

Criteria	Issues	Discussion
Preservation: 103(a) Subst. Right 103(a)(1) admit (A) Timely, (B) hearsay and CC Std. of Review	The objection must be: 1) made; 2) timely; 3) well-grounded Oral objection on the record when each deputy testified. Both hearsay and CC. Overruled by the court. Not really 103(b) situation. Why Require Objections?: 1) To avoid endless litigation; 2) To help the court; 3) To help the opposing side (<i>And here ...</i>) Review abuse of discretion as to factual findings on FRE and de novo as to law and all CC. Error: Constitutional. Substantial Right.	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 Lots of bad 104(b)= Ultimate Fact deductions	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.	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 and Motive most critical What/How independent	401(a) relevance (hypo: ID Shooter and motive); 401(b) materiality (“of consequence”) (attack detail, motive, ID, USE STATUTES). TOMA: “Defendant Did it!” probably “Why/Intent” given instructions discussion. Flight? “How” he did it corroborated by independent evidence including his own confession. 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) (lots of deductions for this!!)	801(a)[1] Oral assertions; 801(b) by Mrs. Raymond. Note that the testimony was received in the form of “what did she tell you” which avoids having to discuss what the officers <i>said</i> . Good practice to avoid problems. Not so in the 911 call and in the interrogation of defendant which I did not give you. 801(c)[start] these “statements”; 801(c)(1) not made while testifying at the current trial, at home at time of incident; 801(c)(2) prosecution intends to offer Mrs. Raymond’s words for TOMA. Her son shot at her after interactions she details (go to intent) and she was terrified for her life, pleaded for her life.	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 as to Mrs. Raymond NOT deputies Fernandez and Knight Mrs. Raymond paints a detailed picture of how the crime developed and occurred.	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) 3 elements Corroboration of elements Corroboration of TOMA reliability.	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 that was admitted. Note that officers were prepared to talk about her “demeanor”. “Whispering” to 911, very loud to officers. RTCB: 911 recording! Damage to pillow, headboard, wall. Spent shell. Shotgun found later. Go to her shock and fear as well as to TOMA Corroboration of call, found in her room, evidence of shot fired, her condition.	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, cited, meaning given, applicable to States, Pointer.	Sixth Amendment; Confrontation Clause; (quote it); Explain what it means (<i>Coy</i> used effectively by best answers); 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 Primary Purpose Investigatory	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
We need go no further after CC No Balancing? 403	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 2018, Professor Pedro A. Malavet	360 total points