

1 [~~Wharton, Criminal Evidence~~] Charles E. Torcia, *Wharton's Criminal Evidence* § 264 (13th ed.
2 1972).

3 Under the general rule, evidence of collateral offenses committed by the defendant, even if similar
4 in character to the crime charged, is not admissible to prove that [~~he~~] the defendant committed the
5 crime charged. See [~~e.g.~~], *e.g.*, *State v. Velarde*[~~;~~], 1960-NMSC-077, 67 N.M. 224, 354 P.2d 522
6 [(1960)]. See generally 1 [~~Wharton, Criminal Evidence~~] Torcia, *supra*, § 240 [(13th ed. 1972)].

7 The general rule is subject to exceptions. See Rule [~~11-404B~~] 11-404(B) NMRA. See generally 1
8 [~~Wharton, Criminal Evidence~~] Torcia, *supra*, §§ 241-259 [(13th ed. 1972)]. As stated by the New
9 Mexico Supreme Court, [~~the~~] “The courts are not divided upon these abstract rules, but are in
10 hopeless confusion in their application to particular facts.” *State v. Lord*[~~;~~], 1938-NMSC-059, ¶
11 35, 42 N.M. 638, 652, 84 P.2d 80 [(1938)].

12 Some significant cases involving the collateral offenses rule include: proof of knowledge - *State*
13 *v. Lindsey*[~~;~~], 1969-NMCA-121, ¶¶ 24-26, 81 N.M. 173, [~~178;~~] 464 P.2d 903[~~;~~ 908 (Ct. App. 1969),
14 ~~cert. denied~~], *cert. denied*, 81 N.M. 140, 464 P.2d 559, [~~cert. denied~~] *cert. denied*, 398 U.S. 904[~~;~~
15 90 S. Ct. 1692, 26 L. Ed. 2d 62] (1970)[~~;~~ and]; *State v. Sero*[~~;~~], 1970-NMCA-102, 82 N.M. 17, 474
16 P.2d 503[~~(Ct. App. 1970)~~]; proof of scheme, plan, or design - *State v. Mason*[~~;~~], 1968-NMCA-
17 072, 79 N.M. 663, 448 P.2d 175[~~(Ct. App.)~~], *cert. denied*[~~;~~], 79 N.M. 688, 448 P.2d 489 (1968);
18 proof of intent - *State v. Roy*, 1936-NMSC-048, ¶¶ 30-31, 40 N.M. 397, [~~406;~~] 60 P.2d 646, [~~110~~
19 A.L.R. 1 (1936), and]; *State v. Marquez*[~~;~~], 1974-NMCA-129, 87 N.M. 57, 529 P.2d 283 [(Ct.
20 ~~App.~~), ~~cert. denied~~], *cert. denied*, 87 N.M. 47, 529 P.2d 273 (1974).

21 The *Marquez* case, specifically interpreting Rule [~~11-404B NMRA~~] 11-404(B), should be
22 analyzed with caution. The relevant part of the decision did not receive a majority vote of the
23 panel. Furthermore, the decision does not discuss the limitations on the use of collateral offenses

1 to prove intent. *See generally* 1 [~~Wharton, Criminal Evidence~~] Torcia, supra, § 245 [(13th ed.
2 1972)]. *See also* [~~State v.~~] Mason, [~~supra~~] 1968-NMCA-072.
3 Rule [~~11-404B NMRA~~] 11-404(B) also allows evidence of other ["wrongs" or "acts" of
4 the defendant to be admitted. This probably does not expand the common-law decisions admitting
5 evidence of collateral offenses, although the commentaries to the Rules of Evidence do not fully
6 explain the use of ["wrongs" and "acts." *See* 56 F.R.D. 183, 221 (1973). Rule [~~11-404B~~
7 ~~NMRA~~] 11-404(B), unlike Rule 11-609 NMRA⁵ (impeachment by proof of other crimes), does
8 not require conviction of the collateral offense. Evidence of wrongs and acts may include an
9 offense not even punishable as a serious crime. [~~Cf. commentary to~~] Cf. UJI 14-230 comm. cmt.
10 (involuntary manslaughter by an act not amounting to a felony).
11 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]