

CONSCIOUSNESS OF GUILT¹

In this case the People contend that (briefly specify the defendant's conduct, e.g. the defendant fled New York shortly after the crime; the defendant gave a false alibi), and that such conduct demonstrates a consciousness of guilt.²

You must decide first, whether you believe that such conduct took place, and second, if it did take place, whether it demonstrates a consciousness of guilt on the part of the defendant.

In determining whether conduct demonstrates a consciousness of guilt, you must consider whether the conduct has an innocent explanation. Common experience teaches that even an innocent person who finds himself or herself under suspicion may resort to conduct which gives the appearance of guilt.³

If you determine that the evidence establishes that the defendant engaged in the conduct and that the conduct does demonstrate a consciousness of guilt, the weight and importance you give to that evidence depends on the facts of the case. Sometimes such evidence is only of slight value and, standing alone, it may never be the basis for a finding of guilt.⁴

¹ In November 2020, at the beginning of the fourth paragraph, the “if” clause was added for clarity, and the endnotes were revised.

² See Guide to NY Evidence rule 4.20.1

³ See *People v Bennett*, 79 NY2d 464, 470 (1972) (“Consciousness of guilt evidence has consistently been viewed as weak because the connection between the conduct and a guilty mind often is tenuous. Even innocent persons, fearing wrongful conviction, may flee or lie to extricate themselves from situations that look damning” [citations omitted]).

⁴ See *People v Reddy*, 261 NY 479, 486 (1933) (“Consciousness of guilt” evidence “ordinarily is of slight value”); *People v Cintron*, 95 NY2d 329, 332-33 (2000) (“consciousness of guilt” evidence has “limited probative value” and its probative weight is “highly dependent upon the facts of each particular case”).