A plaintiff sued a defendant for an assault that occurred in State A. To support his defense that he was in State B on the date of the assault, the defendant identifies and seeks to introduce a letter he wrote to his sister a week before the assault in which he stated that he would see her in State B on that date.

Is the defendant's letter admissible?

A. No, because it is a statement of belief to prove the fact believed.

B. No, because it lacks sufficient probative value.

C. Yes, as a prior consistent statement to support the defendant's credibility as a witness.

D. Yes, within the state of mind exception to the hearsay rule.

Explanation:

Then-existing state of mind

(FRE 803(3))

Hearsay exception for statements of declarant's (available or not) then-existing:

state of mind (eg, motive, intent, plan)
emotional, sensory, or physical condition (eg, mental state, pain, bodily health)
BUT NOT

memory of past events or belief *unless* related to validity or terms of 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. Such statements are inadmissible unless they are excluded or excepted from the rule against hearsay. One **hearsay exception** is for statements of a declarant's **then-existing state of mind**—eg, motive, intent, or **plan**—which can be admitted as substantive proof that the declarant later **acted in accordance** with that state of mind.

Here, the defendant's letter is hearsay because it was written before the assault (out-of-court statement) and is being offered to show that the defendant planned to see his sister in State B on the date of the assault in State A (asserted truth). But since the letter concerns the defendant's *plan*, it falls under the then-existing state of mind exception to the hearsay rule. Therefore, the letter is admissible to prove that the defendant acted in accordance with that plan and was in State B on the date of the assault.

(Choice A) Although statements of the declarant's memory or belief typically fall outside the then-existing state of mind exception to the hearsay rule, statements of the declarant's then-existing plan do not (as seen here).

(Choice B) Probative value is the degree to which evidence makes a material fact more or less likely. Here, the defendant's letter is sufficiently probative because it makes it far more likely that he was in State B on the day of the assault.

(Choice C) A prior statement that is *consistent* with the witness's current testimony is admissible if the witness is subject to cross-examination and the statement is offered to (1) rebut a charge of fabrication or improper influence or (2) rehabilitate the witness. But here, there is no indication that the defendant's credibility was impeached.

Educational objective:

Statements of a declarant's then-existing state of mind (eg, motive, intent, plan) are excepted from the rule against hearsay and are admissible as substantive proof that the declarant later acted in accordance with that state of mind.

References

Fed. R. Evid. 803(3) (hearsay exception – declarant's then-existing state of mind).

Copyright © 1997 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.