

2 PJI 10 | EVIDENCE ADMITTED FOR A LIMITED PURPOSE

You [have heard] [will now hear] evidence that was received for [a] particular limited purpose[s]. [This evidence can be considered by you as evidence that (describe limited purpose)]. It may not be used for any other purpose. [For example, you cannot use it as proof that (discuss specific prohibited purpose)].

COMMENT

The instruction is derived from Fifth Circuit 2.15, Eighth Circuit 2.08B, and former Ninth Circuit 1.5. Cf. Ninth Circuit 1.8.

This instruction can be modified slightly to be given again at the close of the evidence. The Court of Appeals has stated, however, that it is error to fail to give a requested limiting instruction "at the time the evidence [i]s admitted." *United States v. Davis*, 726 F.3d 434, 445 (3d Cir. 2013) (identifying this issue in a case where the court gave the instruction "only in the final jury charge").

The Third Circuit has expressed a preference for an instruction that tells the jury both how the evidence can be used and how it must not be used. See *Government of Virgin Islands v. Mujahid*, 990 F.2d 111 (3d Cir. 1993) (trial judge should tell the jury that a guilty plea of a coconspirator can be used for impeachment of the coconspirator but cannot be used as proof of the defendant's guilt). See also *United States v. Lee*, 612 F.3d 170, 191 & n.25 (3d Cir. 2010) (discussing Third Circuit Model Criminal Jury Instruction 4.29 and "encourag[ing] district court judges to delineate the specific grounds for admissibility of 404(b) evidence, even if the entire 404(b) litany has already been recounted"); *United States v. Ciavarella*, 716 F.3d 705, 728 n.15 (3d Cir. 2013) (noting that evidence admitted under Rule 404(b) "must... 'be accompanied by a limiting instruction (where requested) about the purpose for which the jury may consider it'" (quoting *United States v. Cross*, 308 F.3d 308, 320-21 (3d Cir. 2002))); *Davis*, 726 F.3d at 445 (finding error in jury instruction that "included a wide list of purposes" despite trial court's ruling that the evidence in question was admissible only "to prove knowledge"); *SEC v. Teo*, 746 F.3d 90, 97 (3d Cir. 2014) (concluding that the district court's limiting instruction "provid[ed] a meaningful delineation of character evidence from evidence that goes to intent and the absence of mistake" and that it "capture[d] the key points of this Court's Model [Criminal] Jury Instruction[§ 4:29]"); *United States v. Bailey*, 840 F.3d 99, 128-29 & n.138



(3d Cir. 2016) (quoting an instruction that “undisputedly met” the requirement for a requested limiting instruction under Rule 404(b) by contrasting permissible and impermissible uses of the evidence), cert. denied, 137 S. Ct. 1116 (2017); *United States v. Repak*, 852 F.3d 230, 248 (3d Cir. 2017) (holding that the district court “appropriately provid[ed] limiting instructions for the other-acts evidence as requested by” the defendant, and quoting the relevant instructions, which directed that the evidence could be used “only for the purpose of” proving the defendant’s state of mind). Cf. *United States v. Caldwell*, 760 F.3d 267, 274 (3d Cir. 2014) (stressing “that Rule 404(b) must be applied with careful precision, and that evidence of a defendant’s prior bad acts is not to be admitted unless both the proponent and the District Court plainly identify a proper, non-propensity purpose for its admission”).

For discussions of the importance of a limiting instruction when inadmissible evidence is disclosed to a jury under Evidence Rule 703’s balancing test, see the 2000 Committee Note to Evidence Rule 703 (“If the otherwise inadmissible information is admitted under [Rule 703’s] balancing test, the trial judge must give a limiting instruction upon request, informing the jury that the underlying information must not be used for substantive purposes.”), and *Williams v. Illinois*, 132 S. Ct. 2221, 2241 (2012) (plurality opinion) (“[E]xperts are generally precluded from disclosing inadmissible evidence to a jury. See Fed. Rule Evid. 703.... [I]f such evidence is disclosed, the trial judges may and, under most circumstances, must, instruct the jury that out-of-court statements cannot be accepted for their truth, and that an expert’s opinion is only as good as the independent evidence that establishes its underlying premises.”).

Instruction 2.10 can be used in multiple party cases where evidence is admissible against one party but not another (e.g., a statement by an agent that is admissible against the agent but not the principal).

See Instruction 1.5, including a reference to limited use instructions as part of a general instruction on evidence to be given at the beginning of the case.

(Last Updated October 2017)

