

A defendant has been charged with war crimes. The prosecution alleges that, before immigrating to the United States under an alias, the defendant was a high-ranking official in a brutal foreign regime. At trial, the prosecution seeks to introduce a diamond-encrusted pendant found among the defendant's possessions after his arrest. The prosecution claims that such pendants were only given to high-ranking officials of the regime.

The defendant has objected to the introduction of the pendant, arguing lack of authentication. In response, the prosecution has produced a pendant obtained from a human rights museum, which has been authenticated as formerly belonging to a general of the regime. The prosecution has requested that both pendants be conditionally admitted so that the jury can compare them.

Should the court admit the pendants?

- A. No, because comparison of the pendants for authentication purposes must be done by an expert.
- B. No, because the authenticity of physical evidence must be established by testimony of a witness with personal knowledge of the object.
- C. Yes, because the jury may properly compare the pendants for authentication purposes.
- D. Yes, provided the court is satisfied the pendants are of sufficient similarity to allow for jury comparison.

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.

A **physical object** must be **authenticated** before it can be admitted at trial. Authentication requires a prima facie showing that the object is what the proponent claims it to be. One method of authentication involves **comparing an object** that the proponent seeks to admit (defendant's pendant) **with** one that has been **authenticated as genuine** (museum's pendant). The comparison may be made by an expert *or* the **trier of fact (Choice A)**. Therefore, the court should admit both pendants so that the jury, as the trier of fact, can compare them.

(Choice B) An object can be authenticated by testimony from a witness with personal knowledge of the object, but this is not the only available method of authentication.

(Choice D) There is no requirement that the court be satisfied that the items are sufficiently similar before allowing the jury to compare them. However, as a practical matter, the items will often bear strong similarities.

Educational objective:

A physical object may be authenticated by comparison to another that has been authenticated as genuine. Such a comparison may be made by either an expert or the trier of fact.

References

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

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