

Criteria	Issues	Discussion
Preservation: 103(a) Subst. Right 103(a)(1) admit (A) Timely, (B) hearsay and CC FRE 103(b) renew Std. of Review	The objection must be: 1) made; 2) timely; 3) well-grounded Why Require Objections?: 1) To avoid endless litigation; 2) To help the court; 3) To help the opposing side (<i>And here ...</i>) FRE 103(a)(1) admit, (A) timely objection (B) grounds 802 and CC. Motion to admit was opposed by defense on hearsay and CC grounds. Hearing. No need to reassert at trial FRE 103(b). Std. of review: fact abuse of disc. Law: de novo. CC: plenary de novo. Four types of error: reversible, harmless, plain and constitutional Here we have constitutional error under 6 th amendment, substantial right effect, 103(a).	Good (A- to A): 23-30 Satisfactory (B- to B+): 15-22 Unsatisfactory (C- to C+): 08-14 Poor (E to D+): 0-07 MAX: 30
FRE 104(a) mostly Jury Trial	104(a): <i>Predicate facts</i> on admissibility, especially findings of fact for 803(2) and <i>Crawford</i> Doctrine for the judge (subject to Std of Review above) by a preponderance using <i>Bourjaily</i> . Is it admissible hearsay and testimonial or not? Partial bootstrapping ok, and lots of independent corroborating evidence available to establish elements of 803(2) and reliability of TOMA use as will be discussed in 803(2) section. 104(a)[2] not bound (even if recording not admitted ...)	Good (A- to A): 23-30 Satisfactory (B- to B+): 15-22 Unsatisfactory (C- to C+): 08-14 Poor (E to D+): 0-07 MAX: 30
Logical Relevance FRE 401/402 Who, How (setup, carried out, premeditation), Why (motive?), Coverup	401(a) relevance (hypo: ID Shooter and how, best added premeditation); 401(b) materiality (“of consequence”) (attack detail—belt—and ID). TOMA: “Defendant Did it!” “How” he did it. “Premeditation” the set up of the murder by defendant intentionally and by Holly Smith unwittingly; coverup threats. Of Consequence because state had to prove murder. 402[b] irrelevant not admissible; 402[a] relevant potentially (presumed is ok) admissible Relevance standard of the rules most liberal of possible four	Good (A- to A): 23-30 Satisfactory (B- to B+): 15-22 Unsatisfactory (C- to C+): 08-14 Poor (E to D+): 0-07 MAX: 30
Specific Rule(s) Hearsay: 801(a),(b),(c) Do NOT mention 801(d)	801(a)[1] Oral assertions; 801(b) by Holly Smith. Questions by officer Gonzalez prompted responses. 801(c)[start] these “statements”; 801(c)(1) not made while testifying at the current trial, in patrol car at time of incident; Officer Gonzalez questions. 801(c)(2) prosecution intends to offer Holly’s words for TOMA. Crime was set up with premeditation and that he actually committed and how. Gonzalez questions explain answers, non truth.	Good (A- to A): 23-30 Satisfactory (B- to B+): 15-22 Unsatisfactory (C- to C+): 08-14 Poor (E to D+): 0-07 MAX: 30
FRE 802 Presumptive Inadmissibility Exclude and Distrust factors related to declarant	3 Reasons Why Exclude Hearsay? (1) The absence of cross-examination; (2) The absence of demeanor evidence; (3) The absence of the oath 4 Reasons Why do we distrust Hearsay? Four Risks: (1) Risk of Faulty Memory; (2) Risk of Misperception; (3) Risk of "Ambiguity" or "Faulty Narration"; (4) Risk of Distortion There is overwhelming evidence of the murder. But as to the critical questions of how (especially premed) and who, the only evidence is Holly’s hearsay statements. Discuss relative to HOLLY!	Good (A- to A): 23-30 Satisfactory (B- to B+): 15-22 Unsatisfactory (C- to C+): 08-14 Poor (E to D+): 0-07 MAX: 30
FRE 803(2)	803(2) (Rule elements, especially “related to” and then <i>Haggins, Arnold</i>). NOT description made while observing it. YES on 803(2) the three factors from US v. Arnold: (1) excitement causing event; (2) no time to contrive; (3) under effect of excitement; Independent corroboration by officer’s observations and recording (inadmissible?). RTCB: Murder, crime scene, observations of sister, Gonzalez and Koons. TOMA Corroboration of calls and that Holly was at the apartment TOMA.	Good (A- to A): 45-60 Satisfactory (B- to B+): 30-44 Unsatisfactory (C- to C+): 15-29 Poor (E to D+): 0-14 MAX: 60
Confrontation Clause applicable to States, Pointer.	Sixth Amendment; Confrontation Clause; (quote it); Made applicable to states; by 14 th Am.; Due Process Clause; <i>Pointer v. Texas</i> ; quote from <i>Pointer</i> .	Good (A- to A): 23-30 Satisfactory (B- to B+): 15-22 Unsatisfactory (C- to C+): 08-14 Poor (E to D+): 0-07 MAX: 30
Specific Rule Constitutional: Crawford Doctrine Officer questioning	Crawford: <i>Testimonial statements of witnesses absent from trial have been admitted only where the declarant is unavailable, and only where the defendant has had a prior opportunity to cross-examine.</i> Davis: Testimonial occupies entire field; emergency doctrine; More like <i>Hammon</i> than <i>Davis</i> by the time Holly gets into patrol car police control scene; officer asked questions and preserved testimony. Bryant: Objective totality of the circumstances test for primary purpose of declarant’s statement to investigate and prosecute a past offense. No emergency, medical or security.	Good (A- to A): 70-90 Satisfactory (B- to B+): 45-69 Unsatisfactory (C- to C+): 22-44 Poor (E to D+): 0-21 MAX: 90
Balancing? 403 We need go no further	HOWEVER, given that the court has decided that there was a 6 th Amendment Confrontation Clause violation, the need go no further. Graded so that you talked yourself out of points rather than earn them. 105 cannot fix a constitutional problem. This year there WAS a jury.	Good (A- to A): 23-30 Satisfactory (B- to B+): 15-22 Unsatisfactory (C- to C+): 08-14 Poor (E to D+): 0-07 MAX: 30
	Evidence, Fall 2017, Professor Pedro A. Malavet	360 total points