

**FLIGHT<sup>1</sup>**

There has been some testimony in the case from which you may infer that the defendant fled shortly after the alleged commission of the crime.<sup>2</sup> The defendant denies any flight, (or, the defendant denies that the acts constituted flight). The question of whether the defendant fled after the commission of the crime is another question of fact for your determination. Mere departure from a place where a crime has been committed does not constitute flight. If you find that the defendant, fearing that an accusation or arrest would be made against him/her on the charge involved in the indictment, took refuge in flight for the purpose of evading the accusation or arrest on that charge, then you may consider such flight in connection with all the other evidence in the case, as an indication or proof of consciousness of guilt. Flight may only be considered as evidence of consciousness of guilt if you should determine that the defendant's purpose in leaving was to evade accusation or arrest for the offense charged in the indictment.

**OR**

**(THE FOLLOWING SHOULD BE USED WHERE THE DEFENSE HAS NOT DENIED THAT HE/SHE DEPARTED THE SCENE BUT HAS SUGGESTED AN EXPLANATION)**

There has been some testimony in the case from which you may infer that the defendant fled shortly after the alleged commission of the crime. The defense has suggested the following explanation:

**(SET FORTH EXPLANATION SUGGESTED BY DEFENSE)**

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<sup>1</sup> See State v. Mann, 132 N.J. 410 (1993); State v. Leak, 128 N.J. Super. 212 (App. Div.), certif. denied, 65 N.J. 565 (1974); State v. Petrolia, 45 N.J. Super. 230 (App. Div. 1957); State v. Centalozza, 18 N.J. Super. 154, 161 (App. Div. 1952).

**NOTE:** 1. Mere departure from the scene is distinguished from flight. See: State v. Sullivan, 43 N.J. 209 (1964); State v. Jones, 94 N.J. Super. 137 (App. Div. 1967); and

2. State v. Wilson, 57 N.J. 49 (1970) states:

“You the jury must first find that there was a "departure" from the scene and then you must also find a motive which would turn the departure into flight." This charge may be necessary to include contingent upon the right factual context.

<sup>2</sup> This charge should NOT be given simply because a defendant is being tried in absentia. State v. Horne, 376 N.J. Super. 201 (App. Div. 2001). It might be appropriate if a defendant flees during trial. Id. at 210.

## **FLIGHT**

If you find the defendant's explanation credible, you should not draw any inference of the defendant's consciousness of guilt from the defendant's departure.

If, after a consideration of all the evidence, you find that the defendant, fearing that an accusation or arrest would be made against him/her on the charge involved in the indictment, took refuge in flight for the purpose of evading the accusation or arrest, then you may consider such flight in connection with all the other evidence in the case, as an indication or proof of a consciousness of guilt.

It is for you as judges of the facts to decide whether or not evidence of flight shows a consciousness of guilt and the weight to be given such evidence in light of all the other evidence in the case.