

A defendant was prosecuted for murder of a man whose body was found one morning in the street near the defendant's house. The state calls a neighbor to testify that during the night before the body was found he heard the defendant's wife scream, "You killed him! You killed him!"

Is the neighbor's testimony admissible?

- A. No, because it reports a privileged spousal communication.
- B. No, if the wife objects on spousal immunity grounds.
- C. Yes, as a report of a statement of belief.
- D. Yes, as a report of an excited utterance.

## 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	

Under the **rule against hearsay**, **out-of-court statements** are presumed unreliable and, therefore, are generally **inadmissible** when offered to prove the truth of the matter asserted therein. However, certain out-of-court statements are excepted from this rule because they are inherently reliable. One such **exception** is **excited utterances**—ie, spontaneous statements that are:

related to a **startling event** or condition (regardless of the declarant's participation in that event) *and*

made while the **declarant was still under stress** from that event (ie, before the declarant could reflect on the event and fabricate the statement).

These requirements are assessed using multiple factors, including the content of the statement and the declarant's condition (eg, demeanor, vocal tone, physical condition).

Here, the state seeks to introduce the neighbor's testimony about the wife's out-of-court statement ("You killed him! You killed him!") to prove the truth of the matter asserted therein (that the defendant killed the man). Although that statement is hearsay, it relates to a startling event (the man's death) and was made while the wife was still under stress (as evidenced by her repeated screams). Therefore, the neighbor's testimony is admissible as a report of an excited utterance.

**(Choice A)** Spousal communications are privileged if they are made during a valid marriage and reasonably intended to be confidential. But here, confidentiality was not intended since the woman screamed loudly enough for the neighbor to hear.

**(Choice B)** A criminal defendant's spouse may assert spousal immunity and refuse to testify against the criminal defendant. But this privilege would not apply here since the neighbor—not the defendant's wife—was called to testify.

**(Choice C)** A statement of a declarant's then-existing state of mind is a hearsay exception. But mere *statements of belief* or memory do not fall within this exception unless they relate to the declarant's will (not seen here).

**Educational objective:**

Excited utterances—ie, spontaneous statements that (1) relate to a startling event and (2) were made while the declarant was still under stress from that event—are excepted from the hearsay rule.

**References**

Fed. R. Evid. 803(2) (excited utterance hearsay exception).

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