

The city police department received a 911 call regarding a domestic violence incident. The caller said that she was staying with her sister and her sister's boyfriend. The caller said that she had called the police because her sister's boyfriend was becoming violent. The police department records all 911 calls. The relevant portions of the 911 recording are as follows:

Caller: My sister's boyfriend is out of control right now. He just threw a broken beer bottle at my sister. It hit her on the arm. Now he's holding a chair like he's going to throw that at her, too. Police Dispatcher: Where is your sister? Caller: She's running toward the bathroom. Police Dispatcher: Is she injured? Caller: I see some blood on her arm. Police Dispatcher: Does he have a gun? Caller: I don't see a gun.

A nearby police officer arrived on the scene five minutes after the caller telephoned 911. The police officer found the boyfriend pacing in the front yard and ordered him to sit in the rear seat of the patrol car. The boyfriend sat in the patrol car, and the officer locked the door from the outside so that the boyfriend would stay in the car while the officer spoke to the sister.

When the sister saw that her boyfriend was locked in the patrol car, she came out on the porch to speak with the officer. The sister was in a highly agitated and emotional state, and she had several fresh cuts on her right arm. The officer asked her how she got the cuts. The sister replied, "My boyfriend threw a bottle at me which cut my arm." The sister declined the officer's offer of medical assistance but said that she wanted to press charges against her boyfriend. The sister was in tears throughout her conversation with the officer.

The boyfriend was charged in state court with battery and disorderly conduct. The prosecutor made every effort to secure the appearance of both the sister and the caller at trial, but when the trial began, the sister and the caller did not appear.

The prosecutor is attempting to convict the boyfriend without trial testimony from the sister or the caller. The prosecutor plans to introduce the caller's statements to the police dispatcher and to call the officer to testify and to repeat the statements the sister made to him at her house to prove that the boyfriend attacked the sister.

The 911 recording containing the caller's statements to the police dispatcher has been properly authenticated. Defense counsel has objected to the admission of (1) the caller's statements to the police dispatcher on the 911 recording and (2) the officer's testimony repeating the sister's statements to the officer (at her house). Defense counsel asserts the following:

- a) The caller's statements to the police dispatcher are inadmissible hearsay.
- b) Admission of the caller's statements to the police dispatcher would violate the boyfriend's constitutional rights.
- c) The officer's testimony repeating the sister's statements is inadmissible hearsay.
- d) Admission of the officer's testimony repeating the sister's statements would violate the boyfriend's constitutional rights.

This jurisdiction has adopted rules of evidence identical to the Federal Rules of Evidence and interprets the provisions of the Bill of Rights in accordance with relevant United States Supreme Court precedent.

How should the trial court rule on each defense objection? Explain.

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Police received a 911 call during a domestic violence incident. The caller reported, as it was happening, that her sister's boyfriend just threw a broken beer bottle that hit her sister on the arm, and that he was now holding a chair as if to throw it while her sister ran toward the bathroom. The dispatcher asked whether the sister was hurt; the caller said she saw blood on her sister's arm. An officer arrived five minutes later, ordered the boyfriend into the patrol car, and locked him inside so he was secured and no longer a threat. The sister then came out, in tears and highly agitated, with fresh cuts on her arm, and told the officer, "My boyfriend threw a bottle at me which cut my arm." Neither the caller nor the sister appeared at trial. The prosecution offers the caller's 911 statements and the officer's account of the sister's statements; the defense objects to each as hearsay and as violating the Confrontation Clause.

← *Live play-by-play of the attack: present sense impression and excited utterance.*

← *Chair still raised, victim fleeing: the emergency is ongoing, so the 911 call is nontestimonial.*

← *Report of the injury lets the dispatcher gauge treatment: medical-diagnosis exception.*

← *Suspect locked in the car: the emergency has ended before the sister speaks.*

← *Crying, agitated, fresh cuts: her statement is an excited utterance, but made after the danger passed.*

Section 1: Caller's 911 Statements, Hearsay (Objection a)

Issue. Whether the caller's statements to the 911 dispatcher are inadmissible hearsay.

Rule. G/R: hearsay is an out of court statement offered to prove the truth of the matter asserted, and it is inadmissible unless an exception applies.

Present sense impression: a statement describing an event or condition, made while or immediately after the declarant perceived it.

Excited utterance: a statement about a startling event or condition, made while the declarant is still under the stress of excitement it caused.

Statement for medical diagnosis or treatment: a statement made for, and reasonably pertinent to, diagnosis or treatment, describing symptoms or their cause.

Objection (a): the caller is absent, so start with hearsay.

Three exceptions can each independently save the same statement.

Analysis. Here, the caller narrated the attack to the dispatcher as it unfolded, so the statements describe an event as she perceived it and qualify as present sense impressions. Watching the boyfriend hurl a bottle and raise a chair is a startling event that kept the caller under stress, so the statements are also excited utterances. Her report that she saw blood on her sister's arm, given so the dispatcher could judge whether medical help was needed, fits the medical-diagnosis exception as well.

Conclusion. Therefore, Section 1: the caller's 911 statements clear the hearsay bar and the objection is overruled.

Each fact in blue, periwinkle, and yellow maps to a different exception.

Section 2: Caller's 911 Statements, Confrontation Clause (Objection b)

Issue. Whether admitting the caller's 911 statements violates the Confrontation Clause.

Rule. G/R: the Confrontation Clause bars testimonial hearsay against a criminal defendant unless the declarant is unavailable and the defendant had a prior chance to cross examine.

Primary-purpose test: a statement is nontestimonial when its primary purpose is to help police meet an ongoing emergency, and testimonial when its primary purpose is to establish past events for later prosecution.

Analysis. Here, the caller spoke while the attack was in progress: the boyfriend had a chair raised and the sister was fleeing toward the bathroom. The primary purpose of the call was to summon police help for an ongoing emergency, not to preserve testimony for trial. The statements are therefore nontestimonial, and admitting them does not offend the Clause even though the caller does not testify.

Conclusion. Therefore, Section 2: the Confrontation Clause objection to the caller's statements is overruled.

Objection (b): hearsay admissibility does not answer the constitutional question.

Clearing a hearsay exception is separate from clearing the Clause.

Ongoing emergency is the key fact (periwinkle).

Section 3: Sister's Statements to the Officer, Hearsay (Objection c)

Issue. Whether the officer's testimony repeating the sister's statements is inadmissible hearsay.

Rule. G/R: hearsay is an out of court statement offered to prove the truth of the matter asserted, and it is inadmissible unless an exception applies.

Objection (c): again, hearsay first.

Same excited-utterance exception as the caller.

Excited utterance: a statement about a startling event or condition, made while the declarant is still under the stress of excitement it caused.

Analysis. Here, the sister had just been attacked and was in tears, highly agitated, with fresh cuts on her arm when she told the officer that her boyfriend threw a bottle at her. The startling attack still dominated her emotions, so her statement is an excited utterance and falls within that exception.

Conclusion. Therefore, Section 3: the hearsay objection to the sister's statements is overruled.

Tears and fresh cuts (green) show she was still under the stress.

Section 4: Sister's Statements to the Officer, Confrontation Clause (Objection d)

Issue. Whether admitting the officer's account of the sister's statements violates the Confrontation Clause.

Rule. G/R: the Confrontation Clause bars testimonial hearsay against a criminal defendant unless the declarant is unavailable and the defendant had a prior chance to cross examine.

Primary-purpose test: a statement is nontestimonial when its primary purpose is to help police meet an ongoing emergency, and testimonial when its primary purpose is to establish past events for later prosecution.

Even a statement that fits a hearsay exception is barred if it is testimonial and the absent declarant was never subject to cross examination.

Analysis. Here, by the time the sister spoke, the boyfriend was locked in the patrol car and no longer a threat, so the emergency had ended. The officer's question about how she got the cuts had the primary purpose of establishing past events for prosecution, which makes her answer testimonial. Because the sister did not testify and the defendant never cross examined her, admitting the statement violates the Clause even though it is an excited utterance.

Conclusion. Therefore, Section 4: the Confrontation Clause objection to the sister's statements is sustained.

Objection (d): the outcome flips here.

An excited utterance can still be testimonial.

Suspect secured (pink) ends the emergency and makes the statement testimonial.

Step-by-Step: Hearsay Plus Confrontation for Out of Court Statements

For each statement, clear the hearsay bar first, then run the separate Confrontation Clause test.

1. Out of court statement offered for its truth? If yes, it is hearsay and inadmissible unless an

exception applies.



2. Does a hearsay exception fit? Present sense impression, excited utterance, or statement for medical diagnosis.

→ **Both statements fit an exception**



3. Separate constitutional question: is the statement testimonial? Primary purpose to meet an ongoing emergency = nontestimonial; to prove past events = testimonial.



4. Caller's 911 statements: made during the ongoing attack.

→ **Nontestimonial, admitted**



5. Sister's statements: made after the suspect was locked in the car.

→ **Testimonial, barred absent cross examination**