

3.08 CIRCUMSTANCES OF IDENTIFICATION

You have heard testimony of an identification of a person. Identification testimony is an expression of belief or impression by the witness. You should consider whether, or to what extent, the witness had the ability and the opportunity to observe the person at the time of the offense and to make a reliable identification later. You should also consider the circumstances under which the witness later made the identification.

The government has the burden of proving beyond a reasonable doubt that the defendant was the person who committed the crime charged.

Committee Comment

A specific instruction on witness identification must be given when identification is in issue. *United States v. Anderson*, 730 F.2d 1254, 1257-58 (7th Cir. 1984). The present instruction is extracted from the recommended instruction in *United States v. Telfaire*, 469 F.2d 552 (D.C. Cir. 1972), and incorporates the standard credibility instructions while attempting to eliminate some of the confusion of *Telfaire*. The Committee believes that elaboration on the specific circumstances surrounding the identification is best left to argument.