

## 4.23 Connecting Physical Evidence to Defendant

**Physical evidence is admissible when the evidence is sufficiently connected with the defendant to be relevant to an issue in the case. Physical evidence is sufficiently connected to a defendant when the connection is not so tenuous as to be improbable.**

### Note

This rule is derived from *People v Mirenda* (23 NY2d 439, 453 [1969] [“The admissibility of (the physical) evidence was dependent solely on whether they were sufficiently connected with the defendants to be relevant to an issue in the case. The test for admissibility of this type of object is an evaluation of how close is the connection between the object and the defendant. If it is not so tenuous as to be improbable, it is admissible as is any other evidence which is relevant to an issue in the prosecution”]).

In *Mirenda*, after shooting the victim, the defendant and another fled along a path where a pair of sunglasses was subsequently found. A witness testified that the glasses “resembled” a pair of sunglasses he had previously offered the defendant but he did not recall whether the defendant had taken them; another witness testified that the glasses were “similar” to the glasses he saw one of the fleeing perpetrators wearing. The Court of Appeals after stating the rule on admissibility of physical evidence remarked: “Though the glasses were of a common variety the possibility that they were dropped in the roadway by someone other than the defendants was not so great as to make their introduction irrelevant. . . . The process of drawing a concrete conclusion from differing inferences requires adding together a number of circumstances, each of which by itself might be common to many pairs of glasses but which, when viewed together, make it more than probable that they could only co-exist in one pair of glasses. In this case there were enough surrounding circumstances to permit the jury to infer that these glasses were actually the glasses which [were] offered Mirenda.” (*Mirenda* at 453-454).

Other examples of physical evidence connected to a defendant are:

- The trial court properly permitted the police officers to testify that when they first sought to question the defendant “he had in his possession a black skirt, torn and stained, and when he saw them he discarded the skirt and ran from them.” (*People v Jones*, 69 NY2d 853, 855 [1987].) The skirt was “relevant to the issue of identification because the victim had testified that her attacker was carrying something black at the time of the incident and the evidence of defendant’s possession of a similar object at another closely related time helped to link him to the crime.” (*Id.*)

- During a robbery, a defendant “thrust his arm, with its hand enclosed in a brown paper bag, towards [the victim]” who testified that it “looked like there was a gun in it.” (*People v Pena*, 50 NY2d 400, 406 [1980].) The codefendant took the victim’s coat. Subsequently, the codefendant was found wearing the coat and carrying a brown paper bag that contained a knife. There was “no direct evidence” that the defendants had exchanged possession of the bag, and the victim could not say “for certain whether the bag . . . was the very same one” he observed in the defendant’s hand, but it was sufficient for admission of the bag (and the knife) given that the “bag found on [codefendant] . . . ‘looked like’ the one” the victim saw the defendant holding. (*Id.* at 408-409.)
- “It was reported that the robber had possessed a ‘nickel-plated 45— an Army type 45’. This type of pistol was discovered in a briefcase under the seat of . . . [an] automobile borrowed by defendant and in which he was observed leaving the scene of the crime. The briefcase was identified as similar to the one carried by the robber. Defendant was identified as the robber. This then was sufficient evidence to establish defendant’s possession of the pistol. And the evidence that the pistol was similar to the one used during the robbery was admissible.” (*People v Logan*, 25 NY2d 184, 194 [1969].)
- Hours after the defendant’s arrest for robbery in which a gun was used, a police officer returned to the site of the crime and found a gun. That gun was properly admitted in evidence on the complainant’s testimony identifying the gun “as one like that placed against his chest by the defendant’s accomplice.” (*People v Randolph*, 40 AD2d 806, 806 [1st Dept 1972], *cited with approval in Pena*, 50 NY2d at 409.)