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Attorney for Defendant

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

THE PEOPLE OF THE STATE OF)	Case No.
CALIFORNIA,)	
)	
Plaintiff,	)	EXCLUDING HEARSAY
	)	STATEMENTS OF ALLEGED
vs.	)	VICTIM ON GROUNDS OF NOT
	)	BEING A FRESH COMPLAINT OR
	)	SPONTANEOUS STATEMENT, AND
Defendant.	)	LIMITING THE SCOPE OF
	)	FRESH COMPLAINT
)	
	)	Date:
	)	Time:
_____	)	Dept:

THE STATEMENTS AT ISSUE

Set forth the statements in question.

1
2 **THE STATEMENTS IN QUESTION DO NOT**
3 **QUALIFY AS SPONTANEOUS STATEMENTS**

4 Evidence Code section 1240 provides:

5 "Evidence of a statement is not made
6 inadmissible by the hearsay rule if the
7 statement:

8 (a) Purports to narrate, describe, or
9 explain an act, condition or event perceived
10 by the declarant; and

11 (b) Was made spontaneously while the
12 declarant was under the stress of excitement
13 caused by such perception."

14 Thus, the spontaneous statements exception requires (1) that
15 there be an occurrence startling enough to produce nervous
16 excitement and render the ensuing utterance spontaneous and
17 unreflecting, and (2) that the utterance have been made before
18 there has been time to contrive and misrepresent. If an out of
19 court statement meets these criteria, it is admitted for its
20 truth. (People v. Pearch (1991) 229 Cal.App.3d 1282, 1289-1290,
21 citing People v. Poggi (1988) 45 Cal.3d 306, 318. The fact that
22 a statement may have been made in response to questioning does
23 not make it nonspontaneous if the questioning was simple and not
24 suggestive. (In re Daniel Z. (1992) 10 Cal.App.4th 1009, 1021.)
25 The rationale underlying this exception is that the
trustworthiness of the statements is guaranteed by the fact that
they are spontaneous, under the stress of excitement and without
opportunity for reflection and fabrication. (People v. Hughey
(1987) 194 Cal.App.3d 1383, 1388.)

1 Use whichever of the following paragraphs apply depending upon
2 the nature of the statement

3 The statement does not describe an act, condition, or
4 event perceived by the declarant, and thus does not meet the
5 statutory definition of a spontaneous statement. (Explain how
6 this is so with respect to your particular statement.)

7 The statement was not made under the stress of the
8 excitement and therefore does not meet the requirements of
9 §1240. As explained in In re Cheryl H. (1984) 153 Cal.App.3d
10 1098, the requirement that the statement be made under the
11 stress of excitement in order to be admissible within this
12 hearsay exception:

13 "has been construed to introduce a very tight
14 time limitation on out-of-court declarations which
15 parties seek to qualify as "spontaneous
16 exclamations." Frequently, statements are ruled
17 inadmissible under this exception even though
18 uttered only a few minutes after the exciting
19 event. (People v. Fain (1959) 174 Cal.App.2d
20 856, 345 P.2d 305 [statement inadmissible even
21 though made within five minutes of accident];
22 Dolberg v. Pac. Elec. Ry. Co. (1954) 126 Cal.App.2d
23 487,
24 272 P.2d 527 [statement inadmissible though made
25 10-15 minutes after accident].) Substantially
longer delays have been tolerated when the
declarant was unconscious. (People v. Washington
(1969) 71 Cal.2d 1170, 81 Cal.Rptr. 5, 459 P.2d
259 [declarant unconscious for over an hour then
makes statement, held admissible].) Nonetheless,
nothing in the cases or underlying theory of the
"spontaneous exclamation" exception would suggest
the necessary level of psychological stress could
be sustained for even a few hours to say nothing
of the weeks and months involved in this case."
(153 Cal.App.3d at p. 1130.)

24 Explain how statement in your case was not made under the stress
25 of excitement of the startling event.

THE LIMITATIONS OF "FRESH COMPLAINT"

1 In People v. Brown (1994) 8 Cal. 4th 746 the court
2 held that the premise of the original fresh complaint doctrine
3 as explained in People v. Burton (1961) 55 Cal 2d 328 was no
4 longer valid. The premise stated in that earlier case was that
5 a normal sex victim would immediately report the assault or
6 molestation.

7 In Brown, the court held that "proof of an
8 extrajudicial complaint, made by the victim of a sexual offense,
9 disclosing the alleged assault, may be admissible for a limited,
10 non-hearsay purpose-namely to establish the fact of, and the
11 circumstances surrounding, the victim's disclosure of the
12 assault to others-whenver the fact that the disclosure was made
13 and the circumstances under which it was made are relevant to
14 the trier of fact's determination as to whether the offense
15 occurred." (Brown, 8 Cal. 4th at p. 749-750.) Such evidence
16 ordinarily would be relevant under generally applicable rules of
17 evidence, and therefore admissible, so long as its probative
18 value out-weighs its prejudicial effect. (Id., at p. 760.)
19 However, "only the fact that a complaint was made, and the
20 circumstances surrounding its making, ordinarily are admissible;
21 admission of evidence concerning the details of the statements
22 themselves, to prove the truth of the matter asserted, would
23 violate the hearsay rule." (Id., at p. 760.) As the court
24 cautioned:

25 "Indeed, in light of the narrow purpose of its
admission, evidence of the victim's report or
disclosure of the alleged offense should be limited
to the fact of making of the complaint and other
circumstances material to this limited purpose.
Caution in this regard is particularly important

because

1 if the details of the victim's extra-judicial
2 complaint are admitted into evidence, even with a
3 proper limiting instruction, a jury may well find it
4 Difficult not to view these details as tending to
5 prove the truth of the underlying charge of sexual
6 assault (citation omitted), thereby converting the
7 victim's statement into a hearsay assertion." (Id.,
8 at p. 763.)

9 The court went on to note that the defense, unlike the
10 prosecution, can go into the details of the complaint if the
11 defense wishes to use the details to impeach the alleged victim.
12 (Id., at p. 762.) Further, the complaint did not have to be
13 volunteered but could be the product of questioning, and could
14 be delayed. (Id., at p. 761, 763.)

15 In Brown, supra at p. 764, the district attorney
16 examined the adult witness about the timing of the complaint and
17 the circumstances under which it was made, omitting the content
18 of the statements and specifically any description of the
19 molestation itself.

20 CONCLUSION

21 Based on the foregoing, the statement in question does
22 not qualify as a spontaneous statement within Evidence Code
23 §1240.

24 Further, under People v. Brown, supra, only the name
25 of the alleged perpetrator and the general nature of the
26 allegations (child molest) are admissible and not the details.
27 Further, the defense is entitled to a limiting instruction that
28 the statement is not introduced for the truth of the matter
29 asserted.

30 All prosecution witnesses testifying to a "fresh
31 complaint" should be instructed by the Prosecutor that his or

1 her testimony is limited to (a) name of alleged victim; (b) name
2 of alleged perpetrator; (3) date or time of the "fresh" act; and
3 (4) that the allegation was of molestation without any
4 additional details.

5 Dated:

Respectfully submitted,

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8 Attorney for Defendant
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