3.00
PARTICULAR TYPES OF EVIDENCE

INTRODUCTION

As a general proposition, the Committee disapproves of instructions which comment on particular types of evidence, *e.g.,* flight. We agree with those cases holding that

> "Courts are under a general obligation to avoid giving instructions which unduly emphasize one part of the evidence in a case, and are not required to give an instruction that would provide the jury with no more guidance than that available to them by application of common sense." *People v. McClellan*, 62 Ill.App.3d 590, 595, 378 N.E.2d 1221 (1st Dist.1978).

There are, however, certain exceptions to the general disapproval. This Chapter contains those exceptions. Each of the following instructions should be used only in cases where it is applicable.

Introduction Approved October 17, 2014

3.01
Date Of Offense Charged

The [(indictment) (information) (complaint)] states that the offense charged was committed [(on or about)] ____. If you find the offense charged was committed, the State is not required to prove that it was committed on the particular date charged.

Committee Note

Instruction and Committee Note Approved October 17, 2014

See People v. Vaughn, 390 Ill. 360, 61 N.E.2d 546 (1945); *People v. Bote*, 379 Ill. 245, 40 N.E.2d 55 (1942).

This instruction should be given only when there is a variance between the date alleged and the evidence, and all dates are within the period of limitations. It should not be given if the State has filed a bill of particulars stating the date of the crime.

The filing of a bill of particulars does not necessarily preclude the use of this instruction. Give this instruction whenever the time variance is immaterial. *See People v. Suter*, 292 Ill.App.3d 358, 685 N.E.2d 1023 (4th Dist. 1997).

Insert in the blank the date of the alleged offense.

Use applicable bracketed material.

3.02
Definition Of Circumstantial Evidence

Circumstantial evidence is the proof of facts or circumstances which give rise to a reasonable inference of other facts which tend to show the guilt or innocence of [(the) (a)] defendant. Circumstantial evidence should be considered by you together with all the other evidence in the case in arriving at your verdict.

Committee Note

Instruction and Committee Note Approved October 17, 2014

This instruction should not be given when all of the evidence is direct. *People v. Gardner*, 4 Ill.2d 232, 122 N.E.2d 578 (1954).

For an example of the use of this instruction, see Sample Sets 27.02, 27.05, 27.06, and 27.07.

3.03
Flight

Committee Note

Instruction and Committee Note Approved October 17, 2014

The Committee recommends that no instruction be given on this subject.

Although evidence of flight is a proper subject of argument, its probative value is questionable. *See Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963); *see also United States v. Jackson*, 572 F.2d 636 (7th Cir.1978). The use of flight instructions has frequently been found to constitute error. *See, e.g., People v. Henderson*, 39 Ill.App.3d 502, 348 N.E.2d 854 (3d Dist.1976) (Stouder, J., specially concurring) (collecting cases). For these reasons, the Committee believes that a flight instruction should not be given.

3.04
Motive

Committee Note
Instruction and Committee Note Approved October 17, 2014

The Committee recommends that no instruction be given on this subject.

Although motive or lack of motive is a proper subject of argument, it is not an element which must be proved by the State. An instruction which defines the word "motive" and then explains "its immateriality for a purpose other than one probative of intent, only creates confusion far greater than any clarification an instruction might accomplish." Federal Jury Instructions of the Seventh Circuit 23 (1980). No instruction should be given. *People v. Harrod*, 140 Ill.App.3d 96, 488 N.E.2d 316 (4th Dist.1986).

3.05
Separate Consideration For Each Defendant

You should give separate consideration to each defendant. Each is entitled to have his case decided on the evidence and the law which applies to him.

[Any evidence which was limited to [(one defendant) (some defendants)] should not be considered by you as to [(any) (the)] other defendant[s].]

Committee Note

Instruction and Committee Note Approved October 17, 2014

Give this instruction only when there is more than one defendant.

Give the second paragraph when appropriate.

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Set 27.03.

3.06-3.07
Statements By Defendant

You have before you evidence that [(the) (a)] defendant made [a] statement[s] relating to the offense[s] charged in the [(indictment) (information) (complaint)]. It is for you to determine [whether the defendant made the statement[s], and, if so,] what weight should be given to the statement[s]. In determining the weight to be given to a statement, you should consider all of the circumstances under which it was made.

Committee Note

Instruction and Committee Note Approved October 17, 2014

The bracketed phrase in the second sentence should be deleted only when the defendant admits making all the material statements attributed to him.

The Committee decided that whether a statement is an admission, confession, or false exculpatory statement is a legal conclusion that ought not to be communicated to the jury. This instruction avoids the complications that ensue when a judge characterizes a statement. *See People v. Horton*, 65 Ill.2d 413, 358 N.E.2d 1121 (1976); *People v. Sovetsky*, 323 Ill. 133, 153 N.E. 615 (1926); *People v. Oliver*, 50 Ill.App.3d 665, 365 N.E.2d 618 (1st Dist.1977).

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Set 27.01.

3.08
Statements--Multiple Defendants

A statement made by one defendant may not be considered by you against any other defendant.

Committee Note

Instruction and Committee Note Approved October 17, 2014

Give this instruction in conjunction with Instruction 3.06-3.07. It applies when a statement by one defendant in a multiple defendant case has been admitted only against the declarant. The judge should distinguish this situation from that where a defendant's words are admitted against all defendants on the theory that the words were in furtherance of a conspiracy or joint venture.

3.09
Dying Declaration

Committee Note

Instruction and Committee Note Approved October 17, 2014

The Committee recommends that no instruction be given on a dying declaration.

Whether a statement is admissible as a dying declaration is a question of law to be decided by the trial court. *People v. Tilley*, 406 Ill. 398, 94 N.E.2d 328 (1950); *People v. Hubbs*, 401 Ill. 613, 83 N.E.2d 289 (1948). The significance of this evidence is a proper subject of argument to the jury.

3.10
Right Of Attorney Or Attorney's Investigator To Interview Witness

It is proper for an [(attorney) (attorney's investigator)] to interview or attempt to interview a witness for the purpose of learning the testimony the witness will give.

[However, the law does not require a witness to speak to [(an attorney) (an attorney's investigator)] before testifying.]

Committee Note

Instruction and Committee Note Approved October 17, 2014

This instruction should not be given unless the jury has heard testimony that a witness was interviewed or was asked to be interviewed by an attorney or an attorney's investigator.

The bracketed paragraph should not be given unless the jury has heard testimony that a witness refused to speak to an attorney or to an attorney's investigator prior to that witness testifying at trial.

This instruction is not intended to preclude argument concerning inferences to be drawn from a witness's refusal or willingness to be interviewed before testifying.

Use applicable bracketed material.

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

3.11
Prior Inconsistent Statements

The believability of a witness may be challenged by evidence that on some former occasion he [(made a statement) (acted in a manner)] that was not consistent with his testimony in this case. Evidence of this kind [ordinarily] may be considered by you only for the limited purpose of deciding the weight to be given the testimony you heard from the witness in this courtroom.

[However, you may consider a witness's earlier inconsistent statement as evidence without this limitation when

[1] the statement was made under oath at a [(trial) (hearing) (proceeding)].

[or]

[2] the statement narrates, describes, or explains an event or condition the witness had personal knowledge of;

and

[a] the statement was written or signed by the witness.

[or]

[b] the witness acknowledged under oath that he made the statement.

[or]

[c] the statement was accurately recorded by a tape recorder, videotape recording, or a similar electronic means of sound recording.]

It is for you to determine [whether the witness made the earlier statement, and, if so] what weight should be given to that statement. In determining the weight to be given to an earlier statement, you should consider all of the circumstances under which it was made.

Committee Note

Instruction and Committee Note Approved October 17, 2014

The materiality of the earlier statement is a question of law for the court.

This instruction attempts to deal with the situation in which the jury has been permitted to hear separate earlier inconsistent statements that were offered for different purposes. One earlier inconsistent statement was offered for the limited purpose of attacking believability, while the other was offered as substantive evidence under Section 115-10.1. This instruction seeks to distinguish between these two statements.

When both kinds of earlier inconsistent statements are used for both purposes this instruction should be given in its entirety at the close of the trial. The bracketed word “ordinarily” in the first paragraph should be used in the instruction as given.

When earlier inconsistent statements are used *solely* for the limited purpose of attacking believability, and not as substantive evidence under Section 115-10.1, then only the first and last paragraphs, without bracketed material, should be used at the close of trial.

The Committee believes that all evidence is substantive unless limited to a non-substantive purpose, such as impeachment. That is why the Committee recommends that the first and last paragraphs of this instruction be given orally to the jury without bracketed material when the earlier inconsistent statement is being offered for a limited, non-substantive purpose. This instruction should then be given again in the final, written instructions.

There is no need to use this instruction when the earlier inconsistent statement is being offered as substantive evidence under Section 115-10.1 and no earlier inconsistent statement is being offered for use only for the purpose of impeachment.

Use the bracketed phrase "whether the witness made the earlier statement" in the last paragraph whenever the making of the statement is an issue in the case. If the making of the statement is an issue, then this phrase should be used whether the statement is being offered for substantive use or impeachment use.

Do not use numbers or letters unless paragraphs [1] and [2] are both given.

Use applicable paragraphs, subparagraphs, and bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

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

3.12
Impeachment Of A Witness By Prior Conviction

Evidence that a witness has been convicted of an offense may be considered by you only as it may affect the believability of the witness.

Committee Note

Instruction and Committee Note Approved October 17, 2014

This instruction should be given only when there has been impeachment of a witness by proof of a prior conviction. *See People v. Montgomery*, 47 Ill.2d 510, 268 N.E.2d 695 (1971); *People v. Jacobs*, 51 Ill.App.3d 455, 366 N.E.2d 1064 (4th Dist.1977).

3.12X.
Proof Of Prior Conviction/Prior Violent Act/Reputation--Victim--Self-Defense

In this case the State must prove beyond a reasonable doubt the proposition that the defendant was not justified in using the force which he used. You have [(heard testimony) (received evidence)] of ____'s [(prior conviction of a violent crime) (prior acts of violence) (reputation for violence)]. It is for you to determine whether ____[(was convicted) (committed those acts) (had this reputation)]. If you determine that ____[(was convicted) (committed those acts) (had this reputation)] you may consider that evidence in deciding whether the State has proved beyond a reasonable doubt that the defendant was not justified in using the force which he used.

Committee Note

Instruction and Committee Note Approved October 17, 2014

Give this instruction *only* when evidence of the victim's prior conviction for a crime of violence has been admitted pursuant to *People v. Lynch*, 104 Ill.2d 194, 470 N.E.2d 1018 (1984); IRE 405(b).

Insert in the appropriate blanks the name of the victim and the victim's prior conviction(s) for a crime of violence.

The Committee devised this instruction to address the nature of evidence regarding a victim's prior conviction for a crime of violence when the defendant claims self-defense. In *People v. Lynch*, 104 Ill.2d 194, 470 N.E.2d 1018 (1984), the Illinois Supreme Court discussed the situation in which the defendant claimed to have acted in self-defense, and held that evidence of the victim's prior convictions for crimes of violence was admissible to show the victim's aggressive and violent character.

No need exists to limit the *Lynch* evidence for self-defense purposes. Instead, once evidence of the victim's prior convictions for a crime of violence is admitted, it need not satisfy *People v. Montgomery*, 47 Ill.2d 510, 268 N.E.2d 695 (1971), to be properly considered because it may affect the victim's credibility as well. This is because *Montgomery*, which contains the threshold test of admissibility for convictions used solely to impeach a witness, becomes moot once the evidence of the *Lynch* convictions is admitted substantively. *People v. Hester*, 271 Ill.App.3d 954, 959, 649 N.E.2d 1351 (4th Dist. 1995).

Insert in the blanks the name of the victim.

Use applicable bracketed material.

3.13
Impeachment--Defendant--Offenses

Evidence of a defendant's previous conviction of an offense may be considered by you only as it may affect his believability as a witness and must not be considered by you as evidence of his guilt of the offense with which he is charged.

Committee Note

Instruction and Committee Note Approved October 17, 2014

This instruction should be given only at the request of the defendant when there has been impeachment of the defendant by proof of a prior conviction. *People v. Brandon*, 283 Ill.App.3d 358, 669 N.E.2d 1253 (4th Dist.1996); *see People v. Montgomery*, 47 Ill.2d 510, 268 N.E.2d 695 (1971); *People v. Williams*, 173 Ill.2d 48, 670 N.E.2d 638 (1996) (affirming *Montgomery* as establishing the test for the admissibility of prior convictions for impeachment purposes).

When an essential element of the charged offense is that the defendant has been previously convicted of committing a prior offense, use Instruction 3.13X instead of this instruction. *See People v. Bailey*, 201 Ill.App.3d 904, 559 N.E.2d 509 (2d Dist.1990) (defendant charged with unlawful possession of weapon by felon).

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

3.13X
Proof Of Prior Convictions--Defendant--Admissibility

Ordinarily, evidence of a defendant's prior conviction of an offense may [be considered by you only as it may affect his believability as a witness and must] not be considered by you as evidence of his guilt of the offense with which he is charged.

However, in this case, because the State must prove beyond a reasonable doubt the proposition that the defendant has previously been convicted of ____, you may [also] consider evidence of defendant's prior conviction of the offense of ____ [only] for the purpose of determining whether the State has proved that proposition.

Committee Note

Instruction and Committee Note Approved October 17, 2014

This instruction should be given *only* when an element of the charged offense is that the defendant has been previously convicted of committing a prior offense.

Use the bracketed phrase "[be considered by you only as it may affect his believability as a witness and must]" in the first paragraph of this instruction and use the bracketed word "[also]" in the second paragraph of this instruction only when the defendant testifies at his trial.

If the defendant does not testify at his trial, this instruction should be given *only* at the defendant's request; otherwise, this instruction should *not* be given. If the defendant does request that this instruction be given and he does not testify at trial, use the bracketed word "[word]" in the second paragraph of the instruction. Do not use any other bracketed material.

The Committee created this instruction to deal with the admissibility of evidence regarding a defendant's prior conviction when this prior conviction is an essential element of the charged offense. In *People v. Bailey*, 201 Ill.App.3d 904, 559 N.E.2d 509 (2d Dist.1990), the court addressed this situation when the State charged the defendant with unlawful possession of a weapon by a felon and provided a modified Instruction 3.13 to cover the defendant's testimony at his trial. In *Bailey*, the court stated that "[i]n effect, [use of Instruction 3.13, by itself,] would have made it impossible to convict defendant of unlawful use of weapons by a felon." *Bailey,* 201 Ill.App.3d at 906, 559 N.E.2d 509. See Instructions 18.07 and 18.08, defining the offense of unlawful possession of a weapon by a felon. Accordingly, this instruction provides that when the defendant has been previously convicted of committing a prior offense and he testifies at his trial, evidence of his prior conviction is admissible as substantive evidence of the prior conviction and also as impeachment evidence against the defendant.

Insert in the blanks the defendant's prior conviction.

Use applicable bracketed material.

3.14
Proof Of Other Offenses Or Conduct

[1] Evidence has been received that the defendant[s] [(has) (have)] been involved in [(an offense) (offenses) (conduct)] other than [(that) (those)] charged in the [(indictment) (information) (complaint)].

[2] This evidence has been received on the issue[s] of the [(defendant's) (defendants')] [(identification) (presence) (intent) (motive) (design) (knowledge) (____)] and may be considered by you only for that limited purpose.

[3] It is for you to determine [whether the defendant[s] [(was) (were)] involved in [(that) (those)] [(offense) (offenses) (conduct)] and, if so,] what weight should be given to this evidence on the issue[s] of ____.

Committee Note

Instruction and Committee Note Approved October 17, 2014

The Illinois Supreme Court has made clear that evidence of other crimes is admissible if it is relevant to establish any fact material to the case other than propensity to commit crime. *People v. Stewart*, 105 Ill.2d 22, 62, 473 N.E.2d 840 (1984); IRE 404(b). Accordingly, the Committee determined that this instruction should be broadened by including a blank within the alternatives provided to explain to the jury why the evidence is being admitted. If the court concludes that none of the specific alternatives provided in paragraph [2] of this instruction fits the facts of the case before it, then the court should set forth in the blank in this instruction whatever explanation does fit the evidence.

The issue(s) on which the evidence which is the subject of this instruction has been received *must* be the same issue(s) in both paragraph [2] and paragraph [3]. Accordingly, insert in the blank in paragraph [3] whatever issue(s) that appear in paragraph [2].

On occasion evidence might be received for a limited purpose that is not technically "an offense," but for which this instruction might still be useful. Examples are *People v. Carr*, 114 Ill.App.2d 370, 252 N.E.2d 912 (1st Dist.1969) (in prosecution for unlawful possession and sale of a narcotic drug, State permitted to adduce evidence defendant had rented his apartment, the scene of the sale, under an assumed name); *People v. Jackson*, 145 Ill.App.3d 626, 495 N.E.2d 1207 (1st Dist.1986) (evidence of defendant's status and activities as a gang member admissible on issue of motive); *People v. Branion*, 47 Ill.2d 70, 265 N.E.2d 1 (1970) (evidence of defendant's extra-marital affair and marital discord probative of murder). To meet such circumstances, the word "conduct" has been added in paragraph [1] as an alternative to the word "offense."

Paragraph [3] makes clear to the jury that the limited evidence which is the subject of this instruction is still to be weighed by them; they are free to accept or reject it as they see fit. When the defense concedes that the defendant performed the conduct or committed the offense that is the subject of this instruction, *the bracketed portion of paragraph [3] should not be given.*

Whenever this instruction is given, all three paragraphs (in whatever form is applicable) must be given to the jury.

This instruction may be given both (1) during trial, either just before or immediately after the jury is to hear the evidence in question, *see People v. Roe*, 228 Ill.App.3d 628, 592 N.E.2d 596 (4th Dist.1992), and (2) at the end of the trial, before jury deliberations. *Roe* quoted with approval the following paragraph of this Committee Note. *See Roe,* 228 Ill.App.3d at 636, 592 N.E.2d 596.

At the time the evidence which is the subject of this instruction is first presented to the jury, the Committee recommends that an oral instruction should be given to explain to the jury the limited purpose of this evidence, unless the defendant objects to that instruction.

If this instruction is given just before the jury is to hear the evidence in question, paragraphs [1] and [2] should be modified to begin "Evidence will be received ..." and "This evidence will be received ...."

In *People v. Denny*, 241 Ill.App.3d 345, 360-61, 608 N.E.2d 1313 (4th Dist.1993), the court wrote the following:

> "Because of the significant prejudice to a defendant's case that the admission of other crimes evidence usually risks, we hold that trial courts should not only instruct the jury in accordance with IPI Criminal 2d No. 3.14 at the close of the case, but also orally from the bench (unless defendant objects) at the time the evidence is first presented to the jury."

This instruction is not applicable to proof of prior convictions admitted on the issue of believability. See Instruction 3.13.

Care must be taken to state the proper limited purpose for the evidence. *See People v. King*, 165 Ill.App.3d 464, 518 N.E.2d 1309 (2d Dist.1988).

Use applicable paragraphs and bracketed material.

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.

For an example of the use of this instruction, see Sample Set 27.05.

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
Amendments to Committee Note Approved July 28, 2017

This new instruction simply lists factors well-established by case law. *Manson v. Brathwaite*, 432 U.S. 98, 97 S.Ct. 2243 (1977); *People v. Manion*, 67 Ill.2d 564, 367 N.E.2d 1313 (1977); *People v. Slim*, 127 Ill.2d 302, 537 N.E.2d 317 (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.

See Instruction 3.15A when the identification evidence involves law-enforcement conducted line-up procedures as set forth in Article 107A of the Code of Criminal Procedure (725 ILCS 5/107A-0.1 *et seq*.).

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. *People v. Herron*, 215 Ill.2d 167, 191-92, 830 N.E.2d 467 (2005).

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

3.15A
Circumstances Of Law Enforcement Line-Up Identifications

You have before you evidence that a witness made an identification of [(the defendant) (another individual)] following a [(live) (photographic)] line-up conducted by [a] law enforcement [(agency) (agencies)] relating to the offense[s] charged in this case. It is for you to determine [whether the witness made an identification, and, if so,] what weight should be given to that evidence. In determining the weight to be given to this evidence, you should consider all of the circumstances under which the identification was made, including, but not limited to, the procedures [(used) (or) (not used)] by the law enforcement [(agency) (agencies)].

Committee Note

Instruction and Committee Note Approved July 28, 2017

725 ILCS 5/107A-0.1, *et seq.* (West 2016).

Give this instruction only when there is evidence that a witness made an identification pursuant to a law enforcement live or photographic line-up procedure. In those circumstances, this instruction would typically follow Instruction 3.15.

P.A. 98-104, § 10, effective January 1, 2015, significantly changed the statutory requirements for law enforcement identification procedures, and provides that "when warranted by the evidence, the jury shall be instructed that it may consider all the facts and circumstances including compliance or noncompliance with this Section to assist in its weighing of the identification testimony of an eyewitness." 725 ILCS 5/107A-2(j)(2). Although "compliance or noncompliance" with the statutory provisions is a proper subject of argument to the jury, the Committee believes that judicial commentary on specific aspects of the law enforcement identification procedures would be inconsistent with the general prohibition on instructions on particular types of evidence. *See People v. Cloutier*, 156 Ill.2d 483, 509-10, 622 N.E.2d 774 (1993). *See also* Introduction to Chapter 3.

The bracketed phrase in the second sentence should be included when there is some evidence disputing the making of an identification as described by section 107A-2 (725 ILCS 5/107A-2).

Use applicable bracketed material.

3.16
Evidence Of Defendant's Reputation

The defendant has introduced evidence of his reputation for [(truth and veracity) (morality) (chastity) (honesty and integrity) (being a peaceful and law-abiding citizen) (____)]. This evidence may be sufficient when considered with the other evidence in the case to raise a reasonable doubt of the defendant's guilt. However, if from all the evidence in the case you are satisfied beyond a reasonable doubt of the defendant's guilt, then it is your duty to find him guilty, even though he may have a good reputation for [(truth and veracity) (morality) (chastity) (honesty and integrity) (being a peaceful and law-abiding citizen) (____)].

Committee Note

Instruction and Committee Note Approved October 17, 2014

The instruction comports with the decision in *People v. Hrdlicka*, 344 Ill. 211, 176 N.E. 308 (1931); *see also* IRE 405(a).

3.17
Testimony Of An Accomplice

When a witness says he was involved in the commission of a crime with the defendant, the testimony of that witness is subject to suspicion and should be considered by you with caution. It should be carefully examined in light of the other evidence in the case.

Committee Note

Instruction and Committee Note Approved October 17, 2014

The Committee decided that accomplice testimony represents an area of evidence that requires judicial comment. *See People v. Wilson*, 66 Ill.2d 346, 362 N.E.2d 291 (1977). The term "accomplice" was eliminated from the instruction.

In *People v. Rivera*, 166 Ill.2d 279, 292, 652 N.E.2d 307 (1995), the supreme court held that an accomplice's testimony should be cautiously scrutinized regardless of which side he testifies for. As a result, the Committee now recommends that this instruction be given any time an accomplice testifies.

The appellate court has held that trial counsel renders ineffective assistance of counsel when counsel fails to tender Instruction 3.17 under certain circumstances. *People v. Campbell*, 275 Ill.App.3d 993, 999, 657 N.E.2d 87 (5th Dist.1995). The defendant is entitled to have Instruction 3.17 given to the jury (1) if the witness, rather than the defendant, could have been the person responsible for the crime, or (2) if the witness admits being present at the scene of the crime and could have been indicted either as a principal or under a theory of accountability, but denies involvement. *See People v. Montgomery*, 254 Ill.App.3d 782, 790, 626 N.E.2d 1254 (1st Dist.1993); *People v. Lewis*, 240 Ill.App.3d 463, 467, 609 N.E.2d 673 (1st Dist.1992).

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

3.18
Weighing Expert Testimony

Committee Note

Instruction and Committee Note Approved October 17, 2014

The Committee recommends that no instruction be given on this subject. The believability of witnesses in general is the subject of Instruction 1.02. No separate instruction is needed in this area. *People v. Everist*, 52 Ill.App.2d 73, 201 N.E.2d 655 (1st Dist.1964).

In *People v. Cloutier*, 156 Ill.2d 483, 509-10, 622 N.E.2d 774 (1993), the supreme court noted that the Committee "specifically advises against any comment on the weight to be given [expert] testimony." Relying upon the above paragraph, the court held that the trial court did not err in refusing to give the defendant's proposed instruction. *Cloutier,* 156 Ill.2d at 510, 622 N.E.2d 774.

3.19
Weighing Police Testimony

Committee Note

Instruction and Committee Note Approved October 17, 2014

The Committee recommends that no instruction be given on this subject. The believability of witnesses in general is the subject of Instruction 1.02. No separate instruction is needed in this area. *Accord People v. Springs*, 2 Ill.App.3d 817, 277 N.E.2d 764 (2d Dist.1972); *see also People v. Smith*, 67 Ill.App.3d 672, 385 N.E.2d 44 (1st Dist.1978); *People v. Uselding*, 39 Ill.App.3d 677, 350 N.E.2d 283 (4th Dist.1976); *People v. Taylor*, 8 Ill.App.3d 727, 290 N.E.2d 342 (2d Dist.1972).

In *People v. Cloutier*, 156 Ill.2d 483, 509-10, 622 N.E.2d 774 (1993), the supreme court noted that the Committee "specifically advises against any comment on the weight to be given [expert] testimony." Relying upon the Committee Note to Instruction 3.18, the court held that the trial court did not err in refusing to give the defendant's proposed instruction. *Cloutier,* 156 Ill.2d at 510, 622 N.E.2d 744. The Committee believes that the same principle applies to the weight to be given police testimony.

3.20
Use Of Transcripts Of Tape-Recorded Conversations

[(A) (An)] [(electronic) (_____)] recording has been admitted into evidence. In addition to the [(electronic) (_____)] recording you are being given a transcript of the [(electronic) (_____)] recording. The transcript only represents what the transcriber believes was said on the [(electronic) (_____)] recording, and merely serves as an aid when you listen to the [(electronic) (_____)] recording. The [(electronic) (_____)] recording, and not the transcript, is the evidence. If you perceive a conflict between the [(electronic) (_____)] recording and the transcript, the [(electronic) (_____)] controls.

Committee Note

Instruction and Committee Note Approved October 17, 2014

The jury should be instructed on the role of tape-recordings and other forms of recording including but not limited to video recording, and transcripts. *See People v. Hunley*, 313 Ill.App.3d 16, 37-38, 728 N.E.2d 1183 (2000); *People v. Criss,* 307 Ill.App.3d 888, 899-900, 719 N.E.2d 776 (1999). The instruction should be given during the trial when a tape-recording or other form of recording is admitted. While a tape-recording or other form of recording should not be treated differently than any other evidentiary exhibit, the question of whether a tape-recording or other form of recording and transcript should be sent to the jury along with other exhibits at the close of the case is a matter for the trial court's discretion. *Hunley*, 313 Ill. App. 3d at 38, 728 N.E. 2d 1183. If the court sends the tape or other form of recording and transcript to the jury at the close of the case, this instruction should be given along with the other instructions.