

A plaintiff has brought a civil suit against a defendant for injuries arising out of a fistfight between them. The day after the fight, a police officer talked to the plaintiff, the defendant, and an eyewitness, and made an official police report.

At trial, the plaintiff seeks to introduce from the properly authenticated police report a statement attributed to the eyewitness, who is unavailable to testify at trial, that "[the defendant] started the fight."

Should the court admit the statement from the report?

- A. No, because it is hearsay not within any exception.
- B. No, unless the entire report is introduced.
- C. Yes, because it is an excerpt from a public record offered in a civil case.
- D. Yes, because it was based on the eyewitness's firsthand knowledge.

Explanation:

Hearsay is an out-of-court statement (eg, police report) offered for the truth of the matter asserted therein. When such a statement contains another that is offered for its truth (eg, eyewitness's statement), a **hearsay within hearsay** (ie, multiple hearsay) issue arises. In such cases, both statements are **inadmissible unless both** are **excluded** or **excepted** from hearsay.

For example, police reports are typically excepted from hearsay as either:

business records – records (1) made at or near the time of the recorded event, (2) made by or based on information from someone with personal knowledge of the event, and (3) made and kept as a regular practice in the course of a regular business activity *or*

public records – records of a public office concerning (1) office activities, (2) matters observed pursuant to a legal duty (excluding police observations in criminal cases), or (3) factual findings from a legally authorized investigation in a civil case or against the government in a criminal case.

However, statements in police reports by third parties who are under no business or legal duty to report fall under neither exception and therefore must independently satisfy a hearsay exclusion or exception to be admissible.

Here, the police report itself likely falls within a business or public records hearsay exception since it records the officer's personal knowledge and observations. However, those exceptions do not apply to the eyewitness's statement since the eyewitness lacked a business or legal duty to report on the fight. And since the eyewitness's statement is not otherwise excluded or excepted from the hearsay rule, it is inadmissible.

(Choices B, C & D) The eyewitness's statement is inadmissible because it does not independently satisfy a hearsay exclusion or exception. This is true regardless of whether (1) the entire police report is introduced, (2) an excerpt of that report falls within the public records hearsay exception, or (3) the statement was based on the eyewitness's firsthand knowledge.

Educational objective:

When a hearsay statement is contained within another (ie, hearsay within hearsay), both statements are inadmissible unless both are excluded or excepted from the hearsay rule.

References

Fed. R. Evid. 805 (hearsay within hearsay).

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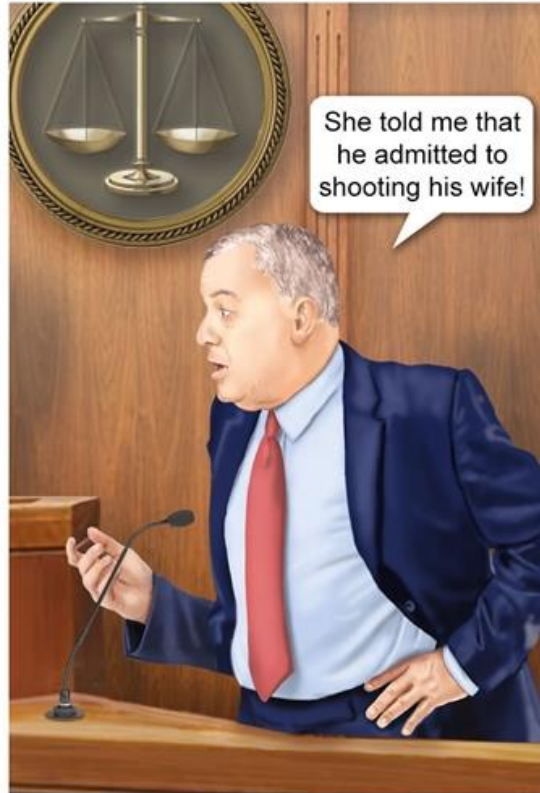
Hearsay within hearsay
(FRE 805)

Woman's statement is hearsay



FRE = Federal Rules of Evidence

Witness's statement is hearsay within hearsay



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