

A defendant was on trial for burglary. The prosecutor called the arresting officer to testify that shortly after her arrest and interrogation, the defendant had orally admitted her guilt to the officer. Before the officer testified, the defendant objected that no Miranda warnings had been given to her, and she requested a hearing outside the presence of the jury to hear evidence on that issue.

How should the court proceed?

- A. The court may grant or deny the request, because the court has discretion whether to conduct preliminary hearings in the presence of the jury.
- B. The court should deny the request and rule the confession admissible, because it is the statement of a party-opponent.
- C. The court should deny the request and rule the confession inadmissible, because only signed confessions are permitted in criminal cases.
- D. The court should grant the request, because the hearing on the admissibility of the confession must be conducted outside the presence of the jury.

Explanation:

Hearings on preliminary questions

(FRE 104)

Preliminary question must be heard outside jury's presence if:

hearing is on admissibility of confession
criminal defendant-witness so requests *or*
justice so requires

FRE = Federal Rule of Evidence

Under Federal Rule of Evidence 104, the court must decide **preliminary questions** on whether evidence is admissible, a privilege exists, or a witness is qualified to testify. **Hearings** regarding such determinations *must* be conducted **outside the presence of the jury** if:

the hearing involves the **admissibility of a confession**
a defendant in a criminal case is a witness and so requests *or*
justice so requires.

Here, whether the defendant was **Mirandized** prior to a **custodial interrogation** is a preliminary question that the court must decide to ultimately rule on the admissibility of the defendant's confession. Since the hearing involves the admissibility of a confession, it *must* be conducted outside the presence of the jury. As a result, the court should grant the defendant's request **(Choice A)**.

(Choice B) The defendant's confession is a **statement by a party-opponent** and is therefore nonhearsay when offered against the defendant. But the confession would still be inadmissible under the **Fifth Amendment** if the defendant was not properly Mirandized before making the confession. Therefore, this is not a basis to deny the defendant's request for a hearing and admit the confession.

(Choice C) Both written (signed or unsigned) and oral confessions are admissible in criminal cases.

Educational objective:

Hearings on preliminary questions must be held outside the jury's presence if (1) the hearing involves the admissibility of a confession, (2) a defendant in a criminal case is a witness and so requests, or (3) justice so requires.

References

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

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