



1. Preliminary and Trial Instructions
2. General Instructions
3. Vicarious Liability and Inchoate Crimes
4. Crimes Against Administration of Government
5. Crimes Against Life
6. Crimes Against Security of Person
7. Sex Crimes
8. Crimes Against Public Health, Safety and Welfare
9. Crimes Against Property
10. Criminal Writings, Financial Crimes, and Fraud

Judicial Home

Criminal Jury Instructions

[Criminal Jury Instructions Home](#)

2.6-4 Identification of Defendant

Revised to December 1, 2007

The state has the burden of proving beyond a reasonable doubt that the defendant was the perpetrator of the crime.

[<Include if appropriate:> The defendant denies that (he/she) is the person who was involved in the commission of the alleged offense(s).]

In this case, the state has presented evidence that an eyewitness identified the defendant in connection with the crime charged. Identification is a question of fact for you to decide, taking into consideration all the evidence that you have seen and heard in the course of the trial.

The identification of the defendant by a single witness as the one involved in the commission of a crime is, in and of itself, sufficient to justify a conviction of such a person, provided, of course, that you are satisfied beyond a reasonable doubt of the identity of the defendant as the one who committed the crime. In arriving at a determination as to the matter of identification, you should consider all the facts and circumstances that existed at the time of the observation of the perpetrator by each witness. In this regard, the reliability of each witness is of paramount importance, since identification testimony is an expression of belief or impression by the witness. Its value depends upon the opportunity and ability of the witness to observe the perpetrator at the time of the event and to make an accurate identification later. It is for you to decide how much weight to place upon such testimony.

Capacity and opportunity of the witness to observe the perpetrator¹

In appraising the identification of the defendant as the perpetrator by any witness, you should take into account whether the witness had adequate opportunity and ability to observe the perpetrator on the date in question. This will be affected by such considerations as the length of time available to make the observation; the distance between the witness and the perpetrator; the lighting conditions at the time of the offense; whether the witness had known or seen the person in the past; the history, if any, between them, including any degree of animosity; and whether anything distracted the attention of the witness during the incident. You should also consider the witness's physical and emotional condition at the time of the incident, and the witness's powers of observation in general.

[<Include if appropriate:> In general, a witness bases any identification on (his/her) sense of sight. But this is not necessarily so. An identification based on other senses, such as smell or the sound of the perpetrator's voice is just as valid.]

Circumstances of identification

Furthermore, you should consider the length of time that elapsed between the occurrence of the crime and the identification of the defendant by the witness. You may also consider the strength of the identification, including the witness's degree of certainty. Certainty, however, does not mean accuracy. You should also take into account the circumstances under which the witness first viewed and identified the defendant, the suggestibility, if any, of the procedure used in that viewing, any physical descriptions that the witness may have given to the police, and all the other factors which you find relating to reliability or lack of reliability of the identification of the defendant.

[<Include if appropriate:> You may also take into account that an identification made by picking the defendant out of a group of similar individuals is generally more reliable than one which results from the presentation of the defendant alone to the witness.]

[<Include if appropriate:>² The identification of the defendant by the witness, <insert name of

witness>, was the result of an identification procedure in which the individual conducting the procedure either indicated to the witness that a suspect was present in the procedure or failed to warn the witness that the perpetrator may or may not be in the procedure.

Indicating to a witness that a suspect is present in an identification procedure or failing to warn the witness that the perpetrator may or may not be in the procedure may increase the likelihood that the witness will select one of the individuals in the procedure even when the perpetrator is not present. Thus, such action on the part of the procedure administrator may increase the probability of a misidentification.

This information is not intended to direct you to give more or less weight to the eyewitness identification evidence offered by the state. It is your duty to determine what weight to give to that evidence. You may, however, take into account this information, as just explained to you, in making that determination.]

Consistency of identification

You may consider whether the witness at any time either failed to identify the defendant or made an identification that was inconsistent with the identification testified to at trial.

Credibility of witness

You will subject the testimony of any identification witness to the same standards of credibility that apply to all the witness. When assessing the credibility of the testimony as it relates to the issue of identification, keep in mind that it is not sufficient that the witness be free from doubt as to the correctness of the identification of the defendant; rather, you must be satisfied beyond a reasonable doubt of the accuracy of the identification of the defendant before you may find (him/her) guilty on any charge.

Conclusion

In short, you must consider the totality of the circumstances affecting the identification. Remember, the state has the burden to not only prove every element of the crime but also the identity of the defendant as the perpetrator of the crime. You must be satisfied beyond a reasonable doubt of the identity of the defendant as the one who committed the crime, or you must find the defendant not guilty. If you have a reasonable doubt as to the accuracy of the identification, you must find the defendant not guilty.

¹ In *United States v. Telfaire*, 469 F.2d 552 (D.C. Cir. 1972), the court proposed a model instruction which has been followed substantially by many jurisdictions. While Connecticut courts "have used the model *Telfaire* instruction as an aid in determining the adequacy of an instruction on eyewitness identification . . . we have never required that it be given verbatim in order to ensure that the jury is properly guided." (Citations omitted; internal quotation marks omitted.) *State v. Tatum*, 219 Conn. 721, 733-34 (1991). The *Telfaire* instruction has four components: 1) the capacity and opportunity of the witness to observe the offender; 2) the circumstances surrounding the subsequent identification; 3) whether the witness at any time either failed to identify the defendant or made an identification inconsistent with that made at trial; and 4) the credibility of the witness making the identification. This instruction complies with the substantive requirements of *Telfaire* in all respects, but should be modified according to the specific facts of the case and the particular claims of the defendant regarding the identification(s).

² *State v. Ledbetter*, 275 Conn. 534 (2005), requires specific instructions on identification procedures under certain circumstances. See discussion of *Ledbetter* below.

Commentary

A defendant who raises the defense of mistaken identity is entitled to an instruction. *State v. Whipper*, 258 Conn. 229, 285 (2001), overruled on other grounds, *State v. Cruz*, 269 Conn. 97 (2004) ("trial court properly charged the jury that the state had to prove beyond a reasonable doubt that the defendant had committed the offenses charged and that the jury should consider the defendant's defense of mistaken identity and the evidence he had submitted in support of that defense."); *State v. Dubose*, 75 Conn. App. 163, 172-73, cert. denied, 263 Conn. 909 (2002) (reviewing nearly identical

instruction).

"[A] trial court's refusal to give any special instruction whatsoever on the dangers inherent in eyewitness identification constitutes reversible error where the conviction of the defendant turns upon the testimony of eyewitnesses who were uncertain, unclear or inconsistent." (Internal quotation marks omitted.) *State v. Tatum*, supra, 219 Conn. 733 n.18; see also *State v. Cerilli*, 222 Conn. 556, 567 (1992); *State v. Taft*, 57 Conn. App. 19, 30 n.8 (2000), aff'd by 258 Conn. 412 (2001); *State v. Askew*, 44 Conn. App. 280, 287-90 (1997), rev'd on other grounds, 245 Conn. 351 (1998); *State v. Collins*, 38 Conn. App. 247, 254 n.6 (1995).

The fact that the defendant and the eyewitness are of different races does not entitle the defendant to a special instruction on cross-racial identification. *State v. Cerelli*, supra, 222 Conn. 571-72; *State v. Wiggins*, 74 Conn. App. 703, 708 (2003) (defendant could have raised the issue of the reliability of the identification in cross-examination).

Overly suggestive identification procedures -- the Ledbetter instruction

In a challenge to the standard identification procedures employed by law enforcement, the Supreme Court, in *State v. Ledbetter*, 275 Conn. 534 (2005), declined to adopt a per se rule that juries should be instructed that such identifications have a high potential for unreliability. It did conclude, however, that "an indication by the identification procedure administrator that a suspect is present in the procedure is an unnecessarily suggestive element of the process that should be considered by the trial court in its analysis. . . . [The Court] also [agreed] that the trial court, as part of its analysis, should consider whether the identification procedure administrator instructed the witness that the perpetrator may or may not be present in the procedure and should take into account the results of the research studies concerning that instruction." (Citations omitted.) *Id.*, 574-75. Consequently, the Court held that trial courts should instruct the jury as to the possible risk of misidentification "in those cases where the identification procedure administrator fails to provide such a warning, unless no significant risk of misidentification exists." *Id.*, 575.

Specifically, the court must give the instruction in those cases in which:

- 1) the state has offered eyewitness identification evidence;
- 2) that evidence resulted from an identification procedure; and
- 3) the administrator of that procedure failed to instruct the witness that the perpetrator may or may not be present in the procedure.

Note that the court "decline[d] to delineate all of the potential factual variations that might result in the trial court finding no significant risk of misidentification, [but noted] that one example would be where the defendant was known by the witness before the incident occurred. The trial court should make its determination of whether a significant risk of misidentification exists on the basis of the totality of the circumstances." *Id.*, 579 n.26.

[Civil Jury Instructions](#) | [Criminal Jury Instructions](#)

[Attorneys](#) | [Case Look-up](#) | [Courts](#) | [Directories](#) | [Educational Resources](#) | [E-Services](#) | [Español](#) | [FAQ's](#) | [Juror Information](#) | [Media](#) | [Opinions](#) | [Opportunities](#) | [Self-Help](#) | [Home](#)

[Common Legal Words](#) | [Contact Us](#) | [Site Map](#) | [Website Policies and Disclaimers](#)

Copyright © 2011, State of Connecticut Judicial Branch