

QUESTION 4 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK II

Dan Defendant is charged with the murder of Vic, who was gunned down in an apparent drive-by shooting at the corner of First and Main. That corner was a known hangout for drug dealers and both Dan and Vic were often spotted there. Vic was shot on February 15 around 11 p.m. The police located no eyewitnesses. Earlier that day, Dan had been released from the county jail after serving time for possession of marijuana.

The prosecutor wants to introduce at Dan's trial the testimony of Warren, who was incarcerated in the county jail when Dan was there. Warren will testify that, the day before Dan was released, Warren heard Art, another inmate, tell Dan in the exercise yard, "When you get out tomorrow, meet Vic at First and Main at 11 p.m." Warren will also testify that Dan looked scared because he saw Dan's eyes widen at the mention of Vic's name and saw his throat tighten as Art walked away.

In an effort to prevent Warren from testifying altogether, Dan's lawyer asks the court in a pretrial motion to disqualify Warren as a witness because he has a felony conviction. As a fall-back position, Dan's lawyer argues in the same motion that Warren quoting Art, who will not be presented as a witness, would be inadmissible hearsay. Dan's lawyer also argues that Warren should not be allowed to say that Dan looked scared of Vic because that statement is hearsay, and in addition, Warren is hardly an expert on human behavior. Finally, Dan's lawyer wants to impeach Warren with his felony conviction for assault with a dangerous weapon.

**What arguments should the prosecutor make in response?
Explain your answer.**

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