

267 VENUE — § 971.19

[THIS INSTRUCTION IS TO BE GIVEN ONLY WHEN VENUE IS A CONTESTED ISSUE IN THE CASE. IT SHOULD BE SUBSTITUTED FOR THE "JURY DECISION" PARAGRAPHS IN THE OFFENSE INSTRUCTION.]¹

A criminal case is required to be tried in the county where the crime was committed.

However,

[where two or more acts are required for the commission of any offense, the trial may be in any county in which any of such acts occurred.]²

[where an offense is committed in or within one-fourth of a mile of the boundary of two or more counties, the trial may be in any of such counties.]³

[where the offense has been committed in, or against a vehicle, the trial may be in any county through which the vehicle has passed or in the county where the travel began or ended.]⁴

[if the act causing death is in one county and death occurs in another, the trial may be in either county.⁵ (If neither location can be determined, the trial may be held in the county where the body was found.)]⁶

[if the offense began outside the state but was completed within the state, the trial may be held in the county where the crime was completed.]⁷

If you are satisfied beyond a reasonable doubt that the defendant committed the offense charged (or _____, a lesser included offense) and that⁸

[one of the acts required for the commission of the offense was committed in

_____ County,]

[the offense was committed on or within one-fourth of a mile of the boundary of

_____ County,]

[the vehicle involved in this offense passed through _____ County or

that the travel began or ended in _____ County,]

[(the act causing death or that the death itself occurred in _____ County)

(that the body was found in _____ County),]

[the offense was completed in _____ County,]

you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 267 was originally published in 1979. The comment was revised in 1983, 1990, 2000, and 2006. This revision was approved by the Committee in October 2010; it involved editorial corrections to the text and updating the Comment.

Section 971.19(1) provides that criminal actions are to be tried in the county where the crime was committed except as otherwise provided in that section. This instruction deals with the generally applicable exceptions under subs. (2) through (6). The offense-specific exceptions in subs. (7) through (12) are not included in the instruction. The Committee concluded that the instruction need be given only when venue is contested and only when one of the exceptions under § 971.19 applies. In all other cases, the Committee believes the finding of venue is adequately covered by the standard verdict forms (Wis JI-Criminal 480 and ff.), which provide for a finding of guilty "as charged in the information."

Venue is not an element of the crime but rather it is a matter of procedure and designates the geographic division of the state in which the action is to be tried. Nevertheless, venue must be proved beyond a reasonable doubt. State v. Dombrowski, 44 Wis.2d 486, 171 N.W.2d 349 (1969); Smazal v. State, 31 Wis.2d 360, 142 N.W.2d 808 (1960). Venue may be established by circumstantial evidence; direct testimony is not required, Smazal, supra, 31 Wis.2d at 363.

In State v. Swinson, 2003 WI App 45, 261 Wis.2d 633, 660 N.W.2d 12, the Court held that "[a] specific instruction on venue needs to be given only when venue is contested." &26. [Note 1 to Wis JI-Criminal 267 was cited with apparent approval.] Also see State v. Schultz, 2010 WI App 124, 329 Wis.2d 424, 791 N.W.2d 190.

Neither statute nor case law (other than Swinson) in Wisconsin specifically requires that the finding of venue be made by the jury. However, that it is the jury's function finds implicit support in a number of cases. See, for example, State v. Dombrowski, *supra*, Smazal v. State, *supra*, State v. Coates, 262 Wis. 469, 55 N.W.2d 353 (1952), Piper v. State, 202 Wis. 58, 231 N.W. 162 (1930), Kellar v. State, 174 Wis. 67, 182 N.W. 321 (1921), and Davis v. State, 134 Wis. 632, 115 N.W. 150 (1908).

The instruction provides for selecting from the alternatives provided in brackets. As adapted for a case involving the first bracketed alternative, the instruction would read as follows:

A criminal case is required to be tried in the county where the crime was committed. However, where two or more acts are required for the commission of any offense, the trial may be in any county in which any of such acts occurred.

If you are satisfied beyond a reasonable doubt that the defendant committed the offense charged and that one of the acts required for the commission of the offense was committed in _____ County, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty

For a discussion of probable cause sufficient to show venue under the general venue requirement in § 971.19(1), see State v. Anderson, 2005 WI 54, 280 Wis.2d 104, 695 N.W.2d 731.

For crimes committed in a "precinct" of a state prison, venue properly lies in the county in which the institution is located, see § 302.02. In such cases, it may be helpful to instruct the jury that they need not be concerned about the fact that the offense actually took place outside the county in which the court is located.

The issue of venue is different from the issue of the territorial jurisdiction of the state of Wisconsin over criminal conduct. The latter is addressed by § 939.03. See Wis JI-Criminal 268 LAW NOTE: JURISDICTION.

In State v. Jensen, 2010 WI 38, 324 Wis. 2d 586, 782 N.W.2d 415, the court held that the exception in sub. (12) applies to a prosecution begun before the exception was created.

1. The Committee concluded that the instruction need be given only when venue is contested and only when one of the exceptions under § 971.19 applies. In all other cases, the Committee believes the finding of venue is adequately covered by the standard verdict forms (Wis JI-Criminal 480 and ff.), which provide for a finding of guilty "as charged in the (information) (complaint)."

2. Section 971.19(2). Under this subsection, venue for a conspiracy case properly lies in any county where a member of the conspiracy performed an act which effected the object of the conspiracy. State v. Cavallari, 214 Wis.2d 42, 54-55, 571 N.W.2d 176 (Ct. App. 1997).

Facts were found to be sufficient to establish venue under § 971.19(2) in a theft by fraud case in State v.

Swinson, 2003 WI App 45, 261 Wis.2d 633, 660 N.W.2d 12.

3. Section 971.19(3).
4. Section 971.19(4).
5. Section 971.19(5).
6. Section 971.19(5). Read only if county where act or death occurred cannot be determined.
7. Section 971.19(6).
8. Select the alternative that matches the alternative selected above.