

A plaintiff is suing the defendant for injuries suffered in an automobile collision. At trial, the plaintiff's first witness testified that, although she did not see the accident, she heard her boyfriend say just before the crash, "Look at the crazy way [the defendant] is driving!"

The defendant offers evidence to impeach the boyfriend by asking the witness if it is true that the boyfriend beat up the defendant just the day before the collision.

Is the defendant's question to the witness proper?

- A. No, because impeachment cannot properly be by specific instances of conduct.
- B. No, because the boyfriend has no opportunity to explain or deny the defendant's assertion.
- C. Yes, because it tends to show the boyfriend's character.
- D. Yes, because it tends to show the possible bias of the boyfriend against the defendant.

Explanation:

Impeaching witness v. hearsay declarant

Method	Witness	Declarant
Character for truthfulness	Specific instance of conduct involving bad act or criminal conviction of felony/crime of dishonesty Reputation or opinion testimony on truthfulness	
Self-interest/bias	Motive to lie or partiality to party	
Specific contradiction	Evidence directly contradicting testimony on material issue	
Inconsistent statement	<i>Prior</i> statement admissible <i>if</i> witness can explain/deny & be questioned by opposing party (or if justice requires)	Admissible <i>regardless</i> of when statement occurred & whether declarant can explain/deny

When an out-of-court statement is admitted under a [hearsay exception](#), the **hearsay declarant** may be **impeached** (ie, discredited) **as if** the declarant had **testified at trial**. One way a declarant can be impeached is by introducing evidence that the declarant's statement was motivated by **bias or self-interest**.

Here, the court admitted the boyfriend's statement implying that the defendant was responsible for the crash—likely under the [excited utterance](#) exception. As a result, the boyfriend can be impeached as though he had testified at trial. Evidence that the boyfriend beat up the defendant the day before the crash tends to show the boyfriend's possible bias against the defendant. Therefore, the defendant's question to the witness is proper.

(Choice A) A specific instance of conduct *is* admissible to impeach a witness or hearsay declarant. For example, a party may examine the witness about such conduct if it is probative of the witness's character for truthfulness or establishes the declarant's bias (as seen here).

(Choice B) A hearsay declarant need not be given an opportunity to explain or deny the offered impeachment evidence. In contrast, a *witness* can only be impeached with an inconsistent statement if the witness is given the opportunity to explain or deny—and the opposing party can question the witness about—the statement.

(Choice C) Character evidence shows a person's general traits or propensities and is generally inadmissible to show conformance therewith on a particular occasion. But here, evidence that the boyfriend beat up the defendant is being offered to show the boyfriend's potential bias—not a character trait.

Educational objective:

When a hearsay declarant's statement is admitted into evidence, the declarant may be impeached in the same manner as a testifying witness—eg, by showing that the declarant's statement was biased or motivated by self-interest.

References

Fed. R. Evid. 806 (attacking & supporting declarant's credibility).

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