

**484 VERDICTS SUBMITTED FOR ONE DEFENDANT: TWO COUNTS:
SEPARATE VERDICT ON EACH COUNT REQUIRED**

The following four forms of verdict¹ will be submitted to you concerning the charges against the defendant, (name of defendant).

Count One

One reading: "We, the jury, find the defendant, (name of defendant), guilty of (offense charged),² as charged in Count One of the (information) (complaint)."³

Another reading: "We, the jury, find the defendant, (name of defendant), not guilty of (offense charged),⁴ as charged in the Count One of the (information) (complaint)."

Count Two

Another reading: "We, the jury, find the defendant, (name of defendant), guilty of (offense charged),⁵ as charged in Count Two of the (information) (complaint)."⁶

Another reading: "We, the jury, find the defendant, (name of defendant), not guilty of (offense charged),⁷ as charged in Count Two of the (information) (complaint)."

It is for you to determine whether the defendant is guilty or not guilty of each of the offenses charged. You must make a finding as to each count of the (information) (complaint). Each count charges a separate crime, and you must consider each one separately. Your verdict for the crime charged in one count must not affect your verdict on any other count.⁸

COMMENT

Wis JI-Criminal 484 was originally published in 1962 and revised in 1979, 1990, 1991, and 1992. It was republished without change in 2000. This revision was approved by the Committee in February 2012; it made nonsubstantive changes in the text and updated footnote 1.

If there are numerous counts alleged to have been committed on different dates, it is best to specify the alleged offenses and the dates of the alleged commission in the verdicts to keep the jury from becoming confused, especially since the state need not prove the exact time of the commission, and the jury is so instructed.

This instruction calls for submitting four verdicts in the two count case: guilty and not guilty for each count. See Wis JI-Criminal 485 for a case involving two counts and lesser included offenses.

1. Additions to the verdict are required in several situations. For example, in theft, criminal damage to property, and receiving stolen property cases, findings are required for the value of the property involved. The instructions for those offenses include recommended additional questions for these findings. A number of other criminal offenses also call for additional findings relating to facts that increase the penalty. Again, individual offense instructions will provide recommended questions. Finally, there are several generally applicable "penalty enhancers" that provide for increased penalties if specified facts are found. See Wis JI-Criminal 980 through 999A for suggested additions to the verdict.

2. Here should be inserted the short title of the offense charged. Refer to the Criminal Code titles, but in some instances these will not be appropriate, and it will be necessary to formulate a short title by synopsis.

3. It is important that the reference, "as charged in the (information) (complaint)," appear in the verdict. The Committee believes that this reference is sufficient to take care of the venue issue in cases where venue has not been contested. While venue is not an element of a criminal offense, it must be established 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). Where venue is contested and one of the exceptions under § 971.19 applies, a separate instruction on venue may be required; see Wis JI-Criminal 267.

4. See note 2, supra.

5. See note 2, supra.

6. See note 3, supra.

7. See note 2, supra.

8. The last two sentences have been added for the situation where joinder of charges, while proper, exposes the defendant to considerable prejudice in that the jury may use the fact of being charged with one offense as proof that the other offense was committed.

In *Peters v. State*, 70 Wis.2d 22, 233 N.W.2d 420 (1975), the defendant was charged with burglary and obstructing an officer. The offenses were joined in a single information and were tried at the same time. The supreme court held that the failure to deliver a proper cautionary instruction on the prejudicial effect of such joinder caused a miscarriage of justice requiring a new trial.

The trial judge in Peters gave Instruction No. 145, Information Not Evidence. This did not go far enough. An instruction was needed that advised the jury that it could not use evidence relating to making false statements to an officer to find the defendant guilty of the crime of burglary. "Such a cautionary instruction must be given in clear and certain terms, because otherwise there is a strong likelihood that the jury will regard the evidence on the obstructing an officer count as sufficient in itself to find the defendant guilty of burglary." Peters, supra at 32.

The decision also recommends an instruction in a case from the 7th Circuit: United States v. Pacente, 503 F.2d 543 (7th Cir. 1974). It reads as follows:

Now, there are two counts in this indictment, and, as I have told you, each one charges a separate crime. You should consider each one separately. The defendant's guilt or innocence of the crime charged in one count should not affect your verdict on the other count. . . .