

In a civil trial arising from a car accident at an intersection, the plaintiff testified on direct examination that he came to a full stop at the intersection. On cross-examination, the defendant's lawyer asked whether the plaintiff claimed to have been exercising due care at the time, and the plaintiff replied that he had been driving carefully. At a sidebar conference, the defendant's lawyer sought permission to ask the plaintiff about two accidents in the previous 12 months in which he had received traffic citations for failing to stop at stop signs. The plaintiff's lawyer has objected.

Should the court allow defense counsel to ask the plaintiff about the two prior accidents?

- A. No, because improperly failing to stop on the other occasions does not bear on the plaintiff's veracity and does not contradict his testimony in this case.
- B. No, because there is no indication that failing to stop on the other occasions led to convictions.
- C. Yes, because improperly failing to stop on the other occasions bears on the plaintiff's credibility, since he claims to have stopped in this case.
- D. Yes, because improperly failing to stop on the recent occasions tends to contradict the plaintiff's claim that he was driving carefully at the time he collided with the defendant.

Explanation:

Methods of impeaching witness

Method	Description	Means
Character for truthfulness	Reputation or opinion testimony	Extrinsic evidence
	SIC involving bad act	Intrinsic evidence
	SIC involving criminal conviction of felony or crime of dishonesty	Intrinsic or extrinsic evidence
Self-interest / bias	Motive to lie or partiality to party	
Prior inconsistent statement	Witness's prior statement inconsistent with present testimony	
Specific contradiction	Evidence directly contradicting witness's testimony on material issue	
Sensory abilities	Evidence showing witness's senses were impaired by physical / mental condition or environmental factors	

SIC = Specific instance of conduct.

Any party may **impeach** (ie, discredit) a witness by inquiring into **specific instances of conduct** (SICs) that bear on the **character for truthfulness** of (1) the witness or (2) another witness about whose character the witness being questioned has testified. And a witness can always be impeached with evidence that **contradicts his/her testimony** about an important issue in the case.

Here, defense counsel sought to ask the plaintiff about two prior accidents in which he had been cited for running stop signs. But these SICs do not bear on the plaintiff's truthfulness (ie, veracity) since running stop signs demonstrates carelessness—not dishonesty (**Choice C**). Nor do they contradict the plaintiff's testimony in this case since he did not claim that he has *never* run a stop sign (**Choice D**). Therefore, the court should not allow defense counsel to ask the plaintiff about the accidents.

(Choice B) Under Federal Rule of Evidence 608(b), a witness *can* be impeached with bad acts that did not result in criminal convictions. But the plaintiff's prior accidents remain inadmissible because they do not bear on truthfulness or contradict prior testimony.

Educational objective:

A witness can be impeached with specific instances of conduct that bear upon truthfulness. And a witness can also be impeached with evidence that contradicts his/her testimony about an important issue in the case.

References

Fed. R. Evid. 608(b) (impeaching witness's character for truthfulness with specific instances of conduct).

Copyright © 2014 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.