

Review of Evidence during Jury Deliberations

During deliberations in a motorcycle accident trial, the jury asks to view and discuss some exhibits in the jury room: a series of admitted photos depicting part of the accident scene. *May the judge allow the jury to take the photos into the jury room?* As with most things, it depends.

This question used to be governed by the “well-settled” rule in *Nunnery v. Baucom*, 135 N.C. App. 556 (1999), that “trial exhibits introduced into evidence may not be present in the jury room during deliberations unless both parties consent.” For civil cases, the “consent required” rule was replaced in October 2007 by [G.S. 1-181.2](#), which governs both open-court and jury room evidence review. Although this statute is now a few years old, it is perhaps not as widely-known as it could be. For a recent case in point, see [Redd v. Wilcohess, LLC](#), 745 S.E.2d 10 (N.C. App. 2013). So, here’s a review of the standards established by G.S. 1-181.2.

Open-court review. When a jury seeks review of “certain testimony or other evidence” after retiring for deliberation, the court must order the jurors to be conducted into the courtroom. After hearing the jury’s request, the court must give the parties notice and an opportunity to be heard (out of the jury’s presence) as to whether to allow review. The court then “in its discretion” may permit portions of testimony to be read to the jury and may allow the jurors to examine “in open court” the requested materials. Only “materials admitted into evidence” are subject to review. G.S. 1-181.2(a). To provide balance and avoid “giv[ing] undue prominence to the evidence requested,” the court in its discretion may also allow review of other related evidence. *Id.* (In the criminal context, the North Carolina Supreme Court has held that the trial court must also “instruct the jury that it must remember and consider the rest of the evidence.” *State v. Weddington*, 329 N.C. 202, 208 (1991)).

Jury room review. If the jury seeks to review the evidence in the jury room, the court may, in its discretion, after giving parties an opportunity to be heard, allow review of:

- Admitted exhibits which have been passed to the jury;
- Photographs admitted into evidence and shown to the jury and used by any witness in their testimony before the jury; and
- Any illustrative exhibits admitted into evidence and used by any witness in their testimony before the jury.

G.S. 1-181.2(b). For these categories of exhibits, then, the court need only give notice and opportunity to be heard. No consent is required as it would have been under the *Baucom* standard. This covers most types of evidence a jury will want to review. But one type of evidence still requires party sign-off: “Depositions may be taken into the jury room...only with consent of the parties.” *Id.* Finally, some items are not permitted in the jury room even in the court’s discretion: “Summaries of testimony prepared in the courtroom by any party, lists made by any party in the courtroom and

such similar documents shall not be sent to the jury room with the jury, even if admitted into evidence and requested by a party.” *Id.*

What if the parties *do* consent? We just talked about depositions. For everything else, the statute states that a court *may* allow “any exhibit” into the jury room if the jury requests it and “all parties stipulate and agree [that it] may be taken into the jury room.” G.S. 1-181.2(c). Presumably the term “any exhibit” includes even the summaries and lists that are prohibited in subsection (b), but it is not entirely clear.

So what about the photographs from our scenario above? If the parties consent, the judge may send them to the jury room. If there’s no consent, the court may send them to the jury room in its discretion after giving the parties an opportunity to be heard. This assumes the photos were shown to the jury during a witness’s testimony. Because the exhibits are photos, they need not have been physically “passed” to the jury.

In sum, the *Baucom* standard was loosened by G.S. 1-181.2 to permit jury room review of a broad range of admitted exhibits, as long as the parties have been given a fair opportunity for a hearing. The discretion and the decision belong to the judge, who is instructed simply to “ensure that the evidentiary integrity of the exhibit is preserved.” G.S. 1-181.2(d).