

A defendant was charged with possession of cocaine. At the defendant's trial, the prosecution called a police officer to testify that, when approached by police on a suburban residential street corner, the defendant dropped a plastic bag and ran, and that when the officer returned to the corner a few minutes later after catching the defendant, he found a plastic bag containing white powder.

The defendant objects to introduction of this bag (the contents of which would later be established to be cocaine), citing lack of adequate identification.

How should the court rule on the defendant's objection?

- A. Overrule the objection, because the objection should have been made on the basis of incomplete chain of custody.
- B. Overrule the objection, because there is sufficient evidence to find that the bag was the one the defendant dropped.
- C. Sustain the objection, because the defendant did not have possession of the bag at the time he was arrested.
- D. Sustain the objection, unless the judge makes a finding by preponderance of the evidence that the bag was the one dropped by the defendant.

## Explanation:

### Authenticating physical objects

(FRE 901)

<b>Personal knowledge</b>	Testimony by witness with personal knowledge of object (or that reproduction depicts original object)  Most common method of authentication
<b>Comparison</b>	Comparison of object or writing against authenticated specimen by expert or trier of fact
<b>Distinctive characteristics</b>	Testimony on object's appearance, contents, substance, internal patterns, or other distinctive characteristics
<b>Chain of custody</b>	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)
<b>X-ray images &amp; electrocardiograms</b>	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.

**Physical objects**, like all tangible evidence, must be **authenticated** before they can be admitted at trial. Authentication requires a **prima facie showing** that the object is what the proponent claims it to be. This is most commonly done by **testimony** of someone with **personal knowledge** of the object, which comes from firsthand observations or experiences.

Here, the police officer testified that he saw the defendant drop a plastic bag before running and that he recovered a bag from that *same* area a few minutes after catching the defendant. Since this testimony is based on the police officer's personal knowledge and provides sufficient evidence to find that the recovered bag was the one the defendant had dropped, the defendant's objection should be overruled.

**(Choice A)** An objection based on incomplete chain of custody may have been sustained if the prosecution failed to establish a substantially unbroken account of the bag's

whereabouts from the time it was obtained until its introduction at trial. However, there are insufficient facts to determine if the prosecution could meet this burden.

**(Choice C)** Although the bag was not found on the defendant's person, there is still sufficient evidence to find that the bag was the one he dropped.

**(Choice D)** Authentication merely requires proof that the item is what the proponent claims it to be. This is a lesser standard than a preponderance of the evidence, which requires that a party show that the greater weight of the evidence (more than 50%) supports his/her argument.

**Educational objective:**

Before physical evidence can be admitted at trial, it must be authenticated through a prima facie showing that the item is what the proponent claims it to be. This is commonly done by testimony of personal knowledge of the object.

**References**

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

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