

A defendant was charged with aggravated assault. At trial, the victim testified that the defendant beat her savagely, but she was not asked about anything said during the incident. The prosecutor then called a witness to testify that when the beating stopped, the victim screamed: "I'm dying—don't let [the defendant] get away with it!"

Is the testimony of the witness concerning the victim's statement admissible?

- A. No, because it is hearsay not within any exception.
- B. No, because the victim was not asked about the statement.
- C. Yes, as a statement under belief of imminent death, even though the victim did not die.
- D. Yes, as an excited utterance.

Explanation:

Common hearsay exceptions

Declarant unavailable	Former testimony
	Dying declaration
	Statement against interest
	Statement of personal or family history
	Statement offered against party that wrongfully caused declarant's unavailability
Declarant's availability irrelevant	Present sense impression
	Excited utterance
	Mental state or physical condition
	Medical diagnosis or treatment
	Recorded recollection
	Business or public records
	Learned treatises, periodicals, or pamphlets
	Judgment of previous conviction
	Residual (catch-all) exception

Under the **rule against hearsay**, an out-of-court statement offered to prove the truth of the matter asserted therein is **generally inadmissible**. But one **exception** to this rule applies to **excited utterances**—ie, statements:

relating to a **startling event** or condition *and* made while the declarant was under the **stress of excitement** caused by that event or condition.

Such statements are **admissible**—regardless of the declarant's availability as a witness at trial—because it is unlikely that these spontaneous statements would be fabricated.

Here, the victim's out-of-court statement ("I'm dying—don't let [the defendant] get away with it!") is hearsay because it is being offered to prove that the defendant was her attacker. But since the statement related to the defendant's savage assault of the victim and was made while she was excited by that startling event, the statement is admissible as an excited utterance (**Choice A**).

(Choice B) There is no requirement that a declarant be asked about his/her hearsay statement while testifying for that statement to be admissible.

(Choice C) A **dying declaration** is a statement (1) made while the declarant believed his/her death was imminent (2) concerning the cause or circumstances of that impending death. These statements are only excepted from the hearsay rule in civil cases and

prosecutions for criminal homicide—not aggravated assault. And though the declarant need not be dead for this exception to apply, he/she must be [unavailable](#) (not seen here).

Educational objective:

An excited utterance is a statement relating to a startling event or condition that is made while the declarant is under the stress of excitement caused by that event or condition. This type of statement is excepted from the hearsay rule regardless of the declarant's availability.

References

Fed. R. Evid. 803(2) (hearsay exception for excited utterances).

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