

Rule 404(b) instruction - primary

INSTRUCTION NO. ____

You [are about to hear] [have heard] evidence that the defendant [insert 404(b) evidence] [before][after] the act[s] charged in this case. You might find this evidence helpful as you decide [tailor to proper non-character purpose such as motive, intent, etc.]. However, this evidence [is] [was] not admitted to prove the character of the defendant or to show that [he] [she] acted in a manner consistent with a presumed “character trait.”

Remember that the mere fact that the defendant may have [insert act or acts] is not evidence that [he][she] committed such [an act][acts] in this case. The defendant is on trial for the crime[s] charged and for [that][those] crime[s] alone. You may not convict a person simply because you believe [he][she] may have committed some other act[s] at another time.

Notes:

Ordinarily, this instruction should be given at the time the 404(b) evidence is presented to the jury and, upon request, again in the closing instructions. Under Rule 105, the court must give a limiting instruction upon request of the defendant.

The committee recognizes, however, that there may be times when a defendant, for strategic purposes, does not want an instruction to be given. In those instances, a record should be made outside the presence of the jury that the defendant affirmatively waives the giving of a limiting instruction. (Also see alternate 404(b) instruction, which a defendant may prefer.)

404(b) allows evidence when relevant to prove any material fact, except criminal disposition as the basis for an inference that the defendant committed the crime charge. *State v. Forsyth*, 641 P.2d 1172 (Utah 1982). Consequently, if, after instructing the jury, a party identifies a proper non-character purpose which goes beyond the purpose or purposes stated in the instruction, the court may amend the instruction.

If the 404(b) evidence was a prior conviction admitted also to impeach under Rule 609, see instruction ____ .

If the instruction relates to a witness other than a defendant, it should be modified.

2007 Instruction 404(b) defendant - primary