Identity is a contested issue in this case. The state must prove, beyond a reasonable doubt, that the defendant is the person who committed each/the offense.

Eyewitness identifications should be examined with care. As with any witness, you must first determine the witness’s credibility – that is, do you believe the witness is being honest? In making this determination, you should consider the factors listed in Instruction No. 1.10 (witness credibility).

Even if you are convinced the witness honestly believes his or her identification of the defendant is accurate, you still must consider the possibility that the witness made a mistake in the identification. A witness may honestly believe he or she saw a particular person but perceive or remember the event incorrectly. You must decide whether the witness’s identification is not only truthful but accurate.

Scientific research has shown that human memory is not foolproof and that there are risks of making mistaken identifications. Memory does not function like a video recording where events are stored in a linear fashion; it is far more complex. The process of remembering consists of three stages: (1) the perception of the event; (2) the time that passes between the perception of the event and the recollection of the event; and (3) the moment when the witness recalls the event. At each of these stages, memory can be affected by a variety of factors. The witness may be unaware of these effects.

To evaluate the accuracy of an identification, you should consider the observations and perceptions on which the identification was based, the witness’s ability to make those observations and perceive events, and the circumstances under which the identification was made. Although nothing may appear more convincing than a witness’s certainty in identifying a suspect, you must critically analyze such testimony. Such identifications, even if made in good faith, may be mistaken. Be advised that a witness’s level of confidence, standing alone, may not be an indication of the accuracy of an identification.

In deciding what weight, if any, to give to the identification testimony, you should consider the following factors related to the witness, the suspect, and the event itself. Some factors may tend to support the reliability of the identification, while others may tend to weaken it. Whether and to what extent a factor actually affected an identification is for you to decide based on all of the evidence.

**[stress**

While moderate levels of stress may improve the accuracy of perception, high levels of stress may lead to inaccuracy of both the witness’s identification of the suspect and the witness’s memory of other details of the event. You should, however, consider a witness’s level of stress and whether that stress, if any, distracted the witness or made it harder for him or her to identify the suspect.**]**

**[weapons/unexpected detail**

The presence of [a weapon] [an unexpected detail] may take the witness’s attention away from other features of the event and the suspect. This may make the identification less reliable if the event is of a short duration. But over time, the effect of the [weapon][unexpected detail] may diminish, because the witness may become used to its presence.**]**

**[duration**

While there is no minimum amount of time necessary for a witness’s observation of a person to result in a reliable identification, longer viewings are more likely to lead to a reliable identification. You should consider that witnesses tend to overestimate the amount of time they had to view an incident, especially if conditions were stressful.**]**

**[environmental conditions**

Environmental conditions under which a witness views a suspect have an effect on the reliability of the identification. For example, weather conditions can affect a witness’s perception. A witness’s identification may be less reliable when the suspect is seen under poor lighting conditions or from far away. You should consider that people tend to have difficulty estimating distances.**]**

**[witness characteristics**

The witness’s personal characteristics may affect the reliability of an identification. Factors that are relevant include physical and mental condition, eyesight, drug or alcohol impairment, age, and relative ages of the witness and the suspect.**]**

**[disguises/changed appearance**

The suspect’s appearance may also affect the reliability of an eyewitness identification. Witnesses tend to more accurately identify individuals who have distinctive facial features than those without. Disguises and masks can also reduce the accuracy of identifications. Sunglasses, hats, hoods, and other things that hide the face, hair, and hairline may affect a witness’s ability to accurately identify a suspect. And changes in a suspect’s appearance between the time of the criminal incident and the time of the identification may also affect the accuracy of an identification.**]**

**[cross-racial effects**

If the witness and the person identified appear to be of different races [or ethnicities], you should consider that people may have greater difficulty in accurately identifying someone of a different race [or ethnicity] than someone of their own race [or ethnicity].**]**

**[time elapsed**

Memories tend to fade with time. While there is no precise time after which a witness’s identification will become unreliable, the more time that passes between the observation and the identification, the less reliable it may become. The speed at which a memory fades increases as time goes by.**]**

**[third-party information**

Exposure to the actions of another person or information from other sources, such as opinions, descriptions, or identifications given by other witnesses, or photographs or media accounts, may affect the reliability of an identification.**]**

**[line-up/show-up**

[Name of witness] participated in a [show-up] [photographic] [line-up]. In evaluating the reliability of [name of witness]’s identification, you should consider the manner in which this procedure was conducted, including anything said before, during, or after the identification procedure.**]**

**[pre-identification instructions**

You should consider what instructions were or were not given to the witness prior to identification procedures. Prior to an identification procedure, the witness should be instructed that the suspect may or may not be present and that the witness should not feel compelled to make an identification. The failure to give this information may increase the risk of misidentification.**]**

**[blind administration**

During a line-up, a line-up administrator who knows which person in the line-up is the suspect might intentionally or unintentionally convey that information to the witness. This can happen even with small changes in the administrator’s body posture or expression and even when the witness and administrator are unaware it is happening. This may increase the chance that the witness will select the suspect, even if the suspect is not the perpetrator. The recommended practice therefore is to not reveal to the line-up administrator the suspect’s identity or to take steps to make sure the administrator does not know which person the witness is viewing.**]**

**[line-up composition**

A suspect should not stand out from other members of the line-up. A line-up that suggests a result to a witness may cause the witness to choose the suspect because he or she is the obvious choice, not because he or she matches the witness’s independent memory. A line-up that suggests a result to a witness may also artificially inflate the witness’s confidence in the identification.

Besides the suspect, line-ups also include a number of possible choices, commonly known as “fillers,” for the witness to consider. A line-up should include a minimum of six photos. When a line-up consists of fewer than six photos, including a photo of the suspect, the chance that the suspect will be selected increases – whether or not the suspect is the perpetrator. For the same reason, each line-up should contain no more than one suspect to reduce the possibility that a witness will select a suspect by guessing.**]**

**[feedback or cues**

The intentional or unintentional cues of an administrator or a police officer might influence an eyewitness’s identification before or after a witness has identified a suspect. Confirmatory feedback occurs when these cues suggest to the eyewitness that the witness correctly identified the suspect. If such feedback occurs, the witness may have a false sense of confidence in the identification. Confirmatory feedback may also cause a witness to enhance his or her recollection of the quality of the view of the event, memory at the time of the line-up, or memory in general.**]**

**[show-up**

In this case, the witness identified the defendant during a “show-up.” A “show-up” is an identification procedure where the witness is presented with a single suspect and asked if that person committed the crime. It is sometimes necessary for law enforcement to conduct a show-up, even though such a procedure is suggestive.

Show-ups are more reliable when they are conducted immediately after a crime when the witness’s memory is fresh. Although the benefits of a fresh memory may balance the risks of undue suggestion, you should consider that show-ups conducted more than two hours after an event present a heightened risk of an inaccurate identification.

Another factor to consider is how the show-up was conducted, including how the suspect was presented to the witness.**]**

**[witness certainty statement**

A witness’s level of certainty in an identification is a factor you may consider in assessing the reliability of the identification. However, the witness’s level of certainty, by itself, may not be a reliable indicator of the accuracy of the identification, especially where the witness did not describe that level of certainty when the witness first made the identification.

You should consider whether a witness’s level of certainty in his or her identification was documented in the witness’s own words at the time he or she made an identification. You may consider a witness’s identification even where the witness is not free from doubt regarding its accuracy.**]**

**[prior exposure/multiple procedures**

When a witness views the same person in more than one identification procedure, it can be difficult to know whether a later identification comes from the witness’s memory of the earlier identification procedure or the original event. As a result, if a witness views an innocent suspect in multiple identification procedures, the risk of mistaken identification is increased.**]**

**USE NOTE**

In *Young v. State*, 374 P.3d 395 (Alaska 2016), the Alaska Supreme Court announced a new test governing the admission of eyewitness identification evidence. *Id.* at 427. The court directed the Criminal Pattern Jury Instruction Committee to “draft a model instruction appropriate for use in future cases, consistent with the principles we announce today.” *Id.* at 428. In light of this direction, the committee has adopted this pattern instruction. This instruction is unique among jury instructions, and the committee struggled with the *Young* court’s direction to characterize the state of scientific knowledge that usually comes to juries in the form of expert testimony. The state of scientific knowledge evolves over time, and eyewitness instructions will need to be revised to remain consistent with scientific knowledge.

**How this instruction works.** This instruction explains how various factors might affect the reliability of an eyewitness identification. The supreme court divided these factors into two categories: estimator variables (factors that “cannot be influenced by the criminal justice system because they are related to environmental conditions and personal characteristics) and system variables (factors that “are manipulable and can be influenced by the criminal justice system”). *Young*, 374 P.3d at 416-17. The instruction follows this categorization. Although bracketed, each estimator variable will likely be relevant in every case. However, system variables are more likely to be fact dependent and case specific.

The following are the estimator variables: stress, weapons/unexpected detail, duration, environmental conditions, witness characteristics, disguises/changed appearance, cross-racial effects, time elapsed, and third-party information. The system variables begin with the paragraph starting “line-up/show-up,” which is an introductory paragraph that should be given when the court instructs on a system variable. The following are the system variables: pre-identification instructions, blind administration, line-up composition, feedback or cues, show-up, witness certainty statement, and prior exposure/multiple procedures.

**When this instruction should be given.** The supreme court stated that a jury instruction on eyewitness identification should be given when eyewitness identification “is a significant issue in a case.” *Young*, 374 P.3d at 428.

**When this instruction should be modified**. The supreme court stated that “the reliability of eyewitness identification frequently is not a matter within the knowledge of the average juror” and that many factors affecting the reliability of an identification are counterintuitive. *Young*, 374 P.3d at 428. The committee drafted this pattern instruction in light of the scientific principles discussed by the court, but the scientific understanding of eyewitness identification continues to evolve. *See id.* at 417-25. In light of this evolution, and because the supreme court held that a “trial court should issue an *appropriate* jury instruction that sets out the relevant factors affecting reliability,” *id.* at 428 (emphasis added), a trial court should consider whether this pattern should be modified.

In addition, a factfinder in a given case may be presented with expert evidence on the scientific principles discussed in this instruction. *Young* did not address what, if any, instruction should be given in this circumstance.

The instruction uses the word “line-up” to describe all identification procedures in which a witness is asked to identify the suspect from a group of people. The trial court should consider whether, given how an identification procedure is described in testimony, to modify this term to better reflect the procedure used in a given case. For example, sometimes the word “array” is used instead of line-up.

**Factor-specific use notes.** The committee offers the following notes specific to individual estimator or system variables. The trial court should determine whether the inclusion of this information is appropriate in a given case.

* **feedback**

The *Young* court noted that “[s]tudies suggest that confirmatory feedback has an effect even when it comes 48 hours after an identification, and the effect is powerful across other variables.” *Young*, 374 P.3d at 420.

* **witness characteristics**

With respect to age, *Young* provides a nuanced explanation of how age and relative age can affect the reliability of an identification. *See id.* at 424 n.174.

* **in-court identification without a prior identification**

If an eyewitness identifies the defendant for the first time in court (i.e., without having made an identification before trial), the trial court should consider whether to include an appropriate instruction. *See id*. at 411-12.