

Q185

1)

Dahlia the police dispatcher testifies to call from Walt

Relevance: evidence is relevant if it tends to prove or disprove any disputed fact of consequence to the determination of the action. The contents of the 911 call would be relevant to the burglary case because the call was about the burglary while it was allegedly in progress, therefore it could help prove that the burglary occurred.

Objection: Hearsay. The defense will object that this evidence is hearsay because it is an out of court statement being used to prove the truth of the matter. Generally hearsay is inadmissible unless the proponent can find an exception that will allow it to be admitted. The proponent in this case would try to get this in as an excited utterance. This is an exception that allows hearsay to come in when it's a statement that a person made while still shaken from witnessing a stressful experience. In this case the alleged robbery was still in progress while Walt made the call and the facts state he was upset which indicate he made these statements while under stress of this event. Because these statements fit the excited utterance exception the judge would most likely rule it admissible.

Objection: Confrontation. If this is admitted, the defense would next object on confrontation grounds because Dahlia is testifying instead of Walt, and the statements were made by Walt. A defendant has the constitutional right to confront witnesses against him, and if the witness is unavailable, he must have had the chance to depose him beforehand. Defense did not have the chance here. Therefore, the confrontation objection would be valid unless, the proponent of the evidence can show that it was nontestimonial, as confrontation is not an issue if evidence isn't testimonial. If statements to a police, or in this case police dispatcher are made to help in an emergency, rather than to preserve evidence for later trial, then they would be nontestimonial. In this case Walt stated he needed immediate police assistance which shows he had an emergency and wanted help. The robbery was also in progress at the time so this would help show it was an emergency situation. The judge would most likely find this nontestimonial and this evidence would be admissible.

The defense could try to object that the witness was not truly unavailable. However the witness had moved out of the jurisdiction and therefore he was beyond the court's ability to compel him to trial which makes him unavailable. Defense would argue, at least in CA, that the proponent should've tried harder to keep the witness available. They should have tried to get a forwarding address before he moved so that they could get in touch with him for trial. If they made no attempt to keep this witness available, then it is possible a CA judge would rule that he is not truly unavailable and this would make the evidence admissible on confrontation grounds.

Paul to testify about Walt's ID

This would be relevant as Walt was present during the alleged robbery and his ID of who

committed the robbery would help prove the crime occurred.

Objection: Hearsay. The defense would object to this because the ID could be seen as an out of court statement made by Walt. Even though Walt only pointed at Ace and Bob, this could be considered assertive conduct. I think that a reasonable person would see pointing at someone when a policeman presents you with two suspects at the scene of the robbery, would be conduct that is replacing the words "it was them." The defense would use this to argue this is assertive conduct and therefore should be hearsay. The Judge would weigh this and it seems most likely he would rule that this is assertive conduct and therefore would be a hearsay statement.

Therefore the proponent would need a hearsay exception in order to get this ID in. They could argue as above this was an excited utterance as Walt was still scared and pointing at the two men was an action type of excited utterance. The judge could let this in as Walt was still upset and shocked and hadn't calmed down to think clearly yet. The defense would try to argue this is testimonial because it was in response to the police question, however the police were still trying to stop the emergency so this could be non testimonial. Judge would let this in as a nontestimonial excited utterance.

If the judge did not let it in for that proponent would try to get it in as a statement of ID exception, but as Walt is unavailable to confirm he made the ID at the time, this would be unlikely for a judge to let it in for that exception.

Paul to testify on his interrogation of Bob

Objection: hearsay. Defense will object that Paul is making out of court statement of Bob. Proponent will say that this is a co-conspirator declaration. Bob and Ace are co-conspirators in this crime and if this is considered a declaration of admission by Bob then it would count as admission for Ace as well under this exception. It was made while the conspiracy was still in action because the car was still running and they hadn't completed the crime yet. However it must also be made in furtherance of the conspiracy to be admissible for both defendants. This would be admissible as an admission for Bob because he is admitting to what he did, but if it wasn't made to further the conspiracy, then it may not be co-conspirator admissible for Ace. Proponent would argue that Bob is trying to explain the actions to the police so they will go away and they can continue the conspiracy to show it's still in furtherance of. Defense for Ace would say Bob is talking to police and conspiracy is done at this point cause he's apprehended. Judge would most likely let this in against Bob but not against Ace as it's not a statement in furtherance of conspiracy.

Proponent would argue this goes to intent or motive for Ace as it's showing his intent to commit the burglary. Judge would most likely admit this for the limited purpose of showing they had intent to commit the robbery, by wanting the paintings.

Paul on Dahlia's dispatch to him

Objection: hearsay. defense will again say this is hearsay as it was dahlia's statement made out of court. Proponent will argue to allow this in as nonhearsay to explain why a course of action was taken by Paul. Judge would rule this admiss for limited purpose and give limiting instruction on this to jury. However the part of statement possibly armed and gang member is not related to teh limited purpose. the defense would ask that this part be redacted as it's alsodefe unduly prejudicial a. 352 allows judge to not allow evidence that is unduly prejudicial and statements that they were armed, when there is no evidence of that, and that thye wre gang members, would unfairly taint the image of the defendants to the jury. out for prejudice, not probabtive enough.

Paul for statements by defense again

ace defense recalls bob and argues these statemetns should be out against ace. they would argue these are hearsay against ace because bob isn't testifying. these statemetns could be redacted to only show that Bob made admission to Paul for himself, but it woudn't be admisslbe to ace because he did not adopt them. however prosecution could argue ace stayed silent and adopted teh admissions. reasoanble person could htink ace silent to not make wrong statements to police and not think he adopted these admission for himself. if bob doesn't testify, then these statements are out for ace.

university transcript and teacher note

defense brings this is to show Ace has good character under the mercy rule. prosectuiong objects to teacher note for not being relevant and hearsay. ace being a good art student is not relevant to whether or not he committed a burglary. it is also hearsay as it's an out of court note written by prof. defense hasn't shown prof is unavailable so this would not be admiss. defense would argue its relevant to show ace didn't have intent to steal art as he was a good art student. they would get this in for nonhearsay to show no intent for ace.

Question 2

2)

Evidence: Kay (K) testifies on Mark's (M) statements

The defendant will object to these statements as hearsay, and inadmissible character evidence. Hearsay is an out of court statement that is used for the truth of the matter asserted. Here, M's statements are made out of court, and to prove that he was discriminating P due to her age. The proponent will attempt to meet this objection by asserting that the evidence should be admissible under the declaration against interest exception of hearsay. A declaration against interest can be used if the decalarant is unavailable, and the objective standard is met (a reasonable person would not have made the statement, as it goes clearly against their culpability/liability interest). The defendant will also likely claim that the evidence should be inadmissbile character evidence. Character evidence is evidence of a trait of a person's character used to show that they are acting in accordance with that trait during a specific occurence. This statement is character evidence to show that in P's instance, M was acting in accordance with the trait that he favors younger people in the work place. The proponent of the evidence will meet the objection by claiming that the character evidence should be admissible to show M's intent, or possibly that M has a common plan or scheme. M will assert that this does not prove any intent toward P, and that there are not sufficient occurrences to show that this is any sort of a common plan. The statement by M that he favors younger employees at work will likely be admissible under the declaration against interest hearsay exception.

Evidence: K hears M tell P that she was the worst employee at the hospital, and might sink us all if allowed to stay on.

M will object to this as multiple hearsay. A multiple hearsay statement can only be admissible if each level of hearsay is met by an exception. The first level of hearsay (Mark tells Pat) can be met by the exception of declaration against interest (supra). M is unavailable to testify (dead), and the objective standard is met, as a reasonable person would not claim that P would sink us all if she is allowed to stay on. M could rebut this by claiming that the statement was irrelevant to the truth of the matter of age discrimination. CA and Federal rules of evidence require that evidence be relevant in order to be admissible. Evidence is relevant if it tends to prove or disprove a disputed fact. The second level (K hears M) might not be met by a hearsay exception. If it is not met by a hearsay exception, the entire statement would be inadmissible. The proponent may attempt to enter the evidence for a non-hearsay purpose, such as to show that M had ill feelings toward P.

Evidence: K tells M that he's wrong about Pat.

The defendant would object to this statement as hearsay. The proponent would meet this objection by asserting that the statement was an excited utterance. An excited utterance is a statement made during a startling event, where the declarant's reflective abilities are in abeyance. In CA, the excited utterance must narrate, describe, or explain the startling event. Federally, the statement need only relate to the startling event. This statement does not narrate, describe, or explain the event, and would likely be inadmissible in a CA court. Federally, the excited utterance exception to the hearsay rule may apply. M will contend that this was not an excited utterance, and that K's comment was not a result of a startling event. The proponent would refute this by asserting that K and the entire staff were shocked at M's statement, and K did not have the reflective ability to contain or alter her statement. The judge may deem this evidence as admissible under the excited utterance exception of the hearsay rule.

Evidence: M states that he was feeling "dangerously frustrated about remaining alive"

The defendant will object to this as hearsay. The proponent will meet the objection by asserting that this was M's present state of mind, thus falling under a hearsay exception. The defendant will assert that his state of mind was not in question as to this litigation, thus the statement is irrelevant. The proponent would then claim that the statement is relevant, as M's state of mind was a pivotal factor in the termination of P. If somehow the evidence were admissible, the defendant would urge the judge to exclude the evidence under 352/403. The 352/403 rule allows the judge to exclude evidence if its probative value is heavily outweighed by its prejudicial value. Here, the prejudicial value would outweigh the probative value, and the judge should deem the evidence as inadmissible.

Evidence: Pat produces records from M's past employers

M will object to this evidence as hearsay (supra), and inadmissible character evidence (supra). The proponent of the evidence will meet the hearsay objection by asserting that the evidence falls under the official business records exception of the hearsay rule. The official business records exception requires that the records be made during the regular course of business, and that they were made at or near the time of the event. Here, it has already been stipulated that the records have sufficient evidentiary foundation, and thus meet the requirements. The proponent of the evidence will then meet the character evidence objection by asserting that the evidence should be allowed to show that M had the motive to discriminate against P because of her age. M will rebut this claim by stating that these statements are inadmissible as specific instances. Either way, the judge will likely deem the evidence as admissible due to the official business records exception to the hearsay rule.

The hospital did not have these records when they hired M. The proponent will assert that they should nonetheless be introduced into evidence, at the very least, for a non-hearsay purpose to show that the hospital should have conducted more investigation before hiring Mark.

Evidence: K states that P always followed Hospital protocol precisely.

The defendant will object to this statement as inadmissible character evidence. The proponent will assert that this is not character evidence, but evidence of habit. A habit is a regular, consistent response to a specific occurrence. Here, K is testifying that P has always followed the protocol precisely over the 20 year period that they have known each other. This would suffice to prove the existence of a habit, as it has gone on for such a long time. M will claim that there is not sufficient evidence to show the accuracy of P's following of protocol. P could then attempt to introduce her "uniformly glowing performance evaluations" over the past 30 years. M would object to this as

inadmissible character evidence. This objection could be met by offering the evidence to show P's knowledge of the protocol, and absence of mistake. Both pieces of evidence will likely be deemed admissible by the judge.

Evidence: Pat's coachings.

In a civil proceeding for wrongful termination, evidence of events leading to the termination should be produced. These coachings were not produced at trial, but could be necessary to Pat's (P) case to prove that the termination was wrongful. If the coachings were introduced, the defendant would object to them as inadmissible character evidence. The objection could be met by the proponent asserting that the evidence should be introduced to show absence of mistake, if the coachings were based on trivial matters.

END OF EXAM