

A defendant was tried for the homicide of a girl whose strangled body was found beside a remote logging road with her hands taped together. After the defendant offered evidence of alibi, the state calls a witness to testify that the defendant had taped the witness's hands and tried to strangle her in the same location two days before the homicide but that she escaped.

Is the evidence admissible?

- A. No, because it is improper character evidence.
- B. No, because it is unfairly prejudicial.
- C. Yes, as tending to show the defendant is the killer.
- D. Yes, as tending to show the defendant's violent nature.

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>ntity	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 of a **criminal defendant's** prior **crimes or bad acts** is inadmissible if it is used to show the defendant's propensity (ie, inclination) to commit the charged crime. This ensures that the jury convicts the defendant for committing the charged crime—not for having a bad character. But evidence of a prior crime or bad act may be **admissible** for **relevant, noncharacter purposes** (ie, MIMIC).

This includes proving the perpetrator's **identity**—eg, showing that the prior crimes or bad acts were committed in a unique manner that is **similar in nature, location, and/or time** to the charged crime (ie, criminal "signature"). Therefore, evidence that the defendant had taped the witness's hands and tried to strangle her in the same location two days before the victim's homicide is admissible as tending to show that the defendant is the killer.

(Choices A & D) The witness's testimony would be inadmissible if it was offered to prove the defendant's bad character (eg, violent nature) to show that he acted in accordance with that character and murdered the victim. But here, this evidence is being offered to prove the killer's *identity* and is admissible for that purpose.

(Choice B) Relevant evidence may be excluded if its probative value (ie, degree of relevance) is substantially outweighed by the danger of unfair prejudice or **other concerns**. Here, the witness's testimony *is* prejudicial to the defendant. But since that testimony is central to the case, its high probative value outweighs the risk of unfair prejudice.

Educational objective:

Evidence of a criminal defendant's prior crimes or bad acts is inadmissible to show the defendant's propensity to commit the charged crime. But it may be admissible for MIMIC purposes—eg, to prove the perpetrator's identity.

References

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

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