

Accomplice As A Matter of Law

(Revised Jan 2011 and June 2022)¹

Under our law, (specify) is an accomplice because there is evidence that he/she participated in [and was convicted of,] a crime based upon conduct involved in the allegations here against the defendant.

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 his/her 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.²

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 A crime was committed or that the defendant is guilty.³ 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.⁴

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.⁵

Add if applicable:

The testimony of one accomplice cannot be used to corroborate the testimony of another.⁶

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 6, which was formerly in a footnote, in the body of the instruction.

2. 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).

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

4. See *People v. Moses*, 63 N.Y.2d 299 (1984); *Glasper*, 52 N.Y.2d 970 (1981).

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

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