

6.10 Activities Not Charged

You are here only to determine whether the defendant is guilty or not guilty of the charge[s] in the indictment. The defendant is not on trial for any conduct or offense not charged in the indictment.

Comment

When evidence has been introduced during trial pursuant to Fed. R. Evid. 404(b), consider also using Instructions 2.11 (Similar Acts in Sexual Assault and Child Molestation Cases) and 3.3 (Other Crimes, Wrongs, or Acts of Defendant).

When conduct necessary to satisfy an element of the offense is charged in the indictment and the government's proof at trial includes uncharged conduct that would satisfy the same element, the court should instruct the jury that it must find the conduct charged in the indictment before it may convict. *See United States v. Ward*, 747 F.3d 1184, 1191 (9th Cir. 2014) (reversible error to permit jury to convict on counts of aggravated identity theft against two victims named in indictment based on evidence presented at trial of uncharged conduct against identity-theft victims not named in indictment).

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