

A defendant has been charged with sexual exploitation of children after several images depicting the defendant's young daughter engaged in sexual conduct were found on a flash drive in his garage. The defendant has pleaded not guilty, claiming that the flash drive belonged to someone else.

At the jury trial in federal district court, the prosecutor seeks to call the defendant's wife, the child's stepmother, to testify that the defendant privately told her that he was likely "going away for a long time for what he did" and that "it would be best for protective services to remove their child from the home immediately." The wife has agreed to testify but the defendant has objected, citing spousal privilege.

Is the wife's proposed testimony admissible?

- A. No, because the spousal-immunity privilege may be asserted by the defendant-spouse.
- B. No, because the statements made by the defendant to his wife are protected under the marital-communications privilege.
- C. Yes, because a defendant cannot assert spousal privilege when charged with a crime against a child of either spouse.
- D. Yes, because the marital-communications privilege is held only by the witness-spouse.

Explanation:

Spousal privileges

	Spousal-immunity	Marital-communications
Purpose	Shields witness-spouse from testifying against spouse in criminal case about matters that occurred before or during marriage	Protects against disclosure of confidential spousal communications made during marriage in criminal & civil cases
Privilege holder	Witness-spouse	Both spouses
Duration	Only during active marriage	Continues after divorce
Exceptions	Not applicable when spouse is (1) suing other spouse or (2) accused of crime against other spouse or child of either	

Two common-law privileges apply to **spousal testimony** in federal court:

Spousal-immunity (ie, spousal-testimonial) privilege – protects persons in an active marriage from testifying against their spouse in a criminal case about any matters that occurred before or during the marriage

Marital-communications (ie, spousal-communications) privilege – protects confidential communications between spouses during the marriage from disclosure in a civil or criminal case, even after the marriage has ended

The spousal-immunity privilege is held only by the witness-spouse, so the defendant here cannot assert this privilege to prevent his wife from testifying against him (**Choice A**). Conversely, the marital-communications privilege is held by *both* spouses. Therefore, one spouse generally can use it to prevent the other from testifying to a confidential marital communication—eg, the defendant's private statements to the wife (**Choice D**).

However, **neither privilege applies** when one **spouse is charged** with a **crime against** the other **spouse or a child of either spouse**—including stepchildren. Since the defendant here has been accused of committing a crime against his own child, he cannot use the marital-communications privilege to prevent the wife from disclosing his confidential statements related to that crime (**Choice B**).* Therefore, the wife's proposed testimony is admissible.

*Similarly, the wife cannot assert the spousal-immunity privilege to avoid testifying against the defendant in this case.

Educational objective:

Spousal privileges do not apply in federal cases where one spouse is charged with a crime against the other spouse or a child of either spouse—including stepchildren.

References

Fed. R. Evid. 501 (applicability of common-law privileges).

Copyright © UWorld. All rights reserved.