

A defendant has been charged with murder. At trial, the defendant testified that he and the victim were discussing politics when the victim became enraged and lunged at him with a knife. The defendant further testified that he feared for his life and had no choice but to kill the victim. On rebuttal, the prosecution seeks to call a witness to testify that the victim had a reputation in the community as a peaceful and nonviolent person.

Is the witness's testimony admissible?

- A. No, because the defendant has not offered evidence of his own pertinent trait.
- B. No, because the defendant has not offered evidence of the victim's bad character.
- C. Yes, because the defendant introduced evidence of the victim's violent character.
- D. Yes, because the defendant testified that the victim was the first aggressor.

Explanation:

Evidence of a person's character is generally inadmissible to prove that the person acted in accordance with that character on a particular occasion. However, the **character of a victim** in a criminal case is **admissible in two circumstances**:

In **any criminal case**, a defendant may offer evidence of the **victim's** pertinent trait,* and the prosecution may then offer (1) evidence to **rebut that trait** and (2) evidence that the defendant has the **same trait**.

In a **homicide case**, if the defendant offers evidence that the victim was the first aggressor, the prosecutor may offer evidence of the **victim's character for peacefulness** to **rebut** that evidence.

Evidence of a victim's character must be introduced through **reputation or opinion testimony**—except on cross-examination of a character witness, where relevant specific instances of the victim's conduct may also be introduced.

In this **homicide** case, the defendant testified that the victim became enraged and attacked the defendant with a knife—evidencing that the victim was the first aggressor. The defendant thereby opened the door for the prosecution to rebut this testimony by introducing evidence of the victim's peaceful and nonviolent character. Therefore, the witness's reputation testimony is admissible.

*Under Federal Rule of Evidence 412, evidence offered to prove (1) that a victim engaged in other sexual behavior or (2) a victim's sexual predisposition is inadmissible in civil or criminal proceedings involving sexual misconduct—with some **exceptions**.

(Choice A) The fact that the defendant has not offered testimony of his own pertinent trait is irrelevant since doing so would merely open the door for the prosecution to rebut the defendant's character—not the victim's character.

(Choices B & C) The defendant did *not* offer evidence of the victim's bad or violent character—traits pertinent to the defendant's self-defense claim. That is because his testimony referred only to one instance of violence as opposed to the victim's general propensity for violence. Had the defendant offered such character evidence, the prosecution could have introduced evidence to rebut it.

Educational objective:

Evidence of a victim's character is generally inadmissible. But in criminal cases, a defendant may offer evidence of the victim's pertinent trait, which the prosecution may then rebut. And in homicide cases, the prosecutor may offer evidence of the victim's peaceful character to rebut evidence that the victim was the first aggressor.

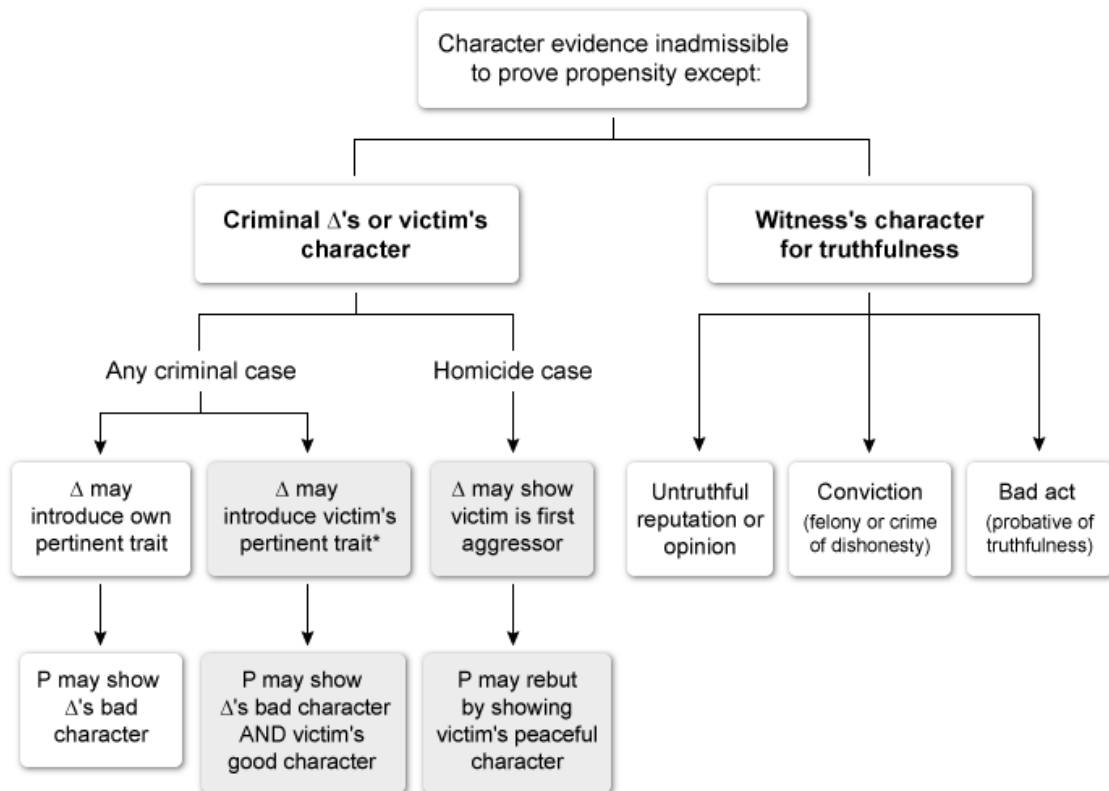
References

Fed. R. Evid. 404(a)(2) (character evidence regarding victim in criminal cases).

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

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**Admissibility of character evidence for propensity
(FRE 404)**



Δ = Defendant; P = Prosecution; FRE = Federal Rule of Evidence

*Evidence of a victim's sexual behavior or predisposition is generally inadmissible in criminal proceedings involving sexual misconduct.

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