



**New Judges Seminar
January, 2013**

EVIDENCE IN THE COURTROOM

**Hon. Randy L. Tahvonen
29th Circuit Court
St. Johns, MI**



401 – “Relevant” Evidence

Evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable.



RELEVANT EVIDENCE – *Rule 401*

Evidence



Any tendency
to make

More likely

**Any fact of
consequence**

Less Likely

Logical relevance

Based on logic,
experience

Legal relevance

Based on
substantive law



THE BALANCING TEST – RULE 403

Probative Value

Substantially
outweighed by...

**Unfair prejudice
Confusion of issues
Misleading jury
Undue delay
Waste of time
Cumulative evidence**



CHARACTER: THE GENERAL RULE 404 (a)

Character
evidence



Conduct

Not admissible

This general rule does NOT prohibit:

Character
evidence



Character

Admissible

Conduct
evidence



Conduct

Admissible



CHARACTER: General Rule, Not Admissible

Rule 404(a) Character Evidence Not Admissible
to Prove Conduct; Exceptions; Other Crimes

Character evidence generally. Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:



**EXCEPTIONS:
CHARACTER OF ACCUSED**
Rule 404 (a)

- (1) Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same; or if evidence of a trait of character of the alleged victim of the crime is offered by the accused and admitted under subdivision (a)(2), evidence of trait of character for aggression of the accused offered by the prosecution;



**EXCEPTIONS:
CHARACTER OF ALLEGED
VICTIM OF HOMICIDE –
*Rule 404(a)***

(2) When self-defense is an issue in a charge of homicide, evidence of a trait of character for aggression of the alleged victim of the crime offered by an accused, or evidence offered by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the alleged victim offered by the prosecution in a charge of homicide to rebut evidence that the alleged victim was the first aggressor;



**EXCEPTION: CHARACTER OF
ALLEGED VICTIM OF SEXUAL
CONDUCT CRIME –
*RULE 404(a)***

- (3) In prosecution for criminal sexual conduct, evidence of the alleged victim's past sexual conduct with the defendant and evidence of specific instances of sexual activity showing the source of origin of semen, pregnancy, or disease;



**EXCEPTION:
CHARACTER OF WITNESS –
Rule 404(a)**

(4) Evidence of the character of a witness, as provided in *Rules 607, 608, and 609.*



CHARACTER: HOW IT IS PROVED Rule 405

- Reputation
- Opinion
- Specific acts of character is element of claim or defense, e.g.,
 - Negligent entrustment
 - Criminal seduction
 - Custody
 - Defamation
- On cross-examination can ask about specific acts to test knowledge and standards of character witness



NON-CHARACTER USES

RULE 404 (b)

As we've seen, *404(a)* generally prohibits proof of character as means of proving conduct.

404(b) similarly prohibits proof of other acts to prove character and through it conduct.



NON-CHARACTER USES

RULE 404 (b) continued

However, neither 404(a) nor 404(b) precludes the use of other acts to prove some relevant fact other than character.

404(b) lists some facts that may be relevant objects of proof.



GOVERNING TEST

The four components are:

1. Evidence must be offered for a proper purpose.
2. The purpose for which the evidence is offered must be relevant.



GOVERNING TEST (*continued*)

3. The probative value of the evidence in proving that relevant fact must not be substantially outweighed by the danger of unfair prejudice, misleading the jury, confusing the issues, or undue delay.
4. Upon request the trial court may provide a limiting instruction to the jury.



NON-CHARACTER PURPOSES

RULE 404 (b)

Legitimate, non-character purposes for which 404(b) evidence may be offered include but are not limited to:

1. Motive *People v Stephens*, 437 Mich 903
2. Opportunity *State v Lemon* 497 A2d 713 (RI 1985)
3. Intent *People v Daoust*, 228 Mich App 1;577
NW2d 179 (1998)



NON-CHARACTER PURPOSES

RULE 404 (b) continued

4. Preparation
5. Scheme, plan, system
People v Sabin (After Remand), 463 Mich 43
6. Knowledge *People v Perez-deLeon, 224 Mich App 43*
7. Identity *People v Golochowicz, 413 Mich 298*
8. Absence of Mistake
People v Williamson, 205 Mich App 592
9. Absence of Accident
People v Cobb, 82 Mich App 167



NON-CHARACTER PURPOSES

RULE 404 (b) continued

10. “Res Gestae”

People v Robinson, 128 Mich App 338

11. Consciousness of Guilt

People v Coleman, 210 Mich App 1

12. Malice *People v Biggs*, 202 Mich App 450

13. Sanity *People v McRunels*, 237 Mich App 168

14. Complainant’s Credibility

People v DerMartzex, 390 Mich 410



Statute – Child Sexual Abuse

MCL 768.27a, eff. 1/1/2006, allows admission of evidence that D committed another listed offense against minor for its bearing on any relevant matter. See CJI2d 5.8b Statute trumps 404(b), *P v Watkins*, 277 Mich App 358 (2007).



Statute – Domestic Violence

MCL 768.27b evidence of other acts of domestic violence admissible for any relevant purpose subject to 403 balancing test and presumptive 10-year bar. See CJI2d 5.8c. Does not infringe upon Court's authority to regulate practice and procedure. *People v Mack*, __ Mich __, 12/12/2012.



IMPEACHING WITNESSES – COMPETENCY

- Oath [603, 610]
- Perception [602]
- Recollection [612, 803(5)]
- Narration [604]



IMPEACHING WITNESSES – CHARACTER

- Convictions [404(a)(4); 609]
- Untruthful Acts [404(a)(4); 608(b)]
- Reputation / Opinion [404(a)(4)'608(a)]



IMPEACHING WITNESSES - INCONSISTENCIES

- Prior Inconsistent Statements [613}
- Contradiction

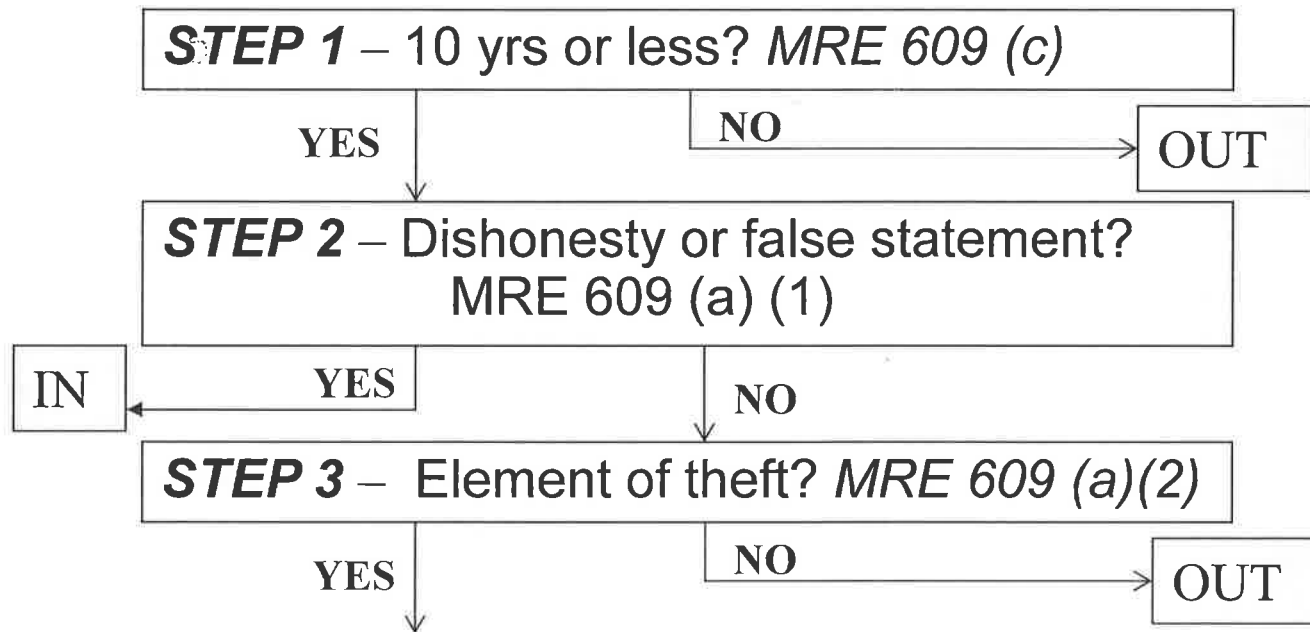


IMPEACHING WITNESSES – BIAS

- Bias, interest, prejudice,
corruption [401]

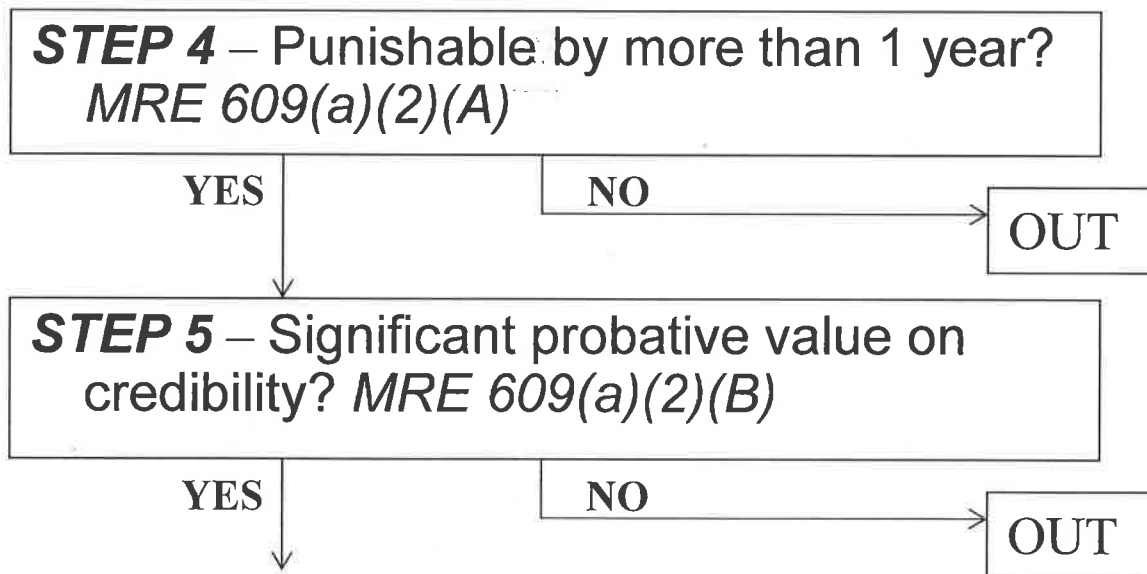


IMPEACHMENT BY CONVICTION - MRE 609





IMPEACHMENT BY CONVICTION - *MRE 609*





IMPEACHMENT BY CONVICTION - *MRE 609*

