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**1) 911 tape admitted**

**Logical Relevancy**

Any evidence tending to prove or disprove a material fact is more or less likely than without the evidence.

Here Vic is refusing to identify Deb in court after the beating which Deb is being charged with.

Further, Vic is a reluctant witness making it difficult to get information from Vic as to the facts of what happened at the time.

Additionally, Vic had called 911 two minutes after the beating occurred when the facts of the event were fresh in his mind.

Therefore the recording on the 911 call is logically relevant

**Legal Relevancy**

Probative value must not be substantially outweighed by prejudicial effect.

Here the facts of what happened to Vic as recorded within minutes of occurrence is highly probative.

Additionally, absent fraud by Vic at the time there is little prejudicial effect on Deb.

Therefore the recording is legally relevant

**Hearsay**

An statement outside the current proceeding admitted for the purpose of proving the facts at issue

Here Deb argues the Vic's statement was made outside of the present trial, thus a statement outside of the current proceeding.

In addition the recording of Vic's statement is offered to prove Deb beat Vic, thus to prove the facts at issue.

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Therefore, absent an exception the recording of Vic's statement is hearsay

### **Business Record Exception**

Business records kept during the usual course of business are non hearsay.

The prosecution argues that 911 recordings are a normal practice done for calls, thus usual course of business.

However, the recording is sought for Vic's statement rather than as a record, thus the statement itself is still hearsay.

This has also been stipulated by the parties.

Therefore, while the practice of recording may be normal practice Vic's statement is not covered as stipulated.

### **Present Sense Impression**

A statement made at or near the time of occurrence when still under the excitement of the happening being fresh.

Here Vic's statement was made 2 minutes after the beating, thus near the time of occurrence.

Moreover, Vic would have been under the stress of the beating at the time of only 2 minutes having passed.

Therefore, Vic's statement is a present sense impression

### **Excited Utterance**

A spontaneous statement by a party during or immediately after a startling event while under the stress of the event.

Vic is the alleged victim of the beating and the caller on the 911 recording, thus a statement by a party.

Further, Vic made the call to 911 2 minutes after allegedly being beaten, thus immediately after a startling event.

Moreover, one who was just beaten two minutes prior would not have had sufficient time to settle, thus still under the stress of the event.

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Therefore, Vic's statements on the 911 recording are an excited utterance.

### **Conclusion**

The 911 recording should be admitted into evidence as Vic is unwilling to provide the information in court, the statement itself and the recording qualifies as an exception to the hearsay rule, and the recording is authentic.

### **2) Sam's Testimony**

#### **Logical Relevancy**

Any evidence tending to prove or disprove a material fact is more or less likely than without the evidence.

Evidence of Deb being violent and beat someone in the past tends to prove Deb is the kind of person that would beat people as she is charged with here, thus tends to prove if more likely.

Therefore the testimony is logically relevant.

#### **Legal Relevancy**

Probative value must not be substantially outweighed by prejudicial effect.

Here there is low to moderate probative value as if Deb has done the same in the past it would be likely she would continue the same behavior.

Further, the testimony is likely to be highly prejudicial against Deb in the current trial and risks Deb being convinced of an outside act rather than what she is charged.

However, the standard is it must be substantially outweighed by the prejudicial effect which does not seem to rise to that level here

Therefore, the testimony is legally relevant

#### **Character Evidence**

Not admissible by the prosecution to prove defendant committed an offence. Can be used for identification or repeated method

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Sam's testimony is not related to if Deb beat Vic nor is Sam purported to have any first hand knowledge of the alleged beating, thus not a direct witness.

Further Sam's testimony is only to show Deb had beating Sam in the past and is being offered to show the Deb is more likely to have beaten Vic now, thus to prove committed an offence.

Moreover, Sam's testimony of Deb threatening to choke Sam to death if Sam ever left Deb speaks to Deb's character of violence by specific occurrence not for a repeated method or identification.

The prosecution would argue that Deb's prior bad acts, especially of violence and similar beating, goes to show a pattern of behavior consistent with the present charge.

However, these are not prior convictions nor is it reputation of violence but actions alleged to have been done by Deb against Sam without any corroboration.

Therefore, Sam's testimony should be ruled inadmissible character evidence.

### **Conclusion**

Sam's testimony should not be admitted as it is improper character evidence.

### **3) Computer Printout**

#### **Logical Relevancy**

Any evidence tending to prove or disprove a material fact is more or less likely than without the evidence.

If Deb was 20 miles away at the time of the besting Deb could not have committed the beating, thus disproves a material fact.

Therefore the printout is logically relevant.

#### **Legal Relevancy**

Probative value must not be substantially outweighed by prejudicial effect.

Proof of Deb being at her office 20 miles away from where the beating happened is highly probative.

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Additionally, accurate alibi information is not prejudicial

therefore, the printout is legally relevant.

### **Hearsay**

An statement outside the current proceeding admitted for the purpose of proving the facts at issue

A computer printout of the activity on the computer is not a statement, thus not a statement outside the current proceeding.

Therefore, the computer printout is not hearsay

### **Best Evidence Rule**

Contents of writings must be proven by producing the original writing absent a reasonable justification.

Deb is offering the computer printouts as proof of the date and time of the file creation.

Further computer printouts has been ruled to be originals for the purpose of the best evidence rule.

The prosecution will argue the accuracy is suspect and there is only Deb's testimony the time on her computer is accurate.

However, the weight given to any evidence, and if the evidence is believed, is a question determined by the trier of fact and not one of admissibility.

Therefore, the printout satisfies the best evidence rule.

### **Conclusion**

The computer printout should be admitted into evidence and it be left to the trier of fact as to how much weight to give the printout, if any, as to establishing an alibi for Deb.

Question #2 Final Word Count = 1145

**END OF EXAM**

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