

Hearsay

Hector Brolo
Evidence, Law 16
Spring 2017

“

Hearsay (n)

An out of court statement offered in court for the truth of the matter asserted.

”



“

Out of court statement...

”

- Statements made outside of the present court
- Examples: crime scene; police interrogation, in a prior court proceeding, in jail, in a private conversation, to a friend, etc.
- The person who made the statement is called the “DECLARANT”
- Declarant is not necessarily the person testifying in court (WITNESS)
- Important to keep track on who the declarant and the witness are

“

...offered in court...

”

“offered” - it is important to understand why the statement is being offered. What is its purpose?

“in court”- this refers to the present court

“

...for the truth of the matter asserted

”

- The truth of the statement itself- not the truth of the matter asserted by the party offering the statement
- Statements used for other purpose besides truth of matter asserted are not hearsay.

Hearsay applies to verbal statements,
non-verbal conduct, and writings.




Although hearsay is inadmissible in court, there are exemptions and exceptions to the hearsay rule

The rationale behind these exemptions/exceptions is that they tend to be reliable and trustworthy.

A decorative graphic consisting of several parallel white lines of varying lengths, slanted upwards from left to right, located in the bottom right corner of the slide.

Hearsay Exemptions

Are not hearsay at all. These include:

- *Admission by a party opponent
 - *Prior witness inconsistent statement
 - *Prior witness consistent statement
 - *Prior witness identification
- 

Hearsay Exceptions

Are considered hearsay but are excepted due to trustworthiness. These include:

- *Excited utterances
- *Present sense impressions
- *Declarations of present state of mind
- *Statement made for medical diagnosis/treatment
- *Recorded recollection

Hearsay Exceptions

Exceptions (cont.)

- *Business records
 - *Public records
 - *Family records
 - *Ancient documents
 - *Dying declarations
 - *Statements against interest
 - *Prior testimony
 - *Forfeiture by wrongdoing
- 

Testimony of Detective Riggs-1

1 Statement of Chris Riggs, Witness for the Prosecution

2
3 My name is Chris Riggs. I am a detective with the Irving Police Department. I am a
4 twenty-year veteran of law enforcement and hold a Bachelor's degree in Criminal Justice from
5 Portland State University. During my career, I have been involved in every type of criminal
6 investigation at the local, state and federal levels. For six years, I served as a member of Oregon
7 Attorney General's Task Force on Organized Crime, working in an undercover capacity. I use
8 the information I learned during my time as an undercover agent to investigate crimes where
9 there is a suspicion that organized crime might be involved. I work closely with the Metro Gang
10 Task Force, the Seattle Police Department, and the Seattle and Portland FBI offices. Besides my
11 duties at the Irving Police Department, I am on the teaching faculty at the Oregon State Police
12 Academy and the Federal Law Enforcement Training Center in Artesia, New Mexico. I have
13 also been a guest lecturer for Assistant United States Attorneys at the Department Of Justice,
14 Office of Legal Education Training Center in New York.

15
16 As a lead investigator for the Oregon Attorney General's Task Force on Organized
17 Crime, I have made numerous arrests and have been credited with assisting in the prosecutions of
18 numerous men and women connected with organized crime. I have received numerous awards
19 for my work including the Medal of Valor, Meritorious Service Medal, The Law Enforcement
20 Official of the Year 2000, and the J. Edgar Hoover award. My efforts have also been the focus
21 of a story in Newsweek, ABC Television News Program 20/20 and The Oprah Winfrey Show.

22
23 I really get irritated when people bring up the two times that I was investigated by
24 Internal Affairs (IA) for possible corruption and connections to the mob. I was accused of
25 evidence tampering and rigging the case involving Lou Contralto and Lou's brother Diamond
26 Jim so that they escaped conviction. Nothing could be farther from the truth, and I swore to
27 myself there would be another day when I would bring them down. Bringing up the IA
28 investigations is just an underhanded attempt by defense counsel to discredit me and let a guilty
29 person go free. It was a long time ago and nothing came of the investigations. I was never
30 indicted, never suspended, and never reprimanded. Naturally when you've infiltrated the mob,
31 there is always a blur in the public or outsider's view as to where your loyalties are. But, if
32 you're going to play the part of an undercover agent, you have to be convincing – or you don't
33 survive. I got pretty good at acting and sometimes, I admit, it was hard to separate the two lives.
34 But, I wanted nothing more than to nail Lou for the heinous crimes he/she has orchestrated. Yes,
35 I developed connections with Lou Contralto, but only to use it against him/her and other violent
36 loan sharks.

37
38 It's ironic that anyone would accuse me of trying to pin this on Willy Freeman as a
39 subterfuge to let Lou go free again. I wanted nothing more than to finally nail Contralto. The
40 reason I was called into this case is because it initially appeared like a mob hit. We had an
41 eyewitness identify Lou outside Shallots on the evening of March 20. We knew that Devin Frost
42 owed Lou over \$200,000 in loans and interest from gambling. There was evidence of threats
43 made upon Ms. Frost, and evidence of physical violent "messages," such as cigarette burns,
44 when Devin had not come up with promised payments. And being iced in a cooler is a typical
45 mob hit because it sends a message to others who owe the loan sharks money. Based upon that
46 evidence, I had Contralto arrested for the murder of Devin Frost. My original investigation
47 report documents my initial findings and conclusions. Exhibit 6 is a true and accurate copy of
48 my investigation report.

A witness may be impeached by several means including:

- Bias
- Inconsistent statement
- Character
- Competency
- Contradiction

Impeachment by character (FRE 608(a))

- FRE 608 (a) permits impeachment or support of a witness's character by reputation or opinion evidence.
- FRE 608(b) allows impeachment by specific instances of conduct on cross examination if they are probative of the character for truthfulness or untruthfulness of the witness

Testimony of Detective Riggs-2

1
2 But two things gnawed at me. First, I would have expected to find some additional
3 physical violence that had occurred prior to Frost's hypothermia. Typically, loan sharks or their
4 soldiers like to rough up the victim before they pronounce the death sentence. A strong message
5 to other potential deadbeats is paramount. In this case, there were no signs of struggle or
6 physical violence. Ms. Frost's body was void of any recent physical abuse. Second, according
7 to Les Moore's forensic accounting investigation, Devin Frost had been making payments to
8 Contralto, and therefore continued to be a source of income for Contralto. Loan sharks typically
9 don't cut off their source of revenue unless it dries up completely or they feel threatened. I
10 didn't see that to be the case for Devin Frost.

11
12 My first and foremost responsibility is to uphold the law. I had to maintain my
13 objectivity throughout my investigation regardless of how much I might have wanted to
14 implicate Contralto. While maintaining my objectivity, I continued the investigation and
15 supplemented my initial investigation report. Exhibit 7 is a true and accurate copy of my
16 supplemental investigation report. Upon completing my investigation, it became clear to me
17 that Willy Freeman had murdered Devin Frost. Motive was clear. Moore had informed Willy
18 that Devin Frost had been stealing money from the restaurant. Frost's death was a payback in
19 more ways than one – not only for vengeance, but also to pay back Willy \$500,000 through the
20 Buy-Sell life insurance policy. Willy was angry when he/she learned about the theft and the
21 company's bankrupt condition. More than one witness heard Willy threaten Devin. Plus, Willy
22 had the opportunity; Contralto had staked out Shallots the night of March 20, and overheard the
23 two arguing outside the kitchen's back door and Freeman brandishing a kitchen knife and forcing
24 Frost back into the kitchen.

25
26 Unfortunately, there is no accurate way to establish time of death merely by observing
27 the body since it was frozen. Thus, as a police detective, I'm trained to use other means, such as
28 witnesses, neighbors, unopened mail, or other testimonial or physical evidence. The last person
29 who was with Frost was Freeman. Upon investigating Frost's home, it was apparent that she had
30 not come home since Saturday evening, March 20. She had not retrieved her mail or picked up
31 any voicemail messages at home or on her cell phone. It is obvious that this was no accident.
32 The padlock to the cooler was locked from the outside and Devin Frost told us what happened
33 through her own words. She identified her assailant's name on the freezer floor with frozen
34 bacon strips. Using the bacon strips stored in the cooler, she spelled out "Killer – I." Exhibit 8
35 is a true and accurate photograph of the clue left behind by Devin Frost.

36
37 Additionally, it became quite evident that this murder was not committed in the heat of
38 passion but rather was premeditated. Shallots had been operating for three years prior to this
39 incident. Freeman purchased a lock for the freezer when Devin Frost was suspected of stealing
40 from the business. Freeman contemplated and planned the whole thing out, forcing Frost into the
41 freezer, locking her in over the weekend, and making it appear that the loan sharks were making
42 a typical mob hit. But, Freeman was careless. Freeman's fingerprints are all over the lock to the
43 cooler, freezer door, and the kitchen knife, and Freeman didn't realize there was a witness
44 lurking in the dark shadows in the alley facing the kitchen's back door. We did not find
45 Contralto's fingerprints anywhere in the restaurant. J. Byrd might have tried to reach me to tell
46 me about something with this case, but I never spoke with J. Byrd. Sure, I know a detective
47 generally follows all leads, but in this instance, I knew every minute I spoke with Byrd was a
48 minute wasted of my life that I would never get back. He/she is a notorious con-artist, always

Business Records Exception FRE 803(6)???

- The record was made at or near the time by someone with knowledge
- The record was kept in the course of regularly conducted activity of the business
- Making the record was a regular activity of the business
- These conditions are shown by a custodian of the record or other qualified witness
- The opponent does not show evidence of a lack of trustworthiness.

Dying Declaration (FRE 804(b)(2))

- In a prosecution for homicide or in a civil case, a statement while believing the declarant's death to be imminent, made about its cause or circumstances.

Testimony of Detective Riggs-3

1 looking for another angle to play. It wasn't worth my time. Also, I'm not in control of the
2 evidence room, so this angle that I tampered with the evidence in this case is not only way off
3 based, but is offensive to me as a person sworn to serve justice and to uphold the law.

4
5 I affirm under penalty of perjury that the foregoing is true and correct to the best of my
6 belief and knowledge.

7
8
9 Chris Riggs
10

EXHIBIT 3

Deposit slip and cash register receipt

Exhibit 3
Deposit Slip and Cash Register Receipt

Deposit	
Shallots	Coins: 43.00
Acct# 34533245	Cash: 325.00
February 11, 2010	Checks: 219.93
	Subtotal: 587.93
	Less Cash Rec'd: -0-
	Total: 587.93

1st Irving Bank, Irving, OR

02-08-10
✓ 39.65
✓ 92.34
✓ 99.00
✓ 114.32
✓ 178.67
✓ 154.36
✓ 86.45
✓ 119.60
✓ 45.54
✓ 92.34
✓ 136.45
✓ 78.84
✓ 91.70
✓ 85.16
✓ 123.55
✓ 48.56
✓ 78.84
✓ 93.25
✓ 44.21
✓ 116.87
✓ 46.78
✓ 90.91
✓ 143.22
✓ 99.00
2299.61

02-09-10
✓ 36.54
✓ 46.78
✓ 86.98
✓ 99.00
✓ 78.84
✓ 83.45
✓ 92.34
✓ 77.44
✓ 154.36
✓ 178.67
✓ 183.77
✓ 92.34
✓ 144.68
✓ 114.32
✓ 86.45
✓ 48.56
✓ 93.25
✓ 87.36
✓ 136.45
✓ 119.60
✓ 98.46
✓ 85.16
✓ 48.56
✓ 92.34
✓ 178.67
✓ 123.98
✓ 91.70
✓ 67.18
✓ 93.25
✓ 45.54
✓ 123.55
3089.57

Recall that written documents can be considered hearsay if offered for the truth of the matter asserted.

- Here the business records exception (FRE 803 (6)) to the hearsay rule may apply if:
 - The record was made at or near the time by someone with knowledge
 - The record was kept in the course of regularly conducted activity of the business
 - Making the record was a regular activity of the business
 - These conditions are shown by a custodian of the record or other qualified witness
 - The opponent does not show evidence of a lack of trustworthiness.

*Exhibit 4
Check and Check Register*

Shallots 4356 Kirkwood Hwy. Irving, OR 97652	Date: 2/25/10	#1099
Pay to the Order of: Devin Frost <i>Three Thousand and 00/1000</i>		\$3000.00 Dollars
		<i>/s/Devin Frost</i>

Check Register				
				11,345.22
02/21/10	1094	Let Us Produce	165.00	11,180.22
02/21/10	1095	Meat Market	465.00	10,715.22
02/22/10	1096	Vineyard Wines	455.85	10,259.37
02/22/10		deposit	825.36	11,084.73
02/23/10		deposit	923.45	12,008.18
02/24/10	1097	Laundry Time	122.35	11,885.83
02/24/10		deposit	654.92	12,540.75
02/25/10	1098	Supplies Unlimited	93.45	12,447.30
02/25/10	1099	VOID		12,447.30
02/29/10	1100	Let Us Produce	128.00	12,319.30

EXHIBIT 4

CHECK AND CHECK REGISTER

QUESTIONS?

Thank-you for your indulgence!

Hector

A decorative graphic consisting of several parallel white lines of varying lengths, slanted upwards from left to right, located in the bottom right corner of the slide.



ARE YOU FEELING IT???

