

A defendant is on trial for kidnapping. The victim has testified that one of the kidnappers referred to the other as "Speed." The prosecutor calls a jail employee to testify that, while the defendant was in jail awaiting trial, other inmates addressed the defendant as "Speed."

Is the jail employee's testimony admissible?

- A. No, because it is hearsay not within any exception.
- B. No, because it is substantially more prejudicial than probative.
- C. Yes, as circumstantial evidence that the defendant was one of the kidnappers.
- D. Yes, to support the truthfulness of the victim.

Explanation:

Evidence is only admissible if it is **relevant**—ie, tends to make a **material fact more or less probable**—and is not barred by other evidentiary rules. For example, Federal Rule of Evidence 403 requires the **exclusion** of relevant evidence when its **probative value** (ie, degree of relevance) is **substantially outweighed** by the danger of any of the following:

unfair prejudice – evidence tends to encourage the jury to decide the case on improper grounds

confusing the issues – evidence leads the jury to focus on a nonmaterial matter

misleading the jury – evidence creates misconceptions in the jurors' minds

undue delay or wasting time – presentation of the evidence will cause unnecessary delay or waste time

needless cumulation – similar evidence on the same issue has already been admitted

Here, the victim testified that one of the kidnappers referred to the other as "Speed." The jail employee now plans to testify that other inmates called the defendant "Speed." The jail employee's testimony is highly relevant because it provides **circumstantial evidence** that connects the defendant to the kidnapping—making the material fact that the defendant was a kidnapper more probable. As a result, it is unlikely that the danger of unfair prejudice *substantially* outweighs the testimony's high probative value, and this testimony should be admitted **(Choice B)**.

(Choice A) Hearsay is an out-of-court statement offered to prove the truth of the matter asserted therein. But the mere use of a person's name or nickname (as seen here) is not a "statement" under this rule because those words are not intended to convey an assertion.

(Choice D) A party may support a witness's character for truthfulness only when (1) that witness's character for truthfulness has been attacked and (2) that support comes in the form of **reputation or opinion** testimony—neither of which is the case here.

Educational objective:

Federal Rule of Evidence 403 requires the exclusion of relevant evidence when its probative value (ie, degree of relevance) is substantially outweighed by the danger of unfair prejudice, confusing the issues, misleading the jury, undue delay/waste of time, or needless cumulation of evidence.

References

Fed. R. Evid. 401 (test for relevant evidence).

Fed. R. Evid. 403 (excluding relevant evidence for certain dangers).

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**Excluding relevant evidence
(FRE 403)**

