

PROBLEM 15A

This is a continuation of Problem 4B, the Big Red delivery truck case.

Plaintiff's first witness is the plaintiff, Fred Turner. He describes the accident and concludes:

1. Q: What's the last thing you remember?
A: I looked up and saw the truck bearing down on me going about 45.
2. Q: Could you see the driver?
A: Yes. She was bent over looking down at something.
3. Q: Looking around the courtroom today, do you see the driver of the truck?
A: I think it's the woman sitting at the table over there, but I'm not 100% sure.

PL ATTY: No further questions

The cross-examination proceeds:

4. Q: You say the truck was going 45 mph?
A: Yes.
5. Q: Two weeks after the accident, when your neighbor Jason came to visit you in the hospital, didn't you tell him that the truck was only going 25 mph?
PL ATTY: Objection hearsay.
JUDGE: Overruled, answer the question.
A: I have no memory of that. I was in a haze and on pain killers.
6. Q: Six months after the accident, when I took your deposition, didn't you again say that truck was only going 25 mph?
PL ATTY: Objection hearsay.
JUDGE: Overruled.
A: No I didn't.

7. DEF ATTY: We offer into evidence page 134 of Turner's deposition, where it says:

Q: Would you estimate that the truck was going about 25 just before it hit you?

A: Yes

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8. Q: So, Mr. Turner, isn't it true you said 25 in your deposition, not 45?
PL ATTY: Objection to the document and the question as hearsay.
JUDGE: Overruled.
A: No. I remember you asking me if the truck was going 45, and I said "yes." That's what I heard -- 45, not 25. Either the deposition is wrong or I misunderstood your question.

- 9 Q: Sounds like your memory has gotten pretty unreliable. Did you suffer any head injuries in the accident?
A: Yes
DEF ATTY: Nothing further.

Redirect examination.

- 10 Q: Mr. Turner, do you recall talking to the police about the accident?
A: Yes, in the hospital right after I was hit. I was in and out of consciousness, so I don't remember much about it.
- 11 Q: Did you tell the police the truck was going 45?
DEF ATTY: Objection hearsay.
JUDGE: Overruled, answer the question.
A: I don't recall.
- 12 PL ATTY: We offer into evidence this police report, dated the day after the accident, and describing the accident, specifically the part where Officer Cagney wrote that Turner said the truck was going 45.

Description: Turner states he was in crosswalk with green light when truck going 45 mph struck him coming from north.

DEF ATTY: Objection hearsay.

The next witness is Officer Chris Cagney.

13. Q: Officer, did you visit Mr. Turner in the hospital a few days after the accident?
A: Yes. I showed him a photo of the defendant Arden and asked him if he could verify that she had been driving the truck that struck him.
14. Q: What did he tell you?
DEF ATTY. Objection, hearsay.
JUDGE: Overruled, you may answer.
A: He said that the woman in the photo looked like the driver of the truck
15. Q: What did you do next?
A: I went to interview the defendant Arden and asked her if she had been the driver of the Big Red delivery truck on September 25.
Q: What did she say?
DEF ATTY. Objection, hearsay.
PL ATTY: Statement of the opposing party, your honor
JUDGE: Overruled, you may answer.
A: She said she was driving the truck.

Cross-examination by defense.

- 16 Q: You just testified that Arden said she was driving the truck. Is that all she said to you?
A: No. She also said she was driving slowly and carefully.
PL ATTY: Objection, hearsay. Move to strike.
JUDGE: Overruled.

The next witness is Victor Isbecki, who testifies that he is the assistant manager of Big Red, and that on September 25, 2015, Jane Arden was employed by Big Red as a delivery truck driver and at the time of the accident was making deliveries. He also says employees are not authorized to speak on behalf of Big Red about any aspect of their jobs.

The next witness is Officer Mary Beth Lacey

- 17 PL ATTY: Officer Lacey, did you investigate the scene of the accident on September 25?
A: Yes.
Q: Tell us about it.
A: First I asked if there were any witnesses. A man stepped forward, said his name was Bert Samuels, and he told me he had overheard the driver of the truck admit that she had been speeding and texting.
DEF ATTY: Object and move to strike. Hearsay.
JUDGE: Overruled.

Think through the arguments for and against the admissibility of the evidence objected to as hearsay.

PROBLEM 15B.

Bill Cosby is scheduled to go on trial in June 2017 in Norristown, Pennsylvania, accused of second degree criminal sexual assault. The prosecution alleges that he had sex with Andrea Constand in 2004, after she became incapacitated from drug intoxication and was incapable of consent. A number of other women (estimates vary from 13 to over 50) have accused Cosby of similar behavior dating back to the 1960s. Some have come forward and made the accusation public, some have made them anonymously through lawyers, and some have sold their stories to the tabloids.

One of his accusers is a former model and actress, Louisa Moritz, who has repeatedly alleged that Cosby sexually assaulted her in 1971 backstage at *The Tonight Show*, although the Internet Movie Database shows that Moritz and Cosby never appeared in the same episode of *The Tonight Show*.

In an event in 2011 staged by Gloria Allred, an attorney who represents several of Cosby's accusers, Moritz waited outside a hotel where Cosby was staying. When he appeared with his wife and several friends, she stepped forward and said, "You raped me at *the Tonight Show* and you know it. Why won't you admit your crimes?" Cosby looked at her for a few seconds and then got in his limousine and drove away without saying anything.

At his upcoming trial, the prosecutor intends to call Allred to describe the incident. Think through the arguments for and against the admissibility of Allred's testimony.

PROBLEM 15C

This is a continuation of the case against Big Red.

The day after the accident, Big Red issued the following press release:

Yesterday, one of our delivery trucks was involved in a horrific accident on College Avenue in which a young man in a wheelchair was struck by a Big Red truck driven by one of our employees. We express our deep sorrow to the young man and his family and pray for his speedy recovery. We take full responsibility for this unfortunate event and promise to provide whatever financial support he and his family need. The young woman who was driving the truck was apparently texting at the time of the accident. This is not acceptable behavior by a Big Red employee, and she has been fired.

Think through the arguments for and against the admissibility of this press release, and whether it matters which of the following Big Red employees signed it:

- a. Don Rix, President and CEO, Big Red Liquors.
- b. Matt Colglazier, Vice President of Merchandising & Marketing
- c. Damon Andrews, Manager of Big Red Store #1, N. College Ave.
- d. Sarah Nichols, Assistant manager, Big Red Store #1, N. College Ave.

PROBLEM 15D

This is a continuation of problem 5A, State v. Waldron and Atkins, the drug-related killing.

After Waldron and Atkins are arrested and have their rights explained to them, the police interrogate them separately. Waldron says to Detective Hank Kruger, “Yeah, we went there to steal drugs from those creeps and things got out of hand, but that’s all I’m saying.”

At their joint trial, the prosecutor calls Kruger to testify to the statement by Waldron. Think through the admissibility of this evidence.