

**STANDING ADVISORY COMMITTEE
ON EYEWITNESS IDENTIFICATION**

**PROPOSED REVISIONS TO MODEL
PRELIMINARY/CONTEMPORANEOUS JURY INSTRUCTION ON
EYEWITNESS IDENTIFICATION**

March 2, 2026

**Existing Preliminary/Contemporaneous Instruction,
approved in 2015.**

You may hear testimony from a witness who has identified the defendant as the person who committed [or participated in] the alleged crime[s]. Where a witness has identified the defendant as the person who committed [or participated in] the alleged crime[s], you should examine the identification with care. As with any witness, you must determine the credibility of the witness, that is, do you believe the witness is being honest? Even if you are convinced that the witness believes his or her identification is correct, 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 person, but perceive or remember the event inaccurately. You must decide whether the witness's identification is not only truthful, but accurate.

People have the ability to recognize others they have seen and to accurately identify them at a later time, but research

and experience have shown that people sometimes make mistakes in identification. The mind does not work like a video recorder. A person cannot just replay a mental recording to remember what happened. Memory and perception are much more complicated. Generally, memory is most accurate right after the event and begins to fade soon thereafter. Many factors occurring while the witness is observing the event may affect a witness's ability to make an accurate identification. Other factors occurring after observing the event also may affect a witness's memory of that event, and may alter that memory without the witness realizing that his or her memory has been affected. Later in the trial, I will discuss in more detail the factors that you should consider in determining whether a witness's identification is accurate. Ultimately, you must determine whether or not the Commonwealth has proved the charge[s], including the identity of the person who committed [or participated in] the alleged crime[s], beyond a reasonable doubt.

[NOTE TO THE JUDGE: Upon request by any party, the trial judge shall give the preliminary/contemporaneous instruction before opening statements or immediately before or after the testimony of an identifying witness, saving the full model instruction to be given at a later time during the trial.]

Proposed 2026 Amendments to Preliminary/Contemporaneous Instruction – Redline version

You may hear testimony from a witness who has identified ~~the defendant~~[DFT = defendant's name] as the person who committed [or participated in] the alleged crime[s]. ~~Where a witness has identified the defendant as the person who committed [or participated in] the alleged crime[s], you~~You should examine ~~the~~any eyewitness identification with care. As with any witness, you must ~~determine the credibility of the witness, that is, do you believe the~~decide whether the witness is being honest? ~~Even if you are convinced that the witness believes his or her.~~However, experience and research show that even witnesses who honestly believe that their identification is correct,you can still ~~must consider the possibility that the witness made a mistake in the identification. A witness may honestly believe he or she saw a person, but~~be mistaken. For instance, they may perceive or remember the event or person inaccurately. ~~You must decide whether the witness's identification is not only truthful, but accurate.~~

~~People have the ability to recognize others they have seen and to accurately identify them at a later time, but research and experience have shown that people sometimes make mistakes in identification. The mind does not work like a video recorder. –~~

A person cannot just replay a mental recording to remember what happened. Memory and perception are much more complicated.

Generally, memory is most accurate right after the event and soon begins to fade ~~soon thereafter. Many factors occurring while the witness is observing.~~ When a witness observes the event, many factors may affect ~~a witness's~~ the witness's ability to make an accurate identification. ~~Other~~ Afterwards, other factors ~~occurring after observing the event also~~ may affect or ~~even alter the~~ witness's memory of that event, ~~and may alter that memory~~ without the witness realizing ~~that his or her memory has been affected. Later in the trial, it.~~ I will discuss explain these factors in more detail ~~the factors that you should consider in determining whether a witness's identification is accurate. Ultimately, you must determine whether or not the Commonwealth has proved the charge[s], including the identity of the person who committed [or participated in] the alleged crime[s], beyond a reasonable doubt~~ later.

[**NOTE TO THE JUDGE:** Upon request by any party, the trial judge shall give the preliminary/contemporaneous instruction before opening statements or immediately before or after the testimony of an identifying witness, saving the full model instruction to be given at a later time during the trial.]

Proposed 2026 Amendments to Preliminary/Contemporaneous Instruction – Clean version

You may hear testimony from a witness who has identified [DFT = defendant's name] as the person who committed [or participated in] the alleged crime[s]. You should examine any eyewitness identification with care. As with any witness, you must decide whether the witness is being honest. However, experience and research show that even witnesses who honestly believe that their identification is correct can still be mistaken. For instance, they may perceive or remember the event or person inaccurately.

The mind does not work like a video recorder. A person cannot just replay a mental recording to remember what happened. Memory and perception are much more complicated.

Generally, memory is most accurate right after the event and soon begins to fade. When a witness observes the event, many factors may affect the witness's ability to make an accurate identification. Afterwards, other factors may affect or even alter the witness's memory of that event, without the witness realizing it. I will explain these factors in more detail later.

[NOTE TO THE JUDGE: Upon request by any party, the trial judge shall give the preliminary/temporaneous instruction before opening statements or immediately before or after the testimony of an identifying witness, saving the full model instruction to be given at a later time during the trial.]