

REVISED ARIZONA JURY INSTRUCTIONS – CRIMINAL, 3D

SOURCE: RAJI (Criminal) No. 38 (1996); *State v. Tucker*, 157 Ariz. 433, 447, 759 P.2d 579, 593 (1988); *State v. Hunter*, 136 Ariz. 45, 50, 664 P.2d 195, 220 (1983).

COMMENT: The court's failure to instruct the jury on motive did not deny defendant a fair trial. *State v. Tucker*, 157 Ariz. 433, 447, 759 P.2d 579, 593 (1986). The presence or absence of motive is relevant in a murder prosecution and a proper motive instruction should be given upon request. *Id.*

Motive is not an element of the crime of murder; nonetheless, in a murder prosecution, the presence or absence of motive is relevant. *State v. Hunter*, 136 Ariz. 45, 50, 664 P.2d 195, 200 (1983).

Standard Criminal 39 – Identification

The State must prove beyond a reasonable doubt that the in-court identification of the defendant at this trial is reliable. In determining whether this in-court identification is reliable you may consider such things as:

1. the witness' opportunity to view at the time of the crime;
2. the witness' degree of attention at the time of the crime;
3. the accuracy of any descriptions the witness made prior to the pretrial identification;
4. the witness' level of certainty at the time of the pretrial identification;
5. the time between the crime and the pretrial identification;
6. any other factor that affects the reliability of the identification.

If you determine that the in-court identification of the defendant at this trial is not reliable, then you must not consider that identification.

SOURCE: RAJI (Criminal) No. 39 (1996); *State v. Dessureault*, 104 Ariz. 380, 381-85 453 P.2d 951, 952-56 (1969), *cert. denied*, 397 U.S. 965 (1970). *See also*; *Manson v. Brathwaite*, 432 U.S. 98 (1977); *Neil v. Biggers*, 409 U.S. 188 (1972).

USE NOTE: This instruction must be given, upon request, when the Court has concluded that pretrial identification procedures were unduly suggestive, but that the proposed in-court identification has been shown by clear and convincing evidence to be reliable and derived from an independent source. *State v. Dessureault*, 104 Ariz. at 384, 453 P.2d at 955.