

A defendant is on trial in federal court for fraudulently inducing an elderly woman to invest her life savings in an investment fund managed by the defendant. The prosecutor has disclosed that the elderly woman suffers from dementia and seeks to call her as a witness. The court, upon its own motion, conducted a competency hearing outside the presence of the jury. At the hearing, the woman gave her personal and family history but could not recall her age, address, or level of education. The woman was also unable to recall the current day, month, or year. However, she was able to understand the difference between the truth and a lie and appreciated the importance of being honest. The woman was also aware that she was in court because her savings had been depleted. When asked if she recognized the defendant, the woman stated that she was sure she had met the defendant but could not recall where.

Should the court allow the woman to testify?

- A. No, because due to her dementia, the woman's testimony will not be helpful to the trier of fact.
- B. No, because the woman could not sufficiently identify the defendant as a person connected with the crime.
- C. Yes, because a crime victim cannot be precluded from testifying against her perpetrator.
- D. Yes, because the woman meets the minimum standards for witness competency.

### **Explanation:**

Under Federal Rule of Evidence 601, a person is generally **presumed competent to testify** until proven otherwise.\* This includes persons called to testify while they are suffering from mental impairment or illness. When a question regarding a **witness's competency** arises, the court should **allow** the testimony so long as the witness has the **capacity to:**

**recall and narrate impressions** of the occurrence at issue (eg, the woman was aware that her savings had been depleted and sure that she had met the defendant) *and*

understand the **importance of telling the truth** (eg, the woman understood the difference between the truth and a lie and knew the importance of honesty).

Therefore, the woman meets the minimum standards for witness competency. Any defects in her testimony caused by an impairment—eg, her inability to recall the date or how she knew the defendant—will be weighed by the trier of fact in assessing her credibility.

\*Note that the federal rules regarding competency do not apply in federal diversity cases, where the opposing parties are citizens of different states and the amount in controversy exceeds \$75,000. Instead, witness competency is assessed under state law.

**(Choice A)** The woman's dementia may diminish the weight the jury gives her testimony. But that testimony can still be helpful to the jury because, for example, the woman will testify that she is sure she met the defendant.

**(Choice B)** The ability to identify a defendant as a person connected with the crime is not a requirement for finding a witness competent to testify.

**(Choice C)** A crime victim must satisfy the same testimonial requirements as any other witness. Therefore, a victim who does not meet the minimum standards for witness competency *can* be precluded from testifying against his/her perpetrator.

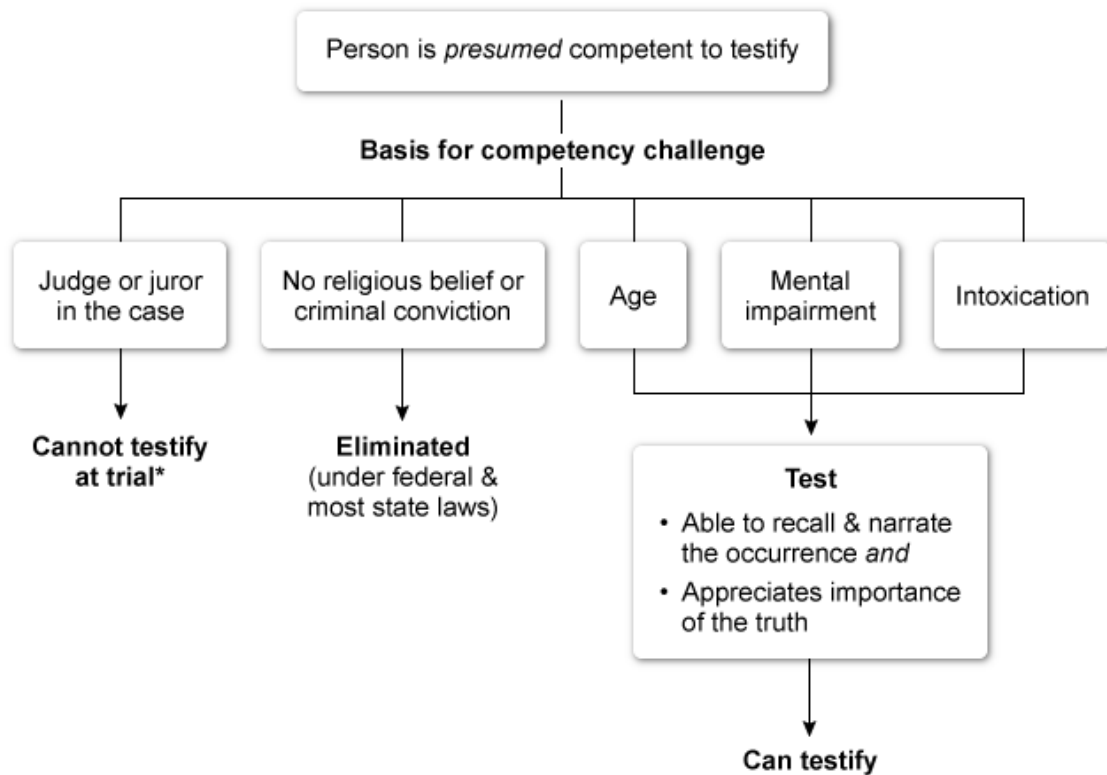
### **Educational objective:**

A witness is generally presumed to be competent to testify unless the witness lacks the capacity to (1) recall and narrate his/her impressions of the occurrence at issue and (2) understand the importance of telling the truth.

### **References**

Fed. R. Evid. 601 (competency to testify).

## Test for competency of witnesses



\*Juror testimony on improper influence during deliberations is permitted after indictment or trial.