

CHAIN OF CUSTODY ¹

NOTE: *This instruction is for inclusion in the Final Instructions to the jury when the chain of custody of fungible evidence is in issue.*

In this case, (specify the fungible evidence [or exhibit identification]), was introduced in evidence. Because such evidence is fungible, that is, because it is of such a nature that another object could be substituted for it or its condition could be changed, you should consider what the law refers to as its “chain of custody,” that is, whether the circumstances surrounding the possession [and testing] of (specify the fungible evidence [or exhibit identification]) provide reasonable assurances of the identity and unchanged condition of the evidence.

In making that determination, consider the testimony of (specify name of witness(es) or specify: “those witnesses”) who handled and identified (specify the fungible evidence [or exhibit identification]) and their testimony as to its manner of custody and condition while in their possession.

Note: Include as may be applicable:

You may consider, for example, whether there were any gaps in the “chain of custody.” If there were, you may consider the length of those gaps and their significance in assuring the identity and unchanged condition of the evidence.

You may consider whether or not logical explanations were provided for any inconsistencies in the testimony or in the physical evidence, or can reasonably be inferred from the surrounding circumstances.

Whether the evidence provides reasonable assurances of the identity of (specify the fungible evidence [or exhibit identification]), and its unchanged condition and what weight, that is, what degree of importance, to be given to (specify the fungible evidence [or exhibit identification]) is for you to decide.

¹ See *People v Baez*, 2024 NY Slip Op 02225, 2024 WL 1773214 (2024).