## 3.5 Reasonable Doubt—Defined

 Proof beyond a reasonable doubt is proof that leaves you firmly convinced the defendant is guilty. It is not required that the government prove guilt beyond all possible doubt.

 A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

 If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant guilty.

**Comment**

The Ninth Circuit has repeatedly upheld this instruction. *See*, *e.g.*,*United States v. Velazquez*, 1 F.4th 1132, 1136 (9th Cir. 2021) (upholding model instruction but remanding due to prosecutor’s misleading comments which compared reasonable doubt standard to making casual, everyday decisions); *United States v. Mikhel*, 889 F.3d 1003, 1033 (9th Cir. 2018) (rejecting defendant’s argument that jury can use speculation to find reasonable doubt in favor of accused); *see also Victor v. Nebraska*, 511 U.S. at 17 (1994) (“doubt that does not rise above pure speculation is not reasonable”). In addition, the Ninth Circuit has expressly approved a reasonable doubt instruction that informs the jury that the jury must be “firmly convinced” of the defendant’s guilt. *United States v. Velasquez*, 980 F.2d 1275, 1278 (9th Cir.1992). *Accord United States v. Soto-Zuniga*, 837 F.3d 992, 1004 (9th Cir.2016) (rejecting challenge to this instruction and noting that Ninth Circuit has repeatedly upheld use of this instruction). In *United States v. Gomez*, 725 F.3d 1121, 1131 (9th Cir.2013), the Ninth Circuit approved the conditional language in this model instruction regarding a jury’s duty in a criminal case. Nonetheless, “[t]he Constitution does not require that any particular form of words be used in advising the jury of the government’s burden of proof.”  *Id.* (citing *United States v. Artero*, 121 F.3d 1256, 1258 (9th Cir.1997)).

 In *Victor v. Nebraska*, 511 U.S. 1, 5 (1994), the Court held that any reasonable doubt instruction must (1) convey to the jury that it must consider only the evidence, and (2) properly state the government’s burden of proof. *See also Gibson v. Ortiz*, 387 F.3d 812, 820 (9th Cir. 2004), *overruled on other grounds by Byrd v. Lewis*, 566 F.3d 855 (9th Cir.2009), and *United States v. Ramirez*, 136 F.3d 1209, 1213-14 (9th Cir.1998).

 Care should be taken to ensure that the language used in a verdict form does not require the jury to find the defendant not guilty beyond a reasonable doubt to acquit. *See United*

*States v. Espino*, 892 F.3d 1048, 1053 (9th Cir. 2018).

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