

In a defendant's prosecution for assault, a witness is called to testify that the victim had complained to the witness that the defendant was the assailant.

When is the witness's testimony most likely to be admitted?

- A. The witness is a doctor whom the victim consulted for treatment.
- B. The witness is a minister whom the victim consulted for counseling.
- C. The witness is a police officer whom the victim called on instructions from her husband.
- D. The witness is the victim's husband whom she telephoned immediately after the event.

Explanation:

Reasoning for common hearsay exceptions

Exception	Reason for reliability
Present sense impression	No time to fabricate statement
Excited utterance	
Past recollection recorded	Records made when fresh in person's mind
Then-existing mental/physical condition	Persons can perceive their own mental or physical state
Statement for medical diagnosis/treatment	Self-interest creates motive for truth
Business & public records	Accuracy verified to preserve legal rights & reputation
Documents & statements on property interest	
Certificates of birth, marriage, baptism	

Hearsay is an out-of-court statement offered for the truth of the matter asserted therein. This type of statement is presumed *unreliable* and is therefore generally inadmissible. But certain statements are **excepted** from the rule against hearsay because they are inherently *reliable* (eg, because they would be hard to fabricate). This includes:

excited utterances – statements related to a startling event or condition that are made while the declarant is still under the stress of excitement from the event or condition *and*

present sense impressions – statements describing or *explaining* an event or condition that are made while or immediately after the declarant perceived it.

Here, a witness seeks to testify that the victim had complained to the witness that the defendant was her assailant. This out-of-court statement is hearsay since it is being offered for its truth. But if the witness is the victim's husband—whom she telephoned *immediately after* the assault—the victim's statement likely qualifies as an excited utterance or present sense impression. Therefore, testimony on this statement would most likely be admissible.

(Choice A) Another hearsay exception exists for statements made for and reasonably pertinent to medical diagnosis or treatment that describe the declarant's medical history, symptoms, or their inception or general cause. Therefore, the doctor could testify to the victim's statements about her medical *condition*—but not about the assailant's *identity* (unrelated to the victim's medical care).

(Choices B & C) No hearsay exception exists for out-of-court statements made to clergy (eg, a minister) for the purpose of receiving counsel or for statements made to law enforcement (eg, a police officer).

Educational objective:

Statements excepted from hearsay include statements (1) related to a startling event or condition made while the declarant is still under stress from it (ie, excited utterances) and (2) describing or explaining an event or condition made while or immediately after the declarant perceived it (ie, present sense impressions).

References

Fed. R. Evid. 803(1)-(2) (hearsay exceptions – present sense impression, excited utterance).

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