

300 CREDIBILITY OF WITNESSES

It is the duty of the jury to scrutinize and to weigh the testimony of witnesses and to determine the effect of the evidence as a whole. You are the sole judges of the credibility, that is, the believability, of the witnesses and of the weight to be given to their testimony.

In determining the credibility of each witness and the weight you give to the testimony of each witness, consider these factors:

- whether the witness has an interest or lack of interest in the result of this trial;
- the witness' conduct, appearance, and demeanor on the witness stand;
- the clearness or lack of clearness of the witness' recollections;
- the opportunity the witness had for observing and for knowing the matters the witness testified about;
- the reasonableness of the witness' testimony;
- the apparent intelligence of the witness;
- bias or prejudice, if any has been shown;
- possible motives for falsifying testimony; and
- all other facts and circumstances during the trial which tend either to support or to discredit the testimony.

Then give to the testimony of each witness the weight you believe it should receive.

[GIVE THE FOLLOWING PARAGRAPH ONLY WHEN THE DEFENDANT TESTIFIES.]¹

[The defendant has testified in this case, and you should not discredit the testimony just because the defendant is charged with a crime. Use the same factors to determine the credibility and weight of the defendant's testimony that you use to evaluate the testimony of any other witness.]

There is no magic way for you to evaluate the testimony; instead, you should use your common sense and experience. In everyday life, you determine for yourselves the reliability of things people say to you. You should do the same thing here.

COMMENT

Wis JI-Criminal 300 was originally published in 1962 and revised in 1979, 1989, 1990, and 1991. This revision was approved by the Committee in June 1999.

The 1999 revision involved a substantial rewriting of the former instruction and was intended to make it more understandable without changing the meaning.

In Wilson v. State, 184 Wis. 636, 200 N.W. 369 (1924), the court approved the general instruction that as to each witness, the jury should take into consideration the appearance and manner of testifying, the apparent interest in the result of the trial, if any, the degree of intelligence of the witness, the reasonableness of the testimony given, and every other circumstance bearing upon credibility and weight.

The supreme court has allowed the trial court considerable latitude in instructions dealing with the credibility of witnesses. A few cases are illustrative. In Emery v. State, 101 Wis. 627, 78 N.W. 145 (1899), the court approved the following part of the instruction:

You are cautioned, however, that interest in the result of the trial creates no presumption that such witnesses will swear falsely.

The trial court was criticized, on the other hand, in Lee v. State, 74 Wis. 45, 41 N.W. 960 (1889), for instructing that:

When the witnesses appear to be equally credible in every other respect, the one who appears to have the greater interest in the result of the case is to have the less weight of the two.

The court remarked that this "trenches too closely . . . upon the legitimate function of the jury."

The question has been raised with the Committee whether a special instruction should be given for police officer witnesses. One theory is that the instruction should advise that the testimony of the police officer witness is to be weighed by the same standards applied to other witnesses. In the Committee's judgment, no separate instruction is necessary; Wis JI-Criminal 300 would apply to all witnesses, including the police officer. A different theory is that an instruction should advise the jury that greater care should be taken in weighing the testimony of a police officer because of the officer's greater interest in gaining a conviction. The Wisconsin Supreme Court addressed that argument in State v. Melvin, 49 Wis.2d 246, 181 N.W.2d 490 (1970), and concluded that on the facts of that case, the general credibility instruction was sufficient.

1. The Committee recommends that instructing the jury on the credibility of the defendant be included in the general credibility instruction as indicated, rather than dealing with the credibility of the defendant separately.

Wis JI-Criminal 310 formerly dealt with the credibility of the defendant but was withdrawn by the Committee in 1979. However, the use of Wis JI-Criminal 310 was approved by the Wisconsin Supreme Court in Thompson v. State, 83 Wis.2d 134, 265 N.W.2d 467 (1978).