

A defendant is on trial for robbing a bank in State A. She testified that she was in State B at the time of the robbery. The defendant calls her friend to testify that two days before the robbery the defendant told him that she was going to spend the next three days in State B.

Is the friend's testimony admissible?

- A. No, because it is hearsay not within any exception.
- B. No, because it is offered to establish an alibi by the defendant's own statement.
- C. Yes, because a statement of plans falls within the hearsay exception for then-existing state of mind.
- D. Yes, because the statement falls within the present sense impression exception to the hearsay rule.

## Explanation:

### Then-existing state of mind hearsay exception

(FRE 803(3))

Type of statement	Examples	Admissibility
State of mind	Motive, intent, plan	Admissible as substantive evidence
Emotional or physical condition	Fear, pain, bodily health	
Memory or belief	Reflection on prior event or belief about matter	Inadmissible unless related to declarant's will

**FRE** = Federal Rule of Evidence.

Hearsay is an out-of-court statement offered to prove the truth of the matter asserted therein and is generally inadmissible. But statements of the declarant's **then-existing state of mind**—eg, **statements of motive, intent, or plan**—are **excepted from hearsay**. And since they are excepted, these statements can be used as substantive evidence to prove that the declarant later acted in conformity with that state of mind.

Here, the defendant's out-of-court statement is hearsay since it is being offered for its truth—ie, that she was going to spend three days in State B. But since this is a statement about her *plans*, it falls within the hearsay exception for then-existing state of mind. Therefore, the friend's testimony as to this statement is admissible as proof that the defendant was in State B on the day of the robbery (**Choice A**).

**(Choice B)** There is no rule prohibiting the use of the defendant's own statement to establish an alibi—ie, a defense that places the defendant elsewhere when the charged offense was committed.

**(Choice D)** The **present sense impression** exception applies to hearsay statements that (1) describe an event or condition and (2) are made while or immediately after the declarant perceived it. This exception is inapplicable here because the defendant was describing her plans—not a perceived event or condition.

### Educational objective:

Statements concerning the declarant's then-existing state of mind (eg, statements of motive, intent, or plan) are excepted from the rule against hearsay.

### References

Fed. R. Evid. 803(3) (then-existing state of mind exception).

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