

## 154 SUMMARY OF EVIDENCE

The court has allowed the use of a chart to organize the evidence and to assist you in understanding it. The chart itself is not evidence.<sup>1</sup> It is a summary of some of the evidence that was presented. However, it is the evidence that controls. You should rely on the chart only to the extent that you believe it accurately and properly summarizes the evidence.

### COMMENT

Wis JI-Criminal 154 was originally published in 2001. This revision was approved by the Committee in June 2011.

This is an optional instruction to be read, if used at all, at the time an organizational chart or other summary is used by counsel. Any chart or summary inevitably involves editing and selectivity, and it is advisable to tell the jury that it is the actual evidence, not the summary, that controls. This instruction does not apply to "summaries" admitted under § 910.06. See footnote 1.

A trial court's admission of a chart summarizing testimony was affirmed in State v. Olson, 217 Wis.2d 730, 579 N.W.2d 802 (Ct. App. 1998). The chart, which listed the various instances of sexual contact addressed by the evidence, was not considered to be a "summary" of evidence under § 910.06 but was received as "a summary exhibit." [Also referred to as a "pedagogical device."] The court of appeals concluded that the cautionary instruction given by the trial court was a correct statement of the law. That instruction provided:

I want to caution you with respect to any reliance on this exhibit in that it is to some extent a summary of evidence that was presented at trial.

You observed the manner and way in which the State proceeded with the use of this exhibit, but it is the evidence that controls, and it is your recollection of the evidence that controls, and you should only rely on any summary to the extent that it's consistent with your recollection and to the extent that you feel it accurately and properly summarizes or reflects evidence that you have heard in the case.

So I have received it, but I just want to caution you that it is received as a summary exhibit, and it is the evidence, and the testimony, and your recollection of that which controls.

State v. Olson, supra at 736.

1. This instruction is intended for cases where a party has used a chart, diagram, or other device to help explain or organize the evidence. It is not to be used where "summaries" have been admitted under § 910.06; those summaries are evidence.