

ALIBI¹

The defendant as a part of his/her denial of guilt contends that he/she was not present at the time and place that the crime was allegedly committed, but was somewhere else and therefore could not possibly have committed or participated in the crime. Where a person must be present at the scene of the crime to commit it, the burden of proving the defendant's presence beyond a reasonable doubt is upon the State. The defendant has neither the burden nor the duty to show that he/she was elsewhere at the time and so could not have committed the offense. You must determine, therefore, whether the State has proved each and every element of the offense charged, including that of the defendant's presence at the scene of the crime and his/her participation in it.²

**(CHARGE THE FOLLOWING PARAGRAPH IN ALL CASES
WHERE THE DEFENDANT HAS TESTIFIED TO AN ALIBI)**

You have heard testimony about when (insert name of defendant) first came forward with his/her account of what happened. I instruct you that (insert name of defendant) had no obligation to provide an account at any time and there may be many reasons for his/her not doing so. You may not use the testimony about when (name of defendant) first came forward to affect his/her credibility or to conclude that he/she violated some obligation to come forward, because (name of defendant) had no duty to speak on the subject with anyone.³

**(CHARGE THE FOLLOWING PARAGRAPH IN ALL
CASES WHERE AN ALIBI WITNESS HAS TESTIFIED)**

You will [also]⁴ recall that the witness testified that _____.
You may consider the evidence concerning when (name of alibi witness) came forward, and why (name of alibi witness) did so at that time, only for the limited purpose of deciding whether it affects

¹ Use of the pejorative word "alibi" should be avoided in the charge. See State v. Peetros, 45 N.J. 540, 553 (1965). If the facts warrant it, defendant is entitled to the charge even in the absence of a request. State v. Searles, 82 N.J. Super. 210 (App. Div. 1964).

² State v. Garvin, 44 N.J. 268, 272 (1965); State v. Ravenell, 43 N.J. 171, 187 (1964); State v. Driver, 38 N.J. 255, 290 (1962); State v. Mucci, 25 N.J. 423, 431 (1957).

³ State v. Silva, 131 N.J. 438, 451; State v. Brown, 118 N.J. 595, 616 & n.3 (1990).

⁴ The word [also] should be used when both the defendant and another alibi witness have testified, and the court has read the preceding paragraph to the jury.

ALIBI

the credibility of (name of alibi witness) account.⁵ You may not use the evidence to conclude that (name of alibi witness) violated some obligation to come forward, because (name of alibi witness) [also] had no duty to speak on the subject with anyone.⁶

CHARGE IN ALL CASES

If, after a consideration of all of the evidence, including the evidence of the defendant's whereabouts at the time of the offense, you conclude that the State has failed to prove beyond a reasonable doubt any of the elements of the offense(s) charged, you must find the defendant not guilty. If, however, after considering all of the evidence, you conclude that the State has proven every element of the offense(s) charged beyond a reasonable doubt, including the defendant's presence at the scene of the crime, then you must find the defendant guilty.

⁵ This sentence applies only to the testimony of a witness other than the defendant and, in cases where the defendant has testified, the court should emphasize that it does not apply to the defendant's testimony. State v. Noble, 398 N.J. Super. 574, 594 n.3 (App. Div. 2008).

⁶ State v. Silva, 131 N.J. 438, 451 (1993); State v. Brown, 118 N.J. 595, 616 & n.3 (1990).