

I.10 Sample Jury Instruction Regarding Missing Evidence

This instruction is based on the Illinois Pattern Jury Instructions, § 5.01. An instruction along these lines is appropriate if the defendant has destroyed, lost, or otherwise failed to produce evidence at trial. See §§ 2.5.2.1, 2.5.2.2, 9.5, supra.

JURY INSTRUCTION

Failure to produce evidence or a witness. If a party to this case has failed [to offer evidence/to produce a witness] within his power to produce, you may infer that the [evidence/testimony of the witness] would be adverse to that party if you believe each of the following elements:

1. The [evidence/witness] was under the control of the party and could have been produced by the exercise of reasonable diligence;

2. The [evidence/witness] was not equally available to the adverse party;

3. A reasonably prudent person under the same or similar circumstances would have [offered the evidence/produced the witness] if he believed [it to be/the testimony to be] favorable to him;

4. No reasonable excuse for the failure has been shown.