

A man was a suspect in a series of murders. Detectives convinced the man's neighbor to sneak into the man's home and remove a cigarette butt so that the man's DNA could be compared to DNA found at the scene of one of the murders. The DNA was a match and the man was arrested.

Upon discovering that the prosecutor intended to present the DNA-comparison evidence to the grand jury, the man's lawyer filed a motion to suppress arguing that the evidence was illegally acquired.

How should the court rule on the man's motion?

- A. Deny the motion, because the cigarette butt was seized by a private citizen instead of a police officer.
- B. Deny the motion, because the exclusionary rule does not apply to grand jury proceedings.
- C. Grant the motion, because the grand jury cannot consider evidence obtained without probable cause.
- D. Grant the motion, because the neighbor was acting as a police agent when he seized the cigarette butt without a warrant.

## Explanation:

### Rights & privileges that may be invoked at grand jury proceedings

<b>Constitutional rights</b>	Privilege against self-incrimination (Fifth Amendment)
	Equal protection (Fifth/Fourteenth Amendment)
	Congressmen's privilege not to be questioned about legislative activities (speech or debate clause)
<b>Privileges</b>	Attorney-client privilege
	Spousal privilege
	Marital communications privilege
	Psychotherapist-patient privilege

The **exclusionary rule** requires the suppression of illegally acquired evidence **at trial**. But this rule does **not apply to grand jury proceedings** because a grand jury only has the investigatory power to charge a person with a crime—not the judicial power to convict. The man's motion to suppress the DNA-comparison evidence was therefore premature and should be denied. However, the man can file a motion to suppress again *at trial*.

**(Choices A & D)** The exclusionary rule applies to misconduct by any government agent—ie, government employees *and* non-employees working on the government's behalf. Here, the neighbor was acting as a government agent because police convinced him to seize the cigarette butt for their benefit. This seizure violated the Fourth Amendment because it was made without a warrant and no **exception** applies. But since the exclusionary rule is inapplicable to grand jury proceedings, the man's motion should be denied.

**(Choice C)** A grand jury can consider any evidence relevant to deciding whether to charge an individual with a crime—including evidence obtained without a warrant based on probable cause. Therefore, the grand jury can consider the DNA evidence even if it was collected without probable cause.

### Educational objective:

The exclusionary rule does not apply during grand jury proceedings since the grand jury is an investigatory body—not a judicial body with the power to convict.

### References

U.S. Const. amend. IV (unreasonable search and seizure).

United States v. Calandra, 414 U.S. 338, 351–52 (1974) (holding that the exclusionary rule does not apply to grand jury proceedings).

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