

Supreme Court: No Video-Recorded Statements In Jury Room

May 21, 2013 | by Matheu Nunn



On May 16, 2013, the Supreme Court of New Jersey decided [State v. A.R.](#), a case that required the Court to determine whether the use of video-recorded statements of a victim or defendant by a jury – in the jury room during deliberations – necessitated a new trial.

For some context, Rule 1:8-8 provides that “The jury may take into the jury room the exhibits received in evidence” It does not, however, limit *the type* of exhibits that may be taken into the jury room.

In *State v. A.R.*, video-recorded statements were marked as exhibits and admitted into evidence, so, one would think that they could be taken into the jury room during deliberations. Wrong.

The Supreme Court held that a video-recorded statement is a hybrid that is considered both a demonstrative exhibit and testimony. As a starting point, the Court held that a jury shall not have unfettered access to recorded statements in the jury room and that replay must be in open court. It added, relying on *State v. Miller*, 205 N.J. 109 (2011), that when a jury asks to replay recorded statements marked as a trial exhibit and received in evidence, the trial judge’s consideration of fairness to the defendant must include whether parts of direct and cross examination at trial also must be replayed to provide context. Stated differently, the trial judge has broad discretion whether, and to

what extent to provide a playback, to make sure that one party is not unfairly prejudiced by a jury's focus on only one portion of a statement.

One final point – the Court declined to remand to the trial court for a new trial based on the doctrine of invited error. That doctrine, in essence, means that a litigant cannot argue on appeal that a prior ruling was erroneous where that party urged the lower court to adopt the proposition now alleged by that party to be in error (it is a fairness argument).

Practice Tip: if you do Appellate work and seek to have a decision affirmed, always check the trial transcripts for errors invited by the party appealing the Judgment or Order.