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Chapter 1 : Present sense impression - Wikipedia

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:(1) Present Sense Impression. A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.(2) Excited Utterance.

The following are not excluded by the hearsay rule, even though the declarant is available as a witness: A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party. Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of RCW 5. Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law. To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with rule , or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter. Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, tattoos, engravings on urns, crypts, or tombstones, or the like. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorized the recording of documents of that kind in that office. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document. Statements in a document in existence 20 years or more whose authenticity is established. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations. To the extent called to the attention of an expert witness upon cross examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or state or nation in which located. Evidence of a final judgment, entered after a trial or upon a plea of guilty but not upon a plea of nolo contendere , adjudging a person guilty of a crime punishable by death or imprisonment in excess of 1 year, to prove any fact essential to sustain the judgment, but not including, when offered by the prosecution in a criminal case for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility. Judgments as proof of matters of personal, family, or general history, or boundaries,

essential to the judgment, if the same would be provable by evidence of reputation.

Chapter 2 : Present Sense Impressions - Order in the Kitchen

A present sense impression, in the law of evidence, is a statement made by a person (the declarant) that conveys his or her sense of the state of an event or the condition of something.

Court of Appeals of the State of New York. Argued September 13, Defendant appeals by leave of a Judge of this Court from an order affirming his conviction, after a jury trial, of burglary and related offenses. This case arises out of a break-in at a private home in Rochester in the early morning hours of April 18, The sound of breaking glass awakened the homeowner, who immediately dialed on his cellular telephone and described the unfolding events to the operator. Under standard practice, the call was recorded and preserved, and the integrity of the tape is not in issue. He added that the perpetrator was wearing dark gray or dark green, midlength, solid-colored, baggy shorts, a white T-shirt, white socks, and white sneakers. This description essentially matched that of the defendant at the time of his arrest, shortly after the break-in. After leaving the house, the burglar was followed by the owner, who kept talking on his cellular telephone. The burglar got to the main road and then began to run. He was perspiring and his T-shirt was bloody. The owner identified him to the police as the man who had broken into his home. At trial, when asked to identify the person who broke into his home, the owner inexplicably did not point to the defendant, but instead identified the deputy sitting next to the defendant. The trial court allowed the victim to testify about his prior identification of the defendant to the police, both before and after the in-court misidentification. That is not in issue here. Both arresting officers testified that they arrested the defendant in the garage in the presence of the owner and that is the subject of an unpreserved Trowbridge-type bolstering claim People v Trowbridge, N. In a pretrial ruling, the court stated that it would allow the evidence in under the present sense impression exception to the hearsay rule. Defendant was convicted on all counts. The Appellate Division unanimously affirmed, with two Justices concurring separately. The majority held that because the victim-witness was available, the confrontation concerns associated with unavailable witnesses were not implicated. It stated that the tape "gave the jury a temporal and auditory sense of the events" and, thus, "should not be viewed in the same light as a prior consistent written statement" id. The two concurring Justices stated that because the witness was available, there was no "pressing need" for the evidence and it should not have been admitted id. They further stated that in all cases, the present sense impression exception should be employed only when the declarant is unavailable. The concurring Justices joined the Court to affirm, however, on harmless error grounds. The tape is hearsay, as an out-of-court statement admitted for the truth of the matter asserted see, People v Caviness, 38 N. This Court recently adopted the present sense impression exception to the rule against hearsay as the law in New York People v Brown, 80 N. The corroboration aspect is not in issue in this case. We left open in Brown, however, the question of whether a declarant must be unavailable before present sense impression evidence is admissible. For example, unavailability is not required for certain exceptions, such as the business records exception see, CPLR ; Meiselman v Crown Hgts. Rather, that factor and the particular exceptions to which it adheres have developed on the typical case-by-case basis 2 McCormick, op. The drafters of the Federal Rules of Evidence, for example, placed exceptions into the "unavailability-needed" category when, in their judgment, the character of the hearsay was not sufficiently or inherently trustworthy to otherwise receive the evidence Advisory Comm Notes, Fed Rules Evid, rule ; 4 Weinstein and Berger, op. As to the alternative "availability-immaterial" category, Professor McCormick suggests that some exceptions are placed into that grouping because those hearsay statements are by their nature at least as trustworthy as live testimony 2 McCormick, op. Virtually no jurisdiction imposes "unavailability" as an absolute prerequisite to admissibility of present sense impression evidence or its close cousin, the excited utterance 4 Weinstein and Berger, op. Finally, unavailability was never required at common law 2 McCormick, op. That array of authorities and our independent analysis convince us that there is no need in logic or in practical procedural protection terms to add this extra unavailability requirement on a per se basis to the opportunity to offer present sense impression evidence. These unenacted, fluctuating formulations are of no value to assist in deciding anything at issue in this case. This case incontrovertibly satisfies that aspect. Finally, the notion in this respect that the proponent

of such evidence has an obligation to demonstrate some special "necessity" before probative evidence is deemed admissible finds no support in our evidentiary principles. However, that statement merely explains our rejection in Brown of another proposed requirement, that present sense impression evidence be corroborated by an "equally percipient witness" id. That explanation in no way was intended to add another component to the opportunity to tender evidence under this newly adopted hearsay exception. Rather, we wish to reinforce in the application of several evidentiary rubrics to this case that "[all] relevant evidence is admissible unless its admission violates some exclusionary rule" People v Lewis, 69 N. Neither Brown nor any other applicable authority requires a novel, threshold showing of "necessity" or "pressing need. Defendant next argues that admitting the tape in this case improperly "bolstered" the testimony of the victim witness by merely repeating a consistent version of his trial testimony. First of all, as the Appellate Division noted, the character of this evidence is different from typical prior consistent statement material and did far more than "mimic" the in-court recollective testimony. First, in the context of eyewitness identification, the testimony of a third party typically, a police officer to the effect that the witness identified a defendant as the perpetrator on some prior occasion is generally inadmissible under the rule enunciated in People v Trowbridge N. The undeviating rationale behind this rule is that such identification evidence is hearsay, not falling within any exception People v Trowbridge, supra, at ; People v Jung Hing, N. The Legislature has since codified and modified the Trowbridge rule, allowing for some third-party testimony about a previous identification if a witness cannot at trial identify a defendant as the person who committed the crime see, CPL That is not a problem in the case before us. Such evidence may be admissible, but only to rebut a claim of recent fabrication People v McDaniel, supra, at 16; People v Davis, 44 N. A prior consistent statement is admitted under these limited circumstances as an exception to the hearsay rule see, People v Baker, 23 N. Significantly, the prior consistent statement prohibition and exception are anchored to the impeachment and rehabilitation of witnesses People v Davis, 44 N. If such statements are not offered in response to a claim of recent fabrication, they are generally inadmissible. Thus, merely because a statement suffers some impediment under one hearsay exception does not preclude the proponent of the evidence from satisfying a court that a different, better-fitting exception fully applies. That is when the trial courts then exercise their evaluation of probativeness versus undue prejudice. Here, the tape plainly did not qualify for admission under the prior consistent statement exception, as there was no charge of recent fabrication made. Indeed, it was not even offered on that basis. Nevertheless, because the evidence fulfilled all the requirements independently for the present sense impression exception, it was admissible cf. Our reasoning that the tape, admissible under the present sense impression exception, does not constitute improper "bolstering" parallels the logic underlying the availability-unavailability dichotomy. To exclude evidence admissible under a hearsay exception for which availability is immaterial, such as we are holding for the present sense impression type, merely because it might also be a prior consistent statement, would mean that the availability of the declarant does matter, especially if the witness also testifies. Such a contradiction would inherently clash with hearsay jurisprudence, which has recognized the distinctions between different types of hearsay exceptions and allows them to operate side-by-side, not mutually exclusively. The Court upheld this statement as an excited utterance and noted that "although not essential for admissibility, there was an added assurance of reliability since the proof of the declaration was by the [testimony of the] declarant who, in taking the stand, was subject to cross-examination" id. The Court did not condemn the "availability" feature as bolstering or otherwise block its admissibility as unnecessary. Rather, we countenanced its use and upheld the admission of the evidence see also, Meiselman v Crown Hgts. Significantly also, in Matter of Danny R. In Matter of Danny R. Though there was no indication that she was unable to identify her attackers in court, the Court still found the excited statement "properly admitted as a spontaneous declaration" 50 NY2d, at , supra, citing People v Caviness, 38 N. We specifically held that the rule of CPL He was vigorously cross-examined, including about his conversation with the operator. Our determination in this case is fortified by the powerfully probative nature of this evidence and its inherent individual integrity and reliability. It gave the jury a chance to experience the crime as the events unfolded. Only a video recording of the crime in progress would be more reliable and more potent. We know of no evidentiary rule that would or should automatically preclude admission of such evidence see, United States v

Inadi, US , ; White v Illinois, US Accordingly, the order of the Appellate Division should be affirmed. Nevertheless, the error was harmless and I therefore vote to affirm. The homeowner was awakened by the sound of shattering glass and immediately phoned to report the entry. He subsequently left the house and hid behind some bushes while he continued to report his observations to on the portable phone. The burglar eventually emerged from the house carrying a briefcase and the victim followed him, while continuing his conversation with the operator. The conversation, which lasted about four minutes, terminated before the police arrived and apprehended defendant. In a pretrial ruling, County Court held the tape would be admissible at trial. After the victim had testified in full and recounted essentially the same facts recorded on the tape, the prosecution played the tape for the jury. For several reasons, I disagree. First, the tape is not admissible in this case because it does not meet the standards for admissibility of evidence satisfying the present sense impression exception to the hearsay rule as stated in People v Brown 80 N. In Brown tapes were received to fill an evidentiary gap to explain why police officers were unable to locate suspects while investigating a burglary in progress. The source of the information was an anonymous caller who was observing from his apartment the actions of the police as they searched for the defendant. The witness made two calls, the first to report the crime and the second to tell the stumped police officers that the suspect they could not locate was hiding on the roof of the burglarized building. In adopting the present sense impression exception, we held that spontaneous descriptions of events made substantially contemporaneously with the observations are admissible if independently corroborated. While the issue of corroboration was not raised during the pretrial hearing in this case, that circumstance does not justify a categorical rule for admissibility of tapes. Such evidence is admissible only if the proponent demonstrates the evidence is reliable, i. Here, the People did not make such a showing when arguing the admissibility of the tape. Moreover, while we have not held that the declarant must be unavailable before the present sense impression applies, there must be a need for the hearsay evidence. The tape was admitted as substantive evidence of material facts in Brown because those facts could not be proven by any other evidence. We implicitly recognized that necessity was the predicate for the admissibility of the evidence when we stated "[i]f [the] eyewitness is available to testify to the events, there is certainly no pressing need for the hearsay testimony" People v Brown, 80 NY2d, at , supra; see also, id. That statement was consistent with the view that, at bottom, necessity is the reason for most hearsay exceptions see, e. It seldom has any independent evidentiary significance of its own, but is intended to replace live testimony. Notwithstanding this statement of the general rule, the Supreme Court allowed the hearsay of a coconspirator in Inadi, finding that it was necessary to establish a conspiracy in progress, and because of the practical difficulties in securing forthcoming testimony from all the coconspirators. In the case before us, there was no similar need for the evidence in the tape because the declarant testified and the four-minute conversation he had with the operator did no more than duplicate his in-court testimony of the events before the police arrived cf. Thus, although I agree that a tape might be admissible as a present sense exception to the hearsay rule if the proponent establishes that the evidence is adequately corroborated and that there is some necessity for it, I cannot agree the tape met those requirements on the record before us. Moreover, because declarant testified in this case the evidence constituted improper bolstering. Generally, all relevant, i.

Chapter 3 : Washington State Courts - Court Rules

Under the Federal Rules of Evidence, a present sense impression is defined as a statement that describes an event while it was occurring or immediately thereafter.A statement that qualifies as a present sense impression is admissible as an exception to the hearsay rule.

A record of a birth, death, or marriage, if reported to a public office in accordance with a legal duty. Testimony â€" or a certification under Rule â€" that a diligent search failed to disclose a public record or statement if: A statement of birth, legitimacy, ancestry, marriage, divorce, death, relationship by blood or marriage, or similar facts of personal or family history, contained in a regularly kept record of a religious organization. A statement of fact contained in a certificate: A made by a person who is authorized by a religious organization or by law to perform the act certified; B attesting that the person performed a marriage or similar ceremony or administered a sacrament; and C purporting to have been issued at the time of the act or within a reasonable time after it. A statement of fact about personal or family history contained in a family record, such as a Bible, genealogy, chart, engraving on a ring, inscription on a portrait, or engraving on an urn or burial marker. The record of a document that purports to establish or affect an interest in property if: A the record is admitted to prove the content of the original recorded document, along with its signing and its delivery by each person who purports to have signed it; B the record is kept in a public office; and C a statute authorizes recording documents of that kind in that office. A statement in a document that was prepared before January 1, , and whose authenticity is established. Market quotations, lists, directories, or other compilations that are generally relied on by the public or by persons in particular occupations. A statement contained in a treatise, periodical, or pamphlet if: If admitted, the statement may be read into evidence but not received as an exhibit. A reputation in a community â€" arising before the controversy â€" concerning boundaries of land in the community or customs that affect the land, or concerning general historical events important to that community, state, or nation. Evidence of a final judgment of conviction if: A the judgment was entered after a trial or guilty plea, but not a nolo contendere plea; B the conviction was for a crime punishable by death or by imprisonment for more than a year; C the evidence is admitted to prove any fact essential to the judgment; and D when offered by the prosecutor in a criminal case for a purpose other than impeachment, the judgment was against the defendant. The pendency of an appeal may be shown but does not affect admissibility. A judgment that is admitted to prove a matter of personal, family, or general history, or boundaries, if the matter: A was essential to the judgment; and B could be proved by evidence of reputation. Notes of Advisory Committee on Proposed Rules The exceptions are phrased in terms of nonapplication of the hearsay rule, rather than in positive terms of admissibility, in order to repel any implication that other possible grounds for exclusion are eliminated from consideration. The present rule proceeds upon the theory that under appropriate circumstances a hearsay statement may possess circumstantial guarantees of trustworthiness sufficient to justify nonproduction of the declarant in person at the trial even though he may be available. The theory finds vast support in the many exceptions to the hearsay rule developed by the common law in which unavailability of the declarant is not a relevant factor. The present rule is a synthesis of them, with revision where modern developments and conditions are believed to make that course appropriate. In a hearsay situation, the declarant is, of course, a witness, and neither this rule nor Rule dispenses with the requirement of firsthand knowledge. It may appear from his statement or be inferable from circumstances. Exceptions 1 and 2. In considerable measure these two examples overlap, though based on somewhat different theories. The most significant practical difference will lie in the time lapse allowable between event and statement. The underlying theory of Exception [paragraph] 1 is that substantial contemporaneity of event and statement negative the likelihood of deliberate of conscious misrepresentation. Moreover, if the witness is the declarant, he may be examined on the statement. If the witness is not the declarant, he may be examined as to the circumstances as an aid in evaluating the statement. Morgan, Basic Problems of Evidence â€" The theory of Exception [paragraph] 2 is simply that circumstances may produce a condition of excitement which temporarily stills the capacity of reflection and produces utterances free of conscious fabrication. Spontaneity is the key factor in each instance,

though arrived at by somewhat different routes. Both are needed in order to avoid needless niggling. While the theory of Exception [paragraph] 2 has been criticized on the ground that excitement impairs accuracy of observation as well as eliminating conscious fabrication, Hutchins and Slesinger, Some Observations on the Law of Evidence: Spontaneous Exclamations, 28 Colum. Since unexciting events are less likely to evoke comment, decisions involving Exception [paragraph] 1 are far less numerous. Illustrative are Tampa Elec. With respect to the time element, Exception [paragraph] 1 recognizes that in many, if not most, instances precise contemporaneity is not possible, and hence a slight lapse is allowable. Under Exception [paragraph] 2 the standard of measurement is the duration of the state of excitement. Obviously there are no pat answers and the character of the transaction or event will largely determine the significance of the time factor. Participation by the declarant is not required: Whether proof of the startling event may be made by the statement itself is largely an academic question, since in most cases there is present at least circumstantial evidence that something of a startling nature must have occurred. For cases in which the evidence consists of the condition of the declarant injuries, state of shock , see Insurance Co. United States, 93 U. United States, 97 U. Industrial Commission, 78 Colo. Moreover, under Rule a the judge is not limited by the hearsay rule in passing upon preliminary questions of fact. However, when declarant is an unidentified bystander, the cases indicate hesitancy in upholding the statement alone as sufficient, Garrett v. Permissible subject matter of the statement is limited under Exception [paragraph] 1 to description or explanation of the event or condition, the assumption being that spontaneity, in the absence of a startling event, may extend no farther. See Sanitary Grocery Co. A Reappraisal of Rule 63 4 , 6 Wayne L. Exception 3 is essentially a specialized application of Exception [paragraph] 1 , presented separately to enhance its usefulness and accessibility. United States, U. The rule of Mutual Life Ins. The same guarantee of trustworthiness extends to statements of past conditions and medical history, made for purposes of diagnosis or treatment. It also extends to statements as to causation, reasonably pertinent to the same purposes, in accord with the current trend, Shell Oil Co. Industrial Commission, 2 Ill. Statements as to fault would not ordinarily qualify under this latter language. Under the exception the statement need not have been made to a physician. Statements to hospital attendants, ambulance drivers, or even members of the family might be included. Conventional doctrine has excluded from the hearsay exception, as not within its guarantee of truthfulness, statements to a physician consulted only for the purpose of enabling him to testify. While these statements were not admissible as substantive evidence, the expert was allowed to state the basis of his opinion, including statements of this kind. The distinction thus called for was one most unlikely to be made by juries. The rule accordingly rejects the limitation. This position is consistent with the provision of Rule that the facts on which expert testimony is based need not be admissible in evidence if of a kind ordinarily relied upon by experts in the field. Many additional cases are cited in Annot. The guarantee of trustworthiness is found in the reliability inherent in a record made while events were still fresh in mind and accurately reflecting them. The principal controversy attending the exception has centered, not upon the propriety of the exception itself, but upon the question whether a preliminary requirement of impaired memory on the part of the witness should be imposed. The authorities are divided. If regard be had only to the accuracy of the evidence, admittedly impairment of the memory of the witness adds nothing to it and should not be required. Nevertheless, the absence of the requirement, it is believed, would encourage the use of statements carefully prepared for purposes of litigation under the supervision of attorneys, investigators, or claim adjusters. Hudson Pulp and Paper Corp. No attempt is made in the exception to spell out the method of establishing the initial knowledge or the contemporaneity and accuracy of the record, leaving them to be dealt with as the circumstances of the particular case might indicate. Multiple person involvement in the process of observing and recording, as in Rathbun v. Locating the exception at this place in the scheme of the rules is a matter of choice. There were two other possibilities. The first was to regard the statement as one of the group of prior statements of a testifying witness which are excluded entirely from the category of hearsay by Rule d 1. The other possibility was to include the exception among those covered by Rule Since unavailability is required by that rule and lack of memory is listed as a species of unavailability by the definition of the term in Rule a 3 , that treatment at first impression would seem appropriate. The fact is, however, that the unavailability requirement of the exception is of a limited and

peculiar nature. Accordingly, the exception is located at this point rather than in the context of a rule where unavailability is conceived of more broadly. Exception 6 represents an area which has received much attention from those seeking to improve the law of evidence. The Commonwealth Fund Act was the result of a study completed in by a distinguished committee under the chairmanship of Professor Morgan. Some Proposals for its Reform 63 With changes too minor to mention, it was adopted by Congress in as the rule for federal courts. A number of states took similar action. Model Code Rule and Uniform Rule 63 13 also deal with the subject. Difference of varying degrees of importance exist among these various treatments. These reform efforts were largely within the context of business and commercial records, as the kind usually encountered, and concentrated considerable attention upon relaxing the requirement of producing as witnesses, or accounting for the nonproduction of, all participants in the process of gathering, transmitting, and recording information which the common law had evolved as a burdensome and crippling aspect of using records of this type. In their areas of primary emphasis on witnesses to be called and the general admissibility of ordinary business and commercial records, the Commonwealth Fund Act and the Uniform Act appear to have worked well. The exception seeks to preserve their advantages. On the subject of what witnesses must be called, the Commonwealth Fund Act eliminated the common law requirement of calling or accounting for all participants by failing to mention it. United States, F. Model Code Rule and Uniform Rule 63 13 did likewise. The exception follows the Uniform Act in this respect. The element of unusual reliability of business records is said variously to be supplied by systematic checking, by regularity and continuity which produce habits of precision, by actual experience of business in relying upon them, or by a duty to make an accurate record as part of a continuing job or occupation. The result is a tendency unduly to emphasize a requirement of routineness and repetitiveness and an insistence that other types of records be squeezed into the fact patterns which give rise to traditional business records. They are problems of the source of the recorded information, of entries in opinion form, of motivation, and of involvement as participant in the matters recorded.

Chapter 4 : Excited utterance - Wikipedia

Present Sense Impression and Excited Utterance Hearsay Exceptions. By Thomas J. Whiteside - February 17, The present sense impression and excited utterance exceptions to the general rule prohibiting hearsay are codified in Rule of the Federal Rules of Evidence.

In this chapter we turn to Rule , which collects In this chapter we turn to Rule , which collects twenty-three different exceptions to the hearsay rule. Those exceptions share a common characteristic: A litigant may invoke them even if the declarant is available to testify. Rule , in contrast, contains exceptions that apply only if the declarant is no longer available to testify. Sportscasters specialize in these statements: Generations of baseball fans have heard monologues like: The pitcher is winding up, and now here comes the pitchâ€¦. These statements are as familiar to us as sports broadcasts. Common excited utterances are: When a crime or accident occurs, the victim and eyewitnesses make numerous statements about the event. Someone may call to report the trauma, others may exclaim to one another about what they see. Victims and bystanders also talk about the incident to police, rescuers, and family members. Parties often offer these statements in court as present sense impressions or excited utterances. Witnesses who did not perceive the event may testify about what the victims and bystanders said: Similarly, a person responding to a startling event has little opportunity to concoct falsehoods. But the rationale behind hearsay exceptions does not assume that certain kinds of statements are always reliable, only that they are more reliable than most other hearsay statements, so that on balance it is better for the jurors to hear the statements than not to hear them. The jurors are free to reject the information if the circumstances persuade them that the declarant was lying or mistaken. Present sense impressions and excited utterances rest particularly on the reliability rationale. This provision, as noted above, relieves parties from proving that the declarant is unavailable. The rule then articulates the straightforward exceptions for present sense impressions and excited utterances. Exceptions to the Rule Against Hearsay â€" Regardless of Whether the Declarant Is Available as a Witness The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness: A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it. A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused. Rule 1 imposes two conditions that define present sense impressions. First, the exception applies only to descriptions or explanations of an event, not to more complex analyses or interpretations. The latter statements involve more complex mental processes that, because they incorporate reflection, also allow time for deception. We will explore the latter language further in the Courtroom section, but it usually provides no more than a few seconds of leeway. The time lapse must be short enough that the speaker has no time to create a lie. Rule 2 contains a different set of prerequisites. First, the declarant must speak while excited by a startling event. The standard is subjective rather than objective: The particular declarant must have been excited by the event. The circumstances that support admission of an excited utterance, therefore, vary widely. Some people suffer extensive shock after witnessing a highway accident or homicide. Others, particularly professionals who respond to these incidents, are more controlled. An excited utterance may move beyond description by analyzing or interpreting the event. But the utterance still must relate to the provoking event. Unrelated comments are not admissible under this exception, even if the declarant makes them while still excited. We will explore all of these requirements more fully in the next section. Meanwhile, note that some statements fall within both 1 and 2 , some fall in just one category, and someâ€"although occurring close in time to a startling eventâ€"fall in neither. Roger was juggling knives in the kitchen while his three young children played at his feet. His wife, Samantha, was on the phone in the same room talking to her sister Louise. Which of these statements would be admissible for the truth of the matter asserted? He is describing the cut as it occurs and is responding to it in an excited way. But this is not a present sense impression because Samantha is referring to a previous action warning Roger and editorializing on the present scene. Nor does she seem particularly startled or excited by the injury to her brother. A present sense impression must describe or explain, rather than analyze, a contemporaneous event. Analysis invokes more complex mental processes that may provide an

opportunity for deception; 1 excludes that type of observation. Here is a case that helps illustrate the distinction: To investigate the spoilage, Cargill sent Everett Fine to check the turkeys at several stores supplied by Cargill. Fine examined the turkeys at these stores and made contemporaneous notes of the production codes on the labels of any spoiled turkeys. Cargill ultimately determined that Boag Cold Storage, a warehouse that stored the turkeys before distribution, had allowed a batch of turkeys to thaw and spoil. Boag objected to the notes as hearsay. This contemporaneous recording of the notes described simply what Fine saw at the time he saw it. He might, for example, have jotted down his thoughts about why the turkeys had spoiled. A batch of spoiled turkeys with consecutive production codes might have prompted him to write: A judge would redact statements like this unless the proponent could find another hearsay exception supporting admission. To distinguish these two categories, think about the policy motivating that exception. Statements of present sense impression should stick closely to the unfolding facts; the absence of analysis suggests that the speaker is not engaging the mental processes that might support deception. Critical commentary, analysis, and other more complex observations all imply a degree of mental engagement that could include deception. The fact that these descriptions occur as an event unfolds enhances their reliability; the declarant has little time to reflect or fabricate. Most present sense impressions occur contemporaneously with the events they describe. But Rule 1 grants a small amount of flexibility in timing: This window is always small: Courts, however, seem to tie the permissible amount of time to what the declarant was doing during those intervening minutes or seconds. Boag Cold Storage Warehouse, 71 F. A bystander who spends a few minutes searching for a pen to record a license plate number, or for a phone to notify police about an accident, may stay focused on the task of remembering the critical information. This seems near the upper limit of what courts will accept as a time gap under Rule 1: David Miller was helping a stranded motorist on the shoulder of Interstate 95 when a trailer truck sideswiped them and their vehicles. The truck killed the stranded motorist and injured Miller. The truck driver did not stop, and Miller did not see the truck that hit him. County police, however, received an anonymous call about eight minutes after the accident. He made no attempt to stop. This was in the area of mile marker 99 or 98, perhaps between the two. Ah, this is my first opportunity to reach a phone. Crown Amusements objected to the recording as hearsay. The trial judge noted that the call came from a gas station located at the highway exit closest to the accident scene. No closer rest stops or call boxes existed on that stretch of Interstate 95, and this accident occurred before cell phones became common. Even with the search, the rationale in cases like this rests on somewhat shaky grounds. Some eyewitnesses may concentrate on remembering the details of an event while they locate a means of communication, but others could use that interval to modify their account. Depending on local precedent, a persuasive attorney might persuade the trial judge to reject delayed reports of present sense impressions like the one in Miller. Startling Events and Excited Declarants. Many motorists, after seeing a large truck hit a person standing on the side of the road, would be distressed and excited. Even after eight minutes, they most likely would convey a sense of panic, urgency, and distress. The caller who aided Miller, however, was not particularly excited. She spoke calmly and related the details she had seen. She concluded the call by checking with the dispatcher to make sure he had all of the necessary information and thanking him for his assistance. She spoke as a concerned citizen doing her civic duty, not as someone making an excited utterance. To gain admission under Rule 2 , the declarant must make a statement with genuine excitement or stress. The reliability of these statements rests on the spontaneity prompted by startling events and the difficulty most people would have lying while responding to them. It is not enough, therefore, that an event would have excited a reasonable person; the declarant must have been subjectively excited while making the statement. Statements made under those circumstances may be admissible under Rule 2 , even though most individuals would have found the occurrence routine: The government prosecuted Moore for fraud, but Marren died before trial. Moore objected to this testimony as hearsay. Searching a wastebasket rarely leads to excitement, but in this case it did. Although Marren had been looking for evidence of this nature, the successful conclusion of a search can still be exciting. Instead, Marren interpreted the significance of what she saw. How Long Does Excitement Last?

Chapter 5 : Hearsay Exceptionsâ€"Present Sense Impressions and Excited - blog.quintoapp.com

Rule sets out twenty-three hearsay exceptions that apply regardless of the declarant's availability. Two that arise with some frequency in criminal cases are present sense impressions and excited utterances.

Whiteside â€" February 17, The present sense impression and excited utterance exceptions to the general rule prohibiting hearsay are codified in Rule of the Federal Rules of Evidence: The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness: A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it. A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused. Although similar, there are several important differences between these hearsay exceptions. The trustworthiness of a present sense impression is based on its proximity to the event or condition it describes. Consequently, a present sense impression must be made either during or very close in timeâ€"usually seconds or minutesâ€"to the event or condition it describes. Green , F. The trustworthiness of an excited utterance, however, is based on the declarant still being under the stress of excitement caused by the event. Jones , F. As such, a statement under this exception can be admissible even if it was made hours after the startling event, as long as the declarant is still under excitement or stress of the event. These two hearsay exceptions have been the subject of some controversy in recent years, with noted jurists calling for their revocation on the ground that they are not sufficiently trustworthy. See United States v. Boyce , F. The Seventh Circuit questioned the psychological basis for these two exceptions, however. The Seventh Circuit also referred to studies showing less than one second is needed to fabricate a lie, thereby undermining the rationale for the present sense impression exception. In a concurring opinion, Judge Posner elaborated on these concerns and proposed amending the hearsay rule, which he characterized as too complex and archaic. Case Law Timing of present sense impression. As such, admissibility is determined on a case-by-case basis. Shoup , F. Danford , F. Timing of excited utterance. The amount of time allowed to pass between an excited utterance and the event causing the excited state is generally longer than that allowed for present sense impressions. McCaughtry , F. Whereas a present sense impression must be made within seconds or minutes of the perceived event, excited utterances can be made hours after the startling event. Tocco , F. Rivera , 43 F. Iron Shell , F. Corroboration of present sense impression. In federal courts, corroboration is generally not required for admissibility of a hearsay statement under the present sense impression exception. Ruiz , F. Medico , F. Practice Pointers The present sense impression and excited utterance exceptions are most commonly used to admit recordings of calls. Polidore , F. Davis , F. They can also be used to admit evidence in a variety of other contexts. Bryant , U. Ignacio , 10 F. Ferber , F. Obayagbona , F. When laying the foundation for a present sense impression, an attorney must establish the following elements: The key to admissibility under the present sense impression exception is the amount of time between the statement and the event that triggered the statement. This should be the focus of questioning when laying the foundation. When laying the foundation for an excited utterance, an attorney must establish the following elements: The key to admissibility under the excited utterance exception is establishing that the declarant was under excitement or stress when making the statement. However, the fact that a statement was made under excitement, without time to think through the answer, is also a drawback of admitting evidence under this exception. On cross-examination, opposing counsel can highlight errors in perception that occurred in the heat of the moment to undermine the evidentiary value of an excited utterance. An attorney should try to lay additional foundation to establish the reliability of a statement beyond the minimum foundational requirements discussed above, especially in light of growing concerns about the propriety of the present sense impression and excited utterance exceptions. Factors that can bolster the reliability of a statement include the age of the declarant, the physical condition of the declarant, the mental condition of the declarant, whether the statement was videotaped, and whether the statement was made under oath. Bonds , F. Asking additional questions to establish the reliability of a statement will increase the likelihood that the statement will be admitted. It will also increase the weight given to the statement by the factfinder after it is admitted. Whiteside is an associate with Littler Mendelson P. This information or any

Chapter 6 : What does present sense impression mean?

In law, Present Sense Impressions are statements which describe an event while it is occurring. These posts contain my daily musings, like good finds on Pinterest, recipes I'm drooling over, and other things that I'm generally loving lately.

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The following are not excluded by the hearsay rule, even though the declarant is available as a witness: (1) Present Sense Impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.