

## MAI 310.02 [2016 New] EYEWITNESS IDENTIFICATION TESTIMONY

(Approved April 2, 2015; Effective January 1, 2016)

Testimony has been introduced identifying [*name of defendant*] as the person observed at the time of the offense. It is up to you to decide whether the witness identification of the defendant is reliable and believable or whether it is based on a mistake.

In deciding the reliability and accuracy of the eyewitness identification testimony you should consider: [Insert applicable paragraphs. Omit bracket and material within the bracket.]

[1. Environmental Viewing Conditions.] That the conditions under which a witness observes an event can affect the witness' ability to identify a person. You should consider the distance between the witness and the person, the lighting conditions, and any other aspect of the viewing environment that could impair the witness' ability to view the event and identify the person.

[2. Duration.] The amount of time an eyewitness has to observe a person can affect the reliability of an identification. While there is no minimum time required to make an accurate identification, longer durations of exposure generally will result in a more accurate identification.

[3. Witness Attention.] Attention paid to one aspect of an event can decrease the amount of attention available for other aspects. You should consider what was within the witness' view and the focus of the witness' attention.

[4. Presence of a Weapon.] The visible presence of a weapon during an event can affect identification accuracy because a witness may focus their attention on the weapon instead of on the person. In considering this factor, you should take into account the duration of the crime because the longer the event, the more time the witness may have to adapt to the presence of the weapon and focus on other details.

[5. Witness Characteristics and Conditions.] There are a number of factors that can affect the witness' ability to perceive or remember. You should consider the witness' age, eyesight, and other conditions that may affect the witness' ability to perceive and remember(.) (, including any (stress,) (illness,) (injury,) (intoxication,) (impairment) or (fatigue)) of the witness.

[6. Level of Certainty.] You should consider the witness' level of certainty. Witnesses can and do make accurate identifications. However, a witness' level of certainty, standing alone, may not be a reliable indicator of the accuracy of the witness' identification.

[7. The Length of Time Between the Event and the Identification.] The length of time between the event and the later identification of the person can affect the reliability of the witness' identification. You should consider whether the length of time between the witness' observation of the person at the event and a later identification affected the reliability of the witness' identification.

[8. Prior Description.] You should consider the description provided by the witness after the event and before identifying the person.

[9. Cross-Racial Identification.] Some people have a greater difficulty in accurately identifying members of a different race. You should consider whether the fact that the witness and the person identified are not of the same race has affected the accuracy of the witness' identification. You should also consider whether there are other factors present in this case that overcome any such difficulty of identification.

[10. Out-of-Court Identification.] You should consider the circumstances under which the out-of-court identification was made and whether these circumstances affected a later in-court identification.

[a. Lineup.] You have heard testimony that the witness identified the person at a lineup. In determining the reliability of the lineup, you should consider the make-up of the lineup. A person should not stand out from other members of a lineup in a way that might lead the witness to select the person based on something more than his or her memory. It is up to you to determine whether the make-up of the lineup had any affect on the reliability of the witness' identification. In addition, you should consider the procedures used by law enforcement in conducting the lineup, including what was said or not said to the witness during the lineup and whether the lineup procedure affected the reliability of the witness' identification.

[b. Show Up.] You have heard testimony that the witness identified the person during a "show up." A "show up" is a procedure in which law enforcement presents an eyewitness with a single suspect for identification. While this procedure may be suggestive in nature, the benefits of a fresh memory may balance the risks of undue suggestion. In determining the reliability of the identification made at the "show up," you may consider factors, including the time elapsed after the witness last saw the person, what instructions were given to the witness during the procedure, and all other circumstances surrounding the "show up."

You may also consider any other factors that may have affected the accuracy of the witness' identification.

## Notes on Use [2016 New]

**(Approved April 2, 2015; Effective January 1, 2016)**

**1.** This instruction is new. The United States Supreme Court has approved the use of eyewitness testimony by relying on the safeguards built into the adversarial process to protect against the potential dangers of such evidence. *Perry v. New Hampshire*, 565 U.S. \_\_\_, 132 S.Ct. 716 (2012). The safeguards enunciated by the Court included the right to confront eyewitnesses, the right to effective assistance of counsel, and "eyewitness-specific jury instructions, which . . . warn the jury to take care in appraising identification evidence."

**2.** This instruction must be given when identification is an issue and the instruction is requested either by the State or by the defendant or on the Court's own motion. Select the applicable paragraphs and omit the brackets and material within the brackets. Do not include paragraphs not supported by the facts of the case. This instruction is not necessary in every case in which eyewitness testimony is presented. For instance, a general denial of guilt will not, by itself, make identification an issue in a case.