

A defendant has been charged with selling cocaine to a police informant. At trial, the alleged cocaine no longer exists, and the only evidence that the substance sold was cocaine is the informant's testimony that it tasted like cocaine and gave her a cocaine-like sensation. The informant has no formal training in identifying controlled substances.

Should the court admit the informant's opinion testimony that the substance was cocaine?

- A. No, because identification of a controlled substance requires an expert with formal training.
- B. No, because, without a quantity of the controlled substance for testing, opinion testimony is insufficient to make a prima facie case against the defendant.
- C. Yes, if the court determines that the informant has sufficient knowledge and experience to identify cocaine.
- D. Yes, provided there is evidence sufficient to support a jury finding that the informant has sufficient knowledge and experience to identify cocaine.

Explanation:

A **lay witness** (ie, nonexpert witness) **cannot testify** as to his/her **opinion unless** the opinion is:

rationally based on the witness's perception—ie, firsthand knowledge, observations, or experiences

helpful to clearly understand the witness's testimony or **determine a fact in issue** *and* not based on scientific, technical, or other specialized knowledge.

Whether a lay witness possesses the knowledge or experience to testify to his/her opinion is a preliminary question for the court to determine.

Here, the only evidence that the substance was cocaine is the informant's opinion testimony that it tasted like cocaine and gave her a cocaine-like sensation. This testimony would help determine a fact in issue—ie, whether the substance was actually cocaine—and is not based on scientific, technical, or other specialized knowledge. Therefore, this testimony should be admitted if the court determines that the informant has sufficient knowledge and experience to identify cocaine.

(Choice A) Identification of a controlled substance does *not* require an expert with formal training.

(Choice B) Lay witness opinion testimony *is* sufficient to make a prima facie case—ie, to establish a fact or presumption unless disproved—in a controlled-substance prosecution. This is true even without a quantity of the controlled substance for testing.

(Choice D) When the *relevance* of evidence is conditioned upon the existence of a preliminary fact, the court need only find that there is sufficient evidence to support (but not necessarily establish) a jury finding of that preliminary fact. But here, the court must determine whether the informant *actually* possesses the knowledge or experience to testify to his/her opinion.

Educational objective:

A court should admit a lay witness's opinion testimony only if it is (1) rationally based on the witness's perception, (2) helpful to clearly understand the witness's testimony or determine a fact in issue, and (3) not based on scientific, technical, or other specialized knowledge.

References

Fed. R. Evid. 701 (opinion testimony by lay witness).

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Lay witness opinion testimony

