

A defendant was charged with armed robbery and pleaded not guilty. At trial, the victim testified that she was unable to see the robber's face because he wore a mask. She also testified that the robber used a pistol with a unique camouflage paint job. The prosecutor then called a witness to testify that a week before the victim was robbed, the defendant robbed the witness with a camouflage pistol. The defendant has not been convicted of robbing the witness.

Should the court admit the witness's testimony?

- A. No, because it is impermissible character evidence.
- B. No, because the defendant has not been convicted of robbing the witness.
- C. Yes, to prove that the defendant robbed the victim.
- D. Yes, to prove the defendant's propensity to commit robbery.

Explanation:

Noncharacter purposes for admitting crime or bad act

(MIMIC)

<u>M</u>otive	To show purpose for committing charged crime
<u>I</u>ntent	To establish guilty mind or negate good faith
Absence of <u>M</u>istake	To negate mistake or accident & prove deliberate act
<u>I</u>dentify	To connect defendant to crime with unique pattern of behavior (ie, criminal signature)
<u>C</u>ommon plan or scheme	To show preparation or planning
Other	To show knowledge of crime, opportunity to commit crime, consciousness of guilt, etc.

Evidence that a **criminal defendant** committed similar **crimes or bad acts** is improper character evidence and is **inadmissible** when it is offered for **propensity purposes**—ie, to prove the defendant's character trait and his/her conformance with that trait on the occasion at issue **(Choice D)**. This protects criminal defendants from being convicted on the basis of bad character (as opposed to actual guilt).

However, such evidence may be **admissible** for **relevant, noncharacter purposes** (MIMIC). This includes proving the perpetrator's **identity**—eg, by showing a similarity between the defendant's prior bad acts and the charged crime to link the defendant to that crime. Therefore, testimony that the defendant robbed the witness with a camouflage pistol the week before the victim was robbed is admissible to prove that the defendant also robbed the victim **(Choice A)**.

(Choice B) Although the defendant has not been convicted of robbing the witness, this does not preclude the prosecution from introducing evidence of this bad act. Instead, the analysis turns on whether the prosecution is introducing the witness's testimony about the defendant for character or noncharacter purposes.

Educational objective:

Evidence that a criminal defendant committed similar crimes or bad acts is inadmissible character evidence when it is offered for propensity purposes. However, such evidence may be admissible for relevant, noncharacter purposes (MIMIC).

References

Fed. R. Evid. 404(b) (other crimes, wrongs, or acts).

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