

THIRD PARTY GUILT JURY CHARGE

The defendant contends that there is evidence before you indicating that someone other than he or she may have committed the crime or crimes, and that evidence raises a reasonable doubt with respect to the defendant's guilt.

In this regard, I charge you that a defendant in a criminal case has the right to rely on any evidence produced at trial that has a rational tendency to raise a reasonable doubt with respect to his/her own guilt.¹

I have previously charged you with regard to the State's burden of proof, which never shifts to the defendant. The defendant does not have to produce evidence that proves the guilt of another, but may rely on evidence that creates a reasonable doubt. In other words, there is no requirement that this evidence proves or even raises a strong probability that someone other than the defendant committed the crime.² You must decide whether the State has proven the defendant's guilt beyond a reasonable doubt, not whether the other person or persons may have committed the crime(s).

¹ An accused is constitutionally entitled to prove his innocence, or persuade the fact finder of a reasonable doubt about his guilt, by suggesting someone else committed the crime charged. State v. Jiminez, 175 N.J. 475, 486 (2003); see also State v. Koedatich, 112 N.J. 225, 297 (1988), cert. denied, 488 U.S. 1017, 109 S. Ct. 813, 102 L. Ed. 2d 803 (1989). As stated by Chief Justice Weintraub, "[i]t would seem in principle to be sufficient if the proof offered has a rational tendency to engender a reasonable doubt with respect to an essential feature of the State's case." State v. Sturdivant, 31 N.J. 165, 179 (1959), cert. denied, 362 U.S. 956, 80 S. Ct. 873, 4 L. Ed. d 873 (1960).

² To be admissible, evidence of another's guilt need not be conclusive, and it "need not [constitute] substantial proof of a probability that the third person committed the act." Jiminez, supra, 175 N.J. at 486. On the other hand, the theory cannot be speculative. Instead, "[s]omewhere in the total circumstances there must be some thread capable of inducing reasonable men to regard the event as bearing upon the State's case." Sturdivant, supra, 31 N.J. at 179 (quoted with approval in Jiminez, supra, 175 N.J. at 487).