

Defendant Not Testifying

The fact that the defendant did not testify is not a factor from which any inference unfavorable to the defendant may be drawn.¹

1. CPL 300.10(2). The statute specifies that the charge must be given “[u]pon request of a defendant who did not testify in his own behalf, but not otherwise.” Appellate courts have cautioned that this statutory charge should be given only upon the defendant's request, and when given, the charge should be limited to the statutory language. *People v. Koberstein*, 66 N.Y.2d 989 (1985); *People v. Vereen*, 45 N.Y.2d 856 (1978); *People v. Cooper*, 300 A.D.2d 4 (1st Dept. 2002); *People v. Clearwater*, 269 A.D.2d 462 (2nd Dept. 2000); *People v. Stinson*, 186 A.D.2d 23 (1st Dept. 1992); *People v. Morton*, 174 A.D.2d 1019 (4th Dept. 1991). See also *People v. Rogers*, 48 N.Y.2d 167, 174 n 3 (1979) (“it is unnecessary and improper to qualify the charge with words indicating that it is given at defendant's request”).