

A woman sued a neighbor for shooting her husband from ambush. The woman offers to testify that, the day before her husband was killed, he described to her a chance meeting with the neighbor on the street in which the neighbor said, "I'm going to blow your head off one of these days."

Is the woman's testimony concerning her husband's statement admissible?

- A. No, because it is hearsay not within any exception.
- B. No, because it is improper evidence of a prior bad act.
- C. Yes, because the neighbor's statement is that of a party-opponent.
- D. Yes, to show the neighbor's state of mind.

### Explanation:

The **rule against hearsay** bars the admission of an **out-of-court statement** offered to **prove the truth** of the matter asserted therein. When such a statement (eg, the neighbor's threat) is **contained within another** (eg, the husband's description of the encounter), neither statement is admissible unless *both* are **excluded or excepted** from the rule against hearsay.

One **hearsay exclusion** applies to **statements by a party-opponent** that are offered against that party. Since the neighbor is a party to this lawsuit and his statement is being offered against him, that statement is excluded from hearsay (ie, constitutes nonhearsay). But since the husband's statement describing his chance meeting with the neighbor does not fall within any hearsay exclusion or **exception**,\* the woman's testimony about both statements is inadmissible **(Choice C)**.

\*The hearsay exception for statements offered against a party that wrongfully caused the declarant's unavailability does not apply here because the neighbor did not shoot the husband with the intent to prevent him from testifying.

**(Choice B)** Evidence of a prior bad act cannot be used to prove a person's propensity to behave in a certain manner. But here, the neighbor's statement was offered to prove that he killed the husband—not that the neighbor was prone to violence. Therefore, this rule is inapplicable.

**(Choice D)** The hearsay exception for statements of a declarant's **then-existing state of mind** is unnecessary because the neighbor's statement is nonhearsay. And even if this exception applied, the neighbor's statement would remain inadmissible because it is contained within the husband's inadmissible hearsay statement.

### Educational objective:

When an out-of-court statement that is offered for the truth of the matter asserted therein is contained within another, neither statement is admissible unless both are excepted or excluded from the rule against hearsay.

### References

Fed. R. Evid. 805 (hearsay within hearsay).

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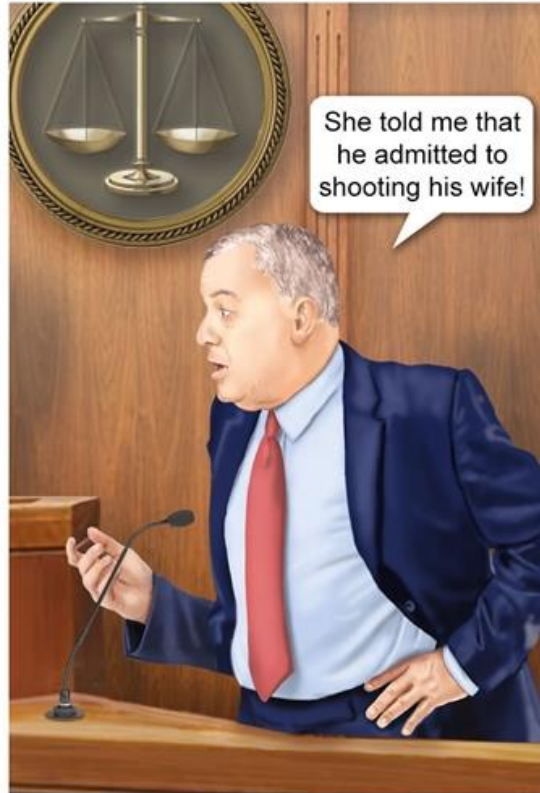
**Hearsay within hearsay**  
(FRE 805)

Woman's statement is hearsay



FRE = Federal Rules of Evidence

Witness's statement is hearsay within hearsay



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