

At a student's trial for stealing an automobile, the student called his college professor as a character witness. The professor testified that the student had an excellent reputation for honesty. In rebuttal, the prosecutor calls one of the student's classmates to testify that he recently saw the student cheat on a college examination.

Is the classmate's testimony admissible?

- A. No, because it has no probative value on any issue in the case.
- B. No, because the student's cheating can be inquired into only on cross-examination of the college professor.
- C. Yes, because the cheating involves "dishonesty or false statement."
- D. Yes, because the student "opened the door" to the prosecutor's proof of bad-character evidence.

Explanation:

A **criminal defendant** may offer **evidence of his/her good character** if that trait is **pertinent to the crime charged**—eg, a defendant's peaceful nature is pertinent to a violent crime. This can be accomplished by calling a character witness to provide **reputation or opinion testimony** about that character trait. But once this testimony is admitted, the defendant opens the door for the **prosecution to rebut** it by introducing:

reputation or opinion testimony from its own witness about the defendant's pertinent character trait *or*

specific instances of conduct involving that trait—but only while cross-examining the defendant's character witness (ie, no **extrinsic evidence**).

Here, the student called his professor to testify to the student's excellent reputation for honesty—a character trait pertinent to vehicle theft. This testimony opened the door for the prosecution to offer rebuttal evidence showing the student's bad character for honesty **(Choice D)**. But since evidence that the student had cheated on a college exam is a specific instance of conduct, it can only be admitted on cross-examination of the professor—not through extrinsic evidence like the classmate's testimony. Therefore, the classmate's testimony is inadmissible.

(Choice A) Evidence is probative when it tends to make a material fact more or less probable. Cheating on the exam *is* probative of the student's character for truthfulness, but it can only be admitted if it complies with other evidentiary rules.

(Choice C) Since the student's cheating involves dishonesty or a false statement, the prosecution can use this evidence to rebut the student's evidence showing his honest character. But the prosecution can only inquire into this specific instance of conduct while cross-examining the professor.

Educational objective:

A criminal defendant may call a character witness to testify about a character trait that is pertinent to the crime charged. If the defendant does so, the prosecution can rebut that evidence by introducing (1) reputation or opinion testimony from any witness or (2) specific instances of conduct while cross-examining the defendant's witness.

References

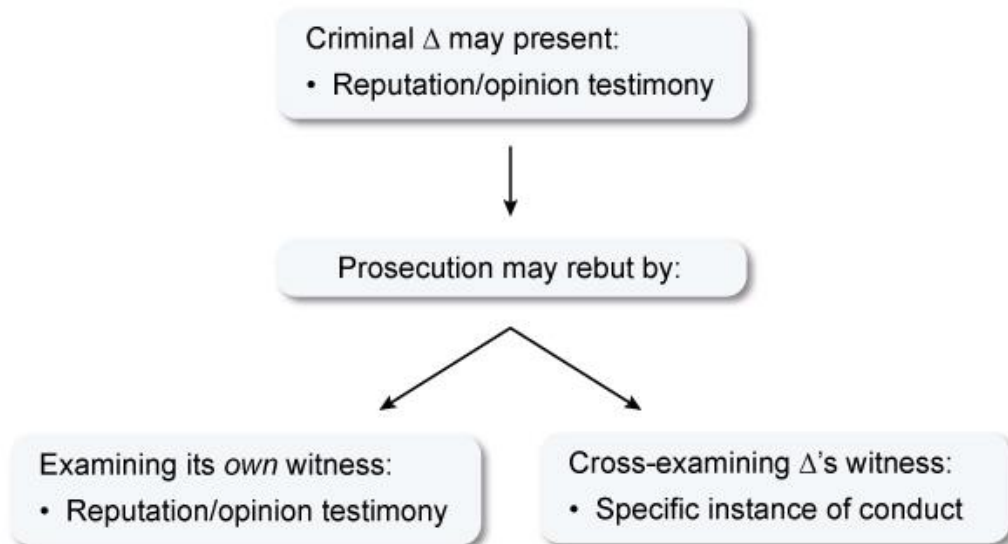
Fed. R. Evid. 404 (character evidence).

Fed. R. Evid. 405 (methods of proving character).

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Character evidence on pertinent trait



Δ = defendant

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