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7 SUPERIOR COURT OF CALIFORNIA, COUNTY OF

8 THE PEOPLE OF THE STATE OF) Case No.
CALIFORNIA,)
9)
Plaintiff,) EXCLUDING HEARSAY
10) STATEMENTS OF ALLEGED
vs.) VICTIM ON GROUNDS OF NOT
11) BEING A FRESH COMPLAINT OR
SPONTANEOUS STATEMENT, AND
12) LIMITING THE SCOPE OF
Defendant.) FRESH COMPLAINT
13)
14) Date:
Time:
15) Dept:

16 **THE STATEMENTS AT ISSUE**

17 Set forth the statements in question.

18 **THE STATEMENTS IN QUESTION DO NOT**
19 **QUALIFY AS SPONTANEOUS STATEMENTS**

20 Evidence Code section 1240 provides:

21 "Evidence of a statement is not made
22 inadmissible by the hearsay rule if the
statement:

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

25 (b) Was made spontaneously while the declarant
26 was under the stress of excitement caused by
27 such perception."

28 Thus, the spontaneous statements exception requires (1) that there

1 be an occurrence startling enough to produce nervous excitement and
2 render the ensuing utterance spontaneous and unreflecting, and (2)
3 that the utterance have been made before there has been time to
4 contrive and misrepresent. If an out of court statement meets
5 these criteria, it is admitted for its truth. (People v. Search
6 (1991) 229 Cal.App.3d 1282, 1289-1290, citing People v. Poggi
7 (1988) 45 Cal.3d 306, 318. The fact that a statement may have been
8 made in response to questioning does not make it nonspontaneous if
9 the questioning was simple and not suggestive. (In re Daniel Z.
10 (1992) 10 Cal.App.4th 1009, 1021.) The rationale underlying this
11 exception is that the trustworthiness of the statements is
12 guaranteed by the fact that they are spontaneous, under the stress
13 of excitement and without opportunity for reflection and
14 fabrication. (People v. Hughey (1987) 194 Cal.App.3d 1383, 1388.)

15 Use whichever of the following paragraphs apply depending upon the
16 nature of the statement

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

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

26 "has been construed to introduce a very tight
27 time limitation on out-of-court declarations which
28 parties seek to qualify as "spontaneous
exclamations." Frequently, statements are ruled
inadmissible under this exception even though

1 uttered only a few minutes after the exciting
2 event. (People v. Fain (1959) 174 Cal.App.2d
3 856, 345 P.2d 305 [statement inadmissible even
4 though made within five minutes of accident];
5 Dolberg v. Pac. Elec. Ry. Co. (1954) 126 Cal.App.2d 487,
6 272 P.2d 527 [statement inadmissible though made
7 10-15 minutes after accident].) Substantially
8 longer delays have been tolerated when the
9 declarant was unconscious. (People v. Washington
10 (1969) 71 Cal.2d 1170, 81 Cal.Rptr. 5, 459 P.2d
11 259 [declarant unconscious for over an hour then
12 makes statement, held admissible].) Nonetheless,
13 nothing in the cases or underlying theory of the
14 "spontaneous exclamation" exception would suggest
15 the necessary level of psychological stress could
16 be sustained for even a few hours to say nothing
17 of the weeks and months involved in this case."
18 (153 Cal.App.3d at p. 1130.)

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

21 **THE LIMITATIONS OF "FRESH COMPLAINT"**

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

27 In Brown, the court held that "proof of an extrajudicial
28 complaint, made by the victim of a sexual offense, disclosing the
alleged assault, may be admissible for a limited, non-hearsay
purpose-namely to establish the fact of, and the circumstances
surrounding, the victim's disclosure of the assault to others-
whenever the fact that the disclosure was made and the
circumstances under which it was made are relevant to the trier of
fact's determination as to whether the offense occurred." (Brown,
8 Cal. 4th at p. 749-750.) Such evidence ordinarily would be
relevant under generally applicable rules of evidence, and

1 therefore admissible, so long as its probative value out-weighs its
2 prejudicial effect. (Id., at p. 760.) However, "only the fact
3 that a complaint was made, and the circumstances surrounding its
4 making, ordinarily are admissible; admission of evidence concerning
5 the details of the statements themselves, to prove the truth of the
6 matter asserted, would violate the hearsay rule." (Id., at p.
7 760.) As the court cautioned:

8 "Indeed, in light of the narrow purpose of its
9 admission, evidence of the victim's report or
10 disclosure of the alleged offense should be limited
11 to the fact of making of the complaint and other
12 circumstances material to this limited purpose.
13 Caution in this regard is particularly important because
14 if the details of the victim's extra-judicial
15 complaint are admitted into evidence, even with a
16 proper limiting instruction, a jury may well find it
17 difficult not to view these details as tending to
18 prove the truth of the underlying charge of sexual
19 assault (citation omitted), thereby converting the
20 victim's statement into a hearsay assertion." (Id.,
21 at p. 763.)

22 The court went on to note that the defense, unlike the
23 prosecution, can go into the details of the complaint if the
24 defense wishes to use the details to impeach the alleged victim.
25 (Id., at p. 762.) Further, the complaint did not have to be
26 volunteered but could be the product of questioning, and could be
27 delayed. (Id., at p. 761, 763.)

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

CONCLUSION

Based on the foregoing, the statement in question does

1 not qualify as a spontaneous statement within Evidence Code §1240.

2 Further, under People v. Brown, supra, only the name of
3 the alleged perpetrator and the general nature of the allegations
4 (child molest) are admissible and not the details. Further, the
5 defense is entitled to a limiting instruction that the statement is
6 not introduced for the truth of the matter asserted.

7 All prosecution witnesses testifying to a "fresh
8 complaint" should be instructed by the Prosecutor that his or her
9 testimony is limited to (a) name of alleged victim; (b) name of
10 alleged perpetrator; (3) date or time of the "fresh" act; and (4)
11 that the allegation was of molestation without any additional
12 details.

13 Dated:

Respectfully submitted,

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16 Attorney for Defendant
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