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.