

1. Were there grounds for Joe Sim's attorney to object to Nora Moss' testimony?

According to the FRE, there were grounds for Joe Sim's attorney to object to Nora Moss' testimony. In this criminal trial of Joe Sims regarding his charge of rape, the judge must only admit such evidence as is both relevant and properly admissible in order to facilitate and uphold fairness, transparency, accuracy, reliability, and efficiency within the legal system.

First of all, Nora Moss' testimony is relevant according to FRE 401 because if Joe Sims pushed Nora Moss into the woods and raped her, it is more likely that he has the desire to rape women, and thus it is more likely that he pushed Anna Lee into the woods and raped her. FRE 401 establishes that evidence is relevant if it has any tendency to make a fact more or less probably than it would be without the evidence; and the fact is one that is of consequence in determining the action. Nora Woods and Anna Lee are very similar in their size and characteristics; both have blonde hair, both are very petite with similar weights around 100 pounds, and both are approximately five feet tall.

However, passing the test of relevance is only the first step in the analysis for properly admissible evidence. According to FRE 403, even relevant evidence may not be admissible if it is unfairly prejudicial; that is, if the potential unfair prejudice of the evidence substantially outweighs its probative value, the court may exclude it. FRE 404 specifically relates to one specific type of evidence in which unfair prejudice is often present, character evidence. Character evidence relates to a trait of the person's personality that is pertinent to the current case. According to FRE 404(a)(1), character evidence is not admissible when it is used as propensity evidence, for showing that because a defendant acted in a certain manner on one particular occasion, then he acted in the same way on the particular occasion at the particular time in question. FRE 404(a)(2) lists the exceptions for the admission of character evidence when it is either opinion or reputation evidence, but in this case the questionable evidence is a specific act and is being offered by the prosecution rather than the defense. Thus, FRE 404(b) must be applied, relating to specific crimes, wrongs, or other acts. These acts are not admissible to show propensity, but they may be admissible for another non-character purpose, such as proving motive, opportunity, identity, or plan. Nora Moss' testimony of her suffered rape by Joe Sims in the same manner as Anna Lee, with the unique quality of being pushed into the woods, could be properly offered for the purpose of showing Sims' identity.

Joe Sims' attorney had grounds to object to Nora Moss' testimony on the grounds of it being arguably irrelevant or unfairly prejudicial, due to the long period of three years between the two incidents. Gaps in time between incidents can make evidence which would seemingly be very relevant to be much less relevant. Also, the fact that Mr. Sims was not ever convicted of the prior alleged rape could make it slightly questionable, casting possible doubt upon Nora Moss' testimony. Further, Nora Moss' testimony could be arguably unfairly prejudicial because there could be a propensity for the trier of fact in this case to view the earlier incident as so similar to this incident that the trier of fact could be unfairly emotionally swayed to find Joe Sims automatically guilty of raping Anna Lee in this case since he allegedly raped Nora Moss in the



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same manner three years before. Thus, Joe Sims' attorney had grounds for a valid objection on the basis of FRE 404 and possibly FRE 401.

2. Was the trial judge correct in allowing the testimony of Nora Moss?

The trial judge was correct in allowing the testimony of Nora Moss to be admitted into evidence in this case. FRE 104 gives the court the power to decide any preliminary questions about whether or not evidence is admissible. As noted above, evidence must be both relevant and properly admissible to be used in a case. Nora Moss' testimony is relevant because if Joe Sims raped Nora Moss, someone of similar stature as Anna Lee, and if he raped her in a similar way by first pushing her into the woods, it is more likely that he did in fact rape Anna Lee. Nora Moss' testimony is circumstantial evidence that leads to inferences that assist in the present case with Anna Lee. Thus, the testimony of Nora Moss passes the relevance standard of FRE 401. Next, although Nora Moss' testimony could be viewed as unfairly prejudicial, it is very probative. According to FRE 404(b), Nora Moss' testimony relating to this prior specific act may be admissible for proving motive, opportunity, identity, or plan. In this case, the prior manner of Sims' alleged rape of Nora Moss can be viewed as having a signature quality to indicate his identity. Even though Sims is not on trial for the prior alleged act and was not convicted of that act, this is not a requirement for its admission.



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