

A defendant is on trial for attempted fraud. The state charges that the defendant switched a price tag from a cloth coat to a more expensive fur-trimmed coat and then presented the latter for purchase at the cash register. The defendant has testified in her own behalf that someone else must have switched the tag. On cross-examination, the prosecutor asks whether the defendant was convicted twice within the last five years of misdemeanor fraud of a retailer by the same means of switching the price tag on a fur-trimmed coat.

Is the question about the prior convictions proper either to impeach the defendant or to prove that the defendant committed the crime?

- A. It is not proper for either purpose.
- B. It is proper for both purposes.
- C. It is proper to impeach the defendant, but not to prove that the defendant committed the crime.
- D. It is proper to prove that the defendant committed the crime, but not to impeach the defendant.

Explanation:

Admissibility of previous criminal conviction or bad act

(FRE 404, 608 & 609)

Impeach witness's

character

(FRE 608(b), 609)

Relevant noncharacter purpose

(FRE 404(b))

Impeach witness with either:

conviction for crime of dishonesty or any felony through examination & extrinsic evidence *or*

bad act (no conviction) elicited only on examination

Examination & extrinsic evidence to show **MIMIC**:

Motive/opportunity

Intent

Mistake (absence of)

Identity

Common scheme/plan

FRE = Federal Rules of Evidence

Evidence that a witness has been convicted of a **crime of dishonesty** (eg, fraud) may be offered to **impeach** the **witness** by showing that his/her **testimony is untruthful**. When such a **conviction** is less than 10 years old (as seen here), it must be admitted by the court—even when the witness is a criminal defendant. Therefore, the defendant's previous fraud convictions are admissible to impeach her (**Choices A & D**).

In contrast, evidence that a **criminal defendant** previously committed a **crime or bad act** is inadmissible to show the defendant's propensity or inclination to commit the charged crime. But such evidence may be **admissible** for other **relevant, noncharacter purposes** (ie, **MIMIC**). Therefore, the defendant's prior convictions for switching tags can be used to prove that she intentionally did so here and committed attempted fraud (**Choices A & C**).

Educational objective:

Convictions for crimes of dishonesty that occurred within the last 10 years are admissible to impeach a witness's credibility. And evidence of prior crimes or bad acts is admissible for MIMIC purposes, such as proving intent.

References

Fed. R. Evid. 404(b) (admissibility of MIMIC evidence).

Fed. R. Evid. 609 (attacking a witness's character for truthfulness with a criminal conviction).

Copyright © 2014 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.