

3.60. Certificates Concerning Judgments of Conviction and Fingerprints (CPL 60.60)

1. A certificate issued by a criminal court, or the clerk thereof, certifying that a judgment of conviction against a designated defendant has been entered in such court, constitutes presumptive evidence of the facts stated in such certificate.

2. A report of a public servant charged with the custody of official fingerprint records which contains a certification that the fingerprints of a designated person who has previously been convicted of an offense are identical with those of a defendant in a criminal action, constitutes presumptive evidence of the fact that such defendant has previously been convicted of such offense.

Note

This rule reproduces verbatim CPL 60.60. By making the specified certificate of a judgment of conviction and of an official fingerprint record “presumptive evidence” of the specified facts, the statute also provides an exception to the hearsay rule for the admission in evidence of those facts.

Subdivision (1) authorizes the introduction in evidence of a certificate of a judgment of conviction of a named person. If the purpose, however, is to provide presumptive evidence of the identity of a person as the one named in the certificate, the certificate, with only a name recorded on it, is insufficient (*People v Vollick*, 148 AD2d 950, 951 [4th Dept 1989] [“While the certificate here states that (a named person) was previously convicted, it does not otherwise state any facts demonstrating that the person named in the certificate is the defendant. The certificate proves only that a person by the same name as defendant was previously convicted” (citation omitted)], *affd for reasons stated below* 75 NY2d 877 [1990]). Additional evidence of identity, such as “date of birth and NYSID number,” is necessary (*People v Shaw*, 83 AD3d 1101, 1102-1103 [2d Dept 2011]).

Subdivision (2) allows for presumptive proof of identity by a comparison of the defendant’s fingerprints and the fingerprints of the person previously convicted of an offense (*People v Mathis*, 278 AD2d 803, 803 [4th Dept 2000])

[“The certificates of conviction issued by the clerks of (the) Counties constitute presumptive evidence of defendant’s two prior violent felony convictions (*see*, CPL 60.60 [1]), and the testimony of a State Police investigator concerning defendant’s fingerprints established that defendant is the person named in those certificates (*see*, CPL 60.60 [2]” (citation omitted)].

While the Sixth Amendment right of confrontation does not apply in a grand jury or sentencing proceeding (*People v Leon*, 10 NY3d 122 [2008]), it applies at a trial. As a result, “fingerprint reports,” comparing unknown latent prints from a crime scene with fingerprints from a known individual, that are introduced in evidence at a trial are testimonial when prepared “solely for prosecutorial purposes and, most importantly, because they were accusatory and offered to establish defendant’s identity,” so the defendant is accordingly entitled to confront the author of the report (*People v Rawlins*, 10 NY3d 136, 157 [2008]).