

A plaintiff has sued a defendant for negligently causing her injury. The plaintiff alleges that the defendant, who was standing on a scaffold while painting a building, dropped a paint can that struck the plaintiff on the head while she was walking under the scaffold.

At trial, to prove her injury, the plaintiff offers a photograph for admission into evidence. A witness will testify that he took the photograph with his cell phone and that the photograph accurately portrays what he saw. The photograph shows the plaintiff lying on the sidewalk, bleeding from a gash on her head, with a spilled paint can nearby.

Is the photograph admissible?

- A. No, because the unfair prejudicial effect of the photograph outweighs its probative value. (7%)
- B. No, because there is no testimony establishing that cell-phone technology produces accurate photographs. (0%)
- C. Yes, because the photograph will be authenticated by the witness's testimony. (88%)
- D. Yes, because the photograph is self-authenticating. (3%)

Correct

88% Answered correctly

47 secs Time Spent

2023 Version

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.

Under Federal Rule of Evidence (FRE) 901, tangible evidence must be **authenticated** before it can be admitted at trial. This requires a prima facie showing that the object is what the proponent claims it to be. A **photograph** is authenticated by having a witness with **personal knowledge**—ie, knowledge based on firsthand observation or experience—of the thing depicted testify that the photograph **fairly and accurately depicts** that thing.

Here, the witness will testify that he took the photograph with his cell phone (firsthand observation or experience) and that it accurately portrays what he saw after the plaintiff's injury (fair and accurate depiction). That testimony is sufficient to authenticate the photograph, so the photograph is admissible.

(Choice A) Under [FRE 403](#), otherwise relevant evidence can be excluded if its probative value is *substantially* outweighed by the danger of unfair prejudice—ie, the risk that the jury will decide the case on improper grounds. Here, the photograph's probative value is high

because it depicts the plaintiff's injury exactly as she alleges, and the danger of unfair prejudice is low. Therefore, it should *not* be excluded on this basis.

(Choice B) Testimony that cell-phone technology produces accurate photographs is not needed to authenticate a photograph taken by a cell phone. Testimony that the photograph fairly and accurately depicts what it purports to depict will suffice.

(Choice D) Some tangible evidence is [self-authenticating](#), but photographs are not.

Educational objective:

A photograph is authenticated by having a witness with personal knowledge of the thing depicted testify that the photograph fairly and accurately depicts that thing.

References

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

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