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.