

RECORDING PLAYED WITH AID OF A TRANSCRIPT

Introduction

This instruction first assumes that the court has properly admitted a recording in evidence. See Matter of M.S. (M.H.), _ NY3d_, 2026 NY Slip Op 00825 [2026] ["It is the burden of the party moving to introduce evidence [of videos] to make 'a sufficient threshold showing of reliability'"]; People v Ely, 68 NY2d 520, 522 [1986] ["The predicate for admission of tape recordings in evidence is clear and convincing proof that the tapes are genuine and that they have not been altered"]; People v Arena, 48 NY2d 944, 945 [1979] ["the uncontradicted testimony of that victim, who identified the recording as a fair and accurate reproduction of the conversation, was sufficient to support the decision of the trial court to admit the recording into evidence in the absence of any indication that the tape had been altered"]; People v McGee, 49 NY2d 48, 60 [1979] ["The infirmities concerning chain of custody or inaudibility properly go to the weight of the evidence, not its admissibility"]; Guide to NY Evidence rule 9.05(7), Methods of Authentication and Identification.

Next, this instruction assumes that the court has properly settled any transcript of the recording (that has been marked as an exhibit but not admitted in evidence) that the jury may use as an aid in listening to the recording. See People v Feld, 305 NY 322, 331 [1953] [approving the use of a transcript which was "compared by the court and the counsel not in the presence of the jury or members of the public"].

Instruction

You are about to hear the recording that has been admitted in evidence.

A transcript of the recording [has been / will be] given to you. The transcript, however, is not in evidence and is provided only as an aid in listening to the recording.

If you detect any difference between what you hear in the recording and the transcript, you are to rely on what you hear in the recording.¹

¹ *People v Wilson*, 207 AD2d 463, 464 [2d Dept 1994] [Since the tapes were audible and intelligible to third parties, the County Court properly exercised its discretion in allowing the jury to utilize transcripts prepared by the undercover officer while the tapes were played and properly instructed the jury that the transcripts were not evidence]
