

Question MEE 1 – July 2022 – Selected Answer 1

1. The issue is whether the detective's testimony about gang identification, organization, and activities is improper expert testimony.

Generally, an the opinion of an expert witness and their subsequent testimony must be based on technical, scientific, knowledge. The opinion and testimony must also be based on well-established, thoughtful principles that are based on a reliable methodology or practice and will be helpful in assisting the finder of fact. An expert witness is not permitted to testify regarding the mens rea of a defendant in a criminal case.

Here, the prosecution is seeking to admit the City detective as an expert witness. The detective purports to base his opinion in this case based on the training sessions that he has both been provided and instructed on gang structure, membership, and activities. It is unclear what level of training this is considered, or if this is a type of training that would be considered a higher knowledge. However, the detective has received 75 training session, has worked in gang related task forces for the federal government, as well as being a former police and corrections officer. Although the detective was not necessarily an officer for an extended period of time, he likely will meet the qualifications of an expert witness that will be qualified to testify regarding gang activity. Additionally, he is seeking to testify as to gang structure, leadership, behavior codes, loyalty, identification procedures, as well as "The Lions" gang in City. It appears that all of the detective's testimony is based on his experience with his additional training and is based on well established principles of gang activity that is based on scientific research. Since the testimony is based on reliable principles and is going to help the trier of fact, the judge should overrule the objection to the expert's testimony.

2. The issue is whether the photograph of Defendant's tattoo and the former gang leader's anticipated testimony about it is inadmissible character evidence.

In a criminal case, character evidence is inadmissible to prove that on a particular date a defendant had a propensity to act in accordance with that character trait. However, if evidence is offered for non-propensity purposes, such as to prove motive, intent, identity, or the defendant's mental state, then it will not be improper character evidence. Further, all evidence that is admitted for non-propensity purposes must still be able to overcome any prejudicial effect. If the evidence is offered for non-propensity purposes, then the probative value of the evidence cannot be outweighed by its prejudicial effect.

Here, the prosecution is seeking to offer a photograph of the Lions gang tattoo, as well as testimony by a former Lions leader that this is in fact a Lions member tattoo on the defendant's arm. The testimony is likely being offered to establish that the

Defendant is a member of the lion's gang, so the prosecution may argue that it is not improper character evidence because it is being offered to establish identity, as well as association between the defendant and the gang. However, the photo of the tattoo includes the digits that are the police code for homicide. This may indicate that the prosecution is establishing that the defendant has killed before in order to prove that the defendant shot the victim in this case. The numbers for homicide will likely be highly prejudicial to the defendant and therefore will not be admitted into evidence. As a result, the judge should overrule the objection as it pertains to establishing that the tattoo indicates association with the Lion's gang, but should exclude or redact the homicide numbers as well as sustain any objection as to testimony about the defendant having the homicide numbers tattooed on him.

3. The issue is whether Victim's anticipated testimony that Defendant shot him because of a gang dispute is irrelevant.

For evidence to be admissible, it must be relevant. Evidence is relevant if it tends to make a fact of consequence in the dispute more or less likely. The evidence will likely be admitted if the probative value of the evidence outweighs its prejudicial effect. Evidence will likely be relevant if it is helpful to the trier of fact, is not duplicative, and does not confuse the issues.

Here, the victim is attempting to testify that the defendant shot him because he refused to participate in an attack on a rival gang because he has a family member in that gang. This evidence is likely relevant because it goes towards establishing the motive behind the shooting, as well as assisting in the expert's testimony that loyalty is a fundamental requirement for gang membership and that by refusing to participate in the attack was against the gang's loyalty principles. As a result, the judge should likely overrule the objection to the Victim's testimony.

Question MEE 1 – July 2022 – Selected Answer 2

1. The issue is how the trial court should rule on the improper expert opinion objection regarding the detective's anticipated testimony.

An expert opinion is admissible if the foundational requirements of specialized knowledge, sufficient facts and data to form a conclusion, reliable principles and methods in forming a conclusion, and reliably applied principles and methods in the purported expert forming their conclusion are met. If a court deems these elements met and that the subject matter of the expert testimony would help a jury come to a conclusion, i.e., that it is relevant to the facts at issue and requires expert testimony due to the subject matter, then the expert opinion may be admitted subject to the court's discretion.

Here, the intended expert is a City detective. The expertise the detective is being called to testify for is his knowledge of gang identification, gang organizational structure, and gang activities generally, particularly those gangs located in City. In favor of the specialized knowledge element, for the past 6 years, Detective's primary assignment has been "to investigate gangs and criminal activity in City." He has also "worked closely with federal drug and firearm task forces as they relate to gangs," and in the past worked three years as a corrections officer "in charge of the gang unit for City's jail" where he interviewed, investigated and identified gang members. A court would also look favorably upon clear recognition of his expertise in the field of gang structure, membership, and activities based on the detective "being asked to lead" more than 75 law enforcement training sessions in the past three years regarding those issues.

While the facts and data underlying the detective's conclusions are not specified, it is likely the detective's experience and knowledge in the area would be what he relied upon to come to a conclusion regarding the gang-related implications of the trial. There is also no principle or method that the detective specified in how he identifies gang members, other than the experience he mentioned and observational data he collected over time as a correctional officer and detective in the field. The only method mentioned is the identification of The Lions tattoos, which "depict[] symbols unique to the gang," and it is not clear how similar those tattoos are to the tattoos the Defendant has on his arm.

However, even though there are not likely to be academic papers or studies in a specialized field such as gang identification and not much underlying facts and data have been disclosed, the court should allow the detective to testify regarding these tattoos and their implications regarding gang affiliation, as the detective has sufficient specialized knowledge and authenticity, and any potential prejudice can be remedied on cross examination.

2. The issue is how the trial court should rule on the character evidence objection regarding the photo of the Defendant's tattoo and the former gang leader's anticipated testimony.

Character evidence is evidence that goes towards or suggests a witness's character traits. It is inadmissible if it is being used for propensity purposes, meaning that because they behaved a certain way in the past or have a certain character, that they are more likely to have behaved in conformity therewith in the relevant event bringing forth a trial.

Here, the prosecutor wishes to introduce the photograph of the tattoo and the gang leader's testimony regarding the implications of the tattoo (that it is indeed a Lions gang tattoo) in order to prove that the Defendant is a member of The Lions gang. As this is ultimately a fact intended to go towards the Defendant's character (the character of being in The Lions gang), the prosecutor must prove that proving that fact has a non-propensity purpose, such as to prove identity, motive, intent, or plan. The prosecution's theory is that Victim and Defendant are both part of "The Lions" gang, and that the shooting was the result of a gang dispute. The gang leader's testimony identifying the photograph of the tattoo as a Lions gang tattoo goes to a non-propensity purpose, specifically, identity. While the prejudicial implications of the Defendant being a gang member are high, the Victim is also a gang member of the same gang, so the court would consider the information less prejudicial, especially as the identification also goes towards the potential motive for the shooting.

Thus, the court should allow the photograph and testimony into evidence, potentially with a limiting instruction to limit the jury to consider the evidence only in order to identify Defendant as a Lions member and towards a potential motive of the shooting, but not for the prejudicial reason that as a gang member, Defendant is more likely to have shot the Victim.

3. The issue is how the trial court should rule on the relevance objection regarding the Victim's anticipated testimony that the Defendant shot him because of a gang dispute.

Evidence is relevant if it makes a fact at issue more or less probable. Evidence that goes to credibility and bias of witnesses is always relevant.

Here, the prosecutor wants the Victim to testify as to the underlying motive of the shooting. As the underlying charge is attempted murder, and no element of the charge of attempted murder asks the prosecutor to prove motive, the elements of the charge do not make this testimony relevant. However, as it is the prosecutor's burden to prove the charge beyond a reasonable doubt, the prosecutor's theory on motive behind the crime and evidence supporting that motive is relevant. In addition, the Victim's testimony about the circumstances surrounding the crime goes to his credibility regarding the identity of the shooter (potentially the Defendant), which is always relevant. Thus, this testimony should be admitted.

Question MEE 1 – July 2022 – Selected Answer 3

1. The issue is whether the detective's anticipated testimony about gang identification, organization, and activities is improper expert testimony.

Under the Federal Rules of Evidence, any competent witness may testify if their testimony is relevant, so long as it is not excluded by another rule. An expert may testify when their expertise is required for better understanding the facts in evidence. To be qualified as an expert, a court must find that: (1) the proffered testimony is about information not generally known to the public (i.e., technical or special knowledge); (2) the knowledge is based on the expert's experience, training, education or skills; (3) that their knowledge is the result of reliable methods in their area of expertise; (4) that their conclusions draw on their skills or knowledge; and (5) that this information would be helpful to the trier of fact in understanding the facts in evidence.

Here, the expert is offering to testify about gang structures. The City detective has worked as a detective on the police force for six years and before that was in charge of the gang unit for City's jail for three years. He has gained skills in interviewing, investigating, and identifying gang members. Therefore, he has specialized knowledge about gangs based on experience and training. He has also attended training sessions providing education and information on gang structure, membership, and activities. He has also himself taught more than 75 training sessions in the past three years. The expert has experience with the gang at issue, the Lions.

However, the testimony that the expert wants to offer may not be specialized enough. Most people understand generally how a gang operates, i.e., that it has a leadership structure and strict codes of behavior. Furthermore, it is unclear why an expert would be needed when anyone with experience interacting with the gang would have knowledge about this gang in particular. For instance, the other witnesses testifying (a former leader of the Lions and Victim (V), a former member) both would have knowledge as to how a gang operates and how to identify members of the gang.

Therefore, it is unclear that this testimony would be helpful or necessary in understanding gang identification and structure in this case. Thus, the court should sustain the objection and not admit the expert's testimony.

2. The issue is whether the photograph of Defendant's (D) tattoo and the former gang leader's anticipated testimony about it is inadmissible character evidence.

Under the Federal Rules of Evidence, character evidence is generally inadmissible to show that a person acted in conformity with his character. However, in certain circumstances, the same evidence that would show a character propensity may be used to show something else. For instance, character evidence is admissible to show

motive, intent, planning, or identity. Photo evidence must be authenticated to be admissible. In order to authenticate a photo, the person who took the photo need not testify; the Rules require only that someone with personal knowledge of the contents of the photo identify the contents with reasonable certainty.

Here, at issue is whether D was in the Lions gang. The prosecution wants to introduce testimony by the former leader of the Lions describing the tattoo and then identifying D's tattoo as indicative of membership in the Lions. Membership in a gang, particularly one that is violent, would typically be inadmissible character evidence. However, the former leader's testimony would be used to show identity: the tattoo identifies who is a member, and his testimony relates to what tattoos for the Lions typically include. Therefore, the testimony would be admissible for a purpose other than character propensity.

However, this evidence also indicates other crimes that may have been committed. Such evidence is very prejudicial, and under Rule 403, a judge has discretion to prevent admissible evidence from being admitted if its probative value is substantially outweighed by the risk of unfair prejudice. A judge might look at this testimony, particularly the fact that the tattoo indicates crimes the gang has committed, and view it as unfairly prejudicial. However, the court could remedy this with a limiting instruction, since the presence of the tattoo is relevant to the case. Therefore, the judge should overrule the objection but limit it to exclude the crimes that the gang has committed.

3. The issue is whether V's anticipated testimony that D shot him because of a gang dispute is irrelevant.

Under the Federal Rules of Evidence, any relevant evidence is admissible. Evidence is relevant when it is probative and material. Probative means it tends to make a fact at issue more or less probable than it would be without the evidence. Material means the fact is of consequence in determining the action.

Here, V's statement tends to show that D had a motive to shoot V. The reason for shooting V is highly relevant to the case. Therefore, the court should overrule the objection and admit the evidence.