

Question 3

David and Vic were farmers with adjoining property. They had been fighting for several years about water rights.

In May, Vic and his wife, Wanda, were sitting in the kitchen when Vic received a telephone call. During the call, Vic became quite angry. As soon as he hung up, he said the following to Wanda: "That rat, David, just called and told me that he was going to make me sorry! He used some sort of machine to disguise his voice, but I know it was him!"

In June, Wanda and Vic passed a truck driven by David, who made an obscene gesture as they drove by. Vic immediately stopped and yelled that if David wanted a fight, then that was what he was going to get. Both men jumped out of their trucks. After an exchange of blows, David began strangling Vic. Vic collapsed and died from a massive heart attack. David was charged with manslaughter in California Superior Court.

At David's trial, the prosecution called Wanda, who testified about Vic's description of the May telephone call.

During cross-examination of Wanda, the defense introduced into evidence a certified copy of a felony perjury conviction Vic had suffered in 2007.

The prosecution then introduced into evidence a certified copy of a misdemeanor simple assault conviction David had suffered in 2006.

During the defense's case, David claimed that he acted in self-defense. He testified that he knew about two other fights involving Vic. In the first, which took place four years before his death, Vic broke a man's arm with a tire iron. In the other, which occurred two years before his death, Vic threatened a woman with a gun. David testified that he had heard about the first incident before June, but that he had not heard about the second incident until after his trial had commenced.

Assuming that all appropriate objections were timely made, should the California Superior Court have admitted:

1. Wanda's testimony about Vic's statement regarding the May phone call? Discuss.
2. The certified copy of Vic's 2007 felony perjury conviction? Discuss.
3. The certified copy of David's 2006 misdemeanor simple assault conviction? Discuss.
4. David's testimony about the first fight involving Vic breaking another man's arm with a tire iron? Discuss.
5. David's testimony about the second fight involving Vic threatening a woman with a gun? Discuss.

Answer according to California law.

Answer A to Question 3

1. Wanda's testimony about Vic's statement concerning the May Phone call:

Logical and Legal Relevance

For evidence to be admissible it must be relevant which, under California law, is any evidence that has any tendency to make any fact of consequence, that is at issue, more or less probable than it would be without such evidence. In this case, Wanda's testimony concerning the phone call is relevant, in that it goes to show that David's intent to hurt Vic in some way prior to the June fight, a fact that is at issue, since David is claiming he acted in self-defense when he killed Vic.

Under Proposition 8 of the California Constitution (hereafter Prop. 8), any evidence that is relevant may be admitted in a criminal case. However, Prop. 8 makes an exception for balancing under California Evidence Code (hereafter CEC) 352, which gives a court discretion in excluding relevant evidence if its probative value is substantially outweighed by a risk of unfair prejudice, confusion of issues, or misleading the jury. In this case, the evidence has significant probative value, as it tends to show that David had a preexisting intent to hurt Vic and thus makes it more likely than not that he, not Vic, was the initial aggressor in the June fight that led to Vic's death. There is no indication that such evidence poses a risk of unfair prejudice, confusion of issues, or misleading the jury, and as a result, the evidence would not be barred by CEC 352.

Personal Knowledge

A witness may only testify as to those matters to which she has personal knowledge, in that she must have perceived the matter in some manner, such as by hearing or observing it. In this case, Wanda personally heard Vic's statement concerning the phone call, and as a result, she has sufficient personal knowledge to testify.

Authentication

All evidence must be authenticated, in that it must be proven to be what it purports to be. In this case, the authenticity of the phone call – namely, whether David was the person who actually made the call – comes into question, given that Vic stated David

was using some machine to disguise his voice. To authenticate a phone call, the person hearing it must be shown to have some familiarity with the speaker's voice, which can be gained either from prior interactions before the trial or subsequent to the trial. In this case, David and Vic had been fighting for several years about water rights, and thus it would be likely that Vic was familiar with the sound of David's voice. As a result, he would be qualified to make an identification of David's voice over the phone. As a result, Vic's statement concerning the phone call would be properly authenticated for purposes of trial.

Hearsay

A statement is hearsay if it is made out-of-court and being offered to prove the truth of the matter asserted. In this case, Wanda's statement contains two pieces of hearsay: 1) Vic's statement made to her, and 2) David's statements to Vic over the phone. Both are being offered to prove the truth of the matter asserted, in that Vic's statement is being offered to show that David called him and Vic knew it was him despite the voice distortion, and David's statement is being offered to show that David was planning to make Vic sorry.

In general, hearsay is inadmissible. However, the CEC does contain numerous exceptions to this general rule of hearsay inadmissibility that may allow these statements in. In a situation where a statement contains two levels of hearsay, such as here, both levels of hearsay must fall within an exception in order to be admissible.

Prop. 8 would not be sufficient to admit the evidence, as Prop. 8 contains an exception which requires hearsay rules to be satisfied before admitting relevant evidence.

David's Statement to Vic:

Admission of a Party-opponent:

If the statement is made by one party to the case and is offered into evidence against him by the opposing party, it is an exception to the hearsay rule and is admissible. In this case, the person who made the statement is David, the party-opponent, and it is being offered against him by the prosecution. Thus, it would be admissible under the exception for statements of a party-opponent.

Statement Against Interest:

A statement may also be admitted if it is made by one party against their penal or pecuniary interest, and such party is unavailable. Here, David is available to testify, and there is no indication that he made the statement knowing that it was against his penal interest to do so; thus, the statement would not qualify under this exception.

Then-existing State of Mind:

A statement may be admissible to show the party's then-existing state of mind at the time the statement was made. In this case, Wanda can argue that the statement shows David's existing state of mind at the time, namely, that he was going to make Vic sorry and intended to act on his statement. If the court finds this to be accurate, the statement would be admissible.

Vic's Statement to David:

Contemporaneous Statement:

A hearsay statement is admissible if it is made describing or explaining certain conduct of the declarant while the declarant is engaged in such conduct. In this case, while the statement does describe Vic's conduct, namely, that he was just on the phone with David, Vic made the statement about the phone call only after he had hung up, not while he was actively listening to David. Thus, the statement was not contemporaneous with Vic's action and would not be admissible under this exception.

Excited Utterance:

A hearsay statement is also admissible if it describes an exciting or startling event or condition and is made while the person is still under the stress of excitement from an event or condition. In this case, the facts indicate that Vic became quite angry during the call, thus indicating the call itself was a startling event or condition. In addition, given David's particular statements to Vic during the call, namely, that he meant to make Vic sorry, a court most likely would find this to be a startling event or condition. Vic's statements about the call were made to Wanda as soon as he hung up, thus indicating that he was still under the stress of the phone call – furthermore, the statements are followed by exclamation points, implying that he was still agitated from it.

Therefore, the statement would qualify as an excited utterance, and would be admissible.

Thus, in conclusion, the court did not err in admitting Wanda's statement.

2. Certified Copy of Vic's 2007 Felony Perjury Conviction:

Logical and Legal Relevance

The evidence of Vic's conviction is logically relevant to the case, as it goes to show Vic's character for truthfulness, and thus would be used to impeach his statements to Wanda above concerning the telephone call, indicating that David did not make the call or have the intent to hurt Vic. Further, David's preexisting intent to hurt Vic is in dispute, since David is claiming he acted in self-defense and was not the initial aggressor. Thus, the evidence is logically relevant.

The prosecution could argue that the evidence is inadmissible under CEC 352, on the grounds that it would mislead the jury by making them think that Vic's character for truthfulness is relevant to whether he started the fight or not. However, it is unlikely a court would find that a reasonable jury would make this inference, given that the conviction was for perjury, not for a crime of violence, and it is being offered during the cross-examination of Wanda, thus indicating that it is meant to attack Wanda's testimony, not Vic's character for violence as a whole. Furthermore, the evidence has substantial probative value, as it tends to show that Vic is not truthful, and was therefore lying about the phone call from David – thus making David's self-defense argument more probable. Therefore, the evidence would not be barred by CEC 352.

Character Evidence

Character Evidence is any evidence offered to show that a person acted in conformity with character on a particular occasion, and is generally inadmissible. Here, the evidence of Vic's prior conviction is being offered to show Vic's action in conformity with character – namely, his character for lying – and thus would ordinarily be inadmissible. However, evidence of a witness's or declarant's character for truthfulness can be

offered for the purposes of impeachment to attack the witness's or declarant's credibility on the stand. Therefore, the evidence would not be inadmissible character evidence.

Impeachment

Any party is permitted to impeach a witness in order to diminish his or her credibility for speaking the truth. In addition, a declarant, or out-of-court speaker, may be impeached in the same manner that a testifying witness may be impeached. Here, as the evidence goes to show Vic's – the declarant in Wanda's testimony – character for truthfulness, it would be permitted into evidence.

Under California law, the court has the discretion to allow in evidence of prior felony convictions for the purposes of impeaching if such convictions are for crimes of moral turpitude. In this case, the conviction is for perjury, or lying on the stand, which is a crime of moral turpitude, and thus the court would have the discretion to admit it for purposes of impeachment. In addition, prior convictions can be admitted in the evidence either through cross-examination or extrinsic evidence. Here, the conviction was introduced during cross-examination, but by means of extrinsic evidence – namely, the certified copy of the conviction, and therefore is a permissible means of impeachment.

Hearsay

The conviction is hearsay, in that it is an out-of-court statement offered to prove the truth of the matter asserted, namely, that Vic was convicted for felony perjury in 2007. However, a judgment of a prior felony conviction is an exception to the general hearsay rule, and would thus be admissible.

In conclusion, the court did not err in admitting the conviction.

3. Certified Copy of David's 2008 Assault Conviction:

Logical and Legal Relevance

The evidence is logically relevant for two purposes – first, it goes to show that David had a character for violence, and thus acted in conformity with such character during

the June fight, thus negating his claim of self-defense. In addition, the evidence can be used to impeach David's credibility on the grounds that his prior conviction speaks to his ability for truthfulness.

However, the evidence would be subject to CEC 352, particularly, the possibility of unfair prejudice. In this case, the evidence is being used to show action in conformity with character, which is an impermissible character inference and would unfairly prejudice David. In addition, as will be demonstrated, the use for impeachment is impermissible. As there is no other probative value attached to the statement, it would be inadmissible under CEC 352 for being unduly prejudicial.

Character Evidence

As stated, character evidence is any evidence offered to show that a person acted in conformity with his character on a particular occasion. In a criminal case, such evidence cannot be offered by the prosecution unless the defendant "opens the door;" in other words, the defendant must put his character at issue, and the prosecution can only then rebut with character evidence. In this case, David had not yet opened the door to his character – while he did plead self-defense, it was only after the prosecution offered his assault conviction into evidence, not before. Therefore, the prosecution could not admit such evidence prior to David's opening the door, and the evidence should have been ruled inadmissible.

Proposition 8 would not be applicable, as it contains an exception for the rules concerning character evidence.

Impeachment

Under California law, a witness can only be impeached with a misdemeanor conviction if it is one of moral turpitude – otherwise, it is inadmissible. In this case, the conviction was for simple assault, which is not a crime of moral turpitude. As a result, it would be admissible.

Thus, the court erred in admitting the prior felony conviction.

4. David's Testimony about the First Fight:

Logical and Legal Relevance

The evidence is logically relevant, in that it goes towards David's self-defense claim by showing Vic's character for violence and thus indicating that Vic acted in conformity with character on this particular occasion – which is a fact at issue, since the prosecution claims that David was the initial aggressor, while David claims that Vic started the fight.

The evidence is also substantially probative, as it tends to show that Vic started the fight and thus makes David's self-defense claim more likely than it would be without the evidence. However, it does carry a risk of unfair prejudice, in that it involves a character inference concerning Vic's character for violence. However, as described below, the character evidence is permissible under the circumstances, and thus the evidence would not be inadmissible under CEC 352.

Character Evidence

David's introduction of Vic's breaking a man's arm with a tire iron is character evidence, as it is being used to show that Vic had a character for violence and acted in conformity with such character during the June fight. However, under the CEC, a criminal defendant can bring in evidence of the victim's character for violence if he claims self-defense and wishes to show that the victim was the initial aggressor. As this is David's purpose in bringing this evidence, since he is claiming self-defense and is bringing in the evidence to show Vic's initiation of the fight, the evidence would be admissible.

Character evidence can take the form of either reputation evidence, opinion evidence, or specific acts. Under the CEC, a defendant is permitted to use any of these methods in bringing in evidence of the victim's bad character for violence during the direct examination. Here, David's testimony would constitute specific acts, as he is testifying to specific acts that Vic had done in the past. Therefore, the method of character evidence used is permissible.

Personal Knowledge

In this case, David does not have personal knowledge as to the fight. While he heard about it from someone before June, he did not personally witness it, nor is there any indication as to who he heard it from, for example, whether the person who told him was the other man involved in the fight whose arm was broken, or was from someone else. Thus, there is no indication that he has personal knowledge as to the fight, and as a result, the testimony would not be admissible.

Thus, the court erred in permitting David's testimony into evidence.

5. David's Testimony about the Second Fight:

Logical and Legal Relevance

The evidence is logically relevant, in that it, like the testimony about the first fight, goes towards David's self-defense claim by showing Vic's character for violence and his action in conformity with such character on this particular occasion – a fact at issue in this case. The evidence is also substantially probative, as it tends to show that Vic, not David, started the fight and makes David's self-defense claim more likely. In addition, as will be demonstrated below, the use of such evidence is a permissible use of character evidence, and as a result, the testimony would not be barred by CEC 352.

Character Evidence

As with the first fight, David's introduction of Vic's prior threatening a woman with a gun is character evidence, as it is being used to show that Vic had a character for violence and acted in conformity with such character during the June fight. Yet, as indicated above, a criminal defendant can bring in evidence of the victim's character for violence if he claims self-defense and wishes to show that the victim was the initial aggressor – which is the case here, as David is claiming self-defense and wishes to show that Vic was the initial aggressor.

As with the testimony above, this testimony takes the form of specific acts, as David is testifying as to specific violent acts that Vic took in the past, and thus is a permissible use of character evidence.

Personal Knowledge

Here, David again does not have substantial personal knowledge to testify as to the fight. He only heard about it from someone else, and there is no indication as to whom; he did not actually perceive it himself nor hear about it directly from the victim or someone who saw it occur. Furthermore, he did not hear about the second incident until after his trial had commenced, thus running the possible risk of such evidence not being particularly reliable or truthful and being created solely for the purposes of trial. As a result, David lacked sufficient personal knowledge to testify as to the second incident, and the court erred in permitting the evidence to be admitted.

Answer B to Question 3

CA Constitution Truth-in-Evidence Provision

In California, evidentiary rules in criminal cases are sometimes changed by the Truth-in-Evidence Provision of the California Constitution. The Truth-in-Evidence provision generally provides that all relevant evidence is admissible in California criminal trials. As state constitutional law, the Truth-in-Evidence provision overrides any contrary California Evidence Code provisions. However, the Truth-in-Evidence provision itself explicitly preserves numerous rules of the California Evidence Code, including the rule against hearsay and the CEC 352 Balancing Rule. With this general framework in mind, we can discuss the individual evidentiary items.

Wanda's Testimony About Vic's Statement Regarding the May Phone Call

Logical/Legal Relevance

Irrelevant evidence is never admissible. In California, evidence is logically relevant if it has a tendency to make a disputed fact of consequence more or less probable. However, even if evidence is logically relevant, it may still be excluded at the discretion of the court if the court finds that the probative value of the evidence is substantially outweighed by concerns of prejudice, confusion or delay. Neither the basic rule governing relevance nor the balancing rule are changed in criminal trials by Proposition 8.

Here, Vic's statement that David planned to "make [him] sorry" is relevant because it tends to prove that David and Vic were in a feud and that David intended to hurt Vic. Thus, it tends to make more probable that David committed the later violence and strangulation to Vic. However, the fact David attacked Vic does not appear to be in dispute, because David is claiming he acted in self-defense. Thus, it is likely that Vic's statement about the phone call is not relevant under California standards.

If it is logically relevant, it will not be excluded. The evidence is probative of David having committed intentional violence against Vic, and there is no substantial risk of unfair prejudice.

Personal Knowledge

Wanda can only testify as to matters for which she has personal knowledge. Here, Vic told Wanda about the phone call directly; thus she personally perceived the statement by Vic and can testify about it.

Hearsay

Hearsay is an out-of-court statement that is offered to prove the truth of the matter asserted. Hearsay is not admissible unless an exception to the hearsay prohibition applies. Moreover, where a statement contains multiple levels of hearsay, a hearsay exception must apply to each level for the statement to be admissible.

Vic's Statement

In this case, Vic's statement that David called and said he would make Vic sorry is hearsay. Vic is making this statement to prove the truth of the matter asserted, i.e., that David did call and threaten Vic.

Vic's hearsay statement, however, is likely admissible as a spontaneous statement. Under the CEC, a hearsay statement made describing a startling event while still under the stress of excitement is an exception to the hearsay prohibition. In this case, Vic described the phone call to Wanda immediately after receiving it. Moreover, the evidence indicates that Vic was still in a state of anger and excitement after receiving the phone call. Thus, Vic's statement is a spontaneous statement.

The prosecution may also claim that Vic's statement was a contemporaneous statement. The contemporaneous statement exception applies to hearsay statements made by a declarant to describe his conduct contemporaneously to or immediately following his actually doing it. However, in this case, Vic's statement describes David's conduct, not his own, and thus would not fit within the contemporaneous statement exception.

David's Statement

David's statement that he would make Vic sorry is also an out-of-court statement. Moreover, it is also offered to prove the truth of the matter asserted in that it is intended to prove that David did intend to make Vic sorry.

David's statement is admissible under the present state of mind exception. The present state of mind exception applies to statements by a declarant that describe the declarant's state of mind at that time. The exception can be used to admit statements of the declarant's intent in order to prove that the declarant carried out that intent. In this case, David's statement that he "was going to make [Vic] sorry" was a statement of David's present intent and thus fits within the present state of mind exception. It is thus admissible to prove that David later carried out actions to make Vic sorry.

David's statement may also be a spontaneous statement. However, there is no indication that David was in a state of excitement, especially considering he initiated the call. Thus, this exception likely does not apply.

Accordingly, Vic's statement is admissible hearsay because both his statement and David's fit within hearsay exceptions.

Authentication of David's Statement

David's alleged statement, however, can only be admissible if properly authenticated. To be authenticated, there must be sufficient evidence for a jury to find that David's statement is what it was purported to be. In this case, Vic's statement indicates that the caller used a voice-changing device, calling into possible doubt whether David actually called. However, given Vic's belief that it was David that had called, and evidence of the feud between them, there is probably sufficient evidence for a jury to find David made the call. Thus David's statement is authenticated.

Spousal Privileges

David may claim that the evidence is not admissible because of spousal privileges. However, the spousal testimonial immunity only allows a current spouse to choose to refuse to testify against her husband. Moreover, although confidential marital

communications made during marriage are protected by privilege, this privilege is only held by either spouse, not an outside party. Thus, even though Vic's statement to Wanda was a confidential marital communication, only Vic or Wanda could assert the benefit of the privilege.

Confrontation Clause Issues

The confrontation Clause of the federal Constitution forbids the use of otherwise admissible testimonial hearsay evidence against a defendant if the defendant did not have an opportunity to cross-examine the hearsay declarant. "Testimonial" statements are those concerning a past event that are made to incriminate the defendant.

In this case, Vic's statement about David is likely not "testimonial" because it was not made to police or concerning a past event. Thus, it was not a statement that was made for the purposes of incriminating David and the Confrontation Clause will not apply.

Conclusion

Vic's statement should not have been admitted because it was irrelevant, but otherwise it would be admissible hearsay.

Certified Copy of Vic's 2007 Felony Perjury Conviction

Relevance

Vic's felony perjury conviction tends to prove that Vic's statement may have been a lie, negating [a] possible motive by David to attack Vic and strengthening his claim of self-defense. However, it is unclear whether there is any dispute about the veracity of Vic's statement, and thus it may not be relevant under California law. Assuming, however, that the fact of the phone call is in dispute, then Vic's prior conviction is relevant.

Authentication

The copy of the conviction must be authenticated. However, under the CEC, certified copies of public records are self-authenticating, meaning that the document itself provides sufficient evidence for a finding that it is genuine, and no additional foundational evidence is necessary.

Hearsay – Public Records Exception

The copy of Vic's conviction is hearsay because such a document is an out-of-court statement offered to prove the truth of its contents, i.e., that Vic was convicted of perjury. However, factual records made by public officials in the regular course of their duties are excepted from the hearsay prohibition. Records of convictions are made in the regular course of public officials' duties and thus are admissible hearsay as public records.

Character Evidence/Impeachment

Evidence of a victim's character to prove the victim acted in conformity with that character is generally inadmissible in a criminal trial. However, such evidence is permissible if first introduced by the defense or for the purpose of impeaching the victim. Moreover, Proposition 8 allows for the admissibility of the victim's character in a criminal trial wherever relevant, subject to balancing. Moreover, a hearsay declarant can be impeached by any applicable method.

In this case, the evidence was both introduced by David and to impeach Vic, so it is admissible either because David "opened the door" or because it is impeachment evidence.

Use of Conviction

However, a conviction can only be used for impeachment purposes under the CEC if the conviction is for a felony involving a crime of moral turpitude. Proposition 8 broadens this rule for criminal trials by allowing in any relevant convictions, which include misdemeanors involving a crime of moral turpitude.

In this case, Vic's conviction was for a felony involving a crime of moral turpitude, perjury, and thus was admissible to impeach Vic's statement.

Conclusion

The conviction was properly admitted as allowable impeachment evidence.

Certified Copy of David's 2006 Misdemeanor Simple Assault Conviction

Relevance

Evidence of David's misdemeanor assault conviction is relevant because it tends to prove that David was an aggressive individual and may have been the aggressor in the fight against Vic. This does concern a fact of consequence that is in dispute because it undermines David's claim of self-defense.

However, this evidence may be excluded because of its prejudicial effect. By introducing evidence of David's conviction for a violent crime, there is a risk that the jury will decide to punish David because of this past crime or "criminal character" rather than the conduct at issue in this case. Thus, the court should have excluded this evidence because of the risk of unfair prejudice.

Authentication

As with Vic's conviction copy, David's conviction copy is a self-authenticating document.

Hearsay

The certified copy of David's conviction is admissible under the public records exception for the reasons discussed above.

Character Evidence

Generally, evidence of a defendant's character cannot be introduced to prove the defendant acted in conformity unless first introduced by the defendant. However, where the defendant has introduced evidence that the victim has a character for violence, California law permits the prosecution to introduce evidence of the defendant's same character trait for violence.

In this case, the prosecution may be introducing David's prior conviction as evidence that David had a character for violence and acted in conformity on the particular occasion when he attacked Vic in June. This would be an inadmissible use of the conviction because at this point in the trial, David had introduced no evidence regarding his own character or evidence that Vic had a character for violence. However, because

the defendant later testified about Vic's prior fights, the error of admitting evidence of David having a trait for violence was harmless.

The Truth-in-Evidence Provision does not change the rules regarding character evidence about a criminal defendant.

Impeachment by Conviction

As discussed above, misdemeanor convictions cannot be used to impeach a witness or party. However, because of the Truth-in-Evidence provision, misdemeanors involving crimes of moral turpitude are relevant impeachment evidence.

In this case, the defendant has not yet testified, so it was improper for the prosecution to introduce the conviction in order to impeach him. Moreover, a conviction for simple assault is not a crime of moral turpitude because it does not involve lying or similar immoral conduct. Thus, the conviction is not admissible for impeachment purposes.

Other Purposes

The conviction may be used for non-character and non-impeachment purposes, however. Conviction evidence can be used if it is relevant to establishing the defendant's motive, intent, and absence of mistake, or other relevant non-character issues.

In this case, David's prior assault conviction does not appear to be relevant for any purpose besides proving that David was a violent individual. Thus, there are no other purposes for which it may be admissible.

Conclusion

David's conviction should not have been admitted because of its prejudicial effect.

David's Testimony About First Fight

Relevance

David's testimony about Vic's first fight involving the tire iron is relevant because it tends to prove that David reasonably believed Vic was violent and thus David's actions were reasonable self-defense. The fact of David's self-defense is in dispute.

Personal Knowledge

David cannot testify on matters to which he does not have personal knowledge. Here, David is claiming that he knew about the fight, however, and thus may have had personal knowledge about Vic's prior fight.

Character Evidence

As discussed above, the defendant can open the door to prove the victim's character. Thus, David could properly introduce evidence of Vic's character to prove that Vic acted in conformity with that character by attacking David on the occasion at issue.

Other Purposes

Furthermore, the evidence is also relevant to showing David's reasonable belief that he was in danger.

Conclusion

David's testimony about Vic's first fight was properly admitted.

David's Testimony About Second Fight

Relevance

David's testimony about Vic's second fight also tends to prove Vic was an aggressor. However, its probative value is likely substantially outweighed by unfair prejudice because it tends to show that Vic is a violent individual and thus may have deserved David's strangulation even if it wasn't in self-defense. The probative value is limited because David did not know about this fight before his fight with Vic, and thus it cannot be probative of David's belief regarding Vic's nature.

Personal Knowledge

David likely did not have personal knowledge of this incident, and thus it should not have been admitted on these grounds too.

Character Evidence

David could open the door on character evidence regarding Vic.

Conclusion

This evidence should not have been admitted because of its unfairly prejudicial impact.