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 – Admitted For Limited Purpose Only

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. This evidence 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.

Committee Note

This instruction addresses the use of prior inconsistent statements for the non-substantive limited purpose of attacking the credibility of the witness.

Use this instruction when all prior inconsistent statements are admitted solely for the limited purpose of attacking credibility.

Do not use this instruction when all prior inconsistent statements are admitted solely as substantive evidence pursuant to Rule 801 and Section 115-10.1. *People v. Donlow*, 2020 IL App (4th) 170374, ¶ 73 (when a prior inconsistent statement has been admitted substantively, juries need not be instructed regarding that statement). All evidence is substantive unless limited to a non-substantive purpose.

Do not use this instruction when some prior inconsistent statements are admitted for a limited purpose and others substantively. In those circumstances, use Instruction 3.11X.

Upon request, give this instruction orally to the jury when the impeachment occurs. Impeachment occurs when it is completed. Impeachment is completed either when the witness admits the out-of-court statement or other affirmative evidence is admitted to perfect the impeachment. Give this instruction again in the final, written instructions.

A previous version of this instruction mistakenly equated the criteria the trial court must apply to determine the substantive admissibility of the prior inconsistent statement with a factual question for the jury to resolve. *Donlow*, 2020 IL App (4th) 170374, ¶ 70. Accordingly, this section has been deleted from the instruction.

Use the applicable bracketed material.

3.11X

Prior Inconsistent Statements – Multiple Statements Admitted For Limited and Substantive Purposes

[1] The believability of 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 [regarding _____] in this case. This evidence 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.

[2] However, you may consider witness _____'s inconsistent [(statement) (action)] [regarding _____] as evidence without that limitation.

Committee Note

This instruction applies when some prior inconsistent statements are admitted for substantive purposes and other inconsistent statements are admitted for the non-substantive limited purpose of attacking the credibility of the witness.

Do not use this instruction when all prior inconsistent statements are admitted solely as substantive evidence pursuant to Rule 801 or Section 115-10.1 of the Code of Criminal Procedure (725 ILCS 5/115-10.1). *People v. Donlow*, 2020 IL App (4th) 170374, ¶ 73 (when a prior inconsistent statement has been admitted substantively, juries need not be instructed regarding that statement). All evidence is substantive unless limited to a non-substantive purpose.

Do not use this instruction when all prior inconsistent statements are admitted solely for the limited purpose of attacking credibility. In those circumstances, give Instruction 3.11.

Upon request, give paragraph [1] orally to the jury when non-substantive impeachment occurs. Impeachment occurs when it is completed. Impeachment is completed either when the witness admits the out-of-court statement or other affirmative evidence is admitted to perfect the impeachment. This instruction should be given in its entirety in the final, written instructions.

Where multiple witnesses or one witness with multiple statements are presented, paragraph [1] must be repeated for each applicable witness and/or statement.

Where applicable, insert the name of the testifying witness.

Where applicable, insert a brief phrase describing the testimony such as "regarding the description of the vehicle." Do not repeat the entire testimony.

Use applicable paragraphs and bracketed material.

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

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 "[only]" 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] You [(will hear) (have heard) evidence] 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 [(will be) (has been)] received on the issue[s] of the [(defendant's) (defendants')] [(motive) (opportunity) (intent) (preparation) (plan) (knowledge) (identity) (absence of (mistake) (accident)) (propensity) (_____)] and may be considered by you only for [(that) (those)] purpose[s].

[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

At common law, evidence of other crimes is admissible if that evidence is relevant to establish any material purpose other than a defendant's propensity to commit crimes. *People v. Dabbs*, 239 Ill. 2d 277, 283, 940 N.E.2d 1088, 1093 (2010); Ill. R. Evid. 404(b). This rule is grounded in the belief that using prior conduct or charges to show propensity has "too much probative value", tempting the jury to infer guilt because a defendant committed other bad conduct. *People v. Donoho*, 204 Ill. 2d 159, 170, 788 N.E.2d 707, 714 (2003); *People v. Potts,* 2021 IL App (1st) 161219, ¶ 174, 196 N.E. 3d 961, 992.

This common law rule was abrogated in part by 725 ILCS 5/115-7.3 and 115-7.4. *Dabbs*, 239 Ill. 2d at 284-285, 940 N.E.2d at 1094. Both sections 115-7.3 and 115-7.4 provide that for certain defined crimes (such as sexual abuse or domestic violence), evidence of a defendant's other offenses or conduct "may be considered for its bearing on any matter to which it is relevant." 725 ILCS 5/115-7.3; 725 ILCS 5/115-7.4.

Accordingly, unlike the common law, these statutes permit the admission of other crimes evidence to show a defendant's propensity to commit the charged offense if the requirements of the statute and other applicable rules of evidence are met. *Donoho*, 204 Ill. 2d at 176, 788 N.E. 2d at 718; *Dabbs*, 239 Ill. 2d at 295; 940 N.E.2d at 1099. The State is entitled to an instruction that certain evidence can be considered for propensity purposes. See *People v. Heller*, 2017 IL App (4th) 140658, ¶65, 71 N.E.3d 1113, 1123 (where other crimes evidence admitted solely pursuant to statute, instructing jury on propensity is proper); *People v. McDaniel*, 2021 IL App (2d) 190496, ¶ 59; 190 N.E.3d 312, 321 (where the same conduct is admitted both for limited purpose and to prove propensity, omitting reference to propensity renders instruction incomplete); *Potts,* 2021 IL App (1st) 161219, ¶ 191, 196 N.E.3d 961, 995 (when multiple

instances of uncharged offenses or conduct admitted, some pursuant to common law and some pursuant to statute, the State is entitled to a propensity instruction).

Instruction 3.14 is designed for use with all other crimes evidence, whether admitted pursuant solely to common law, solely to statute, or both.

Give paragraphs [1], [2], and [3].

Insert in the blank in paragraph [3] the same issue(s) identified in paragraph [2].

When the defense concedes that the defendant performed the conduct or committed the offense that is the subject of this instruction, do not use the bracketed portion of paragraph [3].

If referencing multiple instances of uncharged offenses or conduct, repeat the entire instruction for each uncharged offense or conduct, briefly identifying the uncharged offense or conduct in paragraph [1] and its corresponding issue(s) in paragraphs [2] and [3]. Modify the instruction to differentiate which uncharged offense or conduct is admitted for what purpose.

Give this instruction verbally to the jury, either just before or immediately after the jury hears the evidence at issue. *People v. Heard*, 187 Ill. 2d 36, 60-61, 718 N.E.2d 58, 72 (1999). Give this instruction again in the final, written instructions.

Do not use this instruction when the proof of prior convictions is admitted on the issue of believability. See Instruction 3.13.

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 Lineup Identifications

You have before you evidence that a witness made an identification of [(the defendant) (another individual)] following a [(live) (photographic)] lineup 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 facts and 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

725 ILCS 5/107A-0.1, *et seq*. (West 2020).

Give this instruction only when there is evidence that a witness made an identification pursuant to a law enforcement live or photographic lineup 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). Where the trial court has determined that such an instruction is warranted by the evidence, give this instruction.

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.

3.15B
Law Enforcement Identification Opinion Evidence

You have before you evidence that a law enforcement officer made an identification of [(the defendant) (an individual) (an object)] from a [(video recording) (photograph)]. It is for you to determine what weight, if any, should be given to that evidence. In determining the weight to be given to this evidence, you should not draw any inference from the fact that the witness is a law enforcement officer.

Committee Note

Instruction and Note Approved January 26, 2018

Give this instruction when a law enforcement officer provides identification testimony regarding a video recording or photograph and the evidence includes that the witness is a law enforcement officer.

In *People v. Thompson*, 2016 IL 118667, 49 N.E.3d 393, the Illinois Supreme Court held that a witness's identification of the defendant from a video recording or photograph constitutes lay witness opinion evidence pursuant to Illinois Rule of Evidence 701. The court further held that when the witness is a law enforcement officer and that fact is disclosed to the jury, the trial court "should properly instruct the jury, before the testimony and in the final charge to the jury," regarding that evidence. *Thompson*, 2016 IL 118667, ¶ 59, 49 N.E.3d at 407.

In *People v. Gharrett*, 2016 IL App (4th) 140315, 53 N.E.3d 332, the court applied *Thompson* to a law enforcement officer's opinion testimony identifying an object in a surveillance video recording.

The Committee believes that giving this Instruction does not require giving Instruction 3.15.

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

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 Illinois 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.

Where a witness who participated in the crime with which a defendant is charged testifies that the defendant did not participate in that crime, the trial court may modify this Instruction with the phrase "if a witness testified that he participated in the crime with which the defendant is charged". *People v. Fane*, 2021 IL 126715 (2021) (holding that the trial court did not abuse its direction modifying the Instruction in this way).

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 English 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

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). This 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.

Insert in the blanks the non-electronic type of recording, as applicable.

Use this instruction only when the original recording is in English. Do not give Instruction 3.20B.

When applicable, give Instruction 3.20A.

3.20A
Use Of Edited Recordings

You are about to [(watch) (hear)] a recording. This recording has been edited to eliminate portions that would not aid in your understanding of the case. The fact that the recording has been edited should not concern you in any way and must not impact the way you [(view) (listen to)] and consider the evidence.

Committee Note

This instruction should be given before an edited recording is played for the jury.

Give either Instruction 3.20 or 3.20B, as applicable.

Use applicable bracketed material.

3.20B
Translation of Non-English Language Recording

You [(are about to (hear) (watch)) (have (heard) (watched))] a recording in the _____ language. You [(have been) (were)] given a transcript of the recording that has been admitted into evidence. The transcript is an English-language translation of the recording.

Although some of you may know the _____ language, it is important that all jurors consider the same evidence. The transcript is the evidence, not the foreign language spoken in the recording. Therefore, you must accept and rely only on the English translation contained in the transcript. Disregard any perceived different meaning. Do not comment to fellow jurors on what you heard in the _____ language. Do not reinterpret for other jurors evidence that has been translated because that would be providing information not admitted in court.

Committee Note

This instruction should be given both before a recording in a language other than English is played for the jury as well as at the conclusion of the case in the final instructions to the jury.

The instruction is premised on the principle that a juror must "be capable of disregarding his or her impressions or opinions and decide the case based solely upon the evidence presented in court." *People v. Kirchner,* 194 Ill. 2d 502, 529, 743 N.E.2d 94, 108 (2000); IPI-Criminal Instruction No. 1.01[3] ("It is your duty to determine the facts and to determine them only from the evidence in this case.").

Where a recording contains statements in a foreign language, it is proper for the trier of face to rely upon translations in the transcript as substantive evidence. *People v. Betance-Lopez*, 2015 IL App (2d) 130521, ¶¶ 31-33, 38 N.E.3d 36, 43-44. When addressing a recorded conversation in a language other than English, merely giving "the usual admonition that the [recording] is the evidence and the transcript only a guide is not only nonsensical, it has the potential for harm where the jury includes bilingual jurors." *Betance-Lopez*, 2015 IL App (2d) 130521, ¶ 32, 38 N.E.3d at 43 (citing *United States v. Fuentes-Montijo,* 68 F.3d 352, 355-56 (9th Cir. 1995)).

When applicable, give Instruction 3.20A.

Use this instruction when the original recording is not in English. In these circumstances, do not give Instruction 3.20.

Insert in the blanks the non-English language spoken.

Use applicable bracketed material.

3.21
Weighing Informant Testimony

Committee Note

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

While the credibility of a government informant is a question for the jury, courts have held that Instruction 1.02 properly informs the jury of its responsibility to judge the credibility of each witness, and that a special jury instruction about informants is contrary to Illinois law. *People v. Trice*, 2017 IL App (4th) 150429, ¶¶ 44-45, 87 N.E.3d 1087, 1096-97; *People v. Evans*, 209 Ill. 2d 194, 808 N.E.2d 939 (2004). In *Trice*, the court additionally noted that the Committee generally "disapproves of instructions which comment on particular types of evidence." *Trice*, 2017 IL App (4th) 150429, ¶ 46, 87 N.E.3d at 1097 (quoting the Instruction to Chapter 3).

3.22
Law Enforcement Officer-Worn Body Camera Recordings

You have heard testimony that _____ was wearing a body-worn camera but the recording was [(not captured) (destroyed) (altered) (intermittently captured)]. If you find by a preponderance of the evidence that the recording was intentionally [(not captured) (destroyed) (altered) (intermittently captured)] and the State did not provide a reasonable justification for this action, you should consider that when determining what weight to give this evidence.

Committee Note

50 ILCS 706/10-30 (West 2023), effective January 1, 2016.

Give Instruction 4.18, defining the term "preponderance of the evidence".

Use this instruction when there is some evidence to support it. *People v. Tompkins*, 2023 IL 127805, ¶ 47.

Section 10-30 includes the intentionality of the officer's conduct and the lack of reasonable justification as two separate considerations, leaving the determination of each to the finder of fact. *Tompkins*, 2023 IL 127805, ¶ 52. Thus the jury is tasked with determining whether an officer purposefully, and not accidentally, failed to record an incident. *Id*. If the jury finds that it was purposeful, the jury then must consider whether the failure was reasonably justified. *Id*.

Insert the name of the law enforcement officer whose body-worn camera is at issue in the blank.

3.23
Testimony through Interpreter

You [(are about to hear) (heard)] testimony from a witness who [(will be speaking) (spoke)] in the _____ language. Witnesses who do not speak English or are more proficient in another language testify through an official court interpreter. You must not make any assumptions about a witness or party based solely on the fact that an interpreter was used. You should give this testimony the same consideration you would give it had the witness himself testified in English.

Although some of you may know the _____language, it is important that all jurors consider the same evidence. Therefore, you must accept and rely only on the English interpretation of this testimony. Disregard any perceived different meaning. Do not comment to fellow jurors on what you heard in the _____ language. Do not reinterpret for other jurors testimony that has been interpreted by the court interpreter because that would be providing information not admitted in court.

Committee Note

This instruction should be given both before a witness testifies in a language other than English and an interpreter translates that testimony as well as at the conclusion of the case in the final instructions to the jury.

The instruction is premised on the principle that a juror must "be capable of disregarding his or her impressions or opinions and decide the case based solely upon the evidence presented in court." *People v. Kirchner,* 194 Ill. 2d 502, 529, 743 N.E. 2d 94, 108 (2000); IPI - Criminal Instruction No. 1.01[3] ("It is your duty to determine the facts and to determine them only from the evidence in this case."). Accordingly, courts have held that it constitutes juror misconduct for a juror to retranslate testimony that has been translated by the interpreter. *People v. Cabrera*, 230 Cal.App.3d 300, 303, 281 Cal.Rptr. 238 (1991).

Insert in the blanks the non-English language used by the witness.

Use applicable bracketed material.

3.24
Stipulations

You are now about to hear a stipulation. A stipulation is an agreement between the parties

[as to the existence of certain facts. You should consider this evidence in the same manner as all the other evidence in the case.]

[or]

[that if _____ were called to testify, [(he) (she)] would testify as set forth in the stipulation. You should consider this testimony in the same manner as if _____ were here in court, testifying under oath.]

Committee Note

This instruction should be given before a stipulation is read to the jury. The Committee suggests that, prior to trial, the court should address with counsel the best manner to present the stipulation to the jury. Because evidence received by way of a stipulation is included in Instruction 1.01, this instruction should not be given with the final instructions to the jury.

A stipulation is an agreement between the parties with respect to an issue before the court. *People v. Woods*, 214 Ill. 2d 455, 468 (2005). Stipulations function as a substitute for proof that dispenses with the need for additional evidence. *Id.* A stipulation is conclusive as to all matters included in it, and no additional proof of the stipulated facts is necessary. *People v. Gray*, 2024 IL 127815, ¶ 26. In other words, a stipulation satisfies the parties' obligation to prove the agreed upon matters. *Gray*, 2024 IL 127815, ¶ 27. Although stipulations may bind the parties and relieve them of the burden of proving stipulated facts or testimony, "stipulations do not bind the jury, and jurors may accept or reject them." *State v. Allen*, 223 Ariz. 125, 127 (2009).

Except in specific instances where the stipulation is tantamount to a guilty plea, neither the trial court nor counsel has an obligation to admonish the defendant regarding the stipulation and ensure that the advisement is made a part of the record. *People v. Clendenin*, 238 Ill. 2d 302, 320 (2010).

Insert the name of the person testifying via stipulation in the blank.

Use applicable bracketed material.