

**2302 INQUEST: FINAL INSTRUCTIONS: EXPLANATION OF VERDICTS**

Members of the jury, this case will now be submitted to you in the form of a special verdict consisting of \_\_\_\_\_ questions. Your duty is to answer those questions which, according to the evidence and my instructions, it becomes necessary for you to answer to arrive at a completed verdict.<sup>1</sup>

Question 1 asks: Is there probable cause to believe that the death of (name of deceased) was caused under circumstances constituting (name of offense submitted to the jury), contrary to section \_\_\_\_\_ of the Wisconsin Statutes?<sup>2</sup>

If you answer question 1 "yes," answer question 2. Question 2 asks: Is there probable cause to believe that (name person) committed the offense of (name of offense submitted to the jury), contrary to section \_\_\_\_\_ of the Wisconsin Statutes, in causing the death of (name of deceased)?<sup>3</sup>

If you answer question 1 "no," answer question 3. Question 3 asks: Is there probable cause to believe that the death of (name of deceased) was a result of [natural causes] [an accident] [suicide] [an act privileged by law]?<sup>4</sup>

All three questions require you to apply the standard of "probable cause."

There is probable cause if the facts and circumstances would cause a cautious and prudent person to reasonably believe that a certain fact situation exists. Probable cause is more than mere suspicion, but the evidence necessary to support a finding of probable cause need not satisfy you beyond a reasonable doubt.<sup>5</sup>

Question 1 asks you to determine whether there is probable cause to believe that the death of (name of deceased) was caused under circumstances constituting (name of offense submitted to the jury).<sup>6</sup>

DEFINE THE OFFENSE OR OFFENSES TO BE SUBMITTED TO THE JURY; WIS JI-CRIMINAL 1010 THROUGH 1191 ADDRESS HOMICIDE OFFENSES.

Question 3 asks you to determine whether there is probable cause to believe that the death of (name of deceased) was a result of [natural causes] [an accident] [suicide] [an act privileged by law].

["Accident" means that the death was caused by other than criminal means. The possible criminal causes of death that apply to this case were defined in connection with question 1.]<sup>7</sup>

["Suicide" means the voluntary and intentional taking of one's own life."] <sup>8</sup>

["An act privileged by law" as it applies in this case requires you to consider the privilege of (identify applicable privilege).]<sup>9</sup>

[ADD INSTRUCTION ON THE APPLICABLE PRIVILEGE; SEE WIS JI-CRIMINAL 800 THROUGH 885.]

In answering the questions provided in the verdict, examine the evidence with care and caution. Act with judgment, reason, and prudence. You are to search for the truth.<sup>10</sup>

Your verdict will be advisory, which means that it will be a recommendation to the district attorney whether criminal charges should be filed against any person arising out of the circumstances of (name of deceased)'s death.

Before you may return a verdict which may legally be received, the verdict must be reached unanimously. All the jurors must agree.<sup>11</sup>

When you retire to the jury room, select one of your members to preside over your deliberations. His or her vote is entitled to no greater weight than the vote of any other juror.

When you have agreed upon your verdict, all of you must sign it and it should be dated by the person you have selected to preside.

Swear the officer.

#### COMMENT

Wis JI-Criminal 2302 was originally published in 1998. This revision was approved by the Committee in June 2009. It adopted a new format and did not make any substantive changes.

This is suggested as the final instruction to the inquest jury and is specifically keyed to the verdict questions the jury will be asked to answer. See Wis JI-Criminal 2302A for the suggested verdict questions. A preliminary instruction to the inquest jury is provided in Wis JI-Criminal 2300.

1. This statement is based on Wis JI-Civil 100, Opening.
2. Section 979.08(1) provides that "[t]he instructions shall include those criminal offenses for which the judge or court commissioner believes a reasonable jury might return a verdict based upon a finding of probable cause." Thus, if supported by the evidence, instructions on more than one offense may be required. If that is the case, the Committee recommends submitting additional questions in essentially the same form as question 1, specifying a different offense and including a definition of that offense.
3. The model is set up for the simple case where one person is being considered as the person who committed the crime. If more than one person is being considered, the Committee recommends adding a separate question for each person.
4. The model is drafted to provide for the selection of the one of the alternatives. If more than one of the alternatives is raised by the evidence, the Committee suggests adding questions for each one.
5. Section 979.08(2) provides that the inquest jury's verdict "shall be based upon a finding of probable cause."

6. Instructions on more than one offense may be necessary. See note 1, supra.
7. Section 979.08(3)(b) uses the term "accident" which has no formal meaning in the law of Wisconsin. The Committee concluded that it is best defined as a death resulting from other than criminal means. The criminal means that may apply to the case will have been defined for the jury in connection with question 1. If those criminal means do not apply, the jury should find that the death resulted from an "accident."
8. The definition of "suicide" is the one provided in Wis JI-Criminal 1195, Assisting Suicide.
9. The privileges most likely to apply are self-defense – see Wis JI-Criminal 800 through 820; defense of others – see Wis JI-Criminal 825 and 830; and the law enforcement officer's privilege to use deadly force – see Wis JI-Criminal 885. The applicable instruction should be adapted for use here.
10. This paragraph consists of the first and last sentences of Wis JI-Criminal 140, Burden of Proof and Presumption of Innocence.
11. Section 979.08(2) provides: "The jury's verdict shall be based upon a finding of probable cause and shall be unanimous." The instruction is based on Wis JI-Criminal 515, Unanimous Verdict and Selection of Presiding Juror.