

A defendant is charged with murder after allegedly shooting a victim during an argument in a crowded nightclub. At trial, the defendant claims self-defense, testifying that he shot the victim only after the victim lunged at him with a knife. In rebuttal, the prosecutor calls an eyewitness to testify that she observed the argument from a short distance away and that she heard a gunshot before the victim lunged at the defendant.

Thereafter, the defendant seeks to call the bartender from the nightclub to testify that the eyewitness had consumed a large amount of alcohol before the shooting and that the music in the nightclub at the time of the shooting was extremely loud. The prosecutor objects that the bartender's testimony would be improper impeachment.

How should the judge rule on the prosecutor's objection?

- A. Allow the bartender's testimony about both the eyewitness's alcohol consumption and the music. (81%)
- B. Allow the bartender's testimony about the music but not about the eyewitness's alcohol consumption, because alcohol consumption is an improper basis for impeachment. (4%)
- C. Exclude the bartender's testimony about the music, because it does not impeach the eyewitness, but allow the testimony about the eyewitness's alcohol consumption. (5%)
- D. Exclude the bartender's testimony in its entirety, because extrinsic evidence is not admissible to impeach. (7%)

Correct

81% Answered correctly

58 secs Time Spent

2023 Version

Explanation:

A party may **impeach a witness** by introducing evidence that, at the time in question, the witness's **sensory abilities** were (1) impaired by a **physical or mental condition** or (2) affected by **environmental factors**. Such evidence can be introduced:

intrinsically – by questioning the witness about the impairment or environmental factors
or

extrinsically – by introducing the impairment or environmental factors through any source other than the witness's testimony (as seen here) **(Choice D)**.

For example, evidence that the eyewitness consumed alcohol and was likely intoxicated at the time in question is a proper basis for impeachment **(Choice B)**.^{*} That is because intoxication impairs a person's ability to accurately perceive events. And evidence that the environment was noisy at the time in question is proper to impeach the eyewitness's testimony as to what she heard **(Choice C)**. Therefore, the judge should overrule the prosecutor's objection and allow the bartender's testimony in its entirety.

^{*}However, courts are cautious about allowing a witness's general alcohol use or alcoholism to be used to impeach when it is not connected directly to the time of the witness's observation.

Educational objective:

A party may impeach a witness with evidence that the witness's senses were impaired by a physical or mental condition or by environmental factors at the time in question. A party may use intrinsic or extrinsic evidence for this purpose.

References

Christopher B. Mueller et al., 3 Federal Evidence § 6:80 (4th ed. 2021) (discussing when drug or alcohol addiction can be used to attack the witness's credibility).

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Impeachment evidence

