

A defendant is on trial for theft of a used car that he took for a test drive and did not return. He was arrested in the car two days later. In his defense, the defendant has testified that he had no intention of keeping the car but got caught up in marital problems and simply delayed returning it. The defendant calls a witness to testify that the defendant told him, during the two days, "I'm going to return this car as soon as I work things out with my wife."

Is the witness's testimony admissible?

- A. No, because it is a self-serving statement by an accused.
- B. No, because it is hearsay not within any exception.
- C. Yes, as a prior consistent statement of the defendant.
- D. Yes, as a statement by the defendant of his then-existing state of mind.

Explanation:

Under the rule against hearsay, testimony regarding an out-of-court statement is generally inadmissible to prove the truth of the matter asserted in that statement. But such testimony is admissible if the statement falls under an **exception** to the hearsay rule. One **hearsay exception** applies to statements concerning the declarant's **then-existing state of mind** (eg, motive, intent, plan) or emotional/physical condition (eg, mental feeling, pain, bodily health).

Here, the witness seeks to testify that the defendant told him, "I'm going to return this car as soon as I work things out with my wife." This out-of-court statement is hearsay since it is offered to prove the truth of the matter asserted—ie, that the defendant intended to return the car once he dealt with his marital issues. But since the statement concerns the defendant's *intent*, it is admissible under the then-existing state of mind exception to the rule against hearsay **(Choice B)**.

(Choice A) Statements by a party-opponent are **excluded** from the hearsay rule (ie, nonhearsay) if the statement is offered *against* that party. And though this does not apply to self-serving statements that *favor* the party-opponent, those statements may still be admissible if they fall under a hearsay exception (as seen here).

(Choice C) A witness's out-of-court statement is nonhearsay if it is (1) consistent with the witness's present testimony and (2) used to support the witness's credibility *after* it has been attacked. The defendant's statement does not fall under this hearsay exclusion because there is no indication that his credibility has been attacked.

Educational objective:

Statements regarding a declarant's then-existing state of mind (eg, motive, intent, plan) or emotional/physical condition (eg, mental feeling, pain, bodily health) are excepted from the rule against hearsay.

References

Fed. R. Evid. 803(3) (hearsay exception for a declarant's then-existing state of mind).

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Admissibility of out-of-court statements

