

**MULTIPLE DEFENDANTS;
EVIDENCE ADMITTED AGAINST ONE DEFENDANT ONLY**

I. MULTIPLE DEFENDANTS

There is more than one defendant on trial in this case. Each defendant is entitled to have you determine his (or her) guilt separately and individually. The fact that the defendants are on trial together is not evidence that there is any connection between them, and is not any evidence of their guilt. The Commonwealth has the burden of proving beyond a reasonable doubt the guilt of each defendant separately.

When you consider the evidence, it is your duty to examine it carefully as to the charge(s) against each defendant separately, as if he (or she) were on trial alone. You may consider only the evidence that applies to that defendant, and you are not to consider any evidence that I have told you was admitted into evidence only against another defendant. Each defendant is entitled to have his (or her) case determined solely from the evidence about his (or her) own acts and statements.

II. EVIDENCE ADMITTED AGAINST ONE DEFENDANT ONLY

During this trial I have told you that some of the evidence was limited to one defendant. Let me emphasize that you may consider such evidence only in your deliberations about that defendant concerning whom it was admitted in evidence. You must not consider it in any way in your deliberations concerning (the other) (any other) defendant.

Commonwealth v. Snyder, 282 Mass. 401, 416, 185 N.E. 376, 381 (1933), *aff'd*, 291 U.S. 97, 54 S.Ct. 330 (1934).

SUPPLEMENTAL INSTRUCTION

Where one defendant's statement is admitted only against that defendant.

You

have heard testimony about a statement that [one codefendant] is alleged to have made. If you accept that testimony, you may consider the statement only in determining the (guilt or innocence) (credibility) of [that codefendant]. It is not evidence against ([other codefendant]) (any other codefendant), and you are not to consider it in any way when you consider the evidence against him (her) (them). Each defendant is entitled to have his

(or her) case determined solely from the evidence about his (or her) own acts and statements.

Commonwealth v. Carita, 356 Mass. 132, 137-139, 249 N.E.2d 5, 8-9 (1969);
Commonwealth v. Valcourt, 333 Mass. 706, 713, 133 N.E.2d 217, 222 (1956);
Snyder, supra.

Note that a limiting instruction is insufficient, and severance is required, where the Commonwealth seeks to introduce the extrajudicial statement of one codefendant who does not testify at trial and which "powerfully incriminat[es]" another codefendant against whom it is not admissible. *Bruton v. United States*, 391 U.S. 123, 135-136, 88 S.Ct. 1620, 1627-1628 (1968), made applicable to the states by *Roberts v. Russell*, 392 U.S. 293, 88 S.Ct. 1921 (1968). See *Jury Trial Manual for Criminal Offenses Tried in the District Court* § 1.14.

NOTE:

1. **Hearsay Exceptions.** For a model instruction on the joint venturer hearsay exception, see the supplemental instructions to Instruction 4.200 (Joint Venture). For a model instruction on the co-conspirator hearsay exception, see the supplemental instruction to Instruction 4.160 (Conspiracy).