

A motorist sued a commuter railway company for personal injuries suffered in a train-automobile collision. The motorist called an eyewitness, who testified that the train was going 20 miles per hour. The railway company then offered the testimony of an experienced police accident investigator that, based on his training and experience and on his examination of the physical evidence, it is his opinion that the train was going between 5 and 10 miles per hour.

Is the accident investigator's testimony proper?

- A. No, because the investigator is unable to establish the speed with a sufficient degree of scientific certainty.
- B. No, because there cannot be both lay and expert opinion on the same issue.
- C. Yes, because a police accident investigator has sufficient expertise to express an opinion on speed.
- D. Yes, because the motorist first introduced opinion evidence as to speed.

Explanation:

A witness is qualified to provide **expert opinion testimony** if the witness has specialized knowledge, skill, experience, education, or training in a subject that pertains to an issue being litigated. Expert opinion testimony is admissible if it is both:

relevant – the testimony will **help the trier of fact** (1) understand the evidence OR (2) **determine a fact** in issue *and*

reliable – the testimony is (1) **based on sufficient facts** or data AND (2) the **product of reliable principles** and methods that the expert has reliably applied to the facts of the case.

Here, the railway company called a police accident investigator to refute testimony on the train's speed at the time of the collision being litigated. The investigator is trained and experienced in investigating accidents and therefore qualified to offer expert opinion testimony on speed. And since his testimony is relevant and he presumably applied reliable principles in examining the physical evidence, the testimony is proper.

(Choice A) An expert witness's opinion need only be based on a *reasonable* degree of certainty—not a scientific degree of certainty.

(Choice B) Lay and expert opinions can be presented on the same issue. However, lay witness opinion testimony is only admissible if it is (1) rationally based on the witness's perception, (2) helpful to understand the witness's testimony or determine a fact in issue, and (3) not based on scientific, technical, or other specialized knowledge.

(Choice D) There is no requirement that an opposing party present opinion evidence on an issue before expert witness testimony is introduced.

Educational objective:

A witness is qualified to provide expert opinion testimony if the witness has specialized knowledge, skill, experience, education, or training in a subject that pertains to an issue being litigated.

References

Fed. R. Evid. 702 (expert witness testimony).

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Admissibility of expert testimony

