

11.10. Exhibits to the Jury (CPL 310.20 [1])

Upon retiring to deliberate, the jurors may take with them any exhibits received in evidence at the trial which the court, after according the parties an opportunity to be heard upon the matter, in its discretion permits them to take.

Note

This rule reproduces verbatim CPL 310.20 (1).

While there is no statute on the subject relating to civil proceedings, decisional law, albeit sparse, supports the application of the rule set forth in CPL 310.20 (1) in civil proceedings as well (*see Howland v Willetts*, 9 NY 170, 175 [1853] [when the jury retired to deliberate, it was not error for the trial court to allow them to take a “deposition” into the jury room]; *Levy v Corn*, 191 App Div 56, 57 [1st Dept 1920] [“Whether exhibits are to be taken by the jury rests in the sound discretion of the trial judge”]; in this civil case, the consent of the defendant “was not necessary”]; *Raynolds v Vinier*, 125 App Div 18, 20 [4th Dept 1908] [The jury over the objection of the defendant was properly permitted to take to the jury room the pleadings in the action which were in evidence because “(w)here a document is in evidence it rests in the sound discretion of the court whether it is to be taken by the jurors when in their deliberations”]).

Rule 11.17 permits the trial court, in its discretion, to provide a deliberating jury with “any exhibits received in evidence.” (*See People v Bouton*, 50 NY2d 130, 137 [1980] [“CPL 310.20 (subd 1) grants the trial court discretion to allow the jury to view any exhibit received in evidence at trial, but no provision authorizes submission of unadmitted exhibits. Departure from that rule affects important rights”]; *but see People v Martell*, 91 NY2d 782, 785 [1998] [no error in submitting to the jury, at its request, a list specifying which exhibit was relevant to each of the counts in the indictment].)

Although trial judges normally wait for a deliberating jury to request an exhibit before sending them any exhibit, there is no requirement that the court must do so. The only statutory predicate to giving exhibits to the jury is to provide the parties an opportunity to be heard as to whether it should be done.

A court’s careful exercise of its discretion may be particularly warranted when one or more exhibits include a weapon or drugs. While either item may be given to a deliberating jury, with respect to a weapon, a trial court may consider whether, given the nature of the weapon and circumstances, a “safer alternative” would be appropriate, such as allowing the jurors to see the weapon in court, “with a court officer exhibiting the weapon to each juror, one at a time” (William

C. Donnino, Practice Commentaries, McKinney's Cons Laws of NY, Book 11A, CPL 310.20). The same alternative procedure may be appropriate when the exhibit contains drugs that "are not in a sealed container." (*Id.*)

Electronic evidence that needs equipment and an operator to view or listen to presents special issues. The Appellate Division approved "permitting the jury to view the store videotape in the jury room during deliberations with the technical assistance of court officers." (*People v Sampson*, 289 AD2d 1022, 1023 [4th Dept 2001].) An alternative, particularly if the evidence can be presented on a laptop and does not contain inadmissible portions, is to send the laptop into the jury room and designate one juror to operate it. "Using a juror to operate the laptop rather than a court officer avoids the potential error of an impermissible communication" (William C. Donnino, Practice Commentaries, McKinney's Cons Laws of NY, Book 11A, CPL 310.20).