

775 ALIBI

INSERT THE FOLLOWING AFTER THE ELEMENTS OF THE CRIME ARE DEFINED BUT BEFORE THE CONCLUDING PARAGRAPHS.

TO BE GIVEN ONLY ON THE REQUEST OF THE DEFENDANT¹

Alibi

There is evidence in this case that at the time of the commission of the offense charged, the defendant was at a place other than that where the crime occurred.²

It is not necessary for the defendant to establish that he was not present at the scene of the crime or that he was at some other place. The burden is upon the State to convince you beyond a reasonable doubt that the defendant committed the offense as charged.

COMMENT

Wis JI-Criminal 775 was originally published in 1962 and revised in 1984 and 1995. This revision was approved in December 2004.

1. The Committee recommends that this instruction be given only when requested by the defendant. The state is required to prove that the defendant committed the crime, and it is obvious that if the defendant was somewhere else when the crime was committed, he did not commit it. To call this an "alibi" and specially instruct on it strikes the Committee as unnecessary, unless the defendant makes a specific request.

2. In the former version of this instruction, the following sentence appeared at this point: "This is what is known in the law as an alibi." While it is not reversible error to use the word "alibi" in the instruction (State v. Williamson, 84 Wis.2d 370, 267 N.W.2d 337 (1978)), the Committee concluded that it is preferable not to, because it may have prejudicial connotations to the jury. However, if the lawyers or witnesses have used "alibi," it is recommended that the following be added at the beginning of the instruction:

References have been made to the defendant having an "alibi." The word, "alibi," is simply the Latin word for "elsewhere." It is used as a shorthand method of describing evidence that the defendant was elsewhere at the time the alleged crime took place.

See Logan v. State, 43 Wis.2d 128, 135, 168 N.W.2d 171 (1969).

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Section 971.23(8) sets forth the procedural requirements that apply to the presentation of alibi evidence. Exclusion of the defendant's own testimony may not be a proper remedy for failure to comply with the statute's notice requirements. Less drastic measures, such as granting a continuance to the state to allow it to prepare for such testimony, should be explored. See Alicea v. Gagnon, 675 F.2d 913 (7th Cir. 1982). Also see State v. Burroughs, 117 Wis.2d 293, 344 N.W.2d 149 (1984).