

A man and his neighbor were involved in an ongoing dispute over loud parties frequently held at the neighbor's home. One morning, after the neighbor hosted a particularly raucous affair, the man approached the neighbor and a fight ensued.

The man was charged with assault. At trial, the man did not take the stand but sought to offer opinion evidence of his good character for truth and honesty.

Should the testimony be admitted?

- A. No, because character cannot be used to prove conduct in conformity therewith.
- B. No, because the testimony is evidence of a trait not pertinent to the case.
- C. Yes, because a criminal defendant may always offer evidence of his good character.
- D. Yes, because a party's credibility is in issue.

## Explanation:

### Pertinent trait v. Truthful character

(admissibility of evidence on criminal defendant's character)

<b>Pertinent trait</b>	Defendant may offer evidence of pertinent character trait by:
(FRE 404(a))	reputation or opinion testimony Prosecution may rebut with:  reputation or opinion testimony <i>or</i> SIC (only on cross-examination)
<b>Truthful character</b>	If defendant testifies, prosecution may impeach with:
(FRE 608)	reputation or opinion testimony SIC (only on cross-examination) <i>or</i> extrinsic evidence of conviction for felony or crime of dishonesty Defendant may rebut with:  reputation or opinion testimony <i>or</i> SIC (only on cross-examination)

**FRE** = Federal Rule of Evidence; **SIC** = Specific instance of conduct.

Under Federal Rule of Evidence (FRE) 404, a **criminal defendant** may offer evidence of his/her **good character** when that trait is **pertinent to the charged crime (Choice C)**. For example, evidence of a defendant's *peacefulness* is admissible when the defendant is charged with a violent crime. But *truthfulness* is not pertinent to violent crimes like assault, so evidence of this trait should not be admitted on this basis.

However, evidence of a criminal defendant's truthfulness also may be admissible if the defendant testifies at trial—even when that trait is not pertinent to the charged crime. FRE 608 allows the admission of *reputation or opinion* testimony to prove the **witness's truthful character after** it has been **attacked**. But since the defendant here did not testify at trial, testimony regarding his character for truth and honesty remains inadmissible.

**(Choice A)** The prosecution cannot use character evidence to prove that the defendant's criminal conduct conforms with his/her character. But when a defendant offers evidence of a *pertinent* character trait, the door opens for the prosecution to rebut that evidence by proving the defendant's corresponding bad-character trait.

**(Choice D)** A party's credibility is "in issue" if (1) that character trait is an *essential element* of a criminal charge, civil claim, or asserted defense or (2) that party becomes a witness by testifying at trial—neither of which is the case here.

**Educational objective:**

A criminal defendant may offer evidence of his/her (1) good character if that trait is pertinent to the crime charged and (2) truthful character if it was attacked after the defendant testified at trial.

**References**

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

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

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