

A defendant was charged with murdering a business rival. Two days before he was killed, the rival visited the police station to communicate his concerns about the defendant, saying to the police, "I think [the defendant] is going to kill me."

At the defendant's murder trial, the defendant moved to exclude the rival's statement to the police on both hearsay and confrontation grounds. The prosecutor responded that the defendant had forfeited both his hearsay and his confrontation objections by killing the rival.

For purposes of the motion, the parties have agreed that the prosecutor can establish to the court, by a preponderance of the evidence, that the defendant killed the business rival because the rival had stolen a large amount of money from the defendant.

What is the correct ruling on the prosecutor's contention that the defendant has forfeited his objections?

- A. The defendant has forfeited his confrontation objection but not his hearsay objection. (21%)
- B. The defendant has forfeited his hearsay objection but not his confrontation objection. (16%)
- C. The defendant has forfeited neither objection, because the prosecutor has not shown that the defendant killed the business rival with the intent to keep him from testifying. (52%)
- D. The defendant has forfeited neither objection, because the prosecutor must prove forfeiture by more than a preponderance of the evidence. (9%)

Correct

52% Answered correctly

01 min, 15 secs Time Spent

2023 Version

Explanation:

Forfeiture of hearsay & confrontation objections

Forfeiture Objection to use of unavailable declarant's hearsay statement is forfeited if party:

wrongfully caused, or acquiesced in causing, declarant's unavailability *and* did so intending that result

Standard of proof Party attempting to prove forfeiture must do so by preponderance of evidence—ie, greater weight of evidence (more than 50%) supports argument

Here, the defendant has moved to exclude the business rival's statement to the police on the following grounds:

the **rule against hearsay**, which bars the admission of out-of-court statements offered to prove the truth of the matter asserted therein *and*

the Sixth Amendment **confrontation clause**, which bars the admission of testimonial statements made by an unavailable hearsay declarant unless the defendant has had the opportunity to cross-examine that declarant.

The prosecutor has responded that the defendant **forfeited** those objections by killing the business rival. But such a forfeiture occurs only when it is established by a **preponderance of the evidence** that the defendant:

wrongfully caused, or acquiesced in wrongfully causing, the **declarant's unavailability** *and*

did so **intending that result (Choice D)**.

Here, there is no indication that the defendant killed the business rival with the intent to cause his unavailability as a witness. Instead, the evidence shows, and the parties are prepared to stipulate, that the defendant killed the business rival because he had stolen a large amount of money from the defendant. Therefore, the defendant has *not* forfeited his hearsay and confrontation objections to the admission of the business rival's statement to the police **(Choices A & B)**.

Educational objective:

To forfeit a hearsay or confrontation clause objection to an unavailable declarant's out-of-court statement, a defendant must have (1) wrongfully caused, or acquiesced in wrongfully causing, the declarant's unavailability and (2) done so intending that result.

References

Fed. R. Evid. 804(b)(6) (discussing the admissibility of a hearsay statement against a party who wrongfully caused the declarant's unavailability).

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