

A plaintiff sued a defendant for assault after a late-night barroom brawl. At trial, the plaintiff planned to call several bar patrons who had been present on the night in question to testify to the circumstances of the alleged assault. The trial judge ordered all witnesses excluded from the courtroom during the trial except for the parties. The trial judge then ordered the plaintiff to testify first during his case-in-chief and to relate his version of events before hearing the testimony of other eyewitnesses. The plaintiff has objected to the order requiring him to testify first.

Did the trial judge exceed her authority in ordering the plaintiff to testify first?

- A. No, because the trial judge has broad discretion to exercise control over the order of examining witnesses.
- B. No, because the trial judge must determine the order in which evidence is presented at trial.
- C. Yes, because a party is always permitted to control the presentation of proof during its case-in-chief.
- D. Yes, because the defendant did not demonstrate likely prejudice from permitting the plaintiff to present evidence in any order he wished.

Correct

Collecting Statistics

02 mins, 35 secsTime Spent

2023Version

Explanation:

Court's control over witness examination & presentation of evidence

(FRE 611)

Court has reasonable control over mode/order of examining witnesses & presenting evidence to:

make procedures effective for determining truth

avoid wasting time

protect witnesses from harassment or undue embarrassment

FRE = Federal Rule of Evidence.

Federal Rule of Evidence (FRE) 611 grants a **trial court broad discretion** to **exercise reasonable control over the mode and order of examining witnesses** and presenting evidence. That is to ensure that, among other things, those trial procedures are effective for determining the truth. For instance, a judge may order a party to testify before calling witnesses to ensure that the party cannot tailor his/her testimony to match (as seen here). Therefore, the trial judge did *not* exceed her authority in ordering the plaintiff to testify first.

(Choices B & C) A party is generally, but not always, permitted to control the presentation of proof during its case-in-chief. And the determination as to the order in which evidence is presented at trial is not one the court *must* make in every case. However, the court does have broad discretion to exercise reasonable control over the mode and order of examining witnesses and presenting evidence when it sees fit.

(Choice D) The defendant did not demonstrate likely prejudice from permitting the plaintiff to present evidence in any order he wished. But a showing of likely prejudice is not needed for the court to exercise its discretion under FRE 611. Instead, the court may do so sua sponte when it deems it necessary.

Educational objective:

A trial court has broad discretion to exercise reasonable control over the mode and order of examining witnesses and presenting evidence. In exercising that discretion, a judge may order a party to testify before calling witnesses to ensure that the party cannot tailor his/her testimony to match.

References

Fed. R. Evid. 611 (explaining the mode and order of examining witnesses and presenting evidence).

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