

CIRCUMSTANTIAL EVIDENCE—ENTIRE CASE ¹

There are two types of evidence; namely, direct evidence and circumstantial evidence.

In this case, the People contend that there is circumstantial evidence of the defendant's guilt.

Let me explain what constitutes direct and circumstantial evidence and how they differ.

Direct evidence is evidence of a fact based on a witness's personal knowledge or observation of that fact. A person's guilt of a charged crime may be proven by direct evidence if, standing alone, that evidence satisfies a jury beyond a reasonable doubt of the person's guilt of that crime.²

Circumstantial evidence is direct evidence of a fact from which a person may reasonably infer the existence or non-existence of another fact. A person's guilt of a charged crime may be proven by circumstantial evidence, if that evidence, while not directly establishing guilt, gives rise to an inference of guilt beyond a reasonable doubt.³

Let me give you an example of the difference between direct evidence and circumstantial evidence.

Suppose that in a trial one of the parties is trying to prove that it was raining on a certain morning. A witness testifies that on that morning she walked to the subway and as she walked she saw rain falling, she felt it striking her face, and she heard it splashing on the sidewalk. That testimony of the witness's perceptions would be direct evidence that it rained on that morning.

Suppose, on the other hand, the witness testified that it was clear as she walked to the subway, that she went into the subway and got on the train and that while she was on the train, she saw

passengers come in at one station after another carrying wet umbrellas and wearing wet clothes and raincoats. That testimony constitutes direct evidence of what the witness observed. And because an inference that it was raining in the area would flow naturally, reasonably, and logically from that direct evidence, the witness's testimony would constitute circumstantial evidence that it was raining in the area.

The law draws no distinction between circumstantial evidence and direct evidence in terms of weight or importance. Either type of evidence may be enough to establish guilt beyond a reasonable doubt, depending on the facts of the case as the jury finds them to be.⁴

Because circumstantial evidence requires the drawing of inferences, I will explain the process involved in analyzing that evidence and what you must do before you may return a verdict of guilty based solely on circumstantial evidence.

Initially, you must decide, on the basis of all of the evidence, what facts, if any, have been proven. Any facts upon which an inference of guilt can be drawn must be proven beyond a reasonable doubt.⁵

After you have determined what facts, if any, have been proven beyond a reasonable doubt, then you must decide what inferences, if any, can be drawn from those facts.

Before you may draw an inference of guilt, however, that inference must be the only one that can fairly and reasonably be drawn from the facts, it must be consistent with the proven facts, and it must flow naturally, reasonably, and logically from them.⁶

Again, it must appear that the inference of guilt is the only one that can fairly and reasonably be drawn from the facts, and that the evidence excludes beyond a reasonable doubt every reasonable hypothesis of innocence.⁷

If there is a reasonable hypothesis from the proven facts consistent with the defendant's innocence, then you must find the

defendant not guilty.⁸

If the only reasonable inference you find is that the defendant is guilty of a charged crime, and that inference is established beyond reasonable doubt, then you must find the defendant guilty of that crime.⁹

1. The following charge does not use the words “moral certainty” which are no longer required in this state. In the words of the Court of Appeals:

"While it is not necessary that the words 'moral certainty' be used, when the evidence is circumstantial the jury should be instructed in substance that it must appear that the inference of guilt is the only one that can fairly and reasonably be drawn from the facts, and that the evidence excludes beyond a reasonable doubt every reasonable hypothesis of innocence." *People v Sanchez*, 61 NY2d 1022, 1024 (1984); *People v Ford*, 66 NY2d 428, 441-443 (1985). See also *People v Gonzalez*, 54 NY2d 729 (1981).

2. See *People v Bretagna*, 298 N.Y. 323, 325 (1949).

3. See *People v Bretagna*, *supra*; *People v Roldan*, 211 A.D.2d 366, 368-369 (1st Dept. 1995), *aff'd* 88 N.Y.2d 826 (1996); *People v Marin*, 102 A.D.2d 14, 26-27 (2d Dept. 1984), *aff'd* 65 N.Y.2d 741 (1985); *People v Vitalis*, 67 A.D.2d 498, 503 (2d Dept. 1979).

4. See *People v Benzinger*, 36 N.Y.2d 29, 31-32 (1974); *People v Cleague*, 22 N.Y.2d 363, 367 (1968).

5. See *People v Cleague*, *supra*, 22 N.Y.2d, at 365-366.

6. See *People v Benzinger*, *supra*, 36 N.Y.2d, at 32.

7. See *People v Sanchez*, 61 N.Y.2d 1022, 1024 (1984).

8. See *People v Morris*, 36 N.Y.2d 877 (1975).

9. See *People v Kennedy*, 47 N.Y.2d 196 (1979).