

At the defendant's murder trial, the defendant calls his first witness to testify that the defendant has a reputation in their community as a peaceful and truthful person. The prosecutor objects on the ground that the witness's testimony would constitute improper character evidence.

Should the court admit or exclude the witness's testimony?

- A. Admit the testimony as to peacefulness but exclude the testimony as to truthfulness.
- B. Admit the testimony as to truthfulness but exclude the testimony as to peacefulness.
- C. Admit the testimony as to both character traits.
- D. Exclude the testimony as to both character traits.

## 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.

A **criminal defendant** may offer evidence of his/her **good character** in the form of **reputation or opinion** testimony if that character trait is **pertinent** (ie, relevant) **to the charged crime**. Here, the defendant's character for peacefulness (but not truthfulness) is pertinent to murder since it is a violent crime. Therefore, the witness's testimony as to the defendant's reputation for peacefulness should be admitted on this basis (**Choice D**).

Alternatively, a defendant may offer evidence of his/her **truthful character** if (1) the **defendant has testified** and (2) the **prosecution has impeached** that testimony by attacking the defendant's truthfulness. Here, the defendant has not testified since he has only called his first witness. Therefore, testimony as to the defendant's truthful reputation is inadmissible on this basis (**Choices B & C**).

### Educational objective:

A criminal defendant may introduce evidence of his/her **good character** if that trait is pertinent to the charged crime. And evidence of a defendant's **truthful character** may be introduced if the defendant testified and his/her truthfulness was then attacked.

### References

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

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

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