

Alabama Rules of Criminal Procedure

Rule 23. Verdict

Rule 23.2. Types of verdicts.

(a) GENERAL VERDICTS. Except as otherwise specified in this rule, the jury shall return a verdict finding the defendant either guilty or not guilty.

(b) INSANITY VERDICTS. When the jury determines that the defendant is not guilty by reason of mental disease or defect, the verdict shall so state.

(c) DIFFERENT OFFENSES OR DEFENDANTS.

(1) If different counts or offenses are charged, a verdict shall be returned on each count or offense charged, and with respect to each defendant.

(2) A not guilty verdict as to one or more counts or defendants in the charge shall not invalidate a guilty verdict as to any other count or defendant in the charge.

(d) DIFFERENT DEGREES OR LESSER INCLUDED OFFENSES. When the verdict of guilty is to a lesser included offense or to an offense which is divided into degrees, the verdict shall specify the offense or the degree of which the defendant is found guilty.

Committee Comments

General verdicts are required by Rule 23.2(a). The general verdict gives the jury discretion over the disposition of the case which it would not have if restricted to finding particular facts in special verdicts.

Section (b) provides for a verdict of not guilty by reason of mental disease or defect, which is an exception to the general verdict rule. Under Rule 14.2(c), not guilty by reason of mental disease or defect must be specially pleaded as a defense to a crime (Ala.Code 1975, § 15-16-1), and if it appears from the evidence that the defendant did the act constituting the offense, but at the time of committing the act he or she suffered from a mental disease or defect, then “the jury shall render a special verdict to the effect that the defendant is not guilty by reason of [mental disease or defect],” Ala.Code 1975, § 15-16-24.

It appears from the language of the statute that a verdict of not guilty by reason of mental disease or defect can only be given after a special plea for not guilty by reason of mental disease or defect has been made by the defendant. See Ala.Code 1975, § 15-16-24. In *Andrews v. State*, 17 Ala.App. 456, 85 So.

840 (1920), in a prosecution for murder, instructions asserting the proposition that if the jury was reasonably satisfied that the defendant suffered from a mental disease or defect at the time the defendant committed the act, it must find the defendant not guilty on his plea of not guilty, were refused as being in direct conflict with Code 1907, §§ 7176, 7177 [now Ala.Code 1975, §§ 15-16-1, 15-16-24] requiring a special plea of not guilty by reason of mental disease or defect and a special verdict thereon. See also *Bowen v. State*, 386 So.2d 489 (Ala.Crim.App.), cert. denied, 386 So.2d 492 (Ala.1980).

Section (c) departs from the common law in Alabama, which allowed a general verdict of guilty to be returned if any one count or offense in the indictment was sustained by the proof, so long as the sentence pronounced did not impose a greater punishment than that prescribed for one of the offenses charged in the indictment. See *Black v. State*, 39 Ala.App. 269, 97 So.2d 833 (1957) (upheld general verdict returned on indictment in two counts charging two distinct offenses).

Rule 23.2(c)(1) requires the jury to specify the particular counts on which it finds the defendant either guilty or not guilty. The provision ensures that the verdict will be clear and unambiguous. Under this rule, the jury must return a verdict on each of the counts, rather than one verdict specifying each count of which the defendant has been found guilty or not guilty. Under section (a) the jury shall find the defendant either guilty or not guilty on each count.

Subsection (2) of Rule 23.2(c) was included in order to avoid any confusion that different verdicts of guilty and not guilty on different charges might cause and to avoid any ambiguity over which count the defendant is found guilty of, thus enabling the judge to sentence the defendant only for those counts or offenses of which he is found guilty. This subsection is needed in view of the ability to join separate offenses in the same indictment. See Rule 13.3(a).