

A defendant is on trial as one of the armed robbers of a liquor store. The defendant testifies that he robbed the store involuntarily because his fellow gang members threatened to kill him right then if he backed out, as he wanted to do. Thereafter, the defense seeks to call a witness who would testify that six months after the defendant was arrested in connection with the robbery, the defendant told him that he had been threatened when he wanted to pull out of the robbery. The prosecution objects to the witness's testimony.

Is the witness's testimony admissible?

- A. No, because it includes the defendant's own hearsay statement that is not within any exception. (43%)
- B. No, because it includes a self-serving statement offered by a criminal accused. (11%)
- C. Yes, because the defendant's hearsay statement fits the state of mind exception. (15%)
- D. Yes, because it includes the prior consistent statement of the defendant, who testified as a witness. (29%)

Incorrect

Correct answer A

43% Answered correctly

01 min, 05 secs Time Spent

2023 Version

Explanation:

Nonhearsay statements by declarant-witness

(FRE 801(d)(1))

Prior statement of identification	Identifies person as someone declarant perceived earlier
Prior <i>inconsistent</i> statement	Inconsistent with declarant's current testimony <i>and</i> made under penalty of perjury at former proceeding
Prior <i>consistent</i> statement	Consistent with declarant's current testimony <i>and</i> offered to either: rebut charge of fabrication/improper influence if made before motive arose <i>or</i> rehabilitate declarant's credibility when attacked on other grounds

FRE = Federal Rule of Evidence.

Under the hearsay rule, out-of-court statements are generally inadmissible to prove the truth of the matter asserted therein. However, certain statements are **excluded** from this rule and are considered **nonhearsay**—including a prior out-of-court statement that is consistent with the declarant's current testimony. This exception for a **prior consistent statement** applies when the statement:

was made by a **declarant who has testified** and is subject to cross-examination (here, the defendant) *and*

is offered either to **rebut a charge of fabrication** or improper influence OR to rehabilitate the declarant's credibility when attacked on other grounds.

However, such a statement may be used to rebut a charge of recent fabrication or improper influence only if the statement was **made before a motive** for the alleged fabrication or improper influence **arose**.

Here, the defendant offers testimony regarding his prior consistent statement that he involuntarily robbed the liquor store. But there is no indication that he was accused of fabricating his earlier testimony or that his credibility was otherwise attacked. Additionally, the statement was made *after* he was arrested and the motive to fabricate arose. Therefore, it is *not* admissible as a prior consistent statement (**Choice D**). And since the witness's testimony includes that statement and no other hearsay exclusion or exception applies, the testimony is inadmissible.

(Choice B) There is no prohibition against offering out-of-court statements that are self-serving so long as they satisfy a hearsay exclusion or exception (not seen here).

(Choice C) Statements of a declarant's then-existing **state of mind** (eg, statements of motive, intent, or plan) are excepted from hearsay. But this exception does not apply here because the defendant's statement to the witness related to past events—not the defendant's state of mind at the time he made the statement.

Educational objective:

A prior consistent statement is nonhearsay if it (1) was made by a declarant who has testified and is subject to cross-examination and (2) is offered to rebut a charge of fabrication or improper influence—if made before any motive for fabrication arose—or to rehabilitate the declarant's credibility when attacked on other grounds.

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