At a defendant's trial for drug dealing, a prosecution witness testified that he had heard the defendant telling a group of people to come to the defendant's house because he had "a great crop of apples for sale." The prosecutor then called and qualified a drug enforcement agent as an expert in how drug dealing is conducted. The prosecutor now seeks to have the expert testify that in her opinion, based on years of experience with drug dealers, the defendant's statement about the apples was code for his having drugs for sale.

Should the expert's opinion be admitted?

A. No, because an expert must base his or her opinion on scientific or technical data, not merely on experience.

B. No, because the opinion is based on the criminal actions of others engaged in drug dealing, and thus is substantially more unfairly prejudicial than probative.

C. Yes, because the opinion is based on her specialized knowledge, and it will assist the trier of fact in understanding the evidence and determining facts in issue in the case.

D. Yes, provided that the expert first testifies about the specific information upon which she based her view that the defendant was using "apples" as a code word to refer to drugs.

Explanation:

A witness is qualified to provide **expert opinion testimony** if the witness has specialized knowledge, skill, experience, education, or training in a subject that pertains to an issue in litigation. However, expert testimony is only **admissible if** the court determines that it is both:

relevant – the testimony will **help the trier of fact** (1) **understand** the evidence or (2) **determine a fact** in issue *and*

reliable – the testimony is (1) **based on sufficient facts** or data and (2) the **product of reliable principles** and methods that have been reliably applied by the expert to the facts of the case

Here, the drug enforcement agent was qualified as an expert in drug dealing. Her expert opinion testimony is relevant because it will help the trier of fact understand the defendant's statement regarding a "great crop of apples" (evidence) and determine if the defendant was selling drugs (fact in issue). That testimony is also reliable because her years of experience with drug dealers (sufficient facts and data) are being applied to the facts of this drug case. Therefore, the expert's opinion should be admitted.

(Choice A) To be reliable, an expert's opinion testimony must be based on sufficient facts or data—but this information can stem from the witness's experience (as seen here) as well as scientific or technical data.

(Choice B) The expert's opinion will assist the jury in understanding and determining a key issue in the case—whether the defendant was dealing drugs. Therefore, the probative value of this evidence outweighs any danger of unfair prejudice.

(Choice D) Unless the court orders otherwise, an expert may state an opinion *before* testifying to the underlying facts or data upon which that opinion is based. The opponent may then inquire into the bases for the opinion on cross-examination.

Educational objective:

Expert opinion testimony is admissible if it will help the trier of fact understand the evidence or determine a fact in issue (ie, relevant) and is based on sufficient facts/data and the product of reliable principles/methods reliably applied by the expert (ie, reliable).

References

Fed. R. Evid. 702 (expert witness testimony).

Admissibility of expert testimony

Qualified as an expert?

Witness has:

- knowledge, skill, experience, training, or education on subject
  AND
- subject pertains to litigated issue

→ **No** → **Inadmissible**

↓ **Yes**

Expert testimony is admissible?

Relevant—ie, helps fact finder:

- understand the evidence
  OR
- determine a fact in issue?

→ **No** → **Inadmissible**

↓ **Yes**

Reliable—ie, testimony is:

- based on sufficient facts or data
  AND
- product of reliable principles & methods properly applied to facts of case?

→ **No** → **Inadmissible**

↓ **Yes**

Admissible