

4.38. Motive to Commit an Offense

(1) Motive to commit an offense refers to the reason or reasons a person chooses to commit or attempt to commit a criminal act.

(2) (a) Evidence of motive (or lack thereof) is admissible for the finder of fact's consideration in determining whether the defendant is guilty of a charged offense, regardless of whether the definition of the offense charged requires proof of motive.

(b) Evidence of motive, by itself, is not sufficient to prove guilt.

(c) Even though no motive for an offense has been proved, the finder of fact may nonetheless enter a verdict of guilty upon finding that the evidence presented establishes the defendant's guilt beyond a reasonable doubt.

(3) Evidence of motive must be: relevant (that is, the motive attributed to the accused must have had a logical connection with the crime charged), have probative value that does not outweigh its prejudice, and be in a form that is otherwise admissible.

(4) In a charge involving domestic violence, a defendant's prior wrongdoing relating to the complainant may be admitted when probative of the defendant's motive.

Note

Subdivision (1) states a definition of "motive" derived from CJI2d(NY) Motive (When Not an Element) ("the reason why a person chooses to engage in criminal conduct"); Law.com, Legal Dictionary, motive (<https://dictionary.law.com/Default.aspx?typed=motive&type=1>) ("the probable reason a person committed a crime"); and Lexico, US Dictionary, motive (<https://www.lexico.com/en/definition/motive>) ("A reason for doing something").

(See *People v Fitzgerald*, 156 NY 253, 258 [1898] [“Motive is an inducement, or that which leads or tempts the mind to indulge the criminal act”].)

Subdivision (2) (a) is derived primarily from *People v Sangamino* (258 NY 85, 88 [1932]):

“While it is true ‘that motive is not an essential ingredient of the crimes [charged],’ and that either crime may be committed without a motive, nevertheless, the question of motive or lack of motive is always a question for the serious consideration of a jury, in determining the guilt or innocence of the defendant. It is the duty of a trial judge to instruct the jury to the effect that in its deliberations upon the question of the defendant’s guilt or innocence it may consider the question of the defendant’s motive or lack of motive to commit the crime charged.” (See and compare *People v Moore*, 42 NY2d 421, 428 [1977] [in a circumstantial evidence case “motive often becomes not only material but controlling”], with *People v Luciano*, 46 NY2d 767, 769 [1978] [“in some circumstances absence of motive evidence may tend to establish that defendant did not commit the act charged or that he lacked the requisite intent”], and *People v Guadagnino*, 233 NY 344, 348-349 [1922] [“the fact that the district attorney can suggest no reason why the defendant should kill (the deceased) bears materially upon the weight of the evidence claimed to show a premeditated and deliberated design to take life”].)

Subdivision 2 (b) is derived from *People v Giordano* (213 NY 575, 584 [1915] [“Motive can never, of itself, prove guilt, though it may, when other circumstances point to the conclusion of guilt, strengthen such circumstantial proof of guilt and thus aid to establish the commission of the crime or the identity of the criminal”]).

Subdivision 2 (c) is derived from *People v Seppi* (221 NY 62, 70 [1917] [“Where testimony is presented on a trial which satisfies a jury that the defendant has committed a crime, it is sufficient for conviction although no motive therefor has been shown”]) and *People v Feigenbaum* (148 NY 636, 639 [1896] [“The question of motive is comparatively unimportant where the other evidence points unmistakably to the guilt of a defendant”]).

Subdivision (3) is derived from a series of Court of Appeals cases, beginning with *People v Namer* (309 NY 458 [1956]), which held that evidence that the defendant was a parole violator was not admissible as evidence of motive to possess a pistol. In making that ruling, the Court explained that:

“To be valid evidence of the commission of a crime, the motive attributed to the accused must have had a logical connection with the crime charged. . . .

“In order to be admissible, evidence of motive must possess a relation to the criminal act according to known rules and principles of human conduct. If it has not such relation, or if it points in one direction as well as in the other, it cannot be considered a legitimate part of the proof.” (*Id.* at 462-63 [quotation marks and citations omitted].)

Examples of evidence of motive that was admissible include: *People v Gamble* (18 NY3d 386, 398 [2012] [the trial court “correctly determined” that “testimony that defendant had previously threatened to kill (the deceased) was relevant in establishing a motive for the murders and the identity of the perpetrator in this circumstantial evidence case”]); *People v Till* (87 NY2d 835, 837 [1995] [“(t)he evidence of the uncharged robbery established a motive for defendant’s attempt to kill or assault the off-duty police officer to avoid capture and punishment”]); and *People v Mees* (47 NY2d 997, 998 [1979] [in a manslaughter prosecution, the trial court properly admitted “evidence that a charge for assaulting the victim was pending against defendant Mees at the time of the homicide . . . to establish motive . . . to avoid punishment for the prior crime . . . and the court instructed the jury that it was not to consider the prior charge as indicative of guilt or innocence of that crime”]).

In particular circumstances, the Court of Appeals has found that the defendant’s association with a group supplied evidence of motive. (*People v Bailey*, 32 NY3d 70 [2018]; *People v Moore*, 42 NY2d 421 [1977].) In *Bailey*, the Court noted that “the testimony elicited by the People about the Bloods was probative of defendant’s motive and intent to join the assault on complainant, and provided necessary background information on the nature of the relationship between the codefendants, thus placing the charged conduct in context.” (32 NY2d at 83.) In *Moore*, the defendant was charged with the attempted murder of two police officers and the “evidence of the defendant’s relationship with the [Black Liberation Army] and their stated hostility to the police was properly admitted at trial to show the motive for the crime.” (42 NY2d at 433.)

Examples of evidence of motive that was not admissible include: *People v Ely* (68 NY2d 520, 522 [1986]) and *People v Montanez* (41 NY2d 53, 58 [1976]).

In *Ely*, taped conversations between the defendant and her husband “which tended to establish that defendant’s motive for procuring the murder of her former husband was to prevent his having overnight visitation with the child” were admissible, but there was “other highly prejudicial material” on the tapes that should have been redacted. (68 NY2d at 528, 531.) As the Court explained, “when, as here, tapes which are admitted to prove motive contain evidence of crimes other

than that for which defendant is on trial, unrelated to motive or the relevance of which to motive is outweighed by its prejudicial effect, which is not itself otherwise admissible and not explanatory of the acts done or words used in the admissible part of the tapes, such material should be redacted before submission of the tapes to the jury.” (68 NY2d at 522.)

In *Montanez*, the defendant was charged with reckless manslaughter. While evidence of an argument between the deceased and the defendant about drugs was admissible, additional testimony that the deceased previously had “smuggled large quantities of drugs into the country,” thereby placing the defendant “squarely in the midst of a large scale and apparently international drug traffic,” is the “classic example of a case where the prejudice to the defendant outweighed the probative value of the evidence.” (41 NY2d at 58.)

An example of proffered evidence of motive that was not in a form that permitted its introduction in evidence is *People v Steiner* (30 NY2d 762, 763 [1972]). There, in a prosecution of a husband for the death of his wife, “diary entries in the decedent’s handwriting and indicating the husband’s involvement with an employee in an extramarital affair” were inadmissible hearsay. (*Id.*)

Subdivision (4) is derived from *People v Dorm* (12 NY3d 16, 19 [2009] [the trial court did not abuse its discretion when it allowed in evidence, with appropriate limiting instruction, the defendant’s prior conduct relating to the complainant that was “probative of his motive and intent to assault his victim; it provided necessary background information on the nature of the relationship and placed the charged conduct in context”]; accord *People v Frankline*, 27 NY3d 1113 [2016]; see *People v Vega*, 3 AD3d 239, 249 [1st Dept 2004] [approving “evidence that defendant had a history of inflicting physical injury to the decedent” to show “a motive to kill the decedent”]; see also Guide to NY Evid rules 7.06, Abused Person Syndrome; 4.21, Evidence of Crimes and Wrongs [*Molineux*]).