

103 EVIDENCE DEFINED

Evidence is:

First, the sworn testimony of witnesses, both on direct and cross-examination, regardless of who called the witness.

Second, the exhibits the court has received, whether or not an exhibit goes to the jury room.¹

Third, any facts to which the lawyers have agreed or stipulated² or which the court has directed you to find.

Anything you may have seen or heard outside the courtroom is not evidence. You are to decide the case solely on the evidence offered and received at trial.

COMMENT

Wis JI-Criminal 103 was originally published in 1983 and republished without change in 1991. This revision was approved by the Committee in December 1999.

The instruction is modeled after an instruction suggested in "Communicating With Juries: Problems And Remedies," by Judge William W. Schwarzer, 69 Calif. L. Rev. 731 (1981).

The 1999 revision added the following to the sentence relating to exhibits: "whether or not an exhibit goes to the jury room." Wis JI-Criminal 155, EXHIBITS, continues to be published as an optional instruction for use where more detailed advice about the status of exhibits is believed to be helpful.

1. Permitting exhibits to be taken to the jury room is a decision resting within the discretion of the trial court. For a discussion of factors bearing on this discretionary decision, see Payne v. State, 199 Wis. 615, 629-30, 227 N.W. 258 (1929).

2. Also see Wis JI-Criminal 162, AGREED FACTS. If the agreed facts go to an element of the crime, a personal waiver by the defendant is required. See State v. Villarreal, 153 Wis.2d 323, 450 N.W.2d 519 (Ct. App. 1989), discussed in Wis JI-Criminal 162, footnote 1 and SM-21, Waiver of Jury Trial, at section III. C. Partial Jury Trial Waiver.