

TRIAL RULES TABLE

Authentication (901)

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| Angleton | 971 S.W.2d 65 (Tex. Crim. App., 1998). | Authentication requirements of Rule 901, Enhanced Audio, Transcript case: (1) whether “enhanced” copy accurately depicts the contents of the original tape; (2) whether the voices on the tape are those of witness and appellant; and (3) whether the depiction of the conversation on the tape as a continuous conversation between the participants is accurate. |
| Butler | 459 SW3d 595 (Tex. Crim. App. 2015) | Text Messages admissible where: Defendant called her from that number in the past (“personal knowledge” of a connection with the number and defendant), the content/context convinced the witness that Defendant sent the messages (“internal characteristics’), calls by Defendant to witness during the string of text messages. |
| Banargent | 228 S.W.3d 393 (Tex. App.—Houston, 2007). | Phone calls from jail: Admitted even though not all voices on tape identified; tape authenticated under 901. |
| Druery | 225 S.W.3d 491 (Tex. Crim. App., 2007). | Admission of letter into evidence: Rule 901 authentication requirement – can be satisfied by showing distinctive characteristics and the like: appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances. |
| Massimo | 144 S.W.3d 210 (Tex. App.—Ft. Worth, 2004). | Email authentication – applying Rule 901(b)(4): (1) consistency with email address on another email sent by Defendant; (2) author’s awareness through the email of details of Defendant’s conduct; (3) email’s inclusion of similar requests that Defendant had made by phone during the time period; and (4) email’s reference to authority by Δ’s nickname. |
| Shea | 167 S.W.3d 98 (Tex. App.—Waco, 2005). | Email authentication. Rule 901(b): authentication may be established by testimony from a witness with knowledge that the document is what it is claimed to be; and also by appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances. |
| Tienda | 358 S.W.3d 633 (Tex. Crim. App., 2012). | Authentication of electronic evidence – MySpace in this case – can be done in various ways, including direct testimony from a witness with knowledge, comparison with other authenticated evidence, or circumstantial evidence. See 901, 104. |
| Wheatfall | 882 S.W.2d 889 (Tex. Crim. App., 1994). | 1006 – Summary of Voluminous Documents: Chart/diagram summary admissible if 1.) based on otherwise admissible evidence, 2.) witness sponsors that the summary is accurate 3.) originals submitted to the other party in a reasonable time. |

Hearsay (800)

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| Apolinar | 155 S.W.3d 184 (Tex. Crim. App., 2005). | Excited Utterance: time not key – whether declarant is capable of reflection/opportunity for reflection; 4 days ok b/c declarant medicated throughout; 10 days or 5 hours not ok b/c reflection. Did the witness reflect? While it may be possible, try and prove that he didn’t. |
| Arroyo | 239 S.W.3d 282 (Tex. App.—Tyler, 2007). | Coconspirator statements made during the course and in furtherance of a conspiracy are not testimonial and don’t require cross examination. <i>Statements made in furtherance of a conspiracy include those made:</i> (1) with intent to induce another to deal with coconspirators or in any other way to cooperate with or assist coconspirators; |

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| | | <p>(2) with intent to induce another to join conspiracy; (3) In formulating future strategies of concealment to benefit the conspiracy; (4) with intent to induce continued involvement in the conspiracy; or (5) for the purpose of identifying the role of one conspirator to another <i>Statements that are not in furtherance of a conspiracy:</i> (1) casual admissions of culpability to someone the declarant had individually decided to trust; (2) mere narrative descriptions; (3) mere conversations between conspirators; or (4) “puffing” or “boasts” by coconspirators</p> |
| Byrd | 187 S.W.3d 436 (Tex. Crim. App., 2005). | Statements made in furtherance of conspiracy are admissible, but mere factual recounts are not. In order to satisfy the rule, the statements must <i>seek to achieve the aim of the conspiracy</i> . |
| Coble | 330 S.W.3d 253 (Tex. Crim. App. 2010) | Excited Utterance: question is not the specific emotion – anger, fear or happiness could qualify – but whether the declarant was dominated by the startling event when speaking; no need for independent evidence of the exciting event as a condition to admissibility. |
| Dinkins | 894 S.W.2d 330 (Tex. Crim. App. 1995) | An extrajudicial statement is not hearsay if it is offered to explain how a defendant became a suspect and not for the truth of the matter asserted. |
| Fischer | 252 S.W.3d 375 (Tex. Crim. App., 2008). | “Speaking offense report” not present sense impression exception to hearsay rule: An officer may testify in the courtroom to what he saw, did, heard, smelled, and felt at the scene, but he cannot substitute or augment his in-court testimony with an out-of-court oral narrative. |
| Martinez - Garcia | 126 S.W.3d 921 (Tex. Crim. App., 2004). | Medical Diagnosis or Treatment: 803(4) –declarant must be specifically seeking treatment to qualify for medical diagnosis or treatment exception to the hearsay rule. |
| Gardner | 306 S.W.3d 274 (Tex. Crim. App. 2009). | Dying declaration 804(b)(2) defined, and do not implicate constitutional protections. “Peering over the abyss into the eternal.” The focus is on the nature and extent of the victim’s injuries, not the actual words or actions of the victim. |
| Hafdahl | 805 S.W.2d 396 (Tex. Crim. App., 1990). | A statement by Defendant that is self-serving is inadmissible hearsay. |
| Johnson | 967 S.W.2d 410 (Tex. Crim. App., 1998). | CCA 4 factors for recorded recollection – Witness had knowledge, original memorandum at or near the time, lacks present recollection of the event, and now vouches for the accuracy of the statement as offered. |
| Johnson | 478 S.W.2d 952 (Tex. Crim. App. 1972) | It is not necessary that the writing have been made by the witness, so long as it refreshes his memory. |
| Jones | 843 S.W.2d 487 (Tex. Crim. App. 1992) | Out of Court statements admissible to show how a defendant became a suspect . |
| Martinez | 17 S.W.3d 677 (Tex. Crim. App., 2000). | 803(3) – state of mind: complainant’s statements that 1.) she is afraid of defendant husband and 2.) if anyone sees the defendant husband, call the sheriff: both admissible. |
| McCarty | 257 S.W.3d 238 (Tex. Crim. App. 2008) | The event producing the excited utterance does not have to be the event <i>about</i> which the utterance is made. <i>Tickling case:</i> testifying witness tickled her grandson (complainant) who spontaneously uttered that he didn’t like to be tickled since Andrew (the Δ) tickled and hurt me (some time ago). |

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| Meador | 812 S.W.2d 330 (Tex. Crim. App., 1991). | Defines Conspiracy – partnership in crime. “As for acts, what one does, all do.” Same for the statements – they must move the conspiracy forward. The conspiracy not over until aim is completed. |
| Trevino | 991 S.W.2d 849 (Tex. Crim. App., 1999) | Admission by party opponent – needs only be their statement, and offered against them. Need not be against their interest; same with adoptive admission. |
| Trostle | 588 S.W.2d 925 (Tex. Crim. App. 1979) | Statements made by complainant that he intended to meet the defendant and tell him to move admissible because it’s explanatory of the declarant’s motive. |
| Wood | 18 S.W.3d 642 (Tex. Crim. App., 2000). | Statement Against Interest: Defines 803(24) as a statement “Which at the time of its making so far tended to subject the declarant to civil or criminal liability that a reasonable person in his position would not have made the statement unless he believed it to be true.” |

Constitutional Challenges

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| Berkley | 298 S.W.3d 712 (Tex. App. – San Antonio, 2009) | Medical Records / Sexual Assault examination records were not testimonial because they were made for the purpose of diagnosing or treating the victim, not collecting evidence for a future prosecution. |
| Burch | 401 S.W.3d 634 (Tex. Crim. App. 2013) | Confrontation Clause – introduction of cocaine lab test report by surrogate analyst who reviewed the report – but did not test it – is Testimonial. Admission of report Requires confrontation of the analyst who actually performed the test. |
| Giles v. California | 554 U.S. 353 (2008). | If the unconfronted statement is testimonial, only 2 ways to make it admissible: 1) dying declaration, 2) Forfeiture by Wrongdoing <i>where the State can show that the express intent of the defendant was to prevent the witness from testifying.</i> |
| Grey | 299 S.W.3d 902 (Tex. App. – Austin, 2009) | Social and criminal history records from TDC are admissible because they are non-testimonial. |
| Langham | 305 S.W.3d 568 (Tex. Crim. App. 2010). | Statements made by a confidential informant to a police officer are testimonial. |
| Martinez | 311 S.W.3d 104 (Tex. App. – Amarillo, 2010). | Offering the testifying experts opinion based on the autopsy and the pictures is admissible; disclosing the testimonial statements in the autopsy report are not admissible. |
| Segundo | 270 S.W.3d 79 (Tex. Crim. App. 2008) | Parole Certificates (granting/revoking) parole are non-testimonial. |
| Scheinman | 77 S.W.3d 810 (Tex. Crim. App., 2002). | No expectation of privacy in jail where 2 inmates discussed in private their plan to avoid prosecution. |
| Smith | 297 S.W.3d 260 (Tex. Crim. App. 2009) | Bare boned, non-detailed factual recitations of offenses committed by the defendant while in prison are non-testimonial. |

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| Wood | 299 S.W.3d 200 (Tex. App. – Austin, 2009). | Visiting pathologist gave an opinion regarding the cause of death based on the autopsy report and pictures. Testimony that he relied on the pictures and reports in forming his opinions is non-testimonial (703) but disclosing certain testimonial statements contained in the autopsy report violated confrontation, and is therefore inadmissible. |
| Woods | 152 S.W.3d 205 (Tex. Crim. App., 2004). | Co-Δ statements made to each other not testimonial b/c they were casual remarks made to acquaintances (Quoting dicta in <i>Crawford</i>). |
| Vinson | 252 S.W.3d 336 (Tex. Crim. App., 2008). | Ongoing Emergency Doctrine: C/w did not testify – statements made to police while Δ present = nontestimonial and therefore admissible. After Δ put in squad car, emergency is no longer ongoing and therefore statements are testimonial. If the objective reason is for police assistance during an ongoing emergency, statements are nontestimonial. If objectively the statements indicate use in a later prosecution, statement is testimonial. |
| Wall | 184 S.W.3d 730 (Tex. Crim. App., 2006). | Excited Utterance to a policeman. Declarant did not testify. Are statements by a declarant to a police officer always testimonial? Would a rational person appreciate the fact that the police officer was collecting information for a prospective prosecution? |
| Wiggins | 152 S.W.3d 656 (Tex. App.— Texarkana, 2004). | Co-conspirator statements made to an ally or friend are non-testimonial , and therefore don't require cross-exam. This hearsay exception is “firmly rooted” in our jurisprudence and therefore is reliable, so it's admissible. |
| Williams | 116 S.W.3d 788 (Tex. Crim. App., 2003) | Voice exemplar does not constitute testimonial evidence – it is more akin to a physical characteristic like handwriting or a fingerprint – and therefore falls outside the protection of the 5 th Amendment. |

| Impeachment | | |
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| Appling | 904 S.W.2d 912 (Tex. App.— Corpus Christi, 1995). | Δ's credibility allowed to be attacked when he elicited his own hearsay. 806 allows for impeachment of any declarant once their hearsay is admitted. |
| Dixon | 2 S.W.3d 263 (Tex. Crim. App., 1999). | Great discussion of the difference b/t 608 (prohibiting admission of a specific instance of conduct for the purpose of impeachment (unless the specific instance is a final felony conviction or one involving crime of moral turpitude under 609)) and 613(b) (allowing questioning into a witnesses' bias or motive). Specifically allows for questioning into a specific instance of conduct for the purpose of showing why a witness may slant his or her testimony in a particular manner despite 608. |
| Garrett | 658 S.W.2d 592 (Tex. Crim. App., 1983). | Bolstering involves use of evidence of prior consistent statements or the like. Use of transcript of a tape does not constitute bolstering. |
| Griffith | 983 S.W.2d 282 (Tex. Crim. App., 1998). | Allowing for impeachment of Co-Δ declarant under 806 |

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| Hammer | 296 S.W.3d 555 (Tex. Crim. App. 2009) | <p>General prior false allegations or statements relating to sexual history are not permissible impeachment evidence. However evidence relevant to a complainant's ill-will toward a defendant, showing for example, her desire to get out of his house is admissible in showing her motive to testify.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="background-color: black; color: white; text-align: center;">Admissible</th> <th style="background-color: black; color: white; text-align: center;">Inadmissible</th> </tr> </thead> <tbody> <tr> <td style="vertical-align: top;"> <ul style="list-style-type: none"> The complainant makes false accusations in certain circumstances and for certain reasons Those reasons/ circumstances are present Therefore the victim made a false accusation in this case </td> <td style="vertical-align: top;"> <ul style="list-style-type: none"> Complainant made a prior false accusation That specific conduct proves dishonest character Therefore, the complainant is generally dishonest and should not be believed </td> </tr> </tbody> </table> | Admissible | Inadmissible | <ul style="list-style-type: none"> The complainant makes false accusations in certain circumstances and for certain reasons Those reasons/ circumstances are present Therefore the victim made a false accusation in this case | <ul style="list-style-type: none"> Complainant made a prior false accusation That specific conduct proves dishonest character Therefore, the complainant is generally dishonest and should not be believed |
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| Hammons | 239 S.W.3d 198 (Tex. Crim. App., 2007). | 801(e)(1)(B) – CCA test for whether to allow the other side to use a prior inconsistent statement is whether, considering all factors including voir dire, opening, statement, and other aspects of defense's demeanor, a reasonable judge would agree that the cross-examiner has challenged the witness for improper motive or recent fabrication; 4 factor test is also listed. | | | | |
| Hernandez, Maria | 219 S.W.3d 6 (Tex. App.—San Antonio, 2007). | Co-Δ declarant hearsay statement admitted, and therefore he was allowed to be impeached as if he testified under Rule 806. | | | | |
| Meadows | 455 S.W.3d 166 (Tex. Crim. App. 2015) | Tacking doctrine requires that the probative value of the final conviction used for impeachment <i>substantially outweigh</i> its prejudicial effect. | | | | |
| Michael | 235 S.W.3d 723 (Tex. Crim. App., 2007). | CCA's test for allowing rehabilitation (in the form of truthful character): whether a reasonable juror would conclude that a witness' truthfulness has been attacked. | | | | |
| Wilson | 71 S.W.3d 346 (Tex. Crim. App., 2002) | <p>405: Witness who testifies to good character of defendant may be impeached by inquiry (but not extrinsic proof of) specific instances of conduct; Reputation = Have you heard questions; Opinion = Did you know questions. The impeachment questions must be</p> <ol style="list-style-type: none"> 1. relevant to the character trait at issue 2. have some basis in fact 3. should be determined outside the presence of the jury | | | | |