

A defendant was prosecuted for homicide. He testified that he shot in self-defense. In rebuttal, the prosecution called a police officer who testified that he came to the scene in response to a telephone call from the defendant. The officer offers to testify that he asked, "What is the problem here, sir?" and the defendant replied, "I was cleaning my gun and it went off accidentally."

Is the officer's testimony about the defendant's statement admissible?

- A. No, because of the defendant's privilege against self-incrimination.
- B. No, because the statement is hearsay not within an exception.
- C. Yes, as an excited utterance.
- D. Yes, to impeach the defendant and as evidence that he did not act in self-defense.

## Explanation:

### Witness's prior inconsistent statement

Use	Applicability	Methods of introduction
<b>Impeachment</b>	Always admissible to discredit witness's trial testimony	Examining witness about prior statement
<b>Substantive evidence</b>	Admissible to prove truth only if excluded or excepted from hearsay	Introducing extrinsic evidence if: witness can address & opposing party can question witness about statement <i>or</i> justice so requires

A **prior inconsistent statement** is a statement that was made by a witness in the past that is inconsistent with the witness's current testimony. Such statements can be used to **impeach** a witness by showing that the witness is unreliable.\* Therefore, the officer's testimony—that the defendant previously claimed that he accidentally shot his gun—can be used to impeach the defendant's testimony that he shot in self-defense.

However, an out-of-court statement can only be used to prove the truth of the matter asserted therein if it falls within an **exclusion** or **exception** to the rule against hearsay. One exclusion is for **statements made by and offered against an opposing party**. Here, the prosecution seeks to admit the defendant's prior out-of-court statement against him. Therefore, it falls under this exclusion and can also be admitted to prove the truth asserted—that the defendant shot his gun accidentally, not in self-defense **(Choice B)**.

\*A party need not show or disclose the contents of a prior inconsistent statement to a witness before questioning the witness on the inconsistency. But the party must, on request, show the statement or disclose its contents to an adverse party's attorney.

**(Choice A)** The Fifth Amendment privilege against self-incrimination applies to **custodial interrogations**. Here, the defendant was not under arrest or restrained in his freedom of movement (ie, not in custody) when he responded to the officer. Therefore, this privilege does not apply.

**(Choice C)** An **excited utterance** is a hearsay exception for statements that relate to an exciting event and were made while the declarant was under the stress of excitement from that event. This exception is inapplicable here since the defendant's statement is not hearsay and even if it was, there is no indication that it was made under the stress of excitement.

## Educational objective:

Prior inconsistent statements—ie, statements made by a witness in the past that are inconsistent with the witness's current testimony—can be used to impeach a witness. But these out-of-court statements can only be used to prove the truth of the matter asserted therein if they fall within an exclusion or exception to the hearsay rule.

**References**

Fed. R. Evid. 801 (nonhearsay statements).

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