

In a murder prosecution, the defendant testified that the killing had occurred in self-defense when the victim tried to shoot him. In rebuttal, the prosecution seeks to call the victim's father to testify that the day before the killing the victim told her father that she loved the defendant so much she could never hurt him.

Is the victim's father's testimony admissible?

- A. No, because the testimony is hearsay not within any exception.
- B. No, because the victim's character is not an issue.
- C. Yes, as a statement of the declarant's then-existing state of mind.
- D. Yes, because the victim is unavailable as a witness.

Explanation:

Then-existing state of mind

(FRE 803(3))

Hearsay exception for statements of declarant's (available or not) then-existing:

state of mind (eg, motive, intent, plan)

emotional, sensory, or physical condition (eg, mental state, pain, bodily health)

BUT NOT

memory of past events or belief *unless* related to validity or terms of declarant's will

FRE = Federal Rule of Evidence.

The **hearsay** rule generally bars the admission of an out-of-court statement offered to prove the truth of the matter asserted therein. But there is an **exception** for statements of a declarant's **then-existing state of mind**—eg, **motive**, intent, plan—which can be admitted as substantive proof that the declarant later acted in accordance with that state of mind. This is true regardless of the declarant's availability as a witness.

Here, the victim's out-of-court statement that she loved the defendant so much she could never hurt him is hearsay since it is being offered for its truth. But since the statement concerns the victim's *lack of motive* to harm the defendant, it falls within the then-existing state of mind exception to the hearsay rule. Therefore, the statement is admissible to prove that the victim did not try to shoot the defendant—regardless of her availability as a witness **(Choices A & D)**.

(Choice B) In a murder trial, the prosecution can introduce [reputation or opinion](#) testimony about the *victim's* peaceful character to rebut the defendant's claim of self-defense. Therefore, the victim's character (ie, her general propensity for peacefulness) *could* be an issue in this case.

Educational objective:

One hearsay exception is for statements of a declarant's then-existing state of mind (eg, motive, intent, plan), which can be admitted as substantive proof that the declarant later acted in accordance with that state of mind.

References

Fed. R. Evid. 803(3) (hearsay exception – declarant's then-existing state of mind).

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