

At trial in a criminal prosecution for aggravated battery, the defendant testified that she was acting in self-defense when she struck the victim. The defendant has now called a witness to testify that the victim has a reputation in the community as a violent person. The prosecutor has objected to the witness's testimony.

Should the testimony be admitted?

- A. No, because the prosecution has not introduced evidence of the defendant's violent character.
- B. No, because the prosecution has not introduced evidence of the victim's peaceful character.
- C. Yes, because the testimony calls the victim's character for truthfulness into question.
- D. Yes, because the testimony supports the defendant's claim of self-defense.

Explanation:

Under FRE 404, evidence of a person's character is generally inadmissible to prove that the person acted in accordance with that character on the occasion being litigated. However, a criminal defendant may offer evidence of an alleged **victim's character**, to show conformity therewith, if it is **pertinent to the case**.*

Here, for example, the criminal defendant is on trial for battery and has argued self-defense. As a result, evidence of the victim's violent character is admissible because it is pertinent to the asserted defense. The evidence may be used to support an argument that the victim was the first aggressor or to show that the defendant reasonably believed she needed to use force to defend herself.

Once admitted, the evidence may be **rebutted by the prosecution** with evidence of the **victim's good character** for the pertinent trait (eg, peacefulness) *and* the **defendant's bad character** for the same **pertinent trait** (eg, violence).

*However, under FRE 412, evidence offered to prove that a victim engaged in other sexual behavior or a victim's sexual predisposition is inadmissible in civil or criminal proceedings involving sexual misconduct—with some [exceptions](#).

(Choices A & B) A criminal defendant's ability to introduce evidence of a victim's pertinent character trait is *not* predicated upon the prosecution opening the door to that evidence. To the contrary, the prosecution may only introduce evidence of a defendant's or victim's character after the defendant has opened the door to that evidence.

(Choice C) Evidence of the victim's reputation for violence has no bearing on the victim's character for truthfulness because it does not show that the victim has a general propensity for dishonesty. It merely supports the defendant's testimony that she was acting in self-defense.

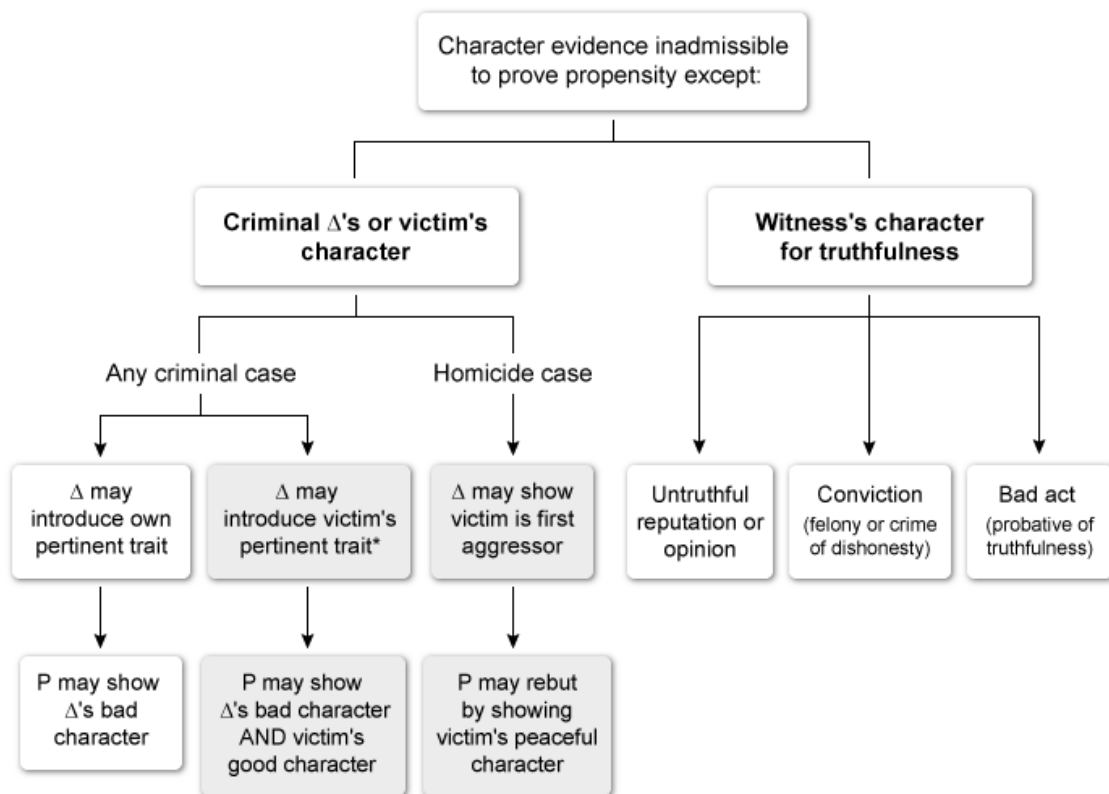
Educational objective:

A criminal defendant may introduce evidence of an alleged victim's character if it is pertinent to the case. The prosecution may then rebut that evidence with evidence of (1) the victim's good character for the pertinent trait and (2) the defendant's bad character for that trait.

References

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

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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