State of New York
Court of Appeals

OPINION

No. 60
The People &c.,
Respondent,
v.
Don Williams,
Appellant.

Helen A. Syme, for appellant.
Kaylan Porter, for respondent.

GARCIA, J.:

When a deliberating jury requests supplemental instruction, Criminal Procedure Law § 310.30 requires the court to provide a meaningful response. When the jury's request concerns a relevant criminal statute, the law also permits the court to provide the jury with

copies of the statutory text, but only with the consent of both parties. This case asks us to decide whether consent of the parties is required before the court, during a readback of the requested law and relevant definitions, may simultaneously display the corresponding text using a visualizer.[1] We conclude that consent is not required and affirm.

I.

Based on evidence seized from his home in Rochester, defendant was charged with criminal possession of a controlled substance in the third degree (Penal Law § 220.16 [1]), and two counts of criminal possession of a weapon in the second degree (Penal Law §§ 265.03 [1] [b]; [3]). At the close of trial, the judge instructed the jury on the law, and stated that if the jurors needed a readback on any portion of the law, he could display the text on a visualizer. During deliberations, the jury sent a note asking for "definitions of the law" and later clarified that they were requesting the elements and relevant definitions of the charged crimes. The jury also asked that this information be displayed on the visualizer.

The judge informed counsel that he would comply with this request and project the relevant statutory text so the jury could see it while the judge read the text aloud. Although defense counsel did not object to the material selected for the readback, he did object to the process of displaying the text for the jury, arguing that "placing [the text] on the visualizer is really [no] different from handing them a written copy." He asserted that once jurors are handed "instructions in written form, whether it is visually or physically, that they then start having the ability to interpret based on how they see the words, [and] what

[1] The trial court and the parties describe the equipment used as a "visualizer"—likely a document camera that projected an image onto a screen.

punctuation may or may not be there . . . ." The judge overruled the objection and proceeded as he had described to the parties. A short time later, the jury convicted defendant on two counts and acquitted him on one count of criminal possession of a weapon.

On appeal, the Appellate Division held that the trial judge did not err in projecting a portion of the court's final instructions as requested by the jury because jurors were not supplied with a physical copy of the text, "[t]he projected charge was substantially the same as the oral charge, and the process took place entirely in the courtroom under the court's supervision and guidance" (184 AD3d 1125, 1126 [4th Dept 2020], quoting *People v Laracuente*, 21 AD3d 1389, 1392 [4th Dept 2005], *lv denied* 6 NY3d 777 [2006]). Therefore, the court concluded, "there was no danger that the jurors would be left to interpret the law themselves" (*id.*).

A Judge of this Court granted leave to appeal.

II.

Requests for information by a deliberating jury are governed by CPL 310.30. Juries are permitted to request "further instruction or information with respect to the law, with respect to the content or substance of any trial evidence, or with respect to any other matter pertinent to the jury's consideration of the case" (CPL 310.30; *see People v Velasco*, 77 NY2d 469, 474 [1991]). Upon such request, the court must first give notice to both the People and defense counsel, return the jury to the courtroom, and give the instruction in the presence of defendant (CPL 310.30). When the jury requests further instruction with respect to a statute, "the court may also give to the jury copies of the text of any statute,"

but only with the consent of the parties (*id*.). Giving copies of statutory text to jurors without the agreement of counsel is error "that cannot be deemed harmless" and requires reversal of the conviction (*see People v Sanders*, 70 NY2d 837, 838 [1987]). The jury here requested the text of the criminal charges and relevant definitions, and so this case falls squarely within the purview of CPL 310.30.

Defendant argues that the trial judge's use of the visualizer, over defense counsel's objection, violated the consent provision of CPL 310.30. We reject that argument based on the language of the statute, its legislative history, and consideration of the risks the consent requirement was intended to address.

We begin with our governing rule of statutory construction, namely "that courts are obliged to interpret a statute to effectuate the intent of the Legislature, and when the statutory language is clear and unambiguous, it should be construed so as to give effect to the plain meaning of the words used" (*People v Williams*, 19 NY3d 100, 103 [2012] [internal quotation marks and brackets omitted]). When statutory terms are not defined, "dictionary definitions serve as useful guideposts in determining the word's ordinary and commonly understood meaning" (*People v Holz*, 35 NY3d 55, 59 [2020] [internal quotation marks and citations omitted]).

Neither of the key terms in CPL 310.30—"give" and "copies"—is defined in the statute. As one might expect, definitions of "give" abound. For example, Merriam-Webster's dictionary lists 37 different definitions of the transitive verb, including "to present to view or observation" but also "to put into possession of another for his or her use" (Merriam-Webster Online Dictionary, give [https://www.merriam-

webster.com/dictionary/give]). And "copy" is generally defined as "a thing made to be similar or identical to another" (Lexico, US Dictionary, copy [https://www.lexico.com/en/definition/copy]). Because the terms "give" and "copy" are so broad, and the meaning of each varies widely by context, they must be considered within the statutory setting to determine their proper use here.

To give a copy of text—rather than, for example, to give a toast—implies the receipt of some material. Even "giving" an electronic copy implies that the recipient can retain that copy and refer back to it. Here, the judge's use of the visualizer may have been a reproduction or display of the requested legal instructions that included statutory text, but such display did not constitute the giving of copies. Moreover, as this Court has described the process under CPL 310.30, "the court in its discretion may also furnish [jurors] with copies of the actual text but only with the consent of the parties" (*People v Owens*, 69 NY2d 585, 590 [1987]). We have thus used "furnish" as a synonym of the term "give" in the statute. To "furnish with copies of the actual text" does not suggest overhead projection simultaneous with a readback (*see also People v Martell*, 91 NY2d 782, 785 [1998]).

The context makes clear the plain meaning of the language of CPL 310.30, and the legislative history surrounding the law's enactment further supports the interpretation that use of the visualizer did not require consent of counsel in this case. A memorandum from the Office of Court Administration in support of the amendment adding the consent requirement noted that "much time is spent by the court reading and rereading statutory material which could be supplied to the jury for easy reference and which would aid the jury in reaching a verdict" (Memo of Off of Ct Admin, 1980 McKinney's Session Laws of

NY at 1967). This description clearly contemplates a situation in which the jurors would have the text in the jury room for use as they deliberate. And if a goal in amending the statute was to save time by giving the jury copies of the text rather than reading and rereading the statute, that aim would certainly not be furthered by application of the consent rule here, where the court read the text as it was displayed in open court.

Moreover, the process employed here does not involve the harm this Court has previously identified in providing juries with copies of statutory text. As an initial matter, we noted in *People v Owens* that if a court submits written material to a jury of its own accord, it can "create[] a risk that the jury will perceive the writing as embodying the more important instructions" (69 NY2d at 591). The jury here requested this specific information. More to the point, we stressed that the "physical presence" of the particular text in the jury room would be reinforced "as the oral instructions fade from memory" (*id.*; *cf. People v Baker*, 14 NY3d 266, 274 [2010]). We have also warned of the risk that, when a statute is "submitted" to the jury, the jurors may engage in errant statutory interpretation, "taking on the role as Judges of the law as well as Judges of the fact" (*People v Moore*, 71 NY2d 684, 686-688 [1988])—a concern raised by defense counsel below. Here, however, the jurors viewed the projected instructions under the court's supervision, with defense counsel present, in open court (*cf. People v Tucker*, 77 NY2d 861, 863 [1991]). The risks associated with the physical presence of the text in the jury room were not implicated.

Accordingly, because the judge did not "give" the jurors copies of the relevant text but merely displayed the statutes on the visualizer, consent of the parties was not required and use of the projector falls within the judge's discretion to provide "requested

information or instruction" (*see People v Taylor*, 26 NY3d 217, 224 [2015]). There was no abuse of discretion here.

Defendant's due process claim is unpreserved for our review (*see e.g. People v Mills*, 11 NY3d 527, 536 [2008]).

Accordingly, the order of the Appellate Division should be affirmed.

Order affirmed. Opinion by Judge Garcia. Chief Judge DiFiore and Judges Rivera, Fahey, Wilson, Singas and Cannataro concur.

Decided November 18, 2021