

Separate Consideration of Charges - Single Defendant

Separate charges are preferred. You must consider each charge separately, evaluating the evidence relating to that particular charge to decide whether you are satisfied beyond reasonable doubt that the prosecution has proved its essential elements. You will return separate verdicts for each charge.

The evidence in relation to the separate offences is different, and so your verdicts need not be the same.

Where the elements of the offences are different, add or substitute for this last sentence:

The elements of the offences are different, and so your verdicts need not be the same.

Where an acquittal on one count would appear to require an acquittal on another (as, eg, where the acquittal necessarily reflects adversely on the reliability of a complainant whose evidence is central to the other count), the jury should be told so.¹ Particularly in sexual cases, it will often be crucial to tell the jury that any doubt with respect to the complainant's evidence in connection with one count should be considered when assessing her overall credibility and, therefore, when deciding whether her evidence is reliable in relation to other counts. An appropriate warning may well be along these lines:

If you have a reasonable doubt concerning the truthfulness or reliability of the complainant's evidence in relation to one or more counts, whether by reference to her demeanour or for any other reasons, that *must* be taken into account in assessing the truthfulness or reliability of her evidence generally.²

¹ *Scott* (1996) 131 FLR 137, 148; *Patton* [1998] 1 VR 7, 24-25.

² *Markuleski* [2001] NSW CCA 290; cf *Doggett* [2001] HCA 46 [55]; *M* [2001] QCA 458 [17]-[22]; *S* [2002] QCA 167 [8], [29].

The *Markuleski* direction draws attention to the point that the credibility of the complainant is a separate question from that of whether or not the defendant should be convicted on each separate count. Finding that the complainant is a credible witness generally should only lead to conviction if the evidence given by that complainant is sufficient to allow the jury to find beyond reasonable doubt that each offence was committed. It may be, that while a witness is regarded as generally credible, there are features of the totality of the evidence on a particular count which could rationally lead to a rejection of the witness' evidence on that count. It may also be possible, for example, for a jury to find that a complainant was a credible witness but also come to the view that the account given of a particular incident, while honest, did not amount to reliable evidence that the offence charged had actually been committed. One way in which considerations of this kind might be communicated to a jury is as follows³:

Your general assessment of the complainant as a witness will be relevant to all counts, but you will have to consider her evidence in respect of each count when considering that count.

Now, it may occur in respect of one of the counts, that for some reason you are not sufficiently confident of her evidence to convict in respect of that count. A situation may arise where, in relation to a particular count, you get to the point where, although you're inclined to think she's probably right, you have some reasonable doubt about an element or elements of that particular offence.

Now, if that occurs, of course, you find the defendant not guilty in relation to that count. That does not necessarily mean you cannot convict of any other count. You have to consider why you have some reasonable doubt about that part of her evidence and consider whether it affects the way you assess the rest of her evidence, that is whether your doubt about that aspect of her evidence causes you also to have a reasonable doubt about the part of her evidence relevant to any other count.

³ See *R v LR* [2006] 1 Qd R 435 at [67] ; *R v JK* [2005] QCA 307 at [19], [28], also *R v JL* [2007] QCA 131.