

INFERENCES

An inference is a permissible deduction that you may make from evidence that you have accepted as believable. Inferences are things you do every day: little steps in reasoning, in which you take some known information, apply your experience in life to it, and then draw a conclusion.

You may draw an inference even if it is not necessary or inescapable, so long as it is reasonable and warranted by the evidence, and all the evidence and reasonable inferences in the case together prove the defendant's guilt beyond a reasonable doubt.

Commonwealth v. Corriveau, 396 Mass. 319, 340, 486 N.E.2d 29, 43 (1985); *Commonwealth v. Best*, 381 Mass. 472, 483, 411 N.E.2d 442, 449 (1980); *DeJoinville v. Commonwealth*, 381 Mass. 246, 253 n.13, 408 N.E.2d 1353, 1357 n.13 (1980); *Commonwealth v. Montecalvo*, 367 Mass. 46, 54-55, 323 N.E.2d 888, 893 (1975); *Commonwealth v. Loftis*, 361 Mass. 545, 551, 281 N.E.2d 258, 262 (1972); *Commonwealth v. Kelley*, 359 Mass. 77, 88, 268 N.E.2d 132, 140 (1971); *Commonwealth v. Doherty*, 137 Mass. 245, 247 (1884); *Commonwealth v. Settipane*, 5 Mass. App. Ct. 648, 651, 368 N.E.2d 1213, 1216 (1977). *Durring v. United States*, 328 F.2d 512, 515 (1st Cir.), cert. denied, 377 U.S. 1003 (1964). The first and third sentences of the model instruction, and the first supplemental instruction, are adapted from the charge in *Commonwealth v. Niziolek*, 380 Mass. 513, 404 N.E.2d 643 (1980), habeas corpus denied sub nom. *Niziolek v. Ashe*, 694 F.2d 282 (1st Cir. 1982), which the Supreme Judicial Court has called a "lucid and accurate general description of inferences and their proper role." 380 Mass. at 523, 404 N.E.2d at 649.

See also Instruction 2.240 (Direct and Circumstantial Evidence).

SUPPLEMENTAL INSTRUCTIONS

1. Example. Let me give you an example of an inference. If

your mailbox was empty when you left home this morning, and you find mail in it when you go home tonight, you may infer that the mailman delivered the mail. Now, obviously, you didn't see the mailman deliver the mail, but from the fact that it was empty this morning and is filled tonight, you can properly infer that the mailman came in the interim and delivered the mail. That is all that we mean by an inference.

It is proper to use an illustration to explain the concept of inference. *Commonwealth v. Shea*, 398 Mass. 264, 271, 496 N.E.2d 631, 635 (1986). Illustrations must avoid any similarity to the evidence in that case, *Commonwealth v. Vaughn*, 32 Mass. App. Ct. 435, 443, 590 N.E.2d 701, 706 (1992), and must not involve remote or speculative inferences, the piling of inference upon inference, or any suggestion that, if one is very good at deductive reasoning, only one conclusion is possible, *Commonwealth v. Gonzalez*, 28 Mass. App. Ct. 906, 907, 545 N.E.2d 1189, 1191-1192 (1989).

2. Alternate example. You draw such inferences every day. If

your son leaves your house in the morning with an umbrella, without saying anything, you can draw two conclusions: he thinks it's raining outside and he intends to go out in the rain. Those two conclusions are inferences about his knowledge and his intent. They are reasonable because you know that's what

such behavior indicates.

NOTES:

1. **Subsidiary facts need not be proved beyond reasonable doubt.** The defendant is not entitled to an instruction that the jury may draw an inference only if the Commonwealth has proved beyond a reasonable doubt the subsidiary facts on which it rests. *Commonwealth v. Lawrence*, 404 Mass. 378, 394, 536 N.E.2d 571, 581 (1989).

2. **Subsidiary inferences need not be proved beyond reasonable doubt.** There is no requirement that every inference must be proved beyond a reasonable doubt. *Commonwealth v. Ruggiero*, 32 Mass. App. Ct. 964, 966, 592 N.E.2d 753, 755 (1992); *Commonwealth v. Azar*, 32 Mass. App. Ct. 290, 309, 588 N.E.2d 1352, 1364 (1992). It appears that *Niziolek*, 380 Mass. at 522, 404 N.E.2d at 648, entitles the defense to an instruction that the jury may not draw an inference unless they are persuaded of the truth of the inference beyond a reasonable doubt only in the case of an inference that directly establishes an element of the crime, and not to subsidiary inferences in the chain of reasoning.

3. **“Two possible inferences.”** If the judge correctly charges on reasonable doubt and the burden of proof, the judge is not required to charge on request that if the evidence is susceptible of two reasonable interpretations, the jury must adopt that favoring the defendant. *Commonwealth v. Rhoades*, 379 Mass. 810, 822, 401 N.E.2d 342, 349-350 (1980). Such a charge might be open to objection that it suggests that the Commonwealth could prevail on a standard less than proof beyond a reasonable doubt. See *Id.*, 379 Mass. at 822 n.11, 401 N.E.2d at 350 n.11. Where the judge correctly charges on reasonable doubt, the judge is not required to charge on request that if the evidence sustains either of two inconsistent propositions, neither has been established. *Commonwealth v. Basch*, 386 Mass. 620, 625-626, 437 N.E.2d 200, 205 (1982).