§ 300.50 Court's charge; submission of lesser included offenses.

1. In submitting a count of an indictment to the jury, the court in its discretion may, in addition to submitting the greatest offense which it is required to submit, submit in the alternative any lesser included offense if there is a reasonable view of the evidence which would support a finding that the defendant committed such lesser offense but did not commit the greater. If there is no reasonable view of the evidence which would support such a finding, the court may not submit such lesser offense. Any error respecting such submission, however, is waived by the defendant unless he objects thereto before the jury retires to deliberate.

2. If the court is authorized by subdivision one to submit a lesser included offense and is requested by either party to do so, it must do so. In the absence of such a request, the court's failure to submit such offense does not constitute error.

3. The principles prescribed in subdivisions one and two apply equally where the lesser included offense is specifically charged in another count of the indictment.

4. Whenever the court submits two or more offenses in the alternative pursuant to this section, it must instruct the jury that it may render a verdict of guilty with respect to any one of such offenses, depending upon its findings of fact, but that it may not render a verdict of guilty with respect to more than one. A verdict of guilty of any such offense is not deemed an acquittal of any lesser offense submitted, but is deemed an acquittal of every greater offense submitted.

5. Where the indictment charges a crime committed by the defendant while he was under the age of sixteen but a lesser included offense would be one for which the defendant is not criminally responsible by reason of infancy, such lessor included offense may nevertheless be submitted to the jury in the same manner as an offense for which the defendant would be criminally responsible notwithstanding the fact that a verdict of guilty would not result in a criminal conviction.

6. For purposes of this section, the offenses of rape in the third degree as defined in the former subdivision three or subdivisions seven, eight and nine of section 130.25 of the penal law and a crime formerly defined in subdivision three of section 130.40 of the penal law, are not lesser included offenses of rape in the first degree, a crime formerly defined in section 130.50 of the penal law, or any other offense. Notwithstanding the foregoing, any such offense may be submitted as a lesser included offense of the applicable first degree offense when (i) there is a reasonable view of the evidence which would support a finding that the defendant committed such lesser offense but did not commit the greater offense, and (ii) both parties consent to its submission.