

A defendant has been indicted for shooting a gun at a local official. She has raised an insanity defense. At trial, the defendant's attorney seeks to call a qualified psychiatrist as an expert witness. The psychiatrist would testify (1) that at the time of the shooting the defendant suffered from schizophrenia and heard voices commanding her to shoot the official, and (2) that because of these auditory hallucinations, the defendant was legally insane at the time of the shooting. The prosecutor objects to the proposed testimony.

What is the proper ruling for the court to make?

- A. The psychiatrist's testimony is admissible in its entirety, because it will be helpful to the jury.
- B. The psychiatrist's testimony is admissible in its entirety, because the bar on expert testimony about a criminal defendant's mental state applies to the prosecution's expert witnesses only.
- C. The psychiatrist's testimony regarding the defendant's schizophrenia and auditory hallucinations is admissible, but the testimony about whether the defendant was legally insane at the time of the shooting is inadmissible.
- D. The psychiatrist's testimony is inadmissible in its entirety, because an expert witness may not testify about a criminal defendant's mental state.

Correct

Collecting Statistics

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## Explanation:

### Expert opinion on ultimate issue

(FRE 704)

Admissible unless:

offered in criminal case *and*

concerns requisite mental state for charged crime or asserted defense

**FRE** = Federal Rule of Evidence.

An **expert witness** is one who possesses specialized knowledge, skill, experience, education, or training in a subject that pertains to an issue in litigation. An expert may generally testify, in the form of an opinion or otherwise, if the testimony is:

relevant – the testimony, by virtue of the witness's specialized knowledge, 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 have been reliably applied by the expert to the facts of the case.

An expert witness **may** typically **offer an opinion** on an **ultimate issue**. But in a **criminal case**, an expert **may not** offer an opinion about whether the defendant possessed the **requisite mental state** for the **charged crime** or an **asserted defense** (eg, insanity). Only the **trier of fact** can decide this ultimate issue.

Here, the defendant's attorney seeks to have the psychiatrist testify that, at the time of the shooting, the defendant suffered from schizophrenia and auditory hallucinations. This testimony is presumably reliable, and since it would help the jury determine whether the defendant was insane at the time of the shooting (a fact in issue), it is relevant. Therefore, the court should *admit* that testimony.

However, the defendant's attorney also seeks to have the psychiatrist testify that, at the time of the shooting, the defendant was legally insane. This opinion goes to whether the defendant possessed the requisite mental state for the defense of insanity and is not permitted in a criminal case. Therefore, the court should *exclude* this testimony (**Choices A & D**).

**(Choice B)** The bar on expert testimony about a criminal defendant's mental state applies to *both* prosecution and defense experts.

**Educational objective:**

An expert witness may offer an opinion on an ultimate issue *except* when the opinion is offered in a criminal case and concerns whether the defendant possessed the requisite mental state for a charged crime or asserted defense.

**References**

Fed. R. Evid. 704 (opinion on ultimate issue).

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