

PROOF OF OTHER CRIMES, WRONGS, OR ACTS¹
(N.J.R.E. 404(b))

The State has introduced evidence that the defendant

[OR]

[Describe the evidence of other crimes, wrongs, or acts² offered by the State.]

Normally, such evidence is not permitted under our rules of evidence. Our rules specifically exclude evidence that a defendant has committed other crimes, wrongs, or acts when it is offered only to show that he/she has a disposition or tendency to do wrong and therefore must be guilty of the charged offenses. Before you can give any weight to this evidence, you must be satisfied that the defendant committed the other [crime, wrong, or act]. If you are not so satisfied, you may not consider it for any purpose.³

However, our rules do permit evidence of other crimes, wrongs, or acts when the evidence is used for certain specific, narrow purposes.⁴

(CHARGE IN ALL CASES)

In this case, **[Describe the limited purpose, relevant to a genuine, disputed issue, for which the evidence has been introduced, and explain specifically how that limited purpose relates to the facts of the case.]**⁵

(CHARGE IN APPROPRIATE CASE)

[Where the limited purpose for which the evidence is offered is to prove identity, charge if applicable:

¹ The court must instruct the jury on the limited purpose of this evidence both at the time of its admission and in the final charge. See State v. Williams, 190 N.J. 114, 133-34 (2007); State v. Angoy, 329 N.J. Super. 79 (App. Div. 2000).

² The exclusionary scope of N.J.R.E. 404(b) is broader than that of former Evid. R. 55 and extends to bad acts. State v. Nance, 148 N.J. 376, 386 (1997).

³ See State v. Wilson, 158 N.J. Super. 1, 10 (App. Div. 1978) (it is for the jury to determine whether they accept the evidence of the uncharged offenses).

⁴ See State v. Marrero, 148 N.J. 469, 495-96 (1997); State v. G.S., 145 N.J. 460, 468 (1996); State v. Cusick, 219 N.J. Super. 452, 466-67 (App. Div. 1987) (cited in State v. Oliver, 133 N.J. 141, 158 (1993)).

⁵ It is not enough for the trial judge to tell the jurors that they may not use the evidence to infer propensity and that they may only consider it for the limited purpose of proving some other fact in issue. The judge must instruct the jurors on the specific, limited purpose, relevant to a genuine, disputed issue, for which they may consider the evidence. N.J.R.E. 404(b); State v. Oliver, 133 N.J. 141, 153, 156-58 (1993); State v. Cofield, 127 N.J. 328, 340-42 (1992); State v. Stevens, 115 N.J. 289, 301 (1989). Furthermore, the judge must do more than state the general exception to the rule against other crimes invoked by the State. Instead, he or she must relate the abstract exception to the specific facts of the case. Oliver, 133 N.J. at 158-59; Cofield, 127 N.J. at 341; Stevens, 115 N.J. at 304.

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Here, the evidence has been offered to attempt to convince you that [the prior crime] and [the charged crime] are so similar and so unique that you may infer that the same person committed both of them. You may not draw this inference unless you conclude that the prior criminal activity with which defendant is identified is so nearly identical in method as to earmark the crime as defendant's handiwork. The conduct in question must be unusual and distinctive so as to be like a signature, and there must be proof of sufficient facts in both crimes to establish an unusual pattern.]⁶

(CHARGE IN APPROPRIATE CASE)

[Where the limited purpose for which the evidence is offered is to prove consciousness of guilt related to post-crime conduct, charge if applicable:

Here the evidence has been offered to attempt to convince you that [describe the alleged post-crime conduct] is evidence of a consciousness of guilt on the defendant's part regarding the [particular crime(s) at issue]. You may not draw this inference unless you conclude that the acts alleged were an attempt by the defendant to cover up the crime(s) being alleged]⁷

(CHARGE IN ALL CASES)

Whether this evidence does in fact demonstrate [state the specific purpose for which the State offers it] is for you to decide. You may decide that the evidence does not demonstrate [state the purpose] and is not helpful to you at all. In that case, you must disregard the evidence. On the other hand, you may decide that the evidence does demonstrate [state the purpose] and use it for that specific purpose.⁸

However, you may not use this evidence to decide that the defendant has a tendency to commit crimes or that he/she is a bad person. That is, you may not decide that, just because the defendant has committed other crimes, wrongs, or acts, he/she must be guilty of the present crime[s]. I have admitted the evidence only to help you decide the specific question of [describe specific purpose]. You may not consider it for any other purpose and may not find the defendant guilty now simply because the State has offered evidence that he/she committed other crimes, wrongs, or acts.

⁶ State v. Fortin, 162 N.J. 517, 532 (2000) (quoting State v. Reldan, 185 N.J. Super. 494, 502 (App. Div. 1982)).

⁷ State v. Williams, 190 N.J. 114, 134 (2007). Note that a limiting instruction should be made at the time of the introduction of the evidence.

⁸ State v. J.M., Jr., 225 N.J. 146, 159 (2016).

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(CHARGE IN APPROPRIATE CASE UPON DEFENDANT REQUEST)

(Where the prior conduct alleged has been the subject of a prior trial in which the defendant was acquitted)

The prior conduct which the State alleges you should consider had previously resulted in a criminal charge being brought against the defendant. A previous jury⁹ acquitted the defendant of that charge.¹⁰

⁹ If the acquittal was as the result of a bench trial, the jury may be instructed that the defendant was acquitted of the charge by the appropriate fact finder.

¹⁰ State v. J.M., Jr., 225 N.J. 146, 163, n.2 (2016). The jury should not be instructed that the State has the burden to prove beyond a reasonable doubt the act in the instant trial. Id. at 163.