

A defendant is charged with conspiracy to sell and distribute cocaine. The defendant's attorney contacted the prosecutor to enter plea negotiations. The prosecutor stated that the defendant would first have to agree that any statements made by the defendant during negotiations could be used to impeach him at trial in the event that a plea bargain could not be reached. After deliberating with his attorney, the defendant agreed to proceed under those terms, but the negotiations were fruitless.

At trial, the defendant testified as to his lack of involvement in the alleged conspiracy. The prosecutor now seeks to cross-examine the defendant about a contrary statement that he made during plea discussions.

Is the proposed cross-examination proper?

- A. No, because statements made during plea negotiations cannot be used to impeach a defendant.
- B. No, because the protections for statements made during plea negotiations are not subject to waiver.
- C. Yes, because the defendant and the prosecutor did not reach a plea bargain.
- D. Yes, because the defendant knowingly and voluntarily agreed to waive any protections.

Explanation:

The law encourages settlement of disputes and plea-bargaining, so statements made during **settlement or plea negotiations** are generally **not admissible against a defendant** who participated in the negotiations or made the plea. However, a defendant may **waive this protection**—just like any other privilege—if the waiver is made **knowingly and voluntarily (Choice B)**.

Here, the statements that the defendant made during plea negotiations would typically be inadmissible at trial. However, the defendant knowingly and voluntarily waived this protection after deliberating with his attorney. That waiver allows the prosecutor to use any statements made during plea negotiations to impeach the defendant's trial testimony, so the prosecutor's proposed cross-examination is proper.

(Choice A) Statements made during plea negotiations generally cannot be used against the defendant for any purpose—including impeachment. However, this protection is lost once it has been waived (as seen here).

(Choice C) The rule excluding statements made during plea negotiations applies even when a plea bargain was not reached. Otherwise, the negotiating parties would be penalized if no agreement was reached, which would discourage the settlement of disputes.

Educational objective:

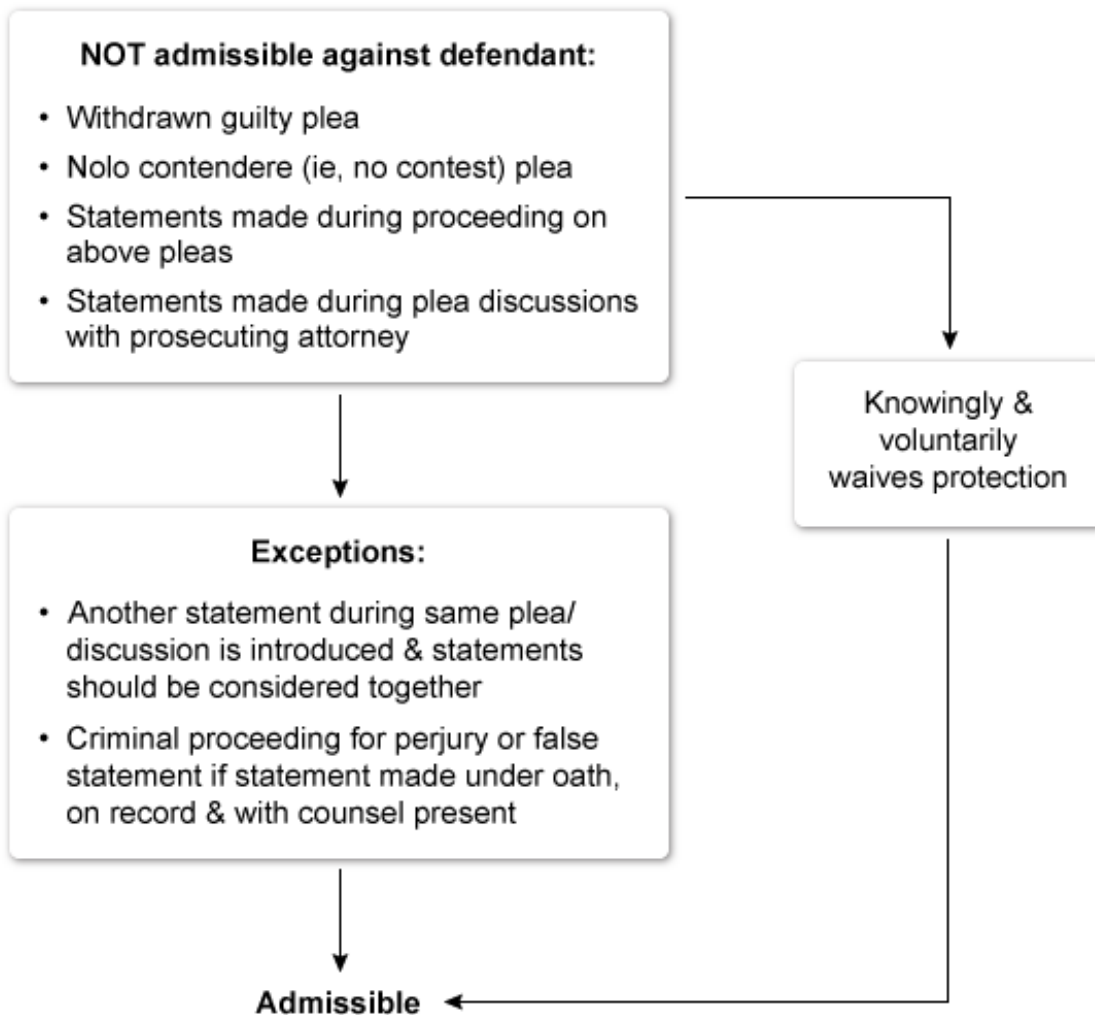
Statements made during settlement or plea negotiations are generally inadmissible against a defendant who participated in the negotiations or made the plea. However, a defendant may waive this protection if the waiver is made knowingly and voluntarily.

References

Fed. R. Evid. 410 (prohibited use of pleas, plea discussions, and related statements).

United States v. Mezzanatto, 513 U.S. 196, 210 (1995) (upholding a criminal defendant's agreement to waive the protections afforded under the plea-statement rules if the agreement was made knowingly and voluntarily).

Pleas, plea discussions & related statements (FRE 410)



FRE = Federal Rule of Evidence.

©UWorld