

A defendant has been charged with murder. The defendant has pleaded not guilty, claiming that on the night of the murder, he was visiting a friend in a neighboring town. During the investigation, a detective interviewed the friend. The friend informed the detective that he and his wife hosted a dinner party at their home on the night of the murder. The friend stated that the dinner party was attended by the defendant and the friend's sister. The friend further stated that the defendant became intoxicated at the dinner party, so the friend took the keys to the defendant's vehicle to prevent the defendant from leaving. Soon after the interview with the detective, the friend died.

Prior to trial, the defendant properly notified the prosecution of his intent to introduce the transcript of the friend's unsworn interview with the detective at trial.

Is the transcript of the friend's unsworn interview with the detective admissible?

- A. No, because it is hearsay not within any exception.
- B. No, because its admission violates the Sixth Amendment confrontation clause.
- C. Yes, because the friend is unavailable to testify.
- D. Yes, under the residual hearsay exception.

### Explanation:

The **rule against hearsay** bars the admission of out-of-court statements offered to prove the truth of the matter asserted therein. However, certain statements are expressly **excluded or excepted** from the rule. And even when **no specific exception applies**, a hearsay statement is admissible under the **residual or catchall exception** if:

the statement is supported by **sufficient guarantees of trustworthiness**

the statement is **more probative** on the point than any **other evidence obtainable** through **reasonable efforts** *and*

the proponent gives the adverse party **notice of the intent** to offer the statement.

Here, the defendant sought to introduce the deceased friend's hearsay statement. The statement does not fall under any specific hearsay exclusion or exception. And though the defendant notified the prosecution of his intent to introduce the statement, it is not admissible under the residual hearsay exception. That is because testimony regarding the defendant's whereabouts on the night of the murder is reasonably obtainable from other sources—eg, the friend's wife or sister **(Choice D)**. Therefore, the transcript of the friend's unsworn interview is *not* admissible.

**(Choice B)** The confrontation clause bars admission of a testimonial statement *against* a defendant unless (1) the declarant is **unavailable** and (2) the defendant had a prior opportunity to cross-examine the declarant. Here, the friend's statement was offered by (not against) the defendant, so the confrontation clause is not implicated.

**(Choice C)** The friend *is* unavailable since he is deceased. However, his statement must still meet the requirements of a hearsay exclusion or exception to be admissible (not seen here).

### Educational objective:

A hearsay statement is admissible under the residual or catchall exception if (1) the statement is supported by sufficient guarantees of trustworthiness, (2) it is more probative on the point than any other evidence obtainable through reasonable efforts, and (3) the proponent gives the adverse party notice of the intent to offer the statement.

### References

Fed. R. Evid. 807 (residual hearsay exception).

## Residual hearsay exception

