

A defendant was charged with attempted murder of a man in a sniping incident in which the defendant allegedly shot at the man from ambush as the man drove his car along an expressway.

The prosecutor offers evidence that seven years earlier the defendant had fired a shotgun into a woman's home and that the defendant had once pointed a handgun at another driver while driving on the street.

Is this evidence admissible?

- A. No, because it is improper character evidence.
- B. No, because such evidence can be elicited only during cross-examination.
- C. Yes, as evidence of the defendant's propensity toward violence.
- D. Yes, as relevant evidence of defendant's identity, plan, or motive.

Explanation:

The prosecution **cannot introduce** evidence of a **criminal defendant's** prior **crime or bad act** to show the defendant's **propensity to commit the charged crime** and establish his/her guilt. 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 is **admissible for noncharacter purposes** (ie, MIMIC).

Here, the prosecutor offered evidence that the defendant had pointed or shot a gun at others in the past. But these prior bad acts are *not* admissible to show that the defendant had a propensity for violence that likely caused him to shoot at the man on the expressway **(Choice C)**. And there is no indication that this evidence was offered for a noncharacter purpose—eg, to prove the defendant's intent, plan, or motive for attempted murder **(Choice D)**. As a result, the defendant's prior bad acts are improper and inadmissible character evidence.

(Choice B) If a criminal defendant introduces testimony regarding his/her good character, then the prosecution can only impeach that witness during cross-examination—eg, by inquiring about the defendant's prior bad acts. But the prosecution can offer evidence of a defendant's prior bad acts for *noncharacter* purposes at any time—not just during cross-examination.

Educational objective:

A criminal defendant's prior crime or bad act is inadmissible when it is offered to show the defendant's propensity to commit the charged crime. But such evidence is admissible for noncharacter purposes (ie, MIMIC).

References

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

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Criminal defendant's previous crimes or bad acts (MIMIC)

Prosecution seeks to offer evidence
of Δ 's previous crime or bad act?

Yes ↓

Evidence intended to show Δ 's
propensity to commit charged crime?

Yes → **Inadmissible**

No ↓

Evidence relevant for a
noncharacter purpose—eg:

- **M**otive/opportunity
- **I**ntent
- **M**istake/accident (absence of)
- **I**ntity
- **C**ommon scheme/plan

No → **Inadmissible**

Yes ↓

Admissible

Δ = defendant

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