

ROUTINE LIMITING INSTRUCTIONS IN CRIMINAL CASES

Senior Resident Superior Court Judge David Lee (January 2010)

I. Limiting Instructions Generally.

- A. Request by Party.** N.C. Rule of Evidence 105 provides: When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.
- B. Sua sponte.** The Rule contemplates a limiting instruction “upon request.” You are required, however, “to be faithful to the law and maintain professional competence in it.” Code of Judicial Conduct, Canon 3. Consequently, you may need to instruct the jury in the absence of a request not to consider incompetent or erroneously admitted evidence. When such a need arises, act as soon as possible. Use your discretion in deciding whether to repeat the instruction during your jury charge.

II. Commonly Used Limiting Instructions. Listed below are some commonly used limiting instructions. The pattern jury instructions are reproduced with notes but without footnotes.

A. N.C. Pattern Jury Instruction 105.40: EVIDENCE OF SIMILAR ACTS OR CRIMES. G.S. 8C-1, Rule 404(b).

Evidence has been received tending to show that (*state specific evidence*). This evidence was received solely for the purpose of showing

[the identity of the person who committed the crime charged in this case, if it was committed]

[that the defendant had a motive for the commission of the crime charged in this case]

[that the defendant had the intent which is a necessary element of the crime charged in this case]

[that the defendant had the knowledge which is a necessary element of the crime charged in this case]

[that there existed in the mind of the defendant a plan, scheme, system or design involving the crime charged in this case]

[that the defendant had the opportunity to commit the crime]

[the absence of mistake]

[the absence of entrapment]

[the absence of accident].

If you believe this evidence you may consider it, but only for the limited purpose for which it was received.

B. N.C. Pattern Jury Instruction 104.50: PHOTOGRAPHS, DIAGRAMS, MAPS, MODELS--AS ILLUSTRATIVE EVIDENCE.

A [photograph] [diagram] [map] [model] was introduced into evidence in this case for the purpose of illustrating and explaining the testimony of a witness. This [photograph] [map] [model] may not be considered by you for any other purpose.

C. N.C. Pattern Jury Instruction 104.96: LIMITATION ON EXPERT OPINION TESTIMONY.

NOTE WELL: Always give N.C.P.I.--Crim. 104.94 first when this instruction is given. This instruction covers the admissibility of expert opinion testimony concerning all "syndromes," and "disorders," including, but not limited to, post-traumatic stress syndrome, rape-trauma syndrome, and conversion disorders. The trial court should balance the probative value of evidence of these conditions against the prejudicial impact of such evidence under Rule 403, and should determine whether admission of evidence of these conditions would be helpful to the trier of fact under Rule 702. See State v. Hall, 330 N.C. 808, 412 S.E.2d 883 (1992).

Expert opinion testimony that one [exhibits symptoms] [fits a profile] consistent with [sexual] [physical] abuse] suffers from [post-traumatic stress syndrome] [rape-trauma syndrome]] had a conversion [reaction] [disorder] consistent with [sexual] [physical] abuse] may be considered by you only if you find that it does corroborate the victim's testimony at this trial, that is, if you believe this opinion testimony supports the testimony of the victim. The testimony is admitted solely for this purpose. You may not convict the defendant solely on this opinion testimony.

D. N.C. Pattern Jury Instruction 105.20: IMPEACHMENT OR CORROBORATION BY PRIOR STATEMENT.

When evidence has been received tending to show that at an earlier time a witness made a statement which may be consistent or may conflict with his testimony at this trial, you must not consider such earlier statement as evidence of the truth of what was said at that earlier time because it was not made under oath at this trial. If you believe that such earlier statement was made, and that it is consistent or does conflict with the testimony of the witness at this trial, then you may consider this, together with all other facts and circumstances

bearing upon the witness's truthfulness, in deciding whether you will believe or disbelieve the witness's testimony at this trial.

E. N.C. Pattern Jury Instruction 105.35: IMPEACHMENT OF A WITNESS (OTHER THAN THE DEFENDANT) BY PROOF OF CRIME. G.S. 8C-1, Rule 609.

When evidence has been received tending to show that a witness has been convicted of (a) criminal charge(s), you may consider this evidence for one purpose only. If, considering the nature of the crime(s), you believe that this bears on truthfulness, then you may consider it, together with all other facts and circumstances bearing upon the witness' truthfulness, in deciding whether you will believe or disbelieve his testimony at this trial. Except as it may bear on this decision, this evidence may not be considered by you in your determination of any fact in this case.

F. N.C. Pattern Jury Instruction 105.40: IMPEACHMENT OF THE DEFENDANT AS A WITNESS BY PROOF OF UNRELATED CRIME. G.S. 8C-1, Rule 609.

When evidence has been received that at an earlier time the defendant was convicted of (a) criminal charge(s), you may consider this evidence for one purpose only. If, considering the nature of the crime(s), you believe that this bears on truthfulness, then you may consider it, together with all other facts and circumstances bearing upon the defendant's truthfulness, in deciding whether you will believe or disbelieve the defendant's testimony at this trial. It is not evidence of the defendant's guilt in this case. You may not convict the defendant on the present charge because of something the defendant may have done in the past.