

Oklahoma Uniform Jury Instructions

Criminal

Chapter 9. Evidence

OUJI-CR 9-19 Evidence —Eyewitness Identifications

Eyewitness identifications are to be scrutinized with extreme care. The possibility of human error or mistake and the probable likeness or similarity of objects and persons are circumstances that you must consider in weighing testimony as to identity. You should carefully consider the factors that bear upon the credibility that you attach to the witness's testimony, such as: (1) whether the witness had an opportunity to observe the subject clearly; (2) whether the witness is positive in the identification; (3) whether the witness's identification is weakened by a prior failure to identify the subject; and, (4) whether the witness's testimony remained positive and unqualified after cross-examination; and (5) whether the witness' prior description of the person/thing was accurate.

The State must prove the identity of the defendant as the person who committed the crime charged beyond a reasonable doubt. If after examining all of the evidence, you have a reasonable doubt as to whether the defendant was the individual who committed the crime charged, you must find the defendant not guilty.

Notes on Use

This instruction should be given if an eyewitness identification is a critical element of the prosecution's case and there is a serious question concerning the reliability of the identification. *McDoulett v. State*, 685 P.2d 978, 980 (Okl. Cr. 1984).

Committee Comments

In *Mathieus v. State*, 1989 OK CR 47, 778 P.2d 491, the Oklahoma Court of Criminal Appeals held that a defendant was entitled to a cautionary instruction substantially similar to this instruction because the eyewitness did not have an opportunity to view the perpetrator and was not positive in the identification. Similarly, in *McDoulett v. State*, 1984 OK CR 81, 685 P.2d 978, the Court of Criminal Appeals ruled that the trial court committed reversible error by refusing to give a requested cautionary instruction, because the witness was not in a position to observe the assailant clearly and her prior description was inaccurate. In *Webb v. State*, 1987 OK CR 253, 746 P.2d 203, however, the Court of Criminal Appeals found that a cautionary instruction was not warranted because after applying the five factors listed in the instruction to the facts of that case, it concluded that the likelihood of misidentification was not substantial. See also *Pisano v. State*, 1981 OK CR 137, 636 P.2d 358

(cautionary instruction was unnecessary because 4 conditions for reliability of identification prevailed); *Hall v. State*, 1977 OK CR 193, ¶¶8–9, 565 P.2d 57, 60 (no necessity for instruction on unreliability of eyewitness testimony because identification appeared reliable); *Moreau v. State*, 1975 OK CR 14, ¶¶14–15, 530 P.2d 1061, 1066 (4 factors regarding reliability of identification were satisfied). The Court of Criminal Appeals stated in *McDoulett*, supra, 1984 OK CR 81, ¶12, 685 P.2d at 981, that the list of factors that the jury may wish to consider in evaluating the credibility of eyewitness identifications is not exclusive. For additional factors that may be appropriate, see 1 Edward J. Devitt et al., *Federal Jury Practice & Instructions* § 14.10 (4th ed. 1992).