

Submitted: 4/16/99

Reviewed by committee 4/16/99

Approved by committee: 7/16/99

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DIRECT AND CIRCUMSTANTIAL EVIDENCE

There are two kinds of evidence -- direct and circumstantial. Direct evidence is direct proof of a fact, such as the testimony or statement of a person about what the person saw, heard or did. Circumstantial evidence is indirect evidence, that is, proof of a chain of facts from which you could find that another fact exists, although it has not been proved directly. For example, if you look outside and see water droplets falling from the sky, that is direct evidence that it is raining. But if you look out the window at night and the ground is dry and again the next morning and the ground is wet, that is indirect or circumstantial evidence that it rained during the night. By circumstantial evidence, I simply mean that you may infer the ultimate fact from another fact shown. You should feel free to reach reasonable conclusions from proven facts. Conversely, you may not reach conclusions based on facts that have not been proved. In the rain example, wet ground alone may support an inference that it rained during the night, but in the absence of additional evidence, it will not necessarily support inferences about how much rain fell or for how long a time period.

You should consider both kinds of evidence. You are permitted to give equal weight to both, but it is for you to decide how much weight to give any evidence, whether it be direct or circumstantial. However, to be sufficient to establish guilt beyond a reasonable doubt, circumstantial evidence must exclude all other rational conclusions. This means that if, from the circumstantial evidence, it is rational to arrive at two conclusions, one consistent with guilt and one consistent with innocence, then you must choose the rational conclusion consistent with innocence. However, do not consider each item of circumstantial evidence in isolation. In determining whether all other rational conclusions have been excluded, you should consider each item of circumstantial evidence in the context of all the other evidence, which includes all other circumstantial evidence and direct evidence.

You should consider all the direct and circumstantial evidence in the case as well as any reasonable inferences you draw therefrom in deciding whether the State has proved all the elements of the crime beyond a reasonable doubt.

Reporter's Note:

Committee members could not agree whether the law requires that the second paragraph of this instruction need always be given in mixed evidence cases. *State v. McCue*, 134 N.H. 94, 104 (1991) (“In a case like this one, where there is only circumstantial evidence to support the conviction, the evidence must be sufficient to allow the jury to exclude all rational conclusions other than the defendant’s guilt.”); *State v. Sharon*, 136 N.H. 764, 766 (1993) (“It is fundamental to our justice system that where the state relies on circumstantial evidence to prove an essential component of its case, such evidence must exclude all rational conclusions except guilt.”); *State v. Newcomb*, 140 N.H. 72, 80-81 (1995) (“This case contained not only circumstantial evidence but also direct evidence in the form of the defendant’s admissions to witnesses. The [circumstantial evidence] instruction he received was therefore arguably more than that to which he was entitled.”); *State v. Laudarowicz*, 142 N.H. 1, 5 (1997) (“When the State relies upon circumstantial evidence to prove an element of the charged offense, “such evidence must exclude all rational conclusions except guilt.””)