

A defendant was charged with drug trafficking after a large quantity of heroin was found in the trunk of his car during a traffic stop. The defendant filed a motion to suppress the heroin on the ground that the officer who stopped him had no legal basis to do so. The court granted a hearing on the defendant's motion, at which the defendant testified about his driving behavior prior to the traffic stop. On cross-examination, the prosecutor asked the defendant whether he was aware that the heroin was in the trunk of his car. The defendant's attorney objected to the prosecutor's question.

Is the prosecutor's question proper?

- A. No, because a criminal defendant testifying about a specific issue at a preliminary hearing is not subject to cross-examination on other issues in the case.
- B. No, because the prosecutor failed to obtain judicial authorization to inquire into additional matters on cross-examination.
- C. Yes, because the defendant waived his privilege against self-incrimination as to other issues in the case by voluntarily testifying at the preliminary hearing.
- D. Yes, because the question is within the proper scope of cross-examination.

Explanation:

Under Federal Rule of Evidence 104, [preliminary questions](#) relating to the **admissibility of evidence** must be decided by the court. This includes questions regarding the legality of a seizure (eg, a traffic stop) that led to the discovery of the contested evidence. To decide these questions, the court may **hold a hearing** and receive testimony from both the prosecution and the defense.

When a **criminal defendant testifies** at such a hearing, that defendant is **subject to cross-examination** about **specific issues** addressed at the hearing (here, the defendant's driving) and issues related to the **defendant's credibility**. This allows the court to fully assess the issues and properly rule on the admissibility of the evidence.

However, the criminal defendant is **not subject to cross-examination** on **other issues** in the case (**Choice C**).* This allows the defendant to participate in the determination of preliminary matters—which often involve the defendant's constitutional rights—without being subjected to cross-examination generally. Therefore, the prosecutor's question asking whether the defendant was aware that there was heroin in his trunk is improper.

*In contrast, a defendant who testifies at trial can be cross-examined about matters not covered on direct examination if the court grants the prosecution authority to inquire into those matters. That is because a testifying defendant is subject to the same rules on cross-examination as other witnesses.

(Choices B & D) The [scope of cross-examination](#) is limited to the subject matter of direct examination and matters affecting the witness's credibility. Here, the prosecutor's question addresses neither. And though a party may generally request permission to inquire into additional matters on cross-examination, a court cannot allow such an inquiry against a criminal defendant testifying at a preliminary-question hearing. Therefore, the prosecutor's failure to obtain judicial authorization is irrelevant.

Educational objective:

A criminal defendant who testifies at a preliminary-question hearing can be cross-examined about issues related to the admissibility of the contested evidence and the defendant's credibility—but not about other issues in the case.

References

Fed. R. Evid. 104 (preliminary questions).

Cross-examination of criminal defendant

Preliminary-questions hearing



Trial

