

Utah Model Jury Instruction Criminal

CR404 Eyewitnesses Identification [*Long instruction*].

An important question in this case is the identification of the defendant as the person who committed the crime. The prosecution has the burden of proving beyond a reasonable doubt that the crime was committed AND that the defendant was the person who committed the crime. If you are not convinced beyond a reasonable doubt that the defendant is the person who committed the crime, you must find the defendant not guilty.

The testimony you have heard concerning identification represents the witness's expression of (his) (her) belief or impression. You don't have to believe that the identification witness was lying or not sincere to find the defendant not guilty. It is enough that you conclude that the witness was mistaken in (his) (her) belief or impression.

Many factors affect the accuracy of identification. In considering whether the prosecution has proven beyond a reasonable doubt that the defendant is the person who committed the crime, you should consider the following:

(1) Did the witness have an adequate opportunity to observe the person who committed the crime? In answering this question, you should consider:

- (a) the length of time the witness observed that person;
- (b) the distance between the witness and that person;
- (c) the extent to which that person's features were visible and undisguised;
- (d) the lighting conditions at the time of observation;
- (e) whether there were any distractions occurring during the observation;
- (f) any other circumstance that affected the witness's opportunity to observe the person committing the crime.

(2) Did the witness have the capacity to observe the person committing the crime? In answering this question, you should consider whether the capacity of the witness was impaired by:

- (a) stress or fright at the time of observation;
- (b) personal motivations, biases or prejudices;
- (c) uncorrected visual defects;
- (d) fatigue or injury;
- (e) drugs or alcohol.

[You should also consider whether the witness is of a different race than the person identified. Identification by a person of a different race may be less reliable than identification by a person of the same race.]

(3) Even if the witness had adequate opportunity and capacity to observe the person who committed the crime, the witness may not have focused on that person unless the witness was aware that a crime was being committed. In that instance you should consider whether the witness was sufficiently attentive to that person at the time the crime occurred. In answering this question you should consider whether the witness knew that a crime was taking place during the time (he) (she) observed the person's actions.

(4) Was the witness's identification of the defendant completely the product of the witness's own memory? In answering this question, you should consider:

- (a) the length of time that passed between the witness's original observation and the time the witness identified the defendant;
- (b) the witness's mental capacity and state of mind at the time of the identification;
- (c) the exposure of the witness to opinions, to photographs, or to any other information or influence that may have affected the independence of the identification of the defendant by the witness;
- [(d) any instances when the witness either identified or failed to identify the defendant;]
- [(e) any instances when the witness gave a description of the person that was either consistent or inconsistent with the defendant's appearance;]
- (f) the circumstances under which the defendant was presented to the witness for identification.

[You may take into account that an identification made by picking the defendant from a group of similar individuals is generally more reliable than an identification made from the defendant being

presented alone to the witness.]

[You may also take into account that identifications made from seeing the person are generally more reliable than identifications made from a photograph.]

[A witness's level of confidence in (his) (her) identification of the perpetrator is one of many factors that you may consider in evaluating whether the witness correctly identified the perpetrator. However, a witness who is confident that (he) (she) correctly identified the perpetrator may be mistaken.]

Again, I emphasize that it is the prosecution's burden to prove beyond a reasonable doubt that the defendant is the person who committed the crime.

References

State v. Guzman, 2006 UT 12, ¶¶15-23, 133 P.3d 363.

State v. Long, 721 P.2d 483, 487-95 (Utah 1986).

R. Sanders, Helping the Jury Evaluate Eyewitness Testimony: The Need for Additional Safeguards, 12 Am. J. Crim. L. 189, 222-24 (1984).

Committee Notes

Bracketed portions of the instruction should be used when appropriate to the facts of the case. Also, this instruction should be modified if the identification involves someone other than the defendant, or where it would otherwise be confusing, such as where the defendant is not charged with directly committing the offense, but as a party.