

A defendant has been charged with the murder of a coworker with whom he had a bad working relationship. At trial, the defendant testified that he was out of town on the day of the murder and therefore someone else must have killed the coworker. On rebuttal, the prosecution seeks to call a witness to testify that the coworker had a reputation for peacefulness in the community to show that he was unlikely to have been targeted by anyone other than the defendant. The defendant has objected to the witness's testimony.

Should the testimony be admitted?

- A. No, because only evidence of the defendant's pertinent character trait is admissible.
- B. No, because the prosecution's right to use the witness's testimony has not been triggered.
- C. Yes, because the defendant has placed the coworker's character for peacefulness in issue.
- D. Yes, because the defendant is charged with murder.

### **Explanation:**

**Character evidence** is generalized information about a person's behavior that is generally inadmissible. However, Federal Rule of Evidence 404 allows the prosecution to offer evidence of a **victim's good character**, but only *after*:

the **defendant** has introduced evidence of the **victim's bad character** for a trait pertinent to an asserted defense *or*

in a **homicide case**, evidence that the **victim** was the **first aggressor** has been introduced.

Therefore, the **prosecution's use** of evidence relating to the victim's good character is **limited to rebuttal**.

Here, the defendant did not offer evidence of the coworker's bad character for a trait pertinent to his defense that he was elsewhere on the day of the murder. Additionally, there is no evidence that the coworker was the first aggressor in an altercation between the two. Therefore, the prosecution's right to use the testimony regarding the coworker's peaceful character has not been triggered and the testimony should not be admitted **(Choice C)**.

**(Choice A)** A defendant may introduce evidence of his/her good character if it is pertinent to the crime charged—eg, a defendant's character for peacefulness is pertinent to a murder charge. But this is not the only type of character evidence that is admissible in a criminal case (as shown above).

**(Choice D)** The defendant is charged with murder. But in a murder case, the prosecution may only initiate the introduction of evidence regarding the victim's character (as seen here) when evidence is admitted that the victim was the first aggressor (not seen here).

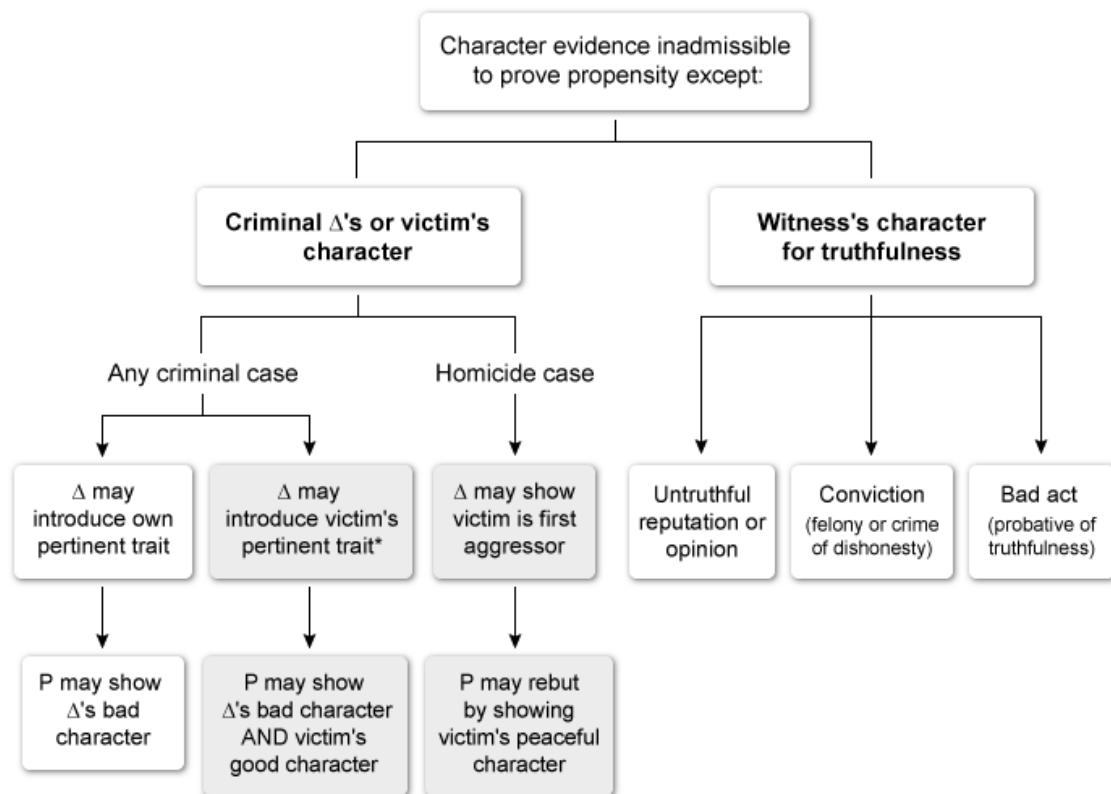
### **Educational objective:**

The prosecution may offer evidence of a victim's good character, but only after (1) the defendant introduces evidence of the victim's pertinent character trait or (2) in a homicide case, evidence that the victim was the first aggressor has been introduced.

### **References**

Fed. R. Evid. 404(a)(2) (character evidence regarding victim in criminal cases).

## Admissibility of character evidence for propensity (FRE 404)



Δ = Defendant; P = Prosecution; FRE = Federal Rule of Evidence

\*Evidence of a victim's sexual behavior or predisposition is generally inadmissible in criminal proceedings involving sexual misconduct.

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