

## 4.27 Defendant's Testimony Re: Intent, Knowledge, or Motive

**When the intent, knowledge, or motive of a defendant in performing a particular act or making a particular declaration is an element of an offense or reflects on a material issue, the defendant may testify as to his or her intent, knowledge, or motive.**

### Note

This well-settled rule is derived from a long line of cases.

*Kerrains v People* (60 NY 221, 228-229 [1875]), for example, allowed a defendant to testify to his motive for procuring the purported murder weapon in order to disprove that he had an intent to use it to kill the deceased. In *Kerrains'* words:

“[W]hen the motive of a witness in performing a particular act, or making a particular declaration, becomes a material issue in a cause, or reflects important light upon such issue, he may himself be sworn in regard to it, notwithstanding the difficulty of furnishing contradictory evidence, and notwithstanding the diminished credit to which his testimony may be entitled as coming from the mouth of an interested witness. The motive for procuring the ax was a fact material upon the principal fact in the case, and it was clearly competent for the prisoner to testify in respect to it” (internal quotation marks omitted; *accord People v Levan*, 295 NY 26, 34 [1945] [“Testimony by the defendant as to what his intent was would not have been conclusive but it was competent”]; *People v McCullough*, 278 AD2d 915, 917 [4th Dept 2000] [“ ‘where an actor’s state of mind is a material issue, the actor is allowed to testify concerning such issue’ (*People v Rivera*, 101 AD2d 981, 982, *affd* 65 NY2d 661). Defendant was convicted of intentional murder as an accomplice, and thus the jury had to find that he acted ‘with the mental culpability required for the commission’ of that offense (Penal Law § 20.00 . . .)”]; *People v McBee*, 143 AD2d 773, 774-775 [2d Dept 1988] [in a prosecution for possession of cocaine with intent to sell, “the defendant should have been permitted to testify fully regarding his mental state with respect to the disposal of the (cocaine)”]; *People v Cohen*, 266 App Div 23, 27 [3d Dept 1943] [in a prosecution for receiving stolen property, the defendant should have been permitted to state that he believed he was paying full value for the articles purchased because “(h)is belief upon that subject was relevant as bearing upon guilty knowledge. Appellant’s testimony as to his intent and

belief was competent”]; *People v Pierce*, 218 App Div 254, 257 [3d Dept 1926] [“Nothing is better settled . . . where the intent is a necessary ingredient of the crime than that a defendant may testify directly as to his intent”).