

In a prosecution for aggravated battery, a police officer testified that when he arrested the defendant, he took a knife from the defendant and delivered it to the medical examiner. The medical examiner testified that the knife blade was consistent with the victim's wound but admitted on cross-examination that any number of other knives could also have caused the wound.

Should the judge grant a motion to strike the medical examiner's testimony?

- A. No, because the probative worth of this evidence is for the jury to assess.
- B. Yes, because in light of the medical examiner's admission, his testimony has insufficient probative value.
- C. Yes, because the medical examiner could not state the probability that the wound was caused by the defendant's knife.
- D. Yes, because the probative value is substantially outweighed by the danger of unfair prejudice.

### Explanation:

Evidence is **relevant** if:

it has **any tendency** to make a **fact more or less probable** than it would be without that evidence (ie, **probative**) *and*

the **fact is of consequence** in determining the action (ie, **material**).

All relevant evidence is admissible unless excluded by law or other rules. Once the evidence is admitted, the jury will determine how much weight to give it (ie, its probative worth).

Here, the medical examiner's testimony has probative value because it links the defendant's knife to the type of knife that could have caused the victim's wound **(Choice B)**. And since the cause of the victim's wound is material to this aggravated battery case, this testimony is relevant. The testimony may not be very strong since other knives could also have caused the wound. But the probative worth of this testimony is for the jury to assess. Therefore, the motion to strike should be denied **(Choice C)**.

**(Choice D)** Federal Rule of Evidence 403 allows relevant evidence to be excluded when its probative value is substantially outweighed by **certain dangers**, including unfair prejudice. Here, testimony that the defendant had a type of knife that may have caused the victim's wound poses minimal risk of unfair prejudice to the defendant, let alone enough to *substantially* outweigh the probative value of this testimony.

### Educational objective:

Evidence is relevant if it has *any* tendency to make a fact more or less probable than it would be without that evidence (probative) and the fact is of consequence in determining the action (material). Once relevant evidence is admitted, the jury determines how much weight to give it.

### References

Fed. R. Evid. 401 (test for relevance).

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