

1 **14-5008. Statement limited to one defendant.**

2 Evidence has been admitted of a statement made by \_\_\_\_\_ (*name of*  
3 *defendant*) after [~~his~~] arrest.

4 At the time the evidence of this statement was admitted, you were told that it could not be  
5 considered by you as against \_\_\_\_\_ (*name of other defendant or defendants*).

6 You are again instructed that you must not consider the evidence as against  
7 \_\_\_\_\_ (*name of other defendant or defendants*).

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

10 USE NOTES

11 No instruction on this subject shall be given.

12 [As amended by Supreme Court Order No. S-1-RCR-2025-00126, effective for all cases pending  
13 or filed on or after December 31, 2025.]

14 **Committee commentary.** — The language of this instruction was derived from California Jury  
15 Instructions Criminal, 2.08. The committee determined that the instruction should no longer be  
16 given. The adoption of a ["no instruction"] instruction may help alert the bench and bar to the  
17 problems of allowing statements by a joint defendant into evidence.

18 If the prosecution ["probably"] was to present evidence against a joint defendant which would  
19 not be admissible in a separate trial of the defendant, the defendant will usually request a separate  
20 trial. *State v. Benavidez*[7], 1975-NMCA-013, 87 N.M. 223, 531 P.2d 957 [~~Ct. App. 1975~~]. A  
21 defendant may know of, or, if [~~he~~] the defendant has pursued [~~his~~] discovery remedies under Rule  
22 5-501 NMRA, will have discovered the [~~codefendant's~~] codefendant's statement. Under such

1 circumstances [~~he~~] the defendant may move for and may be granted a separate trial under Rule 5-  
2 203 NMRA. In that event, this instruction would, of course, be unnecessary.

3 In the event that the defendant overlooks [~~his~~] the remedy under Rule 5-203 [~~NMRA~~] and the joint  
4 trial proceeds to the point at which the prosecution tenders the [~~codefendant's~~] codefendant's out-  
5 of-court statement, there are at least two possible consequences: (1) if the ["declarant"]  
6 codefendant does not take the stand, [~~and~~] subject [~~himself~~] to cross-examination, then this  
7 cautionary instruction does not overcome the violation of the right of the ["injured"]  
8 codefendant to confront [~~the~~] witnesses [~~against him~~], *Bruton v. United States*[~~]~~, 391 U.S. 123[~~]~~,  
9 ~~88 S. Ct. 1620, 20 L. Ed. 2d 476~~] (1968); (2) if the declarant does take the stand and is subject to  
10 cross-examination, there is no denial of the right of confrontation, *Nelson v. O'Neil*, 402 U.S. 622[~~]~~,  
11 ~~91 S. Ct. 1723, 29 L. Ed. 2d 222~~] (1971). In the latter situation, the testimony and the cross-  
12 examination of the declarant and [~~his~~] the declarant's out-of-court statement are admissible for all  
13 purposes. The limiting instruction is simply not necessary. This rule applies, according to  
14 *Nelson*[~~]~~, even if the declarant codefendant denies the statement in court and testifies favorably  
15 for the codefendant.

16 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]