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======== Start of Answer #1 (1388 words) ========

Statement of Pat (P)that Vic (V) told him Ace (A) shot him.

A will object that V's statement is hearsay. Hearsay is an out of court statement taken for the truth of the matter asserted. The prosecution will respond that the statement was a dying declaration. Such statements are admissable when they are made when the declarant is sure of impending death and the statement concerns the situation of the death. Here, V is not under the certain belief that he will die so the statement wont be allowed as a dying declaration.

Prosecution will then offer that the statement was an excited utterance. An excited utterance or spontatneuous statement is one made in response to a startling event and while ones reflective abilities are in abeyance. Here V is very much under the influence of the startling event., as he

has just been shot. It may also be offered as a fresh complaint, which are admissable when the declarant makes a statement to a third party about someting that has recently happened to him. The evidence would be admitted under these exceptions to the hearsay rule.

A will claim that he has a confrontation right to confront the witness. Here he cannot confront V because he is dead. The Supreme Court in *Crawford* held that if a witness is unavailable and the statement is testimonial, his statement may not be used unless the defendant had previous opportunity to cross examine him. A statement is testimonial if it is made not as part of an ongoing emergency, instead but in a context which is aimed at later criminal prosecution. Here the statement was made to a police officer so it can be inferred that it would be used in a later prosecution and that V's motivation in making the statement was so that A would be charged. The prosecution will say that this was still an ongoing emergency because Pat had come on the scene close to the time of the shooting and there was still a killer on the

loose. Ultimately, the judge will find that it is testimonial and be barred.

Evidence of the bullets matching the handgun

A will argue that the evidence of the bullets matching the gun is irrelevant because he has already stipulated that the gun was used to kill V. He is not being tried for the two other murders so the fact that the same gun was used is irrelevant here, he will claim. Evidence is relevant when it is probative (has a tendency in reason to prove or disrpove a (disputed, in CA) fact that is material to the disposition of the case. Since he has already stipulated that the gun was used to shoot V, he will also object that the entry of the bullet evidence is character evidence (ce). CE is evidence of a trait of a persons character used to show that the person acted in conformity with that trait on a specific occasion. A will argue that allowing the evidence will convince the jury that he is the kind of person who kills with guns and they should convict him on that grounds. The prosecutor will argue that the evidence is offered for a non-character purpose, to show that A has a common-plan

that involves killing with a handgun. They may also try to identify him as the killer by using the handgun as evidence. However, no evidence has been offered that he had anything to do with the other murders. Before the entry of the evidence the judge must find that there is a sufficient basis for the jury to find that A commited the prior acts. There is no basis here, so he probably would not allow the evidence. Additionally, under section 352 and 403 he must assess the evidence to determine if its probative value is substantially outweighed by the risk of prejudice or confusion of the issues. Doing so, he would exclude the evidence. If it were admitted, then A should ask for a limiting instruction to the jury.

The prosecutor will argue that the evidence is to show a common plan, or a identity, that this is the way A (time)

Fingerprint from the jailhouse

A will object that the fingerprint taken from the jailhouse is hearsay. The prosecutor will respond that it is an official or business record. Such records are admissable when they are taken in the normal course of the business and the

person making the record does so while the event was still fresh. The fingerprints here would meet this requirement. Generally, they do not require that the person who made the record testify, but it will suffice if someone can lay the foundation of how they are routinely done, as Frank can here. The evidene would be admissable as a business record, but for the confrontation clause. *Melendez-Diaz* court held that such records are testimonial in nature if they really heavily on a human element in there creation. Ulitimately though, the taking of a finger print is not such a human based activity that the taker should be forced to testify. The fingerprints will be admitted.

Wendy's testimony that Gina called her and told her A's statement that he didn't want to shoot but he was afraid.

The prosecutor will argue that this is mutiple hearsay. The first level of hearsay is Gina repeating A's statement to Wendy. The second is Wendy repeating Gina's statement in court. The statement will only be admitted if there is a hearsay exception for each statement. A will claim that the

his statement to Gina was an excited utterance, because he was under the influence of the startling event of the confrontation with when he made it. The Prosecutor (PR) will argue that he created the stratling event so the exception doesn't apply. A will counter that he did not create it, as he says V had the drop on him. A will also claim that the statement was a reflection of his state of mind at the time that he made the statement, and also to show his motive. The first level of hearsay exception is satisfied.

The second level can also be satisfied as a fresh complaint because Gina had called her soon after the killing and was hysterical so it can be inferred that the she was in a startled state. The PR will argue that they have a right of confrontation to cross examine Gina. However the PR never has a confrontation right and the statement was not testimonial anyways.

PArt of statement about not believing Ace but loving him and helping him get out of town

PR will want to enter this part of conversation. Ace will

object that it is hearsay. PR will claim that it is excited utterance. However an excited utterance has to describe or narrate the startling event in CA. This part of the conversation doesn't describe or narrate the event so it will be barred under that exception in CA. FEderally it may be allowed as the FRE only requires the statement to relate to the event.

PR will then try to just enter the part about loving him and helping him get out of town as a state of mind or future plan exception to the hearsay rule. The evidnce will be admitted under these exceptions.

A will claim a confrontation violation since Gina is unavailable. However, again the statement wasn't testiminial so Crawford doesn't remove the statement.

Rob's testimony about V shooting at G

The PR will argue that this is character evidence. Character evidence can be reputational, opinion or specific instances. Here we have a specific instance. However, all 3 types of c.e. can be used by a defendant to impune the

victim's violent nature to prove that he was the likely aggressor. It was not necessary for A to be aware of V's violent nature at the time of the incident.

Rob's testimony of V's statement that he was going to shoot all of them

PR objects that it is hearsay and c.e. A will argue that it was a contemporaneos statement or an excited utterance or a state of mind/future plan. To the c.e. objection he will argue that it shows a common plan, to get everyone of them. The evidence will be admissable.

======== End of Answer #1 ========

2)

======== Start of Answer #2 (1326 words) ========

In both the California Rules of Evidences (CEC) and the Federal Rules of

Evidence (FRE), no evidence is admissible unless it is relevant. Further, all relevant evidence is admissible unless it is excluded by exception. Relevant evidence is defined as evidence that tends to prove or disprove a material fact in dispute.

Dan (D) testified in this case, and denied liability, thus all evidence relating to that fact is material and relevant.

911 Call:

Relavance: The 911 call is relevant since it relates to the crash. It was right after the accident happened and thus details on the tape relating to the crime are relevant as to prove or disprove who commited it.

Objection - Hearsay: D would argue that the 911 call is hearsay and should not be admitted. Hearsay is an out of court statement offered for the truth of the matter. Pat (P) could respond that his call was not hearsay. Should that fail, he could then argue that the excited utterance exception would allow his statement. Excited utterance allows statements made that narrate or describe the crime (in California), or that relate to it (Federal) may be offered for the truth. D would then state that the 911 call was excited when it began, and thus should only be allowed while he was excited. Another possilbe exception to be argued would be in regards to official records. A 911 call would not be considered a business record, for it was not recorded as a matter of procedure. However, official records are allowed as an exception to the hearsay rule when made to an official who has a duty to record it truthfully and accurately. 911 would likely satisfy this exception, however, D may be able to argue by analogy that reports to the DMV are not considered official due to the fact that citizens are making the reports, and as such are not admissible. It is possible that the court would exclude part of the 911 call that relates to the incident under this theory.

Ruling: The judge would likely allow the first part of the 911 call under a theory of official report. After the emergency ceased however, it is likely that the report made would not be allowed in since it was not an official report since it was not made by an individual who had a duty to be truthful.

Statement of D to Ollie re: Insurance:

Relevance: The statement made to O would be relevant to the question that O posed. He asked if D owned the blue truck in question, D's response indicated that it was his.

Objection: Excluded for Extrinsic Reasons - Statements relating to individuals having insurance are typically inadmissilble. Public policy dictates such. However, in this context, it may be offered for another reason. P would argue that it is merely being offered to show D's concession that he did in fact own the blue pick up in question. If he did not own the pick up, certainly he would not have said that his insurance would cover the damage. The statement would likely be allowed on this theory, however, D would want a limiting instruction stating that the statement is only to be used in connection to ownership, not for the fact that he has insurance and can pay P.

Objection - Hearsay: The statement "don't worry, my insurance will take care of it," is an out of court statement. D would object to it being hearsay. P would counter that even if it is hearsay, it may be non hearsay and not for the truth of the matter, there are two exceptions that may allow testimony regarding this statement in. The first exception would be an adoptive admissions exception. P would argue that D's statement as an answer, adopts O's question regarding owerneship. D might contend in response taht his answer was not meant to adopt O's admission. This is judged on an objective standard, and it is likely that the jury or judge would believe that the answer did in fact adopt that question as an admission. Also, this admission could be admitted possibly as a declaration against interests. D's interests are not served by him admitting to the fact that he owned the truck, and as such, his admitting to owning it through that question is against his interests and likely true. Lastly, D would argue that his statement and its implications would be more prejudicial than probative under CEC 350. This argument would come close to succeeding, however, the weight of it would not be substantial, thus likely this statement would come in.

Damage to Truck / Line-Up:

Relavance: D hiding the damage to the truck goes to his guilty conscious relating to his liability here. D would most likely argue that he was not hiding hit for that purpose, and as such, it is not relevance. It would be held as relevant.

O saw the damaged truck and believed this to be D's truck. Presumably, O would testify to the fact that he saw the truck. This would be direct evidence and observation from the Officer. D could challege the official report and argue that D was not an expert in the field of automobile repair and damage, and as such should not be allowed to testify to that fact.

D could also challenge as hearsay P's identification of D at the line-up. He would argue that it is hearsay, since there is no indication in our fact pattern that P is testifying. If he should not testify, for some reason, then he will seek to introduce his statement from O's official report. It was taken by an individual (O) who had a duty to report truthfully and accurately what was stated. Thus, P's identification, and assertive conduct of pointing to D's picture, along with identifying his truck would be admissible against D. D may assert that this was improper, and that he should have the ability to cross examine P due to this hearsay statement, however, you do not have the right to confrontation in civil proceedings.

Ned's Statement:

Relavence: D failing to stop at that stop sign previously would be tend to show his liability.

Objection - Character: D would argue that introducing N's statement that he previously failed to stop at that stop sign 4 times previously is bad character evidence. Character evidence of reputation, opinion, and specific instance is not allowed to show a defendants conformity with that trait on a specified ocassion. Here, we have 4 specific instances attempting to show that on the given occassion he did not stop at the sign. This would not be allowed under CEC 1101(a). However, if it can be shown that it was offered for a non-character reason, such as mistake or lack there of, it may be offered. P can argue that by D denying liability, he is arguing that he was in the right on this occasion. As such P would attempt again to offer the three times as evidence of of D's

knowledge that he needs to stop there. D would counter that specific instances of conduct are not allowed here, only opinion and reputation. D would likely win, and the character evidence would likely not be allowed to be brought in.

P might attempt to argue that D running that stop sign was habit behavior. In order to prove habit, P must show that every time D went to that stop sign he ran it. If it can be shown that D had got to that stop sign only 5 or so times in the last year, he may be able to get in those specific instances as non character evidence. D will contend that 4 times in the proceeding year does not a habit make. This would be resolved by the judge favorable to D most likely, as it is unlikely that this situation would be deemed to be habit evidence.

======== End of Answer #2 ========
END OF EXAM