

A defendant was charged with murder. At trial, the prosecutor called a witness who testified that a friend had told him that there was "bad blood" between the defendant and the victim. After the witness was excused, the defense attorney moved to strike the portion of the testimony that included the friend's statement, arguing that the statement was inadmissible.

Has the issue of admissibility been preserved for appeal?

- A. No, because an objection must be made before the evidence is presented to the jury. (2%)
- B. No, because the defense failed to make a timely objection stating the specific ground for objection. (71%)
- C. Yes, because admission of the statement affected the defendant's right to confront witnesses. (2%)
- D. Yes, because the defense objected to the statement during the trial. (24%)

Correct

71% Answered correctly

01 min, 25 secs Time Spent

2023 Version

Explanation:

Preserving evidentiary rulings for appeal

(FRE 103)

Evidence admitted

Opponent of evidence must:

timely object or move to strike *and*

unless apparent from context, state specific ground(s) for objection or motion

Evidence excluded

Proponent of evidence must:

obtain definitive ruling *and*

unless apparent from context, make timely offer of proof

FRE = Federal Rule of Evidence.

A party must take steps to preserve the right to challenge the admission (or exclusion) of evidence on appeal through a process called "preservation of error." A party who wishes to **claim error** regarding the **admission of evidence**—here, the witness's inadmissible hearsay testimony—must take the following actions **on the record**:

timely object or move to strike *and*

unless apparent from the context, **state the specific ground** for the objection or motion to strike.

An objection or motion to strike is **timely** if it is **made at the first opportunity**. Consequently, the defense attorney's motion to strike that was not made until after the witness left the stand—as opposed to promptly after the hearsay statement was shared—was untimely **(Choice D)**. Even if it had been timely, no specific ground for the motion was provided. Therefore, the issue of the statement's admissibility has *not* been preserved for appeal.

(Choice A) An objection need not be made before the evidence is presented to the jury to be considered timely because that is not possible in all instances. Instead, FRE 103 requires only that the objection (or motion to strike) be made at the first opportunity.

(Choice C) The Sixth Amendment confrontation clause bars the admission of an unavailable hearsay declarant's testimonial statement—eg, a statement made during a police investigation—unless the defendant had an opportunity to cross-examine the declarant. Here, the friend's statement to the witness was *not* testimonial and therefore did not affect the defendant's right to confront witnesses.

Educational objective:

A party who wishes to preserve the right to challenge the admission of evidence on appeal must (1) timely object or move to strike and (2) unless apparent from the context, state the specific ground for the objection or motion to strike. An objection or motion to strike is timely if made at the first opportunity.

References

Fed. R. Evid. 103 (preserving a claim of error in a ruling to admit evidence).

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