

## Introduction to the 2025 Edition

The 2025 edition of the *Hearsay Handbook* includes discussion of recent cases interpreting the hearsay rule and its various exceptions, covering such topics as the following:

- A purported home doorbell video of the victim recanting her allegations and undercutting her testimony at trial that the defendant provided her with alcohol and drugs and touched her sexually was held to be hearsay, and thus inadmissible at trial for gross sexual imposition involving a victim less than 13 years of age, corrupting another with drugs, and gross sexual imposition, where the defendant sought to introduce the video through the testimony of his wife, detective, and his expert, rather than confront victim with purported evidence of her lying during her testimony. (Chapter 1)
- The implied-assertion theory of hearsay is not recognized in all jurisdictions. Thus, an American customs agent's testimony that he took custody of the defendant based on his communications with a Canadian customs officer and that he took custody of a bulletproof vest at the same time implied that the Canadian customs officer, who was unavailable to testify and who had arrested defendant after defendant had driven across border without paying toll, told the American customs agent that the defendant possessed body armor, so that the defendant's confrontation rights were implicated as to that implied statement. The clear and logical inference from the American customs agent's testimony was that during his communications with the Canadian customs officer, that officer made an out-of-court statement regarding his belief that the defendant possessed the body armor. (Chapter 2)
- Testimony of a shooting victim's mother about text messages the victim received concerning negotiations regarding the price of methamphetamine a potential buyer planned to purchase from the victim was held not to be hearsay and, thus, was admissible, in a prosecution for conspiracy to commit felony controlled substance offenses and use of a firearm in the com-

mission of a felony after the defendant pled guilty to involuntary manslaughter; such testimony was not offered for the truth of the matters asserted, the potential buyer was not on trial, and the State was not offering the statements to prove a specific amount that she was willing to pay. (Chapter 2)

- A court held that testimony by the deputy commissioner of the state department of criminal justice information services that searches of the its firearm registry by the agency manager and an attorney did not show that the defendant had a license to carry a firearm or a valid firearms identification card violated the defendant's Sixth Amendment right to confrontation, where the information constituted search results created to prosecute the defendant. (Chapter 7)
- An appellate court held that a rape victim's statements to a sexual assault nurse examiner, noted by the nurse on a sexual assault evidence collection kit form, that the victim had no memory of events during the relevant time period, were made for purposes of obtaining medical treatment and, thus, the nurse's testimony to that effect was admissible, in a rape prosecution even though such testimony was incidental to liability. (Chapter 13)
- A transcript of an alleged victim's forensic interview was admissible under the hearsay exception for recorded recollections, in a prosecution for child molesting where the alleged victim testified she could not remember molestation well enough at time of trial to testify fully and accurately about it, the forensic interview occurred within one week of when alleged victim disclosed abuse to her mother, the alleged victim included several details during the interview which suggested that the matter was fresh in her memory at that time, the alleged victim said she watched a video of the interview, identified herself in the video, testified that the interview occurred when she had remembered events better, and testified that she told the truth to interviewer. (Chapter 15)
- A federal court held that cell phone data constitutes a business record admissible as an exception to the hearsay rule. (Chapter 16)
- Although the market reports exception applies to documents that recite established factual information of the same sort as market quotations, lists, and directories, a state supreme court held, the exception

## INTRODUCTION

does not apply to statements that go beyond the recitation of relatively straightforward objective facts or to documents that present evaluative conclusions. (Chapter 25)

- A transcript of a conversation between an author, who was bringing claims against a former United States President for sexual assault and for defamation, and a witness who testified, at the trial on the author's claims, as to an incident in which the former President had allegedly sexually assaulted the witness was held by a federal court not to contain inadmissible hearsay; the author's statements to the witness were party admissions, and the witness's responses were offered by the former President to place the author's statements into context and were not offered for their truth. *Carroll v. Trump*, 124 F.4th 140 (2d Cir. 2024). (Chapter 36)