

175 MOTIVE

[USE THE TWO SENTENCES IN BRACKETS ONLY IF INTENT IS AN ELEMENT OF THE CRIME CHARGED.]

[Intent should not be confused with motive. While proof of intent is necessary to a conviction, proof of motive is not.]

[USE THE FOLLOWING IN ALL CASES WHERE AN INSTRUCTION ON MOTIVE IS BELIEVED TO BE APPROPRIATE.]

"Motive" refers to a person's reason for doing something. While motive may be shown as a circumstance to aid in establishing the guilt of a defendant, the State is not required to prove motive on the part of a defendant in order to convict. Evidence of motive does not by itself establish guilt. You should give it the weight you believe it deserves under all of the circumstances.

COMMENT

Wis JI-Criminal 175 was originally published in 1962, revised in 1983, and republished without change in 1991. This revision was approved by the Committee in February 1999 and was intended to make the instruction more understandable without changing its meaning.

The original version of this instruction was based on statements in Cupps v. State, 120 Wis. 504, 518, 97 N.W. 210 (1904), and Wittig v. State, 235 Wis. 274, 292 N.W. 879 (1940). More recent cases have restated this general rule, for example:

Motive is not an element of any crime and does not by itself establish guilt or innocence. But evidence of motive is relevant if it meets the same standards of relevance as other evidence. Motive is an evidentiary circumstance which may be given as much weight as the fact finder deems it is entitled to.

State v. Berby, 81 Wis.2d 677, 688, 260 N.W.2d 798 (1977).

The admissibility of evidence of motive is to be evaluated on the same terms as other evidence: it must be relevant and its probative not outweighed by danger of unfair prejudice. Kelly v. State, 75 Wis.2d 303, 320, 249 N.W.2d 800 (1977); State v. Phillips, 99 Wis.2d 46, 54-5, 298 N.W.2d 239 (Ct. App. 1980).

If evidence of motive is admitted, the defendant is entitled to challenge it. The original version of this instruction included the following statement in the comment: "It was held in Runge v. State, 160 Wis. 8, 150 N.W.2d 977 (1915), that where it was claimed by the state that one motive for the uxoricide [wife killing] was defendant's desire to secure his wife's property, he was entitled, upon request, to have the jury instructed as to the law under which, upon her death, her property would descend to other persons."

Other cases analyzing the admissibility of evidence of motive include: State v. Jansky, 258 Wis. 182, 45 N.W.2d 78 (1950); Holmes v. State, 76 Wis.2d 259, 251 N.W.2d 56 (1977); Milenkovic v. State, 86 Wis.2d 272, 283 N.W.2d 320 (Ct. App. 1978).

Also see two cases addressing the problems that arise when the evidence of motive involves evidence of "other acts" covered by the rules in '904.02. State v. Tabor, 191 Wis.2d 482, 529 N.W.2d 915 (Ct. App. 1995); State v. Ingram, 204 Wis.2d 177, 554 N.W.2d 833 (Ct. App. 1996).