

220A CAUTIONARY INSTRUCTION: INTERLOCKING CONFESSIONS

[INSTRUCTION WITHDRAWN]

COMMENT

Wis JI-Criminal 220A was originally approved by the Committee in November 1985. It was withdrawn in August 1987. It was republished without change in Release No. 28—12/91. This revision updated the comment and was approved by the Committee in June 1998.

In Parker v. Randolph, 442 U.S. 62, (1969), a plurality of the U.S. Supreme Court held that "interlocking confessions" do not implicate the mandatory severance rule of Bruton v. United States, 391 U.S. 123 (1968). For a discussion of Bruton and the cases that followed it, see the Withdrawal Note to Wis JI-Criminal 220.

Though Parker v. Randolph was only a plurality decision, it was adopted by the Wisconsin Court of Appeals. See State v. Smith, 117 Wis.2d 399, 344 N.W.2d 711 (Ct. App. 1983); State v. Denny, 120 Wis.2d 614, 357 N.W.2d 12 (Ct. App. 1984). Denny also held that because interlocking confessions present an exception to Bruton, they present an exception to § 971.12(3) which was intended to codify Bruton. 120 Wis.2d 614, 620.

In Cruz v. New York, 481 U.S. 186 (1987), the Court repudiated the plurality decision of Parker v. Randolph. Cruz held that the codefendant's confession is not admissible even if it is closely paralleled by (that is, "interlocks" with) a confession of the defendant. The Court rejected the reasoning of the Parker v. Randolph plurality that the "devastating effect" is absent in the interlocking confession case. Rather, Cruz says the devastating effect is even greater in such cases, requiring full application of the Bruton rule.

No published decision of a Wisconsin appellate court has revisited the interlocking confessions issue since Cruz was decided.