



CHAIN OF CUSTODY AND EXPERT REPORTS

Presentation By The Office Of The Director Of Public Prosecutions (ODPP)

Gikui Gichuhi & Evans Gitonga-SPC

gikui@yahoo.com/muriukievans@gmail.com

19th August 2013



OFFICE OF DIRECTOR OF PUBLIC PROSECUTIONS

(An introduction)

- The ODPP is an independent office created under the constitution of Kenya article 157,
- This office is responsible for prosecuting criminal cases investigated by the police in Kenya.
- The ODPP under Article 157 of the Constitution, is empowered to exercise the state powers of prosecution of crimes, including wildlife related cases; directly or through delegation of its authority to other agencies.



RESPONSIBILITIES


As the principal prosecuting authority in Kenya the office is responsible for:

- advising the police on cases for possible prosecution;
- reviewing cases submitted by the police;
- determining any charges in more serious or complex cases;
- preparing cases for court;
- presenting cases at court
- Handling of appeals.



KENYA WILDLIFE SERVICE(KWS)

- It is established under an Act of Parliament Cap 376 (The Wildlife Conservation and Management Act) with the mandate to conserve and manage wildlife in Kenya, and to enforce related laws and regulations.
- The KWS is one such agency, exercising delegated prosecutorial powers on matters relating to offences under the Wildlife (Conservation And Management) Act in Kenya. The ODPP has facilitated this, through the gazettelement of KWS officials as prosecutors of such offences.



Considerations -Chain Of Custody

- What can be produced as exhibits
- Upon production, trophies are ordered forfeited and returned back to KWS-where?
- Are the same trophies produced again in different cases?
- Where are they taken upon forfeiture and return to kws?
- Is the court involved in destruction?



EXHIBITS

- Exhibits are the tangible objects, documents, photographs, video and audio tapes, digital recordings and other items offered for the courts consideration.
- Exhibits unlike oral testimony based on witnesses memories and perceptions allow the court to use its own sense and perceptions and make its own conclusions.
- In wildlife crimes the exhibits generally used in trials include trophies and weapons.

PRODUCTION OF EXHIBITS

- Tangible objects are admitted into evidence because of what they are, unlike documentary exhibits admitted because of what they say.
- The exhibits produced must be both relevant and authentic for it to be admitted e.g:-
 - ✓ Did the object play a role in the facts of the case?
 - ✓ Does it tend to prove some issue in contention?
 - ✓ Is the object in court really the one we are talking about?
- If these conditions are met, the evidence ought to be admitted. The burden is on the prosecutor to lay foundation of relevancy and authenticity of exhibit. (see section 110 of the evidence act.)



Is There Need For A Chain Of Custody

One of most effective methods of laying a foundation is establishing the chain of custody. This is necessary for exhibits:-

- ✓ that are not uniquely recognizable
- ✓ that have not been marked upon collection
- ✓ where the physical properties are in issue.

A chain of custody establishes the location, handling and care of an object between the time of its recovery and the time of trial.



At the minimum, a chain of custody must be sufficient to show that –

- the object in the courtroom is the same as the one involved in the events being considered at the trial.
- the object was stored during the intervening period in a manner that secured it from tampering or inadvertent change.

Organizations that frequently collect evidence, such as KWS must develop routine chain-of-custody procedures for isolating and preserving potential exhibits.

Considerations-Expert evidence

- Meat –need to prove it is game meat.
- Ivory-to differentiate between it and ordinary horns,
- Linking trophies with the animal killed, i.e do animals have unique DNA traceable to even the ivory?
- Is it possible through DNA analyses to link trophies to dead animals to enable prosecutor add charges of poaching to one of possession?

OPINION OF EXPERTS

Only admissible, if made by person skilled in a:-

- Foreign law,
- science or art, or
- identity or genuineness of handwriting, finger or other impressions.

Thus to qualify as an expert, a witness must be qualified by reason of knowledge, skill, experience, training or education.



Challenges On Identification

Although convictions have routinely been entered in the absence on analyst report to the identity of the trophy it is anticipated that as the new act, with the punitive punishment, come into being major objections are likely to be posed during trial eg-:

- a tusk must scientifically be distinguishable from ordinary horns and,
- further be linked to a specific wild animal
- Meat must scientifically be linked to game as opposed to beef/goat particularly where the offence is merely being in possession.



Considerations By Prosecutor

- Are exhibits (particularly trophies) presented before court sufficiently and properly identified?
- What are the distinguishing features?
- Where is the expert evidence on that?
- Have the exhibits been securely stored?



CONCLUSION

The Kenya wildlife forensic laboratories must therefore be able to develop expertise and criterion for such scientific analysis to enable timely prosecutions in all wildlife crimes in the country.



QUESTIONS?



Thank you