

A defendant was charged with battery for allegedly attacking a man after the two of them left a local bar together. No one else witnessed the incident. At trial, each testified that he had acted only in self-defense. The defendant has called his next-door neighbor as a witness to testify to the defendant's reputation both for truthfulness and for peacefulness. The government has objected to the testimony in its entirety.

How should the court proceed?

- A. Admit the evidence in its entirety.
- B. Admit the evidence regarding the defendant's reputation for peacefulness, but exclude the evidence regarding his truthfulness.
- C. Exclude the evidence regarding the defendant's reputation for peacefulness, but admit the evidence regarding his truthfulness.
- D. Exclude the evidence in its entirety.

### Explanation:

Although character evidence is generally inadmissible, the Mercy Rule allows **criminal defendants** to offer **evidence of their good character** if it is **pertinent to the charges** against them. This means that a defendant who is charged with battery—a crime of violence—may offer evidence of his/her peaceful nature. Such evidence must be in the form of **reputation or opinion** testimony. Therefore, in this battery case, the court should *admit* the neighbor's testimony regarding the defendant's peaceful reputation (**Choices C & D**).

Character evidence can also be offered by **any party** to (1) attack a witness's character for truthfulness or (2) **support a witness's character for truthfulness**—but only *after it has been attacked* (to promote judicial efficiency). Here, the defendant became a witness when he testified in this case. But the court should *exclude* the testimony regarding his truthful reputation since there is no indication that his character for truthfulness had been attacked (**Choices A & C**).

### Educational objective:

A criminal defendant may offer reputation or opinion testimony regarding his/her pertinent character trait. And any party may offer evidence (1) to attack a witness's character for truthfulness or (2) to support a witness's character for truthfulness *after* it has been attacked.

### References

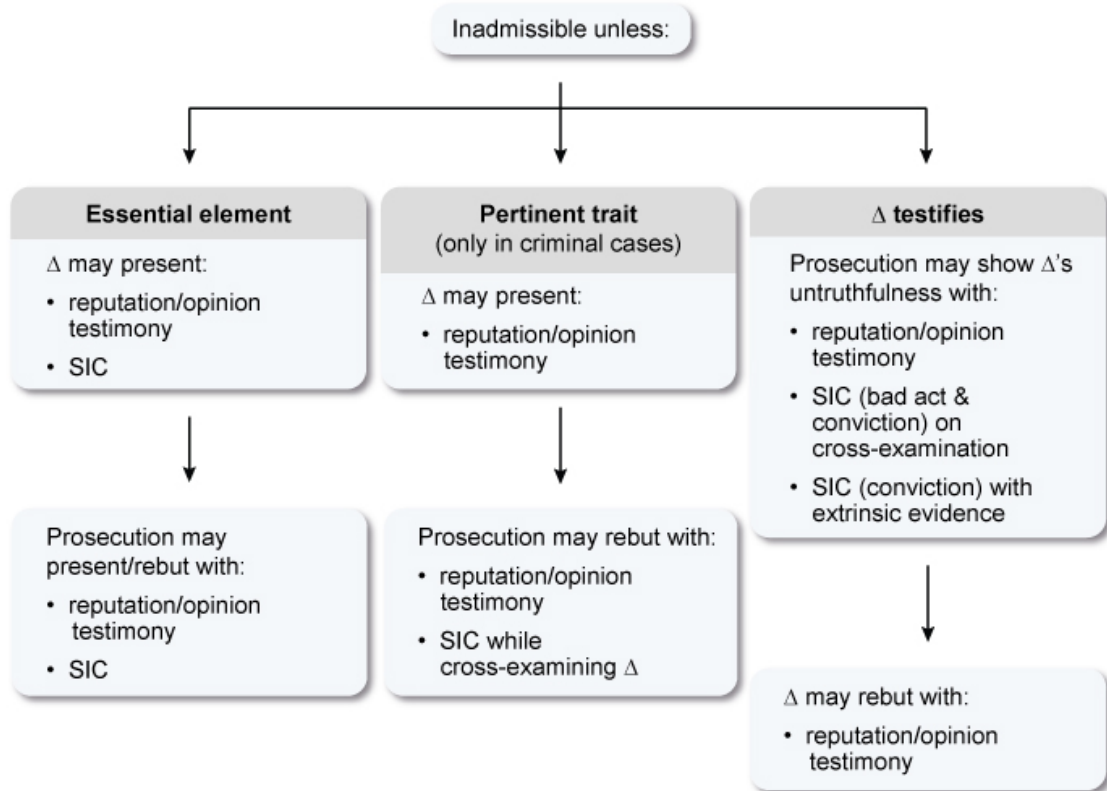
Fed. R. Evid. 404 (character evidence).

Fed. R. Evid. 608 (witness's character for truthfulness).

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## Evidence on criminal defendant's character



Δ = defendant; **SIC** = specific instance of conduct

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