

1 **14-5007. Evidence limited to one defendant.**<sup>1</sup>

2 [Evidence concerning \_\_\_\_\_ (*describe evidence*), has been admitted against  
3 \_\_\_\_\_ (*name of defendant*) but not admitted against \_\_\_\_\_  
4 (*name of defendant*)—

5 [At the time this evidence was admitted, you were instructed that it could not be considered  
6 by you against \_\_\_\_\_ (*name of defendant*).]<sup>2</sup>—

7 You are [again]<sup>2</sup> instructed that you must not consider such evidence against  
8 \_\_\_\_\_ (*name of defendant*).]

9 You are [again]<sup>2</sup> instructed that you must not consider evidence about  
10 \_\_\_\_\_ (*describe evidence*) against \_\_\_\_\_ (*name of*  
11 *defendant*).

12 You may consider this evidence only against \_\_\_\_\_ (*name of*  
13 *defendant*).

14 Your verdict as to each defendant must be reached as if [~~he~~]each defendant were  
15 being tried separately.

16 USE [~~NOTE~~] NOTES

17 1. Upon request, the court must instruct the jury of the limited scope of evidence  
18 admitted only as to one [~~party~~]co-defendant but not the other co-defendant when the co-  
19 defendants are tried jointly.

20 2. Use only if jury was admonished at the time the evidence was admitted.

21 [As amended by Supreme Court Order No. 19-8300-016, effective for all cases pending or  
RCR No. 229

1 filed on or after December 31, 2019.]

2 **Committee commentary.** — Rule 11-105 NMRA says that “[w]hen evidence which  
3 is admissible as to one party . . . but not admissible as to another party . . . is admitted, the  
4 judge, upon request, shall restrict the evidence to its proper scope and instruct the jury  
5 accordingly.” [~~Rule 11-105 NMRA was, in part, derived from the California Evidence Code,  
6 Section 355. See 56 F.R.D. 183, 200 (1973). This instruction is derived from California Jury  
7 Instructions Criminal, 2.07, which was also based upon the California Evidence Code.]~~]

8 In general, evidence that is properly “admissible for one purpose is not to be excluded  
9 because it is inadmissible for another purpose.” *State v. Wyman*, 1981-NMCA-087, 96 N.M.  
10 558, 632 P.2d 1196; see also *DeMatteo v. Simon*, 1991-NMCA-027, ¶ 3, 112 N.M. 112, 812  
11 P.2d 361. “Evidence inadmissible for one purpose may be admissible for other purposes  
12 under a different rule of evidence.” *State v. Litteral*, 1990-NMSC-059, ¶ 10, 110 N.M. 138,  
13 793 P.2d 268. “Evidence can be admitted for a limited purpose and, once so limited, it cannot  
14 be relied on for another purpose.” *Attorney Gen. of State of N.M. v. N.M. Pub. Serv. Comm’n*,  
15 1984-NMSC-081, ¶ 9, 101 N.M. 549, 685 P.2d 957.

16 Even when it is shown that evidence of other acts has a legitimate alternative use that  
17 does not depend upon an inference of propensity, the proponent must establish that under  
18 Rule 11-403 NMRA, the probative value of the evidence used for a legitimate, non-  
19 propensity purpose outweighs any unfair prejudice to the defendant. See *State v. Ruiz*, 1995-  
20 NMCA-007, ¶ 9, 119 N.M. 515, 892 P.2d 962; see also *State v. Kerby*, 2005-NMCA-106,  
21 ¶ 25, 138 N.M. 232, 118 P.3d 740, *aff’d*, 2007-NMSC-014, ¶ 25, 141 N.M. 413, 156 P.3d

- 1     704.
- 2     [As amended by Supreme Court Order No. 19-8300-016, effective for all cases pending
- 3     or filed on or after December 31, 2019.]