

QUESTION 12 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK IV  
OR IN EXAMPLIFY ANSWER SCREEN 12

Defendant Dolan is getting ready for trial on homicide charges in the death of his estranged wife. Dolan's defense is to blame his girlfriend, Gillian, who Dolan claims murdered his wife out of jealousy. Gillian actually witnessed Dolan killing his wife. Gillian nevertheless denies any knowledge of the murder, including any knowledge of Dolan committing the act.

While incarcerated and awaiting trial, Dolan asked a deputy to take to Gillian a note he had written for her. Gillian, at that moment, had arrived after visiting hours but was trying to re-schedule a future time to visit Dolan. The deputy agreed to the request but used his smartphone to photograph the note before giving it to Gillian. The handwritten note instructed Gillian to "stick to the story you've been telling and I will find a way to exonerate you."

Based on the deputy's photograph, law enforcement later found the note in Gillian's possession and planned to use it at trial as evidence that Gillian has a motive to deny Dolan's guilt. Gillian, however, denied any knowledge of the note, claiming someone must have planted it on her.

In final pre-trial proceedings, the prosecutor advised he would call the deputy to introduce the note into evidence. Dolan objects that the note cannot be used because it cannot be authenticated under MRE 901(a), Requirement of Authentication or Identification, because Dolan disputes giving the note to the deputy. Therefore, there is no witness who can authenticate it as a note that came from him, even though it was found in Gillian's possession. Dolan also objects that the note itself is hearsay under MRE 801.

1. How should the court rule on Dolan's MRE 901(a) objection? Explain.

2. How should the court rule on Dolan's MRE 801 objection? Explain.

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