

A defendant is charged with murdering his business partner. At trial, the defendant called a witness to testify that he was with the defendant at an all-day business conference on the day of the murder. The witness further testified that the defendant remained at the conference and did not leave at any point for an extended amount of time. On cross-examination, the prosecutor seeks to impeach the witness by introducing evidence of his five-year-old conviction for stalking for which the witness served two years in prison. The defendant objects on the ground that the witness's conviction was pardoned pursuant to a first-offender pardon program which automatically pardons first-time offenders upon the successful completion of their sentence.

Is evidence of the witness's prior conviction admissible?

- A. No, because the witness did not put his character at issue by testifying about the defendant's whereabouts.
- B. No, because the witness's character for truthfulness cannot be impeached with a specific instance of conduct.
- C. Yes, because prior convictions are probative of a witness's character for truthfulness.
- D. Yes, because the conviction was not pardoned based on a finding of innocence.

Explanation:

Any party can impeach a **witness** by attacking the credibility of the witness's testimony or the witness him/herself. The credibility of the witness can be attacked by introducing **reputation or opinion** testimony OR specific instances of conduct (SICs) that are probative of the witness's **character for (un)truthfulness (Choice B)**.^{*} Only two types of SICs are admissible for this purpose:

Convictions involving a **crime of dishonesty** or **felony** (ie, a crime punishable by imprisonment for more than one year or death) *or*

Other bad acts

However, such a conviction is **inadmissible** if it was the subject of a **pardon, annulment, or certificate of rehabilitation** based on (1) a finding of innocence or (2) a finding of rehabilitation with no subsequent felony convictions. That is because these procedures are based on an inquiry into the witness's character.

Here, the prosecutor seeks to introduce evidence of the witness's prior conviction for which he served *two* years in prison. Although this felony conviction was later pardoned, the pardon automatically occurred when the witness completed the sentence. This means that the pardon was *not* based on a finding of innocence or rehabilitation, so evidence of the conviction is admissible.

^{*}A witness's character for truthfulness may only be supported by reputation or opinion testimony after it has been attacked.

(Choice A) A witness's character for truthfulness (ie, credibility) is *always* at issue—regardless of the substance of his/her testimony. In contrast, the character of a party (ie, plaintiff, defendant) is **at issue** only if it is an essential element of the criminal charge, civil claim, or asserted defense.

(Choice C) Prior convictions involving a *felony* or *crime of dishonesty* are probative of a witness's character for truthfulness absent a finding of innocence or rehabilitation. But no other convictions are admissible for this purpose.

Educational objective:

A conviction involving a felony or crime of dishonesty is admissible to impeach a witness's credibility *unless* it was the subject of a pardon, annulment, or certificate of rehabilitation based on a finding of innocence OR a finding of rehabilitation with no subsequent felony convictions.

References

Fed. R. Evid. 608 (witness's character for truthfulness).

Fed. R. Evid. 609(c) (effect of a pardon, annulment, or certificate of rehabilitation).

Impeachment evidence

