**PROPOSED REVISIONS TO THE UNIFORM JURY INSTRUCTIONS - CRIMINAL**
**PROPOSAL 2019-013**

**March 4, 2019**

The UJI-Criminal Committee has recommended amendments to UJI 14-252, 14-5007, 14-5009, and 14-5010 NMRA for the Supreme Court's consideration.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court's web site at http://supremecourt.nmcourts.gov/open-for-comment.aspx or sending your written comments by mail, email, or fax to:

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov
505-827-4837 (fax)

**Your comments must be received by the Clerk on or before April 3, 2019**, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's web site for public viewing.

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**14-252. Homicide; negligence of deceased or third person.**

The State must prove beyond a reasonable doubt that the defendant's act was a significant cause of the death of _____ (*name of victim*). [~~Evidence has been presented that~~] At issue in this case is whether the negligence of a person other than the defendant may have contributed to the cause of death. Such contributing negligence does not relieve the defendant of responsibility for an act that significantly contributed to the cause of the death so long as the death was a foreseeable result of the defendant's actions.

However, if you find the negligence of a person other than the defendant was the only significant cause of death or constitutes an intervening cause that breaks the foreseeable chain of events, then the defendant is not guilty of the offense of _____ (*name of offense*).

USE NOTE

For use in conjunction with [~~Instruction~~] UJI 14-251 NMRA when there is evidence of negligence by another person. This instruction may be modified and used as appropriate in non-homicide cases.

[As amended, effective January 1, 2000; as amended by Supreme Court Order No. _____, effective _____.]

**Committee commentary.** — *See State v. Munoz*, 1998-NMSC-041, 126 N.M. 371, 970 P.2d 143; *State v. Romero*, 1961-NMSC-139, ¶ 10, 69 N.M. 187, [~~191,~~] 365 P.2d 58 [~~(1961) and~~]

(contrasting contributory negligence in civil and criminal cases and holding "if the culpable negligence of the defendant is found to be the cause of the death, he is criminally responsible whether the decedent's failure to use due care contributed to the injury or not." (internal quotation marks and citation omitted)); *State v. Myers*, 1975-NMCA-055, 88 N.M. 16, 536 P.2d 280[~~(Ct. App. 1975)~~] (requiring proof that defendant's conduct is a proximate cause of death for vehicular homicide conviction).

*Munoz* clarified that a victim's own negligence does not negate the defendant's culpability so long as the defendant is a "significant link" in the causal chain and acknowledged the difference between but-for and proximate causes. *Munoz,* 1998-NMSC-041, ¶¶ 19-22. Because there can be more than one "significant cause" of death, this instruction, along with the "proximate cause" definition in UJI 14-251 NMRA, explains the role of third-party negligence in criminal cases, which may negate a defendant's culpability if it is an intervening event that breaks the causal chain. *See* UJI 14-251 ("The defendant's act was a significant cause of death if it was an act which, in a natural and continuous chain of events, uninterrupted by an outside event, resulted in the death ….")*. Cf.* UJI 13-306 NMRA ("An intervening cause interrupts and turns aside a course of events and produces that which was not foreseeable as a result of an earlier act or omission.").

The defendant is entitled to an instruction on the theory of the case if there is evidence to support it. *See State v. Benavidez*, 1980-NMSC-097, 94 N.M. 706, 616 P.2d 419 [~~(1980)~~]; [~~and~~] *State v. Lujan*, 1980-NMSC-036, 94 N.M. 232, 608 P.2d 1114 [~~(1980)~~], *overruled on other grounds by Sells v. State*, 1982-NMSC-125, ¶ 9, 98 N.M. 786, 653 P.2d 162.

[Commentary amended by Supreme Court Order No. , effective .]

**14-5007. Evidence limited to one defendant**.[1]

~~[Evidence concerning _____ (*describe evidence*), has been admitted against _____ (*name of defendant*) but not admitted against _____ (*name of defendant*)~~

~~[At the time this evidence was admitted, you were instructed that it could not be considered by you against _____ (*name of defendant*).][2]~~

~~You are [again][2] instructed that you must not consider such evidence against _____ (*name of defendant*).~~]

You are [again][2] instructed that you must not consider evidence about _____ (*describe evidence*) against _____ (*name of defendant*).

You may consider this evidence only against _____ (*name of defendant*).

Your verdict as to each defendant must be reached as if [~~he~~]each defendant were being tried separately.

USE [~~NOTE~~]NOTES

1. Upon request, the court must instruct the jury of the limited scope of evidence admitted only as to one [~~party~~]co-defendant but not the other co-defendant when the co-defendants are tried jointly.

2. Use only if jury was admonished at the time the evidence was admitted.

[As amended by Supreme Court Order No. , effective .]

**Committee commentary. —** Rule 11-105 NMRA says that "[w]hen evidence which is admissible as to one party . . . but not admissible as to another party . . . is admitted, the judge, upon

request, shall restrict the evidence to its proper scope and instruct the jury accordingly." [~~Rule 11-105 NMRA was, in part, derived from the California Evidence Code, Section 355. See 56 F.R.D. 183, 200 (1973). This instruction is derived from California Jury Instructions Criminal, 2.07, which was also based upon the California Evidence Code.~~]

In general, evidence that is properly "admissible for one purpose is not to be excluded because it is inadmissible for another purpose." *State v. Wyman,* 1981-NMCA-087, 96 N.M. 558, 632 P.2d 1196; *see also DeMatteo v. Simon,* 1991-NMCA-027, ¶ 3, 112 N.M. 112, 812 P.2d 361. "Evidence inadmissible for one purpose may be admissible for other purposes under a different rule of evidence." *State v. Litteral*, 1990-NMSC-059, ¶ 10, 110 N.M. 138, 793 P.2d 268. "Evidence can be admitted for a limited purpose and, once so limited, it cannot be relied on for another purpose." *Attorney Gen. of State of N.M. v. N.M. Pub. Serv. Comm'n*, 1984-NMSC-081, ¶ 9, 101 N.M. 549, 685 P.2d 957.

Even when it is shown that evidence of other acts has a legitimate alternative use that does not depend upon an inference of propensity, the proponent must establish that under Rule 11-403 NMRA, the probative value of the evidence used for a legitimate, non-propensity purpose outweighs any unfair prejudice to the defendant. *See State v. Ruiz*, 1995-NMCA-007, ¶ 9, 119 N.M. 515, 892 P.2d 962; *see also State v. Kerby*, 2005-NMCA-106, ¶ 25, 138 N.M. 232, 118 P.3d 740, *aff'd*, 2007-NMSC-014, ¶ 25, 141 N.M. 413, 156 P.3d 704.

[Commentary amended by Supreme Court Order No. , effective .]

**14-5009. Evidence admitted for a limited purpose**.[1]

[~~Evidence concerning _____ (*facts*) was admitted for the limited purpose of _____ (*proof*).~~

~~[At the time this evidence was admitted, you were admonished that it could not be considered for any other purpose.][2]~~]

You are [again][2] instructed that you must not consider [~~such~~] evidence about _____ (*facts*) for any purpose other than _____ (*proof*).

USE [~~NOTE~~] NOTES

1. Upon request, the court must instruct the jury that evidence is admitted for a limited purpose. This is a general instruction. For special instructions, see UJIs 14-5010, 14-5022, 14-5028, 14-5034, and 14-5035 NMRA.

2. Use only if jury was admonished at the time the evidence was admitted.

**Committee commentary. —** This instruction is required by Rule 11-105 NMRA. [~~It was derived from California Jury Instructions Criminal, 2.09, which was based upon the California Evidence Code, Section 355.~~] See also the commentary to UJI 14-5007 NMRA.

As indicated in the use note, there are special instructions for the following circumstances, and this instruction should not be given: a confession given to a psychiatrist under certain circumstances, UJI 14-5010; impeachment of the defendant by other crimes or wrongs, UJI 14-5022; impeachment of the defendant by use of otherwise inadmissible confessions, UJI 14-5034; impeachment of the defendant by use of inadmissible real evidence, UJI 14-5035. For a case where this instruction would have been appropriate, *see State v. Foster*, 1974-NMCA-150, ¶ 21, 87 N.M. 155, 530 P.2d 949[~~ (Ct. App. 1974)~~] (testimony inadmissible to establish the truth of a blackmail

defense did not render it inadmissible for the purpose of rebutting the implied charge of recent fabrication).
[Commentary amended by Supreme Court Order No. _____, effective _____..]

**14-5010. Statements made by defendant during psychiatric examination or treatment.**

[~~Evidence has been admitted concerning statements~~] Statements made by the defendant in the course of a mental examination or treatment[~~. These statements~~] may be considered only for the limited purpose of showing the information upon which an expert based [~~his~~] the expert's opinion [~~as to~~]about the defendant's mental capacity.

USE NOTE

Upon request, this instruction may be given upon completion of the witness' testimony, as well as at the time the balance of the instructions are given to the jury.
[As amended by Supreme Court Order No. _____, effective _____.]

**Committee commentary. —** Under Rule 11-504 NMRA, a statement made in the course of a court-ordered mental examination is not privileged. Under Rule 5-602 NMRA, a "statement made by a person during a psychiatric examination or treatment subsequent to the commission of the alleged crime shall not be admissible in evidence against him in any criminal proceeding on any issue other than that of his sanity."

Assuming that the statement is not a privileged communication under Rule 11-504, [~~NMRA, (~~]*see, e.g., State v. Milton*, 1974-NMCA-094, 86 N.M. 639, 526 P.2d 436[~~ (Ct. App. 1974))~~], the statement will be admitted under the restrictions of Rule 5-602[~~ NMRA~~]. In construing a similar federal statute, 18 U.S.C. § 4244, the Tenth Circuit has noted that [~~because~~] "such statements could be prejudicial. The [~~[t]he~~] district judge must therefore. . . be careful in instructing the jury as to the significance of the testimony." *United States v. Julian*, 469 F.2d 371, 376 (10th Cir. 1972)[~~. *See*~~]; *see also United States v. Bennett*, 460 F.2d 872, 879 (D.C. Cir. 1972).

[~~The language of this instruction was derived from California Jury Instructions Criminal, 2.10, and altered to conform to Rule 5-602 NMRA.~~]
[Commentary amended by Supreme Court Order No. _____, effective _____.]