

**PATTERN CRIMINAL JURY INSTRUCTIONS
OF THE SEVENTH CIRCUIT**

(2012 Ed.)

Prepared by
The Committee on Federal Criminal Jury Instructions
of the Seventh Circuit

3.11 EVIDENCE OF OTHER ACTS BY DEFENDANT

You have heard [testimony; evidence] that the defendant committed [crimes; acts; wrongs] other than the ones charged in the indictment. Before using this evidence, you must decide whether it is more likely than not that the defendant did the [crimes; acts; wrongs] that are not charged in the indictment. If you decide that he did, then you may consider this evidence to help you decide [describe purpose for which other act evidence was admitted, *e.g.* the defendant's intent to distribute narcotics, absence of mistake in dealing with the alleged victim, etc.]. You may not consider it for any other purpose. Keep in mind that the defendant is on trial here for [describe charge(s) in indictment], not for the other [crimes; acts; wrongs].

Committee Comment

See Fed. R. Evid. 404(b) (admissibility of other act evidence for limited purposes); see also, *e.g.*, *United States v. Perkins*, 548 F.3d 510, 514 (7th Cir. 2008) (jury must find that the defendant committed the act in question). Other act evidence may be admitted to show, among other things, predisposition, motive, opportunity, intent, preparation, plan, knowledge, identity, presence, or absence of mistake or accident.

In *United States v. Miller*, 673 F.3d 688 (7th Cir. 2012), the court counseled against “leaving juries to decode for themselves how they may properly consider admissible bad acts evidence” and encouraged trial judges to include “a case-specific explanation of the permissible inference – with the requisite care not to affirmatively credit that inference.” 673 F.3d at 702 n.1. This instruction contemplates that the trial judge will do exactly that, inserting into the bracket in the third sentence a description of the issue(s) on which the other-act evidence has been admitted. This will help focus the jury on the fact that the identified purpose for consideration of the evidence is the sole purpose for which it may consider the evidence. As counseled in *Miller*, the description of the basis for which the other-act evidence is offered should be as focused as reasonably possible under the circumstances, and where possible, courts should avoid using overly general language. *Miller* indicates that a general instruction along the lines that other-act evidence may be considered “on the questions of knowledge and intent” may be unduly vague and may invite the jury to consider the evidence for impermissible purposes. See *id.* The cautionary language at the end of the instruction is included for the same reasons and to avoid misuse of “other act” evidence. See, *e.g.*, Sixth Circuit Criminal Instruction 7.13; Eighth Circuit Criminal Instructions 2.08 & 2.09.

This instruction may also be given during the trial at the time the evidence is introduced. The trial judge may refer specifically to the other act evidence in question if necessary for clarity. The judge should take care, however, not to characterize the evidence or to give it additional weight.

This instruction does not apply to evidence admitted pursuant to Fed. R. Evid. 413 or 414, under which a prior act of sexual assault or child molestation by the defendant may be considered for “its bearing on any matter to which it is relevant.” If evidence was admitted pursuant to Rules 413 or 414, this instruction should be modified to exempt that evidence from its limitations, and a separate instruction should be given to address the Rule 413 or 414 evidence.