

Accomplice As A Question of Fact

(Revised Jan 2011; June 2022)¹

In this case, you must determine whether (specify) was an accomplice.

Under our law, a person is an accomplice when that person is a witness in a criminal action who, according to the evidence², may reasonably be considered to have participated in the offense charged or an offense based upon the same or some of the same facts or conduct which constituted the offense charged.³

If you find that (specify) was not an accomplice, then you must consider his/her testimony as you would any other witness.

If, however, you find that (specify) was an accomplice, then you must consider the following:

Our law is especially concerned about the testimony of an accomplice who implicates another in the commission of a crime, particularly when the accomplice has received, expects, or hopes for a benefit in return for testimony.

Therefore, our law provides that a defendant may not be convicted of any crime upon the testimony of an accomplice unless it is supported by corroborative evidence tending to connect the defendant with the commission of that crime.⁴

In other words, even if you find the testimony of (specify) to be believable, you may not convict the defendant solely upon that testimony unless you also find that it was corroborated by other evidence tending to connect the defendant with the commission of the crime.

The corroborative evidence need not, by itself, prove that the defendant is guilty.⁵ What the law requires is that there be evidence that tends to connect the defendant with the commission of the crime charged in such a way as may reasonably satisfy you

that the accomplice is telling the truth about the defendant's participation in that crime.⁶

In determining whether there is the necessary corroboration, you may consider whether there is material, believable evidence, apart from the testimony of the accomplice, which itself tends to connect the defendant with the commission of the crime.

You may also consider whether there is material, believable evidence, apart from the testimony of the accomplice, which, while it does not itself tend to connect the defendant with the commission of the crime charged, it nonetheless so harmonizes with the narrative of the accomplice as to satisfy you that the accomplice is telling the truth about the defendant's participation in the crime and thereby tends to connect the defendant to the commission of the crime.⁷

Add if applicable:

The testimony of one accomplice cannot be used to corroborate the testimony of another.⁸

1. The January 2011 revision was for the purpose of incorporating the dictates of *People v Reome*, 15 N.Y.3d 188 (2010).

The June 2022 revision was for the purpose of including the text to footnote 8, which was formerly in a footnote, in the body of the instruction.

2. The statute, CPL 60.22(2), at this point includes the following language which is here omitted: "adduced in such action."

3. CPL 60.22(2).

4. CPL 60.22(1). See *People v. Morhouse*, 21 N.Y.2d 66 (1967); *People v. Cunningham*, 48 N.Y.2d 938 (1979); *People v. Glasper* 52 N.Y.2d 970 (1981); *People v. Smith*, 55 N.Y.2d 945 (1982); *People v Besser*, 96 N.Y.2d 136 (2001).

5. See *People v. Breeland*, 83 N.Y.2d 286 (1994).

6. See *People v. Moses*, 63 N.Y.2d 299 (1984); *Glasper*, 52 N.Y.2d 970.

7. See *Reome*, 15 N.Y.3d 188.

8. *People v. O'Farrell*, 175 N.Y. 323 (1903); *People v. Mullens*, 292 N.Y. 408 (1944).