

A defendant, the mayor of a city, ran an illegal gambling business with his ruthless business partner. The defendant was charged with dishonest and fraudulent dealings in violation of a federal statute and conspiracy to obstruct law enforcement. At trial, the prosecutor called a witness, a secretary working at the police department. The witness intends to testify that an investigating officer told her that he was afraid to arrest the mayor's business partner because certain officers had been punished for arresting members of the business partner's operation in the past.

Is the witness's testimony admissible?

- A. No, because it is hearsay not within any exception.
- B. No, because the statement was not made while under the stress of a startling event.
- C. Yes, as a statement by the officer of his then-existing emotional condition.
- D. Yes, provided that the officer is unavailable to testify.

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.

The rule against hearsay prohibits the admission of a statement made outside the present proceeding that is offered for the truth of the matter asserted therein unless an **exception or exclusion** applies. One **hearsay exception** permits admission of a **statement concerning the declarant's then-existing** state of mind (eg, motive, intent, plan) OR **emotional/physical condition** (eg, mental feeling, pain, bodily health).

Here, the witness seeks to testify that an officer said that he was afraid to arrest the mayor's business partner because certain officers had been punished for arresting members of the business partner's operation in the past. This out-of-court statement is hearsay since it is offered for its truth—to prove that the officer was afraid of being punished if he arrested the business partner. But since the statement concerns the officer's then-existing emotional condition—his fear of punishment—it is excepted from hearsay and is therefore admissible **(Choice A)**.

(Choice B) An **excited utterance** is a hearsay exception for a statement that relates to, and was made while under the stress of, a startling event or condition (eg, had the officer blurted out the statement after witnessing a punishment). But though the officer's statement was not made under the stress of excitement, it is still admissible as a then-existing emotional condition.

(Choice D) Some hearsay exceptions only apply if the **declarant is unavailable** to testify. But the exception for a then-existing emotional condition is not one of those exceptions. Therefore, the witness's statement would be admissible under this exception regardless of whether the officer is available.

Educational objective:

Statements regarding a declarant's then-existing state of mind (eg, motive, intent, plan) or emotional/physical condition (eg, mental feeling, pain, bodily health) are excepted from the rule against hearsay.

References

Fed. R. Evid. 803(3) (hearsay exception for a declarant's then existing emotional condition).

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