

4.07. Limited Admissibility of Relevant Evidence¹

(1) Evidence may be admitted for one purpose but not for another, or as to one party but not as to another.

(2) In a trial by jury, where evidence is admitted pursuant to subdivision one, the court shall provide the jury an instruction on the limited applicability of the evidence.

(3) When a limiting instruction will not adequately protect a party, the court may exclude the evidence or take other appropriate action.

Note

Subdivisions (1) and (2). This rule is derived from Court of Appeals precedent holding that evidence is admissible as to any party or for any relevant purpose even though it may be inadmissible as to another party or for another purpose. In such circumstances, jury instructions as to the limited purpose for which the evidence may be considered are appropriate. (*Kish v Board of Educ. of City of N.Y.*, 76 NY2d 379, 385 [1990] [admission of evidence for a limited purpose with an appropriate instruction to the jury in the court’s final instructions]; *People v Williams*, 50 NY2d 996, 998 [1980] [evidence was admitted for a limited purpose and in this case the trial court should have, “when (the) evidence (came) in and again in its charge at the end of the case, caution(ed) the jury concerning the limited purpose for which it is being admitted”]; *People v Marshall*, 306 NY 223, 227 [1954] [evidence admissible as to one defendant but not a codefendant]; *cf. People v Warren*, 20 NY3d 393 [2013] [in a simultaneous trial of codefendants, with defendant #1 being tried by jury and defendant #2 by the judge, the trial judge erred in not granting the motion of defendant #1 that the jury be excused when defendant #2 testified in his own behalf].) The aim of the limited admissibility rule “is, insofar as possible, to assure that evidence admitted for a limited purpose will not be improperly applied beyond that purpose by the jury.” (Proposed NY Code of Evidence § 105, Comment [1991].)

In *People v Patterson* (48 AD2d 933, 933 [2d Dept 1975]), the Court reversed a judgment on the law because the trial court “failed to give any instructions as to the limited nature of the rebuttal testimony when it was offered and, during the charge, the jury was not clearly instructed that the admission [of the defendant introduced on rebuttal for impeachment purposes only] could not be considered as evidence of guilt.” Even in the absence of a timely defense objection, the Appellate Division in *People v Campbell* (59 AD2d 912, 912 [2d Dept 1977])

reversed the judgment in the interests of justice when the trial court failed to charge the jury that a statement (albeit taken in violation of the defendant’s constitutional rights) was admitted in rebuttal solely for impeachment purposes.

While the Appellate Division may not exercise its “interests of justice” jurisdiction in every instance that a court in a joint trial of defendants fails to provide a jury instruction on the scope of critical evidence that is not applicable to all defendants, *Campbell* suggests that the better practice is for the court to do so, with or without a request. (See *Brandon v Caterpillar Tractor Corp.*, 125 AD2d 625, 627 [2d Dept 1986] [the trial court “erred in failing to instruct the jury” of the limited purpose for which specific documents were received in evidence].)

Statutes may require a limiting instruction on the receipt of evidence. For example, CPL 60.35 (2) dictates that where a party is authorized to impeach its own witness with a prior contradictory statement, the prior statement “may be received only for the purpose of impeaching the credibility of the witness with respect to his testimony upon the subject, and does not constitute evidence in chief. Upon receiving such evidence at a jury trial, the court must so instruct the jury.”

The timing of the instruction may be critical to curing any prejudice to the party against whom the evidence is not admissible. (*Marshall*, 306 NY at 226, 228 [“ ‘Reserving the instructions (as to evidence that was stricken) until after the evidence had sunk in and then asking the jury to excise it from consideration as to appellant was not psychologically the equivalent of the proper instruction at the proper time’ ”].)

Subdivision (3) is illustrated perhaps best by *Bruton v United States* (391 US 123, 137 [1968]), which held that, in a joint trial of defendants, a limiting instruction that the jury may not consider one defendant’s confession against the codefendant was insufficient to protect the codefendant’s right of confrontation.

¹ In December 2022, the rule was renumbered and amended to expand subdivision (2) and add a new subdivision (3); and the Note was substantially expanded.