

DEFENDANT'S REQUESTS TO CHARGE #1

[Odor of alcohol]

I charge you that the mere fact that the Defendant had an odor of alcohol on his breath is not sufficient, in and of itself, to give rise to an inference that he was impaired.

Clay v. State, 193 Ga. App. 377, 379, 387 S.E.2d 644, 646 (1989).

DEFENDANT'S REQUESTS TO CHARGE #2

[Weight of witness testimony and sufficiency of the evidence]

I charge you that while a witness may give an opinion as to whether a person was under the influence of alcohol to the extent that it was less safe for him to drive, that opinion must be supported by a sufficient evidentiary foundation. The sufficiency of the facts supporting that opinion must be proven to you beyond a reasonable doubt before you may afford any weight to the opinion in your deliberations.

Davis v. State, 206 Ga. App. 647, 387 S.E.2d 644 (1992).
Clay v. State, 193 Ga. App. 377, 426 S.E.2d 267 (1989).

DEFENDANT'S REQUESTS TO CHARGE #3

[Consumption of alcohol is not a violation of law]

I charge you that it is not a violation of the law of this state simply to consume alcohol and thereafter operate a motor vehicle.

O.C.G.A. § 40-6-391.

Cargile v. State, 244 Ga. 871, 262 S.E.2d 87 (1979).

Smitherman v. State, 157 Ga. App. 526, 278 S.E.2d 107 (1981).

DEFENDANT'S REQUESTS TO CHARGE #4

[Witness testimony: jury not bound]

While a witness may give an opinion as to whether a person was under the influence of alcohol to the extent that it was less safe for him to drive, that opinion, if supported by sufficient evidentiary foundation, does not establish any fact as a matter of law and you the jury are not bound by that opinion.

Cameron v. Moore, 199 Ga. App. 800, 802, 406 S.E.2d 133, 135 (1991).
Mills v. State, 71 Ga. App. 353, 356, 30 S.E.2d 824, 827-28 (1944).

DEFENDANT'S REQUESTS TO CHARGE #5

[Circumstantial evidence; sufficiency of evidence]

I charge you that O.C.G.A. § 40-6-391(a) provides in pertinent part that “[a] person shall not drive or be in actual physical control of any moving vehicle while [under] the influence of alcohol.” Although driving a vehicle while intoxicated may be shown by circumstantial evidence, I charge you that to warrant a conviction on circumstantial evidence, the proved facts shall not only be consistent with the hypothesis of guilt, but must exclude every other reasonable hypothesis except that of the guilt of the accused.

O.C.G.A. § 24-4-6.

Frye v. State, 189 Ga. App. 181, 375 S.E.2d 101 (1988).

State v. Hill, 178 Ga. App. 669, 344 S.E.2d 491 (1986).

DEFENDANT'S REQUESTS TO CHARGE #6

[Defendant's intent]

This defendant will not be presumed to have acted with criminal intent, but you may find such intention, or the absence of it, upon a consideration of words, conduct, demeanor, motive, and other circumstances connected with the act for which the accused is being prosecuted.

O.C.G.A. § 16-2-6.

DEFENDANT'S REQUESTS TO CHARGE #7

[State must prove more than mere consumption of alcohol]

I charge you that the term "under the influence of alcohol to the extent that it was less safe for the person to drive" as used in the language of O.C.G.A. §40-6-391(a)(1) means that the person was under the influence of alcohol to the extent that it was less safe for the person to operate a motor vehicle than if he were not so affected. In other words, the State must prove to you beyond a reasonable doubt that the driver had been so affected by the intoxicant that it adversely affected his operation of the motor vehicle at the time of his arrest. This is the level of proof which is required for a conviction. It is not enough that the evidence merely shows the defendant drank some alcoholic beverage and was affected to any extent whatsoever.

Anderson v. State, 226 Ga. 35, 37, 172 S.E.2d 424, 426 (1970).

Harper v. State, 91 Ga. App. 456, 458-460, 86 S.E.2d 7, 9-10 (1955).

DEFENDANT'S REQUESTS TO CHARGE #8

[Defendant not required to testify]

The Defendant in a criminal case is under no duty to present any evidence tending to prove his innocence and is not required to take the stand and testify in the case. If the Defendant elects not to testify, no inference, hurtful or harmful or adverse to the Defendant shall be drawn by the jury, nor shall such fact be held against the Defendant in any way.

Lakeside v. Oregon, 435 U.S. 333 (1978)

Rowe v. State, 162 Ga. App. 742 (1982)

Suggested Pattern Jury Instructions

DEFENDANT'S REQUESTS TO CHARGE #9

[Proof beyond a reasonable doubt]

The facts necessary to establish probable cause for arrest are much less than those required to prove guilt beyond a reasonable doubt at trial.

Draper v. United States, 358 U.S. 307 (1959).

Jones v. State, 177 Ga. App. 489, 339 S.E.2d 766 (1986).

McFarland v. State, 137 Ga. App. 354, 223 S.E.2d 739 (1976).

Hornsby v. State, 124 Ga. App. 724, 185 S.E.2d 623 (1971).

DEFENDANT'S REQUESTS TO CHARGE #10

Before you members of this Jury can convict the accused of any degree of the crime charges, each of you must be satisfied of (his/her) guilt beyond a reasonable doubt. If you are not, then the accused must be acquitted, that is to say, not guilty.

The rule which requires proof of guilt beyond a reasonable doubt is applicable to every single element necessary to constitute the offense charged. So that if you are not satisfied beyond a reasonable doubt on any essential element, you must find the accused not guilty. A reasonable doubt is a doubt for which you can give a reason. The burden is always on the State to remove every reasonable doubt from your mind. In such a case as this, the burden on the State never shifts to the accused.

Suggested Pattern Jury Charges

Chalker v. State, 99 Ga.App. 278 (1959)

DEFENDANT'S REQUESTS TO CHARGE #11

I charge you that a reasonable doubt is a doubt that grows out of the evidence or a conflict in the evidence, or lack of evidence.

Ellis v. State, 166 Ga. 115, 120 (1928)

DEFENDANT'S REQUESTS TO CHARGE #12

Ladies and Gentlemen, you are not authorized to convict the Defendant based upon simply an honest belief of guilt; but rather for a conviction, you must determine that there is no reasonable doubt of guilt.

Ward v. State, 271 Ga.62 (1999)

DEFENDANT'S REQUESTS TO CHARGE #13

If you do not believe that the Defendant is guilty of these offenses, or if you have any reasonable doubt as to the Defendant's guilt, then it would be your duty to acquit the Defendant, in which event the form of your verdict would be " We the Jury find the Defendant not guilty."

Suggested Pattern Jury Charges

DEFENDANT'S REQUESTS TO CHARGE #14

[Credibility of witnesses]

You must determine the credibility or believability of the witnesses. It is for you to determine what witness or witnesses you will believe and which witness or witnesses you will not believe, if there are some you do not believe.

In passing upon their credibility, you may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their interest or lack of interest, their means and opportunity for knowing the facts which they testify about, the nature of the facts which they testify about, the probability or improbability of their testimony, and all of the occurrences which they testify about. You may also consider their personal credibility insofar as it may legitimately appear from the trial of this case.

Suggested Pattern Jury Instructions, Vol. II: Criminal Cases, 2d ed., (1991).

DEFENDANT'S REQUESTS TO CHARGE #15

[Conflicts in testimony]

If upon consideration of the evidence in this case, you find that there is a conflict in the testimony of the witnesses or a conflict between a witness or witnesses, it is your duty to settle this conflict, if you can, without believing that any witness made a false statement. If you cannot do this, then it becomes your duty to believe that witness or those witnesses you think best entitled to believe.

It is for you alone to determine what testimony you will believe and what testimony you will not believe.

O.C.G.A. §§ 24-4-4; 24-9-80.

Suggested Pattern Jury Instructions, Vol. II: Criminal Cases, 2d ed., (1991).

DEFENDANT'S REQUESTS TO CHARGE #16

[Prior inconsistent statements]

Should you find that any witness, prior to the witness's testimony in this case from the witness stand, has made any statement inconsistent with that witness's testimony from the witness stand in this case, and that such prior inconsistent statement is material to the case and the witness's testimony, then you are authorized to consider that prior statement not only for purposes of impeachment, but also as substantive evidence in the case.

Gibbons v. State, 248 Ga. 858, 862, 286 S.E.2d 717, 721 (1982).
Suggested Pattern Jury Instructions, Vol. II: Criminal Cases, 2d ed., (1991).

DEFENDANT'S REQUESTS TO CHARGE #17

[Bare Suspicion or grave suspicion]

Facts and circumstances, which merely place upon the defendant a grave suspicion of the crime charged, or which merely raise a speculation or conjecture of the defendant's guilt, are not sufficient to authorize a conviction of the defendant.

Suggested Pattern Jury Instructions, Vol. II: Criminal Cases, 2d ed., (1991).

DEFENDANT'S REQUESTS TO CHARGE #18

[Field Sobriety Evaluations are Voluntary]

Field sobriety evaluations are voluntary and no person may be compelled to submit to such tests.

Ga. Const. Art. 1, Sec. 1, Para. XVI.

Keenan v. State, 263 Ga. 569, 436 S.E.2d 475 (1993).

Padgett v. State, 230 Ga. App. 659, 498 S.E.2d 84 (1998).

Montgomery v. State, 174 Ga. App. 95, 329 S.E.2d 166 (1985).

DEFENDANT'S REQUESTS TO CHARGE #19

In Georgia, a person suspected of a crime has an absolute right to refuse to perform any act designed to incriminate himself.

XVI

Georgia Constitution, Article I, Section 1, Paragraph

Calhoun v. State, 144 Ga. 679

Creamer v. State, 229 Ga. 511

DEFENDANT'S REQUESTS TO CHARGE #20

In Georgia, a person cannot be compelled to perform an act designed to incriminate himself.

XVI

Georgia Constitution, Article I, Section 1, Paragraph

Calhoun v. State, 144 Ga. 679

Creamer v. State, 229 Ga. 511

DEFENDANT'S REQUESTS TO CHARGE #21

[Reasonable Doubt; Presumption]

This defendant is presumed to be innocent until proven guilty. A defendant enters upon the trial of case with a presumption of innocence in his favor. This presumption of innocence remains with the defendant until it is overcome by the state with evidence that is sufficient to convince you beyond a reasonable doubt that the defendant is guilty of the offense or the offenses charged. No person shall be convicted of any crime unless and until each element of the crime is proven beyond a reasonable doubt. The burden of proof rests upon the state to prove every element of the crimes charged beyond a reasonable doubt.

There is no burden of proof whatsoever on the defendant and the burden never shifts to the defendant to prove his innocence. A reasonable doubt means just what it says. It is the doubt of a fair-minded, impartial juror, honestly seeking the truth. It is a doubt raised upon common sense and reason. It is a doubt for which a reason can be given, arising from a consideration of the evidence, a lack of evidence, a conflict in the evidence, or a combination of these. After you consider all the facts and circumstances of this case, if your minds are wavering, unsettled, unsatisfied, then that is a doubt of the law and you should acquit the defendant. If the state fails to prove the defendant's guilt beyond a reasonable doubt, it is your duty to acquit him.

Baldwin v. State, 264 Ga. 664, 449 S.E.2d 853 (1994).

DEFENDANT'S REQUESTS TO CHARGE #22

[Right to refuse state-administered breath test]

The Georgia Implied Consent Statute grants a right to a defendant to refuse to take a state-administered breath test.

Keenan v. State, 263 Ga. 569 (1993)

State v. Leviner, 213 Ga.App. 99 (1994)

DEFENDANT'S REQUESTS TO CHARGE #23

[Refusal does not permit inference of impaired driving ability]

I charge you that the defendant's refusal to take the state-administered breath test may be considered as positive evidence creating an inference that the test would show the presence of alcohol. However, the law does not allow you to infer from this refusal that the alcohol impaired his driving.

Bravo v. State, 249 Ga.App. 433 (2001)

Baird v. State, 260 Ga.App. 661 (2003)

White v. State, 233 Ga.App.276 (1998)

DEFENDANT'S REQUESTS TO CHARGE #24

[Refusal insufficient alone to convict]

Although the defendant's refusal to submit to a state-administered breath test is admissible as positive evidence creating an inference that the test would show the presence of alcohol, this evidence, alone, is insufficient to sustain a conviction of driving under the influence of alcohol.

(1998) Brinson v. State, 232 Ga.App. 706, 503 S.E.2d 599

DEFENDANT'S REQUESTS TO CHARGE #25

DEFENDANT'S REQUESTS TO CHARGE #26

[Driving under the influence of alcohol: the test]

It shall be unlawful for any person while under the influence of alcohol to drive or be in actual physical control of any moving vehicle anywhere with this state. A driver or operator of a motor vehicle is under the influence of alcohol when the person is affected by alcohol to the extent that is less safe for the person to drive than it would be if the person were not affected by alcohol.

In deciding this issue, you may consider anything in the evidence you find relevant in deciding whether defendant was a less safe driver. Specifically, as to consumption of alcohol you may consider, among other factors, the smell or lack of smell of alcoholic beverages on defendant's breath and/or person and whether any test indicated the presence of alcoholic beverages on defendant's system. As to whether the defendant was less safe to drive, you may consider factors you deem relevant, including but not limited to, the actual manner of driving the motor vehicle; the defendant's control of his mental and/or physical abilities; the physical condition of the defendant; and any expert testimony. Merely showing that defendant had been drinking or that there was the smell of alcohol on defendant's breath or person, without proof of the manner of driving or ability to drive, is insufficient to prove the defendant was guilty of driving under the influence of alcohol.

O.C.G.A., §40-6-391

Turner v. State, 95 Ga.App. (1957)

Park v. State, 220 Ga. App. 215 (1996)

DEFENDANT'S REQUESTS TO CHARGE #27

[State has obligation to negate every other reasonable hypothesis except that of the guilt of Defendant]

To warrant a conviction on circumstantial evidence, the proved facts shall not only be consistent with the hypothesis of guilt, but shall exclude every other reasonable hypothesis save that of the guilt of the accused. The burden is on the State to present evidence that, beyond a reasonable doubt, excludes every other reasonable hypothesis except that of the guilt of the Defendant.

O.C.G.A. § 24-4-6

Cornish v. State, 187 Ga. App. 140, 142, 369 S.E.2d 515 (1988)

Krull v. State, 211 Ga. App. 37, 438 S.E.2d 152 (1993)