

A defendant has been charged with selling cocaine. On the night of the alleged sale, a police officer arrested a woman and found a large package of cocaine in her car. The woman was brought to the police station for questioning. During her interrogation, she admitted to a police officer that she had sold cocaine and said that she had obtained the cocaine from the defendant, who was a local supplier.

By the time of the defendant's trial, the woman has left the country. The prosecutor calls the police officer to testify that the woman told him that the defendant was her cocaine supplier. The defendant's attorney objects.

Is the woman's statement to the police officer admissible to prove that the defendant sold cocaine?

- A. No, because it is hearsay not within any exception. (36%)
- B. No, because the prosecutor has not shown that the woman's attendance at trial could not have been procured through process or other reasonable means. (13%)
- C. Yes, as the statement of the defendant's coconspirator. (12%)
- D. Yes, as the woman's declaration against penal interest. (37%)

Incorrect

Correct answer A

36% Answered correctly

57 secs Time Spent

2023 Version

Explanation:

The **rule against hearsay bars** admission of **out-of-court statements** offered to prove the **truth of the matter asserted** unless an exclusion or exception applies. Here, the woman's out-of-court statement—that she had obtained the cocaine from the defendant, who was a local supplier—was offered to prove its truth. And since no hearsay exclusion or exception applies to the woman's statement, it is not admissible for its truth.

(Choice B) Certain **hearsay exceptions** require that the declarant be **unavailable** as a witness. One way to establish unavailability is by showing that (1) the declarant is absent and (2) the declarant's attendance could not have been procured through process or other reasonable means. Here, although the woman has left the country, the prosecutor has not shown that her attendance could not have been procured. Even if the prosecutor could do so, the woman's statement does not satisfy the criteria for admission under any exception.

(Choice C) Statements made by a party's coconspirator during and in furtherance of the conspiracy are attributable to that party and therefore constitute **nonhearsay**. However, the statement must be part of the flow of information between coconspirators intended to help each perform his/her role (not seen here).

(Choice D) The hearsay exception for statements against interest applies when an unavailable declarant makes a statement that (1) is contrary to the declarant's proprietary or pecuniary interest, (2) tends to invalidate the declarant's claim against another, or (3) exposes the declarant to civil or criminal liability. But here, the woman's statement implicating the defendant in cocaine distribution is against the defendant's penal interest—not her own.

Educational objective:

The rule against hearsay bars admission of out-of-court statements offered to prove the truth of the matter asserted unless an exclusion or exception applies.

References

Fed. R. Evid. 802 (providing the rule against hearsay).

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