

A defendant was charged with possession of marijuana with intent to distribute. On direct examination, the defendant testified that he worked with disadvantaged children as a drug counselor, that he hated drugs, that he would "never possess or distribute drugs," and that he had never used drugs and would not touch them.

The government offered as a rebuttal witness a police officer who would testify that, three years earlier, she saw the defendant buy cocaine from a street dealer. The defendant objected.

Is the testimony of the police officer about the prior drug transaction admissible to impeach the defendant?

- A. No, because it is contradiction on a collateral matter.
- B. No, because the bad act of buying drugs is not sufficiently probative of a witness's character for truthfulness.
- C. Yes, because it is proper contradiction.
- D. Yes, because the bad act shows a disregard for the law and makes it less likely that the defendant would respect the oath of truthfulness.

Explanation:

Methods of impeaching witness

Method	Description	Means
Character for truthfulness	Reputation or opinion testimony	Extrinsic evidence
	SIC involving bad act	Intrinsic evidence
	SIC involving criminal conviction of felony or crime of dishonesty	Intrinsic or extrinsic evidence
Self-interest / bias	Motive to lie or partiality to party	
Prior inconsistent statement	Witness's prior statement inconsistent with present testimony	
Specific contradiction	Evidence directly contradicting witness's testimony on material issue	
Sensory abilities	Evidence showing witness's senses were impaired by physical / mental condition or environmental factors	

SIC = Specific instance of conduct.

A witness may be **impeached** (ie, discredited) with evidence that **contradicts** his/her testimony. This can be done by introducing either:

intrinsic evidence – testimony elicited **from that witness** on cross-examination *or*

extrinsic evidence – evidence elicited **from any source** other than that witness.

But under the collateral-evidence rule, **extrinsic evidence cannot be used** to impeach a witness on a **collateral matter**—ie, one that is irrelevant to a material issue in the case.

Here, the prosecution seeks to impeach the defendant-witness with the police officer's testimony that she saw him buy cocaine. Evidence of the prior cocaine purchase is *not* collateral since (1) the defendant-witness is charged with drug possession and (2) the evidence directly contradicts his testimony that he would "never possess or distribute drugs" (**Choice A**). Therefore, the police officer's testimony is admissible to impeach him by contradiction.

(Choices B & D) Buying drugs is not probative of a witness's character for truthfulness. And even if it were, this specific instance of conduct involving a bad act could

only be used to impeach a witness's truthfulness if it were introduced through *intrinsic* evidence. But here, the prior drug purchase is being used to impeach the defendant-witness by contradiction—not to attack his character for truthfulness—so it can be introduced through *extrinsic* evidence.

Educational objective:

A witness may be impeached with evidence that contradicts his/her testimony. However, under the collateral-evidence rule, extrinsic evidence cannot be used to impeach a witness on a collateral matter.

References

Fed. R. Evid. 403 (excluding relevant evidence).

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