

EVALUATING EYEWITNESS TESTIMONY

You have heard witnesses testify about the observations and perceptions that they made of the defendant's conduct at the time of the alleged offense. It is your function to determine whether the testimony of any witness is reliable and believable, or whether it is based on a mistake or for any reason is not worthy of belief.

Human memory is not foolproof. Research has shown that human memory is not like a video recording that a witness need only replay to remember what happened. Memory is far more complex. The process of remembering consists of three stages:

(1) Acquisition—the stage during which the person perceives the original event;

(2) Retention--the stage consisting of the period of time that passes between the event and the eventual recollection of a piece of information; and

(3) Retrieval—the stage during which a person recalls stored information.

At each of these stages, memory may be affected by a variety of factors.

I will now instruct you on some of the factors you should consider in determining whether the eyewitness testimony is reliable:

The way in which an eyewitness is questioned about an event, or discussed an event with others, may alter the witness' memory of the event.

The use of suggestive wording or leading questions tend to result in answers that more closely fit the expectation embedded in the question. Witness memory may be altered by information or assumptions embedded in questions or otherwise communicated to the witness.

1 Witness memory may be altered by exposure to opinions, information, or
2 discussions of other people about either the event, or the defendant,

3 Memory generally decays over time. The greatest amount of memory loss
4 occurs shortly after an initial observation, then levels off over time.

5 In addition, time estimates given by witnesses may not always be accurate
6 because eyewitnesses tend to think events lasted longer than they actually did.

7 Under most circumstances, witness confidence or certainty is not a good
8 indicator of the accuracy of the recollected event.

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10 You are also free to consider any other factor based on the evidence or lack of
11 evidence in this case that you consider relevant to your determination of whether the
12 testimony of any eyewitness is reliable. Keep in mind that the presence of any single
13 factor or combination of factors, however, does not mean that a particular witness is
14 incorrect or the testimony unreliable. Instead, you should consider the factors I have
15 discussed as you assess all of the circumstances of the case, including all of the
16 testimony and exhibits, in determining whether the testimony of any eyewitness is
17 reliable and believable, or whether it is based on a mistake or for any reason is not
18 worthy of belief.
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21 **AUTHORITIES:**

22 *State v. Lawson*, 352 Or 724 (2012)

23 New Jersey Eyewitness Identification Jury Instruction
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