

A plaintiff sued a defendant for wrongful death arising out of a traffic collision between the plaintiff's decedent and the defendant. At trial, the investigating police officer authenticated a voice recording of her shift-end dictation of comments used in preparing the written report of her factual findings. She has testified that the voice recording was accurate when made and that she currently has no clear memory of the details of the investigation.

Is the voice recording admissible as evidence?

- A. Yes, under the public records exception to the hearsay rule.
- B. Yes, under the recorded recollection exception to the hearsay rule.
- C. No, because it is hearsay and is a police report being offered against the defendant in a wrongful death case.
- D. No, because the police report itself is the best evidence.

## Explanation:

### Recorded recollection

#### (FRE 803(5))

Hearsay exception—regardless of declarant's availability—for records that:

concern matter witness once knew but cannot recall at trial  
witness made or adopted when matter was fresh in his/her mind *and*  
accurately reflect witness's personal knowledge at time record was made  
**FRE** = Federal Rule of Evidence.

The **hearsay rule** bars the admission of an out-of-court statement (eg, voice recording) offered to prove the truth of the matter asserted therein (eg, factual details of the officer's investigation). But one **exception** to this rule applies to **recorded recollections**, which allows a record to be read—or, in the case of audio recordings, played—into evidence if it:

concerns a matter that a witness **once knew but cannot recall** at trial  
was **made or adopted** by the witness when the matter was **fresh in his/her mind** *and*  
accurately reflects the witness's **personal knowledge** at the time it was made.

Here, the officer testified that she has no clear memory of the details of her investigation. But she made the voice recording at the end of her shift—while the matter was fresh in her mind—and she testified that it was accurate when made. Therefore, the recording is admissible under the recorded recollection hearsay exception and can be played to the jury.

**(Choice A)** Although the officer's *formal* written report is likely admissible under the **public records** hearsay exception, her *informal* dictated comments made to help her prepare the report are not.

**(Choice C)** The voice recording is not a police report since it contains only *informal* comments. And if it were a police report, the public records hearsay exception would allow it to be offered in this civil case (or against the government in a criminal case).

**(Choice D)** The **best evidence rule** requires that a party produce an original or reliable duplicate to prove the contents of a writing, photograph, or recording. This rule does not apply here since the voice recording is being offered to prove facts as the officer remembered them at the end of her shift—not the police report's contents.

### Educational objective:

A record that (1) concerns a matter a witness once knew but cannot recall, (2) the witness made or adopted when the matter was fresh in his/her mind, and (3) accurately reflects the witness's personal knowledge at that time is admissible as a recorded recollection.

**References**

Fed. R. Evid. 803(5) (recorded recollection).

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