1)

======== Start of Answer #1 (1984 words) ========

Prosecution (P) attempts to enter into evidence Walt's(W) statement he made IDing Ace(A) to Peter

The defense (D) will object to this as hearsay

Hearsay is an out of court statement offered for the truth of the matter asserted.

Even though W is on the stand testifying to what he said theis is techinacally still considered hearsay. However this is where hearsay is at it weakest, because the declarant if available for cross examination.

Never the less the prosecution will argue that this falls into the hearsay exception prior statement of identification. This hearsay exception allows the statement of a Prior idenfication made out of court. It is generally used when the witness cannot recall but may be used to rein enforce. The facts do not state whether W was having trouble IDing A but either way this statement should be allowed in.

P tries to enter in the statement W made about the jacket.

D will once again object to this as hearsay.

If the prosecution is attempting to enter into evidence the statement he made to Peter than they could run into trouble trying to get into evidence as it does not appear to fall into a hearsay exception.

They could argue that it is being entered into evidence for a non-hearsay purpose as circumstantial evidence of W state of mind at the time but this seems like a very weak argument and most likely would not succeed as W stae of mind at the time of IDing A is

not an issue.

SInce W is on the stand P should have asked directly what he saw that night instead of trying to introduce the statements he made to PEter. If W cannot recall what exactly he said to Peter than the P can ask if Peter created any documentation of the conversation and W can look it over so see if he can refresh his memory with a record recollection. Witness can use a recorded recollection if they are have troubling remember certain facts of an event as long as the statement was made at or near the time of the event by the declarant or adopted by the declarant and the declarant testifies that it is accurate.

SInce there is no hearsay exception to the details W provided to Peter about the jacket and P did not directly ask W about it on the stand, than the information should not be entered into evidence. Like stated previously the Hearsay rule is at its weakest when the declarant is one the stand but this evidence should not be introduce if the P only inquires about the statements he make to Peter instead of asking directly.

If this evidence does come in because P presented it properly then the D will object as Improper character evidence. Improper character evidence is any evidence that show a person acted in accordance to a particular character trait and is generally inadmissible for that purpose. D will contend that if the jacket comes in and it shows A is in a gang he would have a propensity to commit crimes.

P will argue that the evidence should be allow in under 1101b for a non-character purpose to show knowledge, intent, or absent mistake/accident A was committing a crime.
The judge would probably not allow this evidence in as it is a stretch to show any of those not-character purpose just off a gang jacket, but if he does allow it in the D would object under 352/403 and it would most likely not be allowed in under that theory. The probabilities value of entering the jakect is very low and the prejudicial effect it would have would substantially outweigh what ever value the P thinks it would provide.

The evince of the jacket should not come in

P tries to enter into evidence W conversation with A and A's subsequent conduct

The defense will first object to this as relevant. W simplifying asking what are you doing and I think you are robbing the house is relevant to prove a disputed fact. And just cause A smiled and said nothing does not help prove anything either. How ever the sufficiency threshold for relevance is low and the judge could see some value in allowing the P to use it.

The irrelevant objection will be overruled.

D will then object that it is hearsay.

P will contend that it is an adoptive admission and should be allowed in An adoptive admission is where the defendant hears a statement that appear to place fault on him he is physically and mentally capable to object and a reasonable person would object.

P will argue that it is cleaR A heard the statement as he smiled and there is nothing to suggest that A was incapable of objecting. And any reasonable person that is accused of robbing a house would not just smile and say anything, they would argue their innocence.

D will argue that this is not an admission at all. A was taught not to talk to strangers after dark and there is nothing in the facts that A should have responded to such an unreasonable accusation.

P will contend that it was not unreasonable at all to simply deny the allegation and just smiling and saying nothing proves that A knew he was guilty and thought it was funny.

The judge could allow this in as an adoptive admission, but if he does D will object

under a 352/403.

A has a right to remain silent and saying anything would have incriminated him. If the judge allows this information in as an adoptive admission the prejudicial effect would substantially outweigh its probative value and it would be completely unfair to A to consider a smile as an admission of guilt.

The judge might allow this evidence in if he believes a reasonable person should have object. If he believes that the probative value is very high and would not be substantially outweighed by the prejudicial effect.

P tries to enter in the DNA evidence

D will object to this as hearsay.

THe report that Cal (C) is going off could be considered a official record. AN official record is a document made by a government employee at within the scope of their duty and the sources of information indicate trustworthiness. it could also be a business record if the record it made in the regular course of business at or near the time of the act condition or event, and a coston of qualified witless testifies to its id and mode of preparation. the sources also must indicate trustworthiness.

It is unclear if Cellmark is consider a government agency from previous readings but the record should be considered a business record as it is done in the course of their regular business

P will contend that the info the are going off of should be entered in as an official record. C can testify to an official record or business record as long as he is qualified which it appears that he is.

The big issue is whether the Document is non-testimonail or testimonial. If it is

testimonial thaN A's right to confrontation will be violated as he does not have an opportunity to cross examine the analyst from Cellmark. (*Crawford). If it* Is non-tesimonail than there is no issue. Testimonial is any information that is produce for court. In Melendez Dlaz SCOTUS ruled that an analyst's affidaqvat being introduced to prove a substance was cocaine was testimonial as the primary purpose of the affidavit was to be used in court. The CA supreme court in Lopez ruled a lab report mainly done by machines with limitedhiman interaction was non-testimoanal and the analyst did not have to testify. Cellmark was the company that did the testing. Here it is unclear how much human interaction happened when creating the intial report. It is also unclear if Cal was the analyst who compared the result at the DOJ or was it someone else and he is just testifying.

SInce the facts are unclear D will argue that the anhalt need to be produce as A has a constitutional right to confrontation and if he is deprived would do tremendous harm.

It appears more information is neede to determine how the document was prepared but at first blush there seems to be enough human interaction that the Judge will rely on Melendez-diaz. It is better to be safe than sorry in a criminal case as the A's freedom is on the line.

THe document will be considered testimonial and the analyst from Cellmark (and Maybe DOJ) will need to testify to have it entered into evidence

P tries to enter A statement of "Whats going on?"

D will argue relevance as simply stating whats going on you must have caught me at a bad time is not relevant to a robbery.

P will contend that it is relevant and future testimony will show that it is relevant

A judge can conditionally allow evidence in if future evindce will make it relevant.

D will then object to this as hearsay and P will counter with this is being offered not for TOMA but a non hearsay purpose to show A state of mind. A knew he was caught and as future testimony will show thats what he states when he is arrested.

The judge could allow this in under a nonhearsya purpose but he will need to give an jury instruction limiting its purpose.

P tries to introduce prior arrest by Lou and his statement

D will object to this as irrelevant but based off prior info it appears to be relevant and would be a brick in the wal proving A's guilt and show similar occurrences.
D will object with hearsay.

P will contend that this is a habit of the D

D would object as improper Character evince that he has a propensity to commit crimes.

P will contend that it is being introduced for a NOn character purpose to show a habit. Habiti is a regular response to a specific situation. Here every time D gets arrested he makes this statement.

D will argue that being arrested 6 times is not enough to create a habit.

If the judge belcves that 6 times is enough then the evidence should come in

If this is allowed in D will object under 352 as the probative value is substantially outweighed by the prejudicial effect. but will most likely fail as the probative value is quite high.

A tries to introduce evidence that he has a twin and has been wrongfully arrested

P would object to irreevlant.

D would contend that it is very relevant to show someone else committed the crime.

The judge will allow this as relevant

P would object to Mace (M) as hearsay

When M said to O that the always get mixed up and he commits the serious crimes this would be allowed in as a declaration against interest.

M clearly knows that telling an officer that he commits the serious crimes not his brother would be against his interest.

P will counter that was previously and not to this instance. He was not delcaring that he commited the crime at hand.

the judge would propbably not let this in on this theory because the statement was not talking about this specific instance.

D will argue that it can come in as character evidnce under the mercy

D will contend under the mercy **he may introduce evidcne of opionon** or reputation that he is not the one that could have commited the crime. Intdoucing this evidcne would be under reputation that he does not have the reputation to commit major crimes.

P will contend this arugment is irrelevant as the courts shoudl not determine

I had major CPU problems and some of my answer was deleted

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

2)

======== Start of Answer #2 (1003 words) ========

This appears to be a case of negligent entrustment, or at least general negligence under a respondeat superior theory of liability. In Allen v. Toledo, the court allowed otherwise inadmissible character evidence (son's past accidents resulting from his reckless driving) not for the truth of the matter asserted (the recklessness of the son's driving in this instance) but for the limited purpose of proving that the father (charged with negligent entrustment) was on notice that his son was a reckless driver.

In the instant case, Pat is suing Pizza Delivers (PD) for negligence. Under *Allen* (if binding), the business records (which will be admitted into evidence over a hearsay objection anyway, because they're created as common and regular practice within the company and not with an eye toward litigation) will be admissible (if some other objection were raised) for the limited purpose of showing that PD was on notice that it's driver's wellness and cognitive abilities were impaired, yet they not only allowed but requested him to continue his duties, so that at the time of the accident he was most certainly acting within the scope of his employment.

The remaining evidence is less straightforward, and may be highly disputed between the parties. In California, the proponent of each piece of evidence bears the burden of convincing the judge that the evidence should come in (while federally, the opponent bears the burden of convincing the judge to keep the evidence out). Since this is a civil matter of minimal value, we will assume that both are residents of the same state and the matter is before a California court.

Evidence: Pat testifies that Dan said, "I'm so sorry, I have a migraine headache and I can't think straight." In California, an apology is not indicative of liability, responsibility, or negligence. PD objects to the hearsay. Pat argues that it goes to then-present state of mind. The judge sustains the ruling, since "can't think straight" is vague. Pat argues that it was an excited utterance - a statement made in the midst of a startling event while a person's reflective capacity is in abeyance. The judge rules that the apology has no probative value, but the rest of the statement can come in as an excited utterance resulting from the startling collision. Would the outcome be different if Dan testified as to these same statements? It would be relevant nonhearsay or, if ruled inadmissible hearsay, could still come in as an excited utterance.

Evidence: Pat testifies that Dan said he called his boss, told boss of the migraine, and boss instructed him to do one more delivery before going to the doctor. Objection: mulitple hearsay. In order for multiple hearsay to enter into evidence, there must be an

admissible exception at every level. First, the boss' instructions to his employee are inadmissible hearsay. The proponent could claim it for the limited purpose of showing that Dan put his employer on notice of his condition rather than for the actual stated instructions the boss gave. This is tricky - Pat is testifying that Dan said that the boss said... So the boss' statement to Dan is simply inadmissible hearsay, unless Dan testifies to it, then it may come in for a limited purpose, but PD will seek to keep it out at all costs. If somehow the boss' statement to Dan did find an applicable exception, the next level of hearsay must be satisfied, Dan's statement to Pat is still hearsay. The judge will admit into evidence only the statement, "I called my boss a few minutes ago."

Evidence: Dan testifies that he offered $500 for damages, and that Pat accepted it. An offer such as this is not binding on the parties. Nonetheless, Pat will object to the portion of the testimony relating to Pat's acceptance of the offer - inadmissible hearsay. Pat also argues that the first portion, the offer, should come in as an admission of liability. The judge will likely not let the acceptance claim come in and is unlikely to cap the victim's damages to $500 because the car was totaled and anything less than the value of the car would be an unfair outcome and a misapplication of justice.

Evidence: The doctor's testimony (which both parties stipulated was not privileged). PD does not object to this entering into evidence (hence the stipulation against privilege) because it hopes to shift liability back to Dan himself, as the medical history shows that he knew or should have known how migraines effect him and taken different steps to effectively keep other drivers safe in his impaired condition. However, there is a multiple hearsay problem here, because the doctor is simply testifying to what Dan told her. However, the doctor has a duty to correctly report his patient's words and symptoms, which creates a record in the normal course of the business. So the way around the multiple hearsay, is to produce the written medical records rather than simply use the doctor's testimony.

Evidence: PD might bring in evidence that Dan was fired after the incident (direct evidence); which evidence may have a tendency to show that the company was not

fully aware of the problem with its driver, or even that he may have concealed it from his employer until the evening of this incident, and that if they had known, they would have handled it differently or even let him go as a driver for them. Once used in this manner, it is like a subsequent precaution (generally in real property issues), which, for public policy reasons, cannot be used to prove, disprove, or shift liability.

Evidence: The PD operator's note of her impression of the driver as disoriented and out of it. This is a present sense impression which may be included in the business report, as would be standard practice. There is no right to confrontation in civil matters, so it would not matter who the operator was who took the notes, or whether she was available to testify.

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