

A plaintiff sued a police officer for false arrest. The officer's defense was that, based on a description he heard over the police radio, he reasonably believed the plaintiff was an armed robber. The police radio dispatcher, reading from a note, had broadcast the description of an armed robber on which the officer claims to have relied.

The officer offers as evidence: his testimony relating the description he heard; the dispatcher's testimony relating the description she read over the radio; and the note containing the description the dispatcher testifies she read over the radio.

Which are admissible on the issue of what description the officer heard?

- A. The dispatcher's testimony and the note only.
- B. The officer's testimony and the dispatcher's testimony only.
- C. The officer's testimony and the note only.
- D. The officer's testimony, the dispatcher's testimony, and the note.

Explanation:

False arrest occurs when a person is held in custody without a valid warrant or probable cause. As a result, any evidence that would tend to make the existence of probable cause—and any other material fact—more or less probable is relevant. **Relevant evidence is admissible unless it is excluded** by a constitutional provision, law, or rule—including the **rule against hearsay**. That rule bars the admission of out-of-court statements offered to prove the truth of the matter asserted. But it **does not bar** out-of-court statements offered for a **different purpose**—eg:

to prove that a statement was *made*

to identify a statement's *contents*—but not to prove its truth—or

to show a statement's *effect* on the person who heard it.

Here, the officer offered three items of evidence—(1) his testimony to the description he heard broadcast over the radio shortly before the plaintiff's arrest, (2) the police radio dispatcher's testimony to what she said during that broadcast, and (3) the dispatcher's authenticated written note from which she read the armed robber's description. These items would be inadmissible hearsay if offered to prove the truth of the matter asserted therein—ie, that the person described was the armed robber.

But the dispatcher's testimony and the note are admissible to prove that the statements were *made* and to prove their *contents*. And the officer's testimony is admissible to show the description's *effect* on him—ie, that it caused him to *believe* that the plaintiff was the robber. Therefore, the officer's testimony, the dispatcher's testimony, and the note are all admissible to prove that the officer reasonably believed the plaintiff was the armed robber **(Choices A, B & C)**.

Educational objective:

Testimony to what a witness heard is generally inadmissible hearsay if offered for the truth of the matter asserted. But such testimony may be admissible for other purposes—eg, to show that a statement was made or affected another.

References

Fed. R. Evid. 401 (test for relevant evidence).

Fed. R. Evid. 801 (exclusions from hearsay).

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Admissibility of out-of-court statements

