

A building owner sued a company that manufactures and sells water filtration systems, alleging that a defect in a system purchased by the building owner caused extensive flooding in his building. In preparation for trial, the building owner hired a photographer to take photographs of the water filtration system and the damage caused by the flooding. At trial, the photographer testified about the film used for the photographs and where it was sent to be developed. The building owner then moved to admit prints of the photographs into evidence. The company has objected to the introduction of the prints.

Which of the following provides the best basis for the judge to sustain the company's objection?

- A. The building owner did not lay a proper foundation for the admission of the prints.
- B. The building owner hired an amateur photographer instead of an expert.
- C. The photographer could not establish chain of custody for the development of the prints.
- D. The prints of the photographs violate the best evidence rule.

Explanation:

Authenticating physical objects

(FRE 901)

Personal knowledge	Testimony by witness with personal knowledge of object (or that reproduction depicts original object) Most common method of authentication
Comparison	Comparison of object or writing against authenticated specimen by expert or trier of fact
Distinctive characteristics	Testimony on object's appearance, contents, substance, internal patterns, or other distinctive characteristics
Chain of custody	Substantially unbroken account of object's whereabouts from time it was obtained until introduction at trial Required method for authenticating objects that could easily be tampered with or confused with similar item (eg, blood sample)
X-ray images & electrocardiograms	Evidence showing accurate process was used, machine was working properly, machine operator was qualified & chain of custody Required method for authenticating physical representations of things that cannot otherwise be seen

FRE = Federal Rule of Evidence.

Tangible evidence (eg, a photograph) must be authenticated before it can be admitted into evidence. Authentication requires a prima facie showing that the object is what the proponent claims it to be. A **photograph** is authenticated by having a **witness with personal knowledge** of the thing depicted **testify** that the photograph **fairly and accurately depicts** that thing.

Here, the building owner sought to introduce prints of photographs depicting the water filtration system and the damage caused by the flooding in his building. But the building owner failed to elicit testimony from someone with personal knowledge that the prints fairly and accurately depicted the filtration system and the resulting damage. Therefore, no proper foundation was laid, and the judge will most likely sustain the company's objection on this basis.

(Choice B) Photographs need not be taken by an expert or professional photographer to be admissible. Therefore, this would not be a basis for sustaining the company's objection.

(Choice C) **Chain of custody** must be used to authenticate physical evidence—eg, gun, knife, blood sample—that could easily be tampered with or is not readily identifiable. Since photographs can be readily identified by someone who has personal knowledge of the thing depicted, chain-of-custody authentication is unnecessary.

(Choice D) The **best evidence rule** generally requires that an original be produced to prove the contents of a writing, recording, or photograph. An original photograph includes the negative and any prints made from it (as seen here).

*The best evidence rule is unlikely to have been implicated here since there is no indication that the building owner was relying solely on the photographs to prove that the flood occurred.

Educational objective:

A photograph is authenticated when a witness with personal knowledge of the thing depicted testifies that the photograph fairly and accurately depicts that thing.

References

Fed. R. Evid. 901 (authenticating or identifying evidence).