

6.5 Reasonable Doubt—Defined

Proof beyond a reasonable doubt is proof that leaves you firmly convinced the defendant is guilty. It is not required that the government prove guilt beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant guilty.

Comment

The Ninth Circuit has repeatedly upheld this instruction. *See, e.g., United States v. Velazquez*, 1 F.4th 1132, 1136-41 (9th Cir. 2021) (upholding model instruction but remanding due to prosecutor’s misleading comments that compared the reasonable doubt standard to making casual, everyday decisions); *United States v. Mikhel*, 889 F.3d 1003, 1033 (9th Cir. 2018) (rejecting defendant’s argument that jury can use speculation to find reasonable doubt in favor of accused); *see also Victor v. Nebraska*, 511 U.S. 1, 17 (1994) (“A fanciful doubt is not a reasonable doubt”). In addition, the Ninth Circuit has expressly approved a reasonable doubt instruction that informs the jury that the jury must be “firmly convinced” of the defendant’s guilt. *United States v. Velasquez*, 980 F.2d 1275, 1278 (9th Cir. 1992). *Accord United States v. Soto-Zuniga*, 837 F.3d 992, 1004 (9th Cir. 2016) (rejecting challenge to this instruction and noting that Ninth Circuit has repeatedly upheld use of this instruction). In *United States v. Gomez*, 725 F.3d 1121, 1131 (9th Cir. 2013), the Ninth Circuit approved the conditional language in this model instruction regarding a jury’s duty in a criminal case. Nonetheless, “[t]he Constitution does not require that any particular form of words be used in advising the jury of the government’s burden of proof.” *Victor*, 511 U.S. at 5.

In *Victor*, 511 U.S. at 5, the Court held that any reasonable doubt instruction must (1) convey to the jury that it must consider only the evidence, and (2) properly state the government’s burden of proof. *See also Gibson v. Ortiz*, 387 F.3d 812, 820 (9th Cir. 2004), *overruled on other grounds by Byrd v. Lewis*, 566 F.3d 855 (9th Cir. 2009), and *Ramirez v. Hatcher*, 136 F.3d 1209, 1213-14 (9th Cir. 1998).

Care should be taken to ensure that the language used in a verdict form does not require the jury to find the defendant not guilty beyond a reasonable doubt to acquit. *See United*

States v. Espino, 892 F.3d 1048, 1052 (9th Cir. 2018).

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