



determination also requires the judge's careful consideration of the totality of the circumstances, rather than considering a set list of requirements.

Today, there are at least three (3) Hawaii Supreme Court decisions that address when and what type of jury instructions must be given to juries, to ensure that juries are well-aware of the fallibility of eyewitness identifications. Moreover, it is our understanding that the Judiciary's Jury Instructions Committee reviews this matter regularly, and in fact approved new jury instructions regarding eyewitness identifications on December 18, 2014 and October 29, 2014, to properly guide juries in their consideration of eyewitness identifications, as relevant. In order to ensure that our juries—and our courts—continue to consider the true totality of circumstances pertaining to eyewitness identifications, and continue to consider every aspect of the evidence and arguments presented by defense and prosecution, in a totality of circumstances, it is imperative that the Legislature not codify a list of procedures as contemplated by S.B. 161.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes S.B. 161. Thank for you the opportunity to testify on this matter.