

104.15 EVIDENCE OF SIMILAR ACTS OR CRIMES.

Evidence has been received tending to show that (*state specific evidence*).¹ 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]²

[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].³

If you believe this evidence you may consider it, but only for the limited purpose for which it was received. You may not consider it for any other purpose.

1. The Committee recommends that this instruction not be given in three instances in which proof of similar acts or crimes is generally admitted for substantive purposes: (1) where two crimes are so closely connected that neither can be adequately proved without

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the other; (2) where a similar sex offense is introduced either as general corroboration or to show the "unnatural" disposition of the defendant; (3) in a case involving the prosecution of a continuing offense. See *State v. McClain*, 240 N.C. 171 (1954). Brandis and Broun on *North Carolina Evidence* § 94 (5th ed.). The Committee believes that in these instances the evidence of similar acts or crimes is introduced for such a broad purpose that any attempt to define and limit that purpose by an instruction such as this would be futile.

2. In circumstances where the defendant is charged with more than one crime, the trial court's instruction should specify the intent for which crime and not allow the jury to infer the intent requirement for the other crimes from the prior convictions when the prior convictions are not admissible to establish the intent element of the other crimes. *State v. Maready*, 654 S.E.2d 769 (N.C. App., 2008).

3. Use one of more of the bracketed statements as appropriate.