

Issue: The issue is whether the officer's testimony that the defendant started crying be admitted.

Rule: A testimony is hearsay is when a statement is asserted for the truth of the matter asserted. There are hearsay exceptions when the assertions are not statements and/or not meant to assert for the truth of the matter asserted from the statement.

Application: The officer's testimony can be admitted because it is not hearsay. That is, the officer's testimony is asserted to show that the defendant is guilty. Rather, the officer's testimony illustrated that the defendant reacted to the question, "Did you rob Jo-Jo's Bar last night?" The defendant's reaction did not mean that he was guilty of the robbery or that he was sad or terrified of what happened at the Jo-Jo's Bar.

Conclusion: Because the officer's testimony does not show to prove the truth of the matter asserted, it is not hearsay. Hence, the officer's testimony can be admitted.

Issue: The issue is whether the officer can read her handwritten notes to the jury.

Rule: Under the recorded recollection rule, a person can read her notes when she was the person who wrote the notes. The person is the author of writing the notes and the person wrote the notes after the recent activities. The notes cannot be admitted without being reviewed by the opposing party. Then, the notes can be admitted into evidence.

Application: The officer can read her handwritten notes to the jury because the officer identified the notes she made on December 2nd. She made the notes on December 2nd after her interactions with the December 1st. Hence, the officer has fresh memory from the interactions with the defendant on December 1st. There is reliability of the notes given there was only one day difference between December 2nd and December 1st.

Conclusion: A factfinder would allow the officer to read her handwritten notes given that she was the author of the notes and that she made the notes after a one day difference.

Issue: The issue is whether the officer's handwritten notes into evidence as an exhibit.

Rule: The handwritten notes after a record recollection can be admitted only after the opposing party has a chance to review the notes and know the authenticity of the notes. Once the opposing party reviews the notes, then they can admitted into evidence as exhibit.

Application: The handwritten notes cannot be admitted into evidence because the opposing party did not have a chance to review the notes from the officer. Here, the prosecutor asked the notes be received as an exhibit, and the court granted the request for the prosecutor. The defense counsel did not have a chance to review the notes and in fact the defense attorney objected to the prosecutor's request to admit the notes as evidence into the exhibit. That is, the defense counsel will not concur with the prosecutor's request to admit the notes.

Conclusion: A factfinder would not allow the handwritten notes to be admitted because the opposing party was not allowed to look into the notes, and the defense counsel opposed and objected to admit the notes into evidence as an exhibit.

Issue: The issue is whether the officer's testimony recounting the defendant's statement, "I have some information that can really help you with this case," will be admitted into evidence.

Rule: Any statements under the Miranda rights violation will not be admitted if the defendant is under custodial interrogation. Custody means that a person is not allowed to leave freely and that person is under an enclosed area with the police. Interrogation occurs when questioning from the police will elicit

incrimination information against the defendant. A waiver of Miranda rights occurs when a defendant is ambiguous of his request for an attorney under the Fifth Amendment.

Application: The defendant's statement can be admitted because the defendant waived his Miranda rights by being ambiguous of wanting his attorney. Here, after reading his Miranda rights, the defendant waived his Miranda rights by talking to the officer. When the officer asked the defendant how he could help, he went back to say, "Forget it, I want my lawyer." The ambiguity from the defendant will show that he waived his Miranda rights, and that the defendant's statement will be admitted.

Conclusion: A factfinder will admit his statement because his statement was ambiguous to request a lawyer under the Fifth Amendment, and he waived his Miranda rights and wanted to talk to the police.

Issue: The issue is whether the officer's testimony recounting the defendant's statement, "I was there on November 30 and saw the robbery, but I had nothing to do with it."

Rule: When a party made an admission of an act, there is no hearsay.

Application: The officer's testimony recounting the defendant's statement will be admitted because it is a party admission. Here, the defendant admitted that he saw the robbery and he had nothing to do with it. After the 14-day re-Mirandize, the defendant waived his Miranda rights. The defendant spoke after waiving his Miranda rights.

Conclusion: A court will admit the officer's testimony recounting the defendant's statement of the party admission.