

A man sued his neighbor for damage to an expensive in-ground sprinkler system caused by the neighbor's large dogs. At trial, the man testified that the neighbor's dogs broke through the fence separating his and the neighbor's properties and, while in his backyard, dug up and destroyed the sprinkler system. Wanting the jury to understand the full extent of the damage, the man sought to introduce a photograph of his backyard that was taken by his wife.

Should the court admit the photograph of the man's backyard?

- A. No, because, in light of the man's testimony, the photograph is needlessly cumulative.
- B. No, because only the man's wife can properly authenticate the photograph.
- C. Yes, because the photograph is relevant evidence of the damage to the man's backyard.
- D. Yes, provided that the man properly authenticates the photograph.

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.

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 man and his wife both have personal knowledge of the condition of the backyard. The court should therefore admit the photograph, provided that the man properly authenticates it by testifying, or having his wife testify, that the photograph fairly and accurately depicts his backyard after the damage.

(Choice A) Under [FRE 403](#), a court may exclude relevant evidence if it is needlessly cumulative—ie, if the evidence is unnecessarily duplicative or repetitious. Here, although the man testified about the damage to his backyard, the photograph is not needlessly

cumulative. That is because photographs are commonly admitted to illustrate witness testimony and the man is only seeking to introduce one photograph.

(Choice B) There is no requirement that the person who took the photograph (here, the man's wife) testify for the purpose of authentication. Instead, a photograph can be authenticated by *any witness* with the requisite personal knowledge.

(Choice C) The photograph *is* relevant evidence of the damage to the man's backyard. But even if tangible evidence is relevant, it still must be properly authenticated before it can be introduced into evidence.

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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