

**222 JOINT TRIAL: EVIDENCE ADMISSIBLE AS TO ONE DEFENDANT ONLY**

Evidence has been received relating to (describe evidence). It may be used only in considering whether defendant (name) is guilty or not guilty. It must not be used or considered in any way against defendant (name other defendant).

**COMMENT**

Wis JI-Criminal 222 was originally published in 1994 and was republished without substantive change in 2000.

This instruction is intended for the case where a "single line of evidence" is admitted during the joint trial of codefendants. This is evidence admissible against one defendant but not the other. An alternative to ordering separate trials in such cases is to give a cautionary instruction. When evidence is admitted for a limited purpose, a limiting instruction must be given upon request. § 901.06.

In State v. Patricia A. M., 168 Wis.2d 724, 484 N.W.2d 380 (Ct. App. 1992), the court of appeals reversed a conviction because a required cautionary instruction was not given. The case involved the joint trial of codefendants; evidence admissible only as to one defendant was allowed. The court of appeals held that the limiting instruction required by State v. DiMaggio, 49 Wis.2d 565 (1971), should have been given. The Wisconsin Supreme Court reversed, holding that the disputed evidence was admissible as to both defendants, thus avoiding the issue whether a cautionary instruction was necessary. 176 Wis.2d 542, 500 N.W.2d 289 (1993).

DiMaggio approached the issue from the standpoint of reviewing a trial court's refusal to order separate trials for codefendants. One defendant claimed the trial judge should have severed his case when evidence was admitted that related only to one defendant. The court affirmed the trial court's refusal to do so, indicating that the trial court gave a cautionary instruction which was an adequate substitute for severance. The court of appeals decision in Patricia A. M. stated that such an instruction must be given even in the absence of a request since it is the trial judge's duty to follow up once the severance motion was denied. Since the Wisconsin Supreme Court found that the evidence in Patricia A. M. was admissible as to both defendants, it was not necessary for the court to address the necessity or effectiveness of a jury instruction. The Committee concluded that DiMaggio was still a viable decision and drafted this instruction for use in the "single line of evidence" case.