

A defendant is on trial in federal court for bank robbery. The prosecutor called a witness who testified that, while in the bank parking lot, she (1) saw the defendant and his accomplice running out of the bank while removing their ski masks and (2) heard the accomplice call the defendant by name as they ran to their red car.

Which of the following areas of questioning most likely exceeds the proper scope of cross-examination?

- A. A plane passed loudly overhead as the defendant and his accomplice ran to their car.
- B. The witness failed to report income on her federal tax returns for the past five years.
- C. The witness has suffered from colorblindness since childhood.
- D. The witness is a former alcoholic who regularly attends addiction support meetings.

Explanation:

Under Federal Rule of Evidence (FRE) 611, the **scope of cross-examination** is **limited to**: the subject matter of direct examination *and* matters affecting the **witness's credibility**.

One method of **attacking a witness's credibility** is to establish that, **at the time in question**, the witness's **sensory abilities** were impaired by a **physical or mental condition** or affected by **environmental factors**.

Here, the witness's testimony that she *heard* the accomplice call the defendant's name can be attacked with evidence that a plane was passing loudly overhead (**Choice A**). And the witness's testimony that she *saw* the defendant and his accomplice running to a *red* car can be attacked with evidence of her colorblindness (**Choice C**). Therefore, these areas of questioning are within the proper scope of cross-examination.

Another method of attacking a witness's credibility is to introduce **specific instances of conduct** (SICs) that are probative of the witness's **character for truthfulness**. SICs can always be introduced intrinsically—ie, by questioning the witness being impeached about the SIC. Therefore, questioning the witness about her failure to report income on her tax returns is also within the proper scope of cross-examination (**Choice B**).

However, a witness's **alcoholism or drug addiction** does not bear on the witness's truthfulness. And such addiction **cannot be used** to challenge the witness's sensory abilities unless the addiction affected the witness's memory or sensory perception at the time in question or while testifying. This protects the witness from undue harassment. Therefore, questions about the witness's alcoholism likely exceed the scope of cross-examination.

Educational objective:

Evidence that a witness's senses were impaired by a physical or mental condition or by environmental factors at the time in question can be used to attack the witness's credibility. Specific instances of conduct probative of the witness's truthfulness may also be used, but a witness's addiction typically cannot.

References

Fed. R. Evid. 611 (scope of cross-examination).

Fed. R. Evid. 608(b) (impeachment through a witness's specific instance of conduct).

Christopher B. Mueller et al., 3 Federal Evidence § 6:80 (4th ed. 2021) (discussing when drug or alcohol addiction can be used to attack the witness's credibility).

Sequence & scope of witness examination

