

3.15 Circumstances Of Identification

When you weigh the identification testimony of a witness, you should consider all the facts and circumstances in evidence, including, but not limited to, the following:

- [1] The opportunity the witness had to view the offender at the time of the offense.
- [2] The witness's degree of attention at the time of the offense.
- [3] The witness's earlier description of the offender.
- [4] The level of certainty shown by the witness when confronting the defendant.
- [5] The length of time between the offense and the identification confrontation.

Committee Note

The Committee believes an instruction concerning particular types of evidence should not be given *unless* some special guidance from the judge would be useful. Earlier Editions of IPI-Criminal contained no separate instruction concerning circumstances of identification, although the Committee Note to Instruction 1.02 suggested that identification factors could be added to that instruction. This instruction added in the Fourth Edition represents a change of mind. The Committee now unanimously believes that eyewitness identification is a subject deserving of judicial comment. This view is in accord with jury instructions in the Seventh Circuit. See Instruction 3.06, Federal Jury Instructions of the Seventh Circuit (1980); see also *United States v. Hodges*, 515 F.2d 650 (7th Cir.1975).

This new instruction simply lists factors well-established by case law. *Manson v. Brathwaite*, 432 U.S. 98, 97 S.Ct. 2243, 53 L.Ed.2d 140 (1977); *People v. Manion*, 67 Ill.2d 564, 367 N.E.2d 1313, 10 Ill.Dec.547 (1977); *People v. Slim*, 127 Ill.2d 302, 537 N.E.2d 317, 130 Ill.Dec. 250 (1989). The Committee believes this instruction would serve the interests of justice by offering guidance in an area that contains complexities and pitfalls not readily apparent to some jurors.

Give this instruction when identification is an issue.

Give numbered paragraphs that are supported by the evidence. The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

The jury should be instructed on only the factors with any support in the evidence. Other factors should be omitted. Do not use “or” or “and” between the factors where more than one factor is used.

For an example of the use of this instruction, see Sample Set 27.02.