

At a man's trial for public intoxication, the prosecutor offered a videotape of the man being booked into the city jail. The videotape showed the man hardly able to stand unassisted and badly slurring his words when responding to routine booking questions.

Should the court admit the videotape?

- A. No, because the privilege against self-incrimination applies to the booking process.
- B. No, because the videotape is overly prejudicial.
- C. Yes, because the videotape contains statements by a party-opponent.
- D. Yes, because the videotape is probative of the man's conduct.

Explanation:

Evidence is **relevant** if it has *any* tendency to make a material fact more or less probable than it would be without that evidence. Relevant evidence is admissible unless there is some other **legal basis for excluding** it. For example, under Federal Rule of Evidence 403, relevant evidence may be **excluded** if its **probative value** is **substantially outweighed** by the danger of **unfair prejudice**. This danger exists when the evidence would tend to **encourage the jury to decide** the case on **improper grounds** (eg, emotion).

Here, the man is being tried for public intoxication. The prosecutor has offered a videotape of the man exhibiting obvious signs of intoxication when he was booked into the city jail. That videotape is relevant and probative of the man's conduct since it tends to make it more probable that he was intoxicated when he was arrested. And since the videotape poses little danger of encouraging the jury to decide the case on improper grounds, it is not overly prejudicial (**Choice B**). Therefore, the court should admit it.

(Choice A) Under the routine-booking exception, the Fifth Amendment privilege against self-incrimination does not apply to routine biographical questions asked by police while booking a suspect into jail. As a result, police may ask such questions without first issuing the suspect **Miranda warnings**.

(Choice C) An out-of-court statement made by and offered against a party-opponent is admissible as **nonhearsay**. Here, the videotape offered by the prosecution may contain nonhearsay statements made by and offered against the man. But this is inconsequential since there is no indication that the prosecutor has offered those statements for the truth of the matter asserted therein.

Educational objective:

Otherwise relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. This danger exists when the evidence would tend to encourage the jury to decide the case on improper grounds.

References

Fed. R. Evid. 403 (excluding relevant evidence).

**Excluding relevant evidence
(FRE 403)**

