

**WITHDRAWN CASE AGAINST CODEFENDANT;
WITHDRAWN CHARGES AGAINST DEFENDANT**

I. WITHDRAWN CASE AGAINST CODEFENDANT

Members of the jury, I am withdrawing from your consideration the case against [codefendant]. That case is no longer before you for decision. You are to deliberate in this case only concerning the charge(s) pending against [remaining defendant].

You are not to speculate about why the case against [codefendant] has been withdrawn from your consideration, and it is not to influence your verdict(s) concerning [remaining defendant] in any way. You are not to consider it in any way or discuss it in your deliberations. Your responsibility is to decide the charges that remain pending against [remaining defendant] based solely on the evidence.

This instruction may be given when a codefendant has entered a change of plea or has successfully moved for a required finding of not guilty and is therefore no longer in the case. *Commonwealth v. Pasciuti*, 12 Mass. App. Ct. 833, 839-846 & n.7 (1981) (proper even without request to advise jury not to speculate why case against codefendant has been withdrawn, and that it should not influence their verdict as to remaining codefendant, which should be based solely on evidence against him).

The parties may request and the judge should consider whether certain evidence should or must be stricken as a result of the withdrawal of a case against a co-defendant. See *Commonwealth v. Anolik*, 27 Mass. App. Ct. 701, 707-708 (1989).

Where the co-defendant is absent from the trial for another reason, like death, see *Commonwealth v. Mora*, 82 Mass. App. Ct. 575, 580-581 (2012), or failure to appear

after impanelment, see *Commonwealth v. Muckle*, 59 Mass. App. Ct. 631, 634-635 (2003), a neutral instruction informing the jury that the co-defendant was not present and that they should not speculate as to the reasons for that absence is proper.

II. WITHDRAWN CHARGES AGAINST DEFENDANT
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Members of the jury, I am withdrawing from your consideration the following charge(s) against the defendant: [withdrawn charge(s)].

(That charge is) (Those charges are) no longer before you for decision. You are to deliberate in this case only concerning the remaining charge(s), namely:

[remaining charges] .

You are not to speculate about why (one charge) (some charges) have been withdrawn from your consideration, and it is not to influence your verdict(s) on the remaining charge(s) in any way. You are not to consider it in any way or discuss it in your deliberations. Your responsibility is to decide the charge(s) that remain(s) based solely on the evidence.

This instruction may be given when a defendant has successfully obtained a required finding of not guilty as to one or more of multiple pending complaints. See, e.g., *Commonwealth v. Kalhauser*, 52 Mass. App. Ct. 339, 347 (2001); *Commonwealth v. Yelle*, 19 Mass. App. Ct. 465, 475 (1985) (“proper and advisable” to give instruction sua sponte).

The parties may request and the judge should consider whether certain evidence should or must be stricken as a result of the withdrawal of certain charges. See *Commonwealth*

v. Anolik, 27 Mass. App. Ct. 701, 707-708 (1989) (after granting a motion for required finding on some of the indictments, the trial judge instructed the jury to disregard any evidence that was not directly relevant to the indictments still on trial.)