

5.04 DIRECT AND CIRCUMSTANTIAL EVIDENCE

The Court instructs the jury that direct evidence is evidence, usually in the form of testimony from a witness, who actually saw, heard, or touched the subject of questioning. In other words, direct evidence may be described as the testimony of a person who has perceived the existence of a fact, sought to be proved or disproved, by means of his or her senses.

By contrast, circumstantial evidence is evidence which is not based on actual personal knowledge or observation of the facts in controversy, but of other facts from which deductions may be made, showing indirectly the facts sought to be proved. In other words, circumstantial evidence is evidence that, while not directly proving the existence of a fact, gives rise to a logical inference that such fact does exist. ¹

FOOTNOTE

¹ Black's Law Dictionary, 243, 460 (6th Ed. 1990); F. Cleckley, HANDBOOK ON EVIDENCE FOR WEST VIRGINIA LAWYERS, § 1-3(F)(3) (3rd Ed. 1994).

5.05 EYEWITNESS INSTRUCTION

The Court instructs the jury that one of the disputed issues in this case is the identification of the defendant as the person who committed the offense(s) charged in the indictment. The State of West Virginia has the burden of proving this issue beyond a reasonable doubt

In considering whether the State of West Virginia has proven beyond a reasonable doubt that the defendant was the person who committed the offense(s) charged in the indictment, you may consider the following with regard to an identification witness's testimony:

1. the witness's opportunity to observe the person(s) committing the crime, which includes the amount of time of the observation and the physical conditions such as lighting, distance, or obstructions present at the time of the observation;

2. the witness's degree of attention at the time of the observation, whether the witness was under stress, and whether the witness had occasion to see or know the person in the past;
3. whether the witness gave a description of the person after the crime and if so, the accuracy of such description and the length of time after the offense that the description was given; and
4. whether the witness made any subsequent identification of the person after the offense, the circumstances surrounding such subsequent identification, the witness's level of certainty at such subsequent identification, and the time between the offense and the subsequent identification.¹

FOOTNOTE

- ¹ This instruction is adapted from footnote 16 of State v. Watson, 173 W.Va. 553, 318 S.E.2d 603 (1984).

5.06 ACCOMPLICE INSTRUCTION

The court instructs the jury that a criminal conviction can be obtained upon the uncorroborated testimony of an accomplice, accessory or co-conspirator in the act alleged in this matter. However, the court further instructs the jury that such testimony should be viewed with great care and caution, if the testimony tends to inculcate the Defendant and shift responsibility away from the witness. ¹

FOOTNOTE

- ¹ State v. Humphreys, 128 W.Va. 370, 36 S.E.2d 469 (1945); State v. Spadafore, 159 W.Va. 236, 220 S.E.2d 655 (1975); State v. Vance, 164 W.Va. 216, 262 S.E.2d 423 (1980); State v. Hall, 172 W.Va. 138, 304 S.E.2d 43 (1983); State v. Satterfield, 193 W.Va. 503, 457 S.E.2d 440 (1990).