

COMMON OBJECTIONS TO THE STATE'S EVIDENCE IN DISTRICT COURT

Objection	Law	Key Phrases	Examples and Practice Tips
Not relevant	Rule 401 Rule 402	No tendency to make the existence of any fact of consequence more or less probable than it would be without the evidence Evidence that is not relevant is not admissible	<u>Ex.</u> DA in simple assault case: <i>Mr. Δ, you are behind on your child support payments, aren't you?</i> <u>Tip</u> Be careful not to open the door to evidence that would not otherwise be admissible by asking about it yourself.
Unfairly Prejudicial	Rule 403	Probative value substantially outweighed by danger of unfair prejudice Confusion of issues Waste of time or cumulative	<u>Ex.</u> DA in resist/delay/obstruct case: <i>Mr. Δ, you have a tattoo of a swastika on your arm, don't you?</i> <u>Tip</u> It is improper for the State to suggest that the judge decide the case based on emotions, like disliking Δ.
Leading	Rule 611(c)	Leading questions should <u>not</u> be used on direct	<u>Ex.</u> DA in possession of paraphernalia case: <i>Officer, you saw Δ holding a crack pipe, didn't you?</i> <u>Tip</u> The judge may allow leading on direct if needed to develop testimony, ie, if the witness is immature or hostile.
No personal knowledge/speculation	Rule 602 Rule 701	Witness may not testify to ___; no evidence has been introduced sufficient to show that she has personal knowledge of it Witness can only testify as to opinions or inferences that are rationally based on her own perceptions	<u>Ex.</u> Witness in harassing calls case: <i>When the phone rang again, I figured it was Δ, but I didn't pick up.</i> <u>Tip</u> Testimony that a person is/was telling the truth is improper opinion evidence. 130 NCA 505.

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Violates Δ's right to confront	US Const. 6 th Am. <i>Crawford v. Washington</i> 541 US 36 (2004)	In all criminal prosecutions, Δ has the right to be confronted with the witnesses against Δ Testimonial statements by witnesses who do not appear at trial may <u>not</u> be admitted (unless the witness is unavailable to testify and there has been a prior opportunity for cross examination)	<p><u>Ex.</u> Officer in assault on female case: <i>When I got to Amy's house, I interviewed Amy who won't testify about this; she told me that Δ had punched her in the eye and then fled an hour before I got there.</i></p> <p><u>Tip</u> If the officer is questioning the witness to deal with an ongoing emergency, the statement is non-testimonial. If the emergency has passed and the officer is gathering information for prosecution, the statement is testimonial/excludable.</p>
Hearsay	Rule 801(c) Rule 802	A statement, other than one made by the declarant while testifying at the trial, offered to prove the truth of the matter asserted Hearsay is not admissible (unless some exception applies)	<p><u>Ex.</u> Officer in possess stolen goods case: <i>Mrs. Jones next door told me Δ didn't own a lawn mower like the one I saw Δ using.</i></p> <p><u>Tip</u> Familiarize yourself with common exceptions set out in Rules 803 and 804.</p>
No authentication	Rule 901	No showing that the evidence is what the State claims it is (ie, handwriting, photos, phone calls, voice identifications, public records, documents, data compilations, and systems)	<p><u>Ex.</u> Witness in communicating threats case: <i>I have not seen Δ's handwriting before, but Δ wrote this letter because that is Δ's name at the end.</i></p> <p><u>Tip</u> Rule 901 gives examples of methods of authentication that will get the evidence in. Rule 902 describes certain self-authenticating documents.</p>
Character evidence is not admissible to prove conduct	Rule 404(a)	Evidence of a character trait can't be used to show that a person acted in conformity on a particular occasion (Exception: Δ opens door by putting on evidence of Δ's character.)	<p><u>Ex.</u> DA in assault inflicting serious injury case: <i>Mr. Victim, isn't it true that Δ is a violent man?</i></p> <p><u>Tip</u> In self-defense cases, Δ can put on evidence of Victim's character for violence to show V was aggressor, Δ reasonably feared V, and Δ used reasonable force. 125 NCA 721; 120 NCA 276. Rule 405(b) allows proof of specific instances of conduct, eg, proof that Victim once pulled a gun on Δ.</p>

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<p>The State may not put on evidence that their witness is truthful unless Δ has attacked the credibility of that witness</p>	<p>Rule 608(a)</p>	<p>Evidence of character for truthfulness is admissible only after it has been attacked</p>	<p><u>Ex.</u> DA: <i>Officer, you have testified before this court many times and you always tell the truth, don't you?</i></p> <p><u>Tip</u> Under Rule 611(b), Δ may cross a witness regarding her credibility, but this will open the door to evidence of the witness' truthfulness in the form of reputation and opinion.</p>
<p>Prior crimes or bad acts are not <u>admissible to prove conduct</u></p>	<p>Rule 404(b)</p>	<p>The State can't use evidence of other crimes, wrongs, or acts to prove the character of Δ in order to show Δ did _____ on this occasion</p> <p>(The evidence may be admissible for other purposes though, ie, proof of motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, entrapment or accident)</p>	<p><u>Ex.</u> DA in forgery case: <i>Mr. Δ, you sold marijuana back when you were in college, didn't you?</i></p> <p><u>Tip</u> Prior acts that are remote in time and not similar to the charged offense are less likely to be admissible. Argue that a burglary 12 years ago does not prove Δ had intent or plan to commit this larceny.</p>
<p>Prior bad acts can only be used <u>to impeach credibility</u> if they relate to truthfulness or untruthfulness</p> <p>Improper for DA to ask Witness about Δ's prior bad acts to impeach Δ's credibility; DA may only cross Δ about them</p>	<p>Rule 608(b)</p>	<p>The court may allow cross-examination of a witness about specific prior acts if they are probative of truthfulness or untruthfulness</p> <p>No extrinsic evidence may be used to attack credibility</p> <p>(Exception: Witness opens the door by testifying about another's truthfulness)</p>	<p><u>Ex.</u> DA in trespass case: <i>Ms. Landlady, isn't it true that Δ lied on this rental application about his employment?</i></p> <p><u>Tip</u> Be careful not to open the door: If Witness testifies that Δ is honest, the State may cross Witness about Δ's prior acts that go to truthfulness, eg, Neighbor testifies on direct that Δ is honest; the State may cross Neighbor about Δ pirating cable TV...</p>

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<p>Prior convictions do not come in unless Δ takes the stand</p> <p>Class 3 misdemeanors and infractions can't be used</p> <p>Priors over 10 years old are generally not admissible</p>	Rule 609	<p>A <u>witness</u> may be impeached with evidence that he has been convicted of a felony, or a Class A1, 1, or 2 misdemeanor</p> <p>The State may not use a prior if 10 years have passed since the date of conviction (or release from confinement, whichever is later) unless the State gives written notice and the court makes findings that it is especially probative</p>	<p><u>Ex.</u> DA in break & enter case: <i>Mr. Δ, isn't it true that you were convicted of second degree trespass 12 years ago?</i></p> <p><u>Tip</u> When advising Δ about whether to take the stand, explain which of Δ's prior convictions will come in if Δ does and what impact they will have.</p>
<p>Religious beliefs may not be used to show a witness is credible or lacks credibility</p>	Rule 610	<p>Evidence of religious beliefs is not admissible to show that a witness' credibility is impaired or enhanced</p>	<p><u>Ex.</u> DA in pass school bus case: <i>Ms. Bus Driver, as a Christian woman, you would not lie to the court about what you saw, right?</i></p> <p><u>Tip</u> Religious beliefs may be used to show bias, eg, Δ may elicit evidence that co-Δ is anti-semitic and therefore had motive to damage the property of the synagogue.</p>
<p>The information is privileged</p>	<p>§8-57</p> <p>§8-53</p> <p>§8-53.2</p> <p>§8-53.3</p> <p>§8-53.7</p> <p>§8-53.9</p>	<p>Husband-wife</p> <p>Doctor-patient</p> <p>Clergyman-communicants</p> <p>Psychologist-patient</p> <p>Social worker</p> <p>Optometrist-patient</p>	<p><u>Ex.</u> DA in injury to real property case: <i>Mr. Minister, when you visited Δ in jail to offer spiritual comfort and guidance, Δ admitted he threw a rock at the synagogue, didn't he?</i></p> <p><u>Tip</u> Δ may waive the privilege by failing to object.</p>