

IDENTIFICATION

One of the most important issues in this case is the identification of the defendant as the perpetrator of the crime. The State has the burden of proving identity beyond a reasonable doubt. It is not essential that the witness himself be free from doubt as to the correctness of his statement. However, you, the jury must be satisfied beyond a reasonable doubt of the accuracy of the identification of the defendant before you may convict him. If you are not convinced beyond a reasonable doubt that the defendant was the person who committed the crime, you must find the defendant not guilty.

Identification testimony is an expression of belief or impression by the witness. Its value depends on the opportunity the witness had to observe the person who committed the crime at the time of the crime and to make a reliable identification later.

In appraising the identification testimony of a witness, you should consider the following:

1. Are you convinced that the witness had the capacity and an adequate opportunity to observe the person who committed the crime?

Whether the witness had an adequate opportunity to observe at the time of the crime will be affected by such matters as how long or short a time was available, how far or close the witness was, how good were lighting conditions, and whether the witness had occasion to see or know the person in the past. [In general, a witness bases any identification he makes on his perception through the use of his senses. Usually the witness identifies someone by the sense of sight - but this is not necessarily so, and he may use other senses] *

2. Are you satisfied that the identification made by the witness after the crime was the product of his own recollection? You may take into account both the strength of the identification, and the circumstances under which the identification was made. If the identification by the witness may have been influenced by the circumstances under which the defendant was presented to him for identification, you should scrutinize the identification with great care. You may also consider the length of time that elapsed between the occurrence of the crime and the next opportunity of the witness to see defendant, as a factor bearing on the reliability of the identification.

[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 witnesses.]

[3. You may take into account any occasion in which the witness failed to make an identification of defendant, or made an identification that was inconsistent with his identification at trial.]

4. Finally, you must consider the credibility of each identification witness in the same way as any other witness, consider whether he is truthful, and consider whether he had the capacity and opportunity to make a reliable observation on the matter covered in his testimony.

I again emphasize the burden of proof on the State extends to every element of the crime charged, and this specifically includes the burden of proving beyond a reasonable doubt the identity of the defendant as the perpetrator of the crime with which he stands charged. If, after examining the testimony, you have a reasonable doubt as to the accuracy of the identification, you must find the defendant not guilty.

*Sentence in brackets ([]) to be used only if appropriate. Instructions to be inserted or modified as appropriate to the proof and contentions.

State v. Burke, 122 N.H. _____, _____ A.2d _____ (1982) held that when eyewitness identification is "essential to support a conviction," the Court "will view with grave concern the failure to give specific and detailed instructions on identification ... where identification of the defendant is based solely or substantially on eyewitness testimony." The Court went on to "suggest that the trial courts be guided by the instruction set forth in *U.S. v. Telfaire*, 469 F.2d 552, 558-59 (D.C. Cir. 1972) where applicable." The above instruction is virtually identical to the *Telfaire* instruction. The footnote is the original.