

FILED

February 24, 2023

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

ADM10-8049

**ORDER PROMULGATING AMENDMENTS
TO THE MINNESOTA RULES OF CRIMINAL PROCEDURE**

By order filed on January 8, 2020, we granted a request made by the Supreme Court Advisory Committee on the Rules of Criminal Procedure to authorize the Fourth Judicial District to conduct a pilot project (the Pilot Project) to test the feasibility and impact of allowing certain audio and visual evidence into the jury room. *See In re Pilot Project in Certain Criminal Jury Trials*, No. ADM10-8049 (Minn. filed Jan. 8, 2020). For purposes of the Pilot Project, we amended the provisions of Minn. R. Crim. P. 26.03, subd. 20(1)–(2), that govern a jury’s review of depositions and audio and video evidence. Under the current version of the rule (outside the Pilot Project), district courts cannot allow audio and visual evidence into the jury room.

We ordered the committee to file a report by November 1, 2022, and provide recommendations on the continuation, expansion, or discontinuance of the Pilot Project. *See Order Authorizing Extension of Pilot Project in Criminal Jury Trials*, No. ADM10-8049 (Minn. filed July 20, 2022). The committee’s report recommended that the Rules of Criminal Procedure be permanently modified to require the district courts to permit juries to view audio and video evidence in the jury room during deliberations when appropriate and feasible.

Report and Proposed Amendments to the Minnesota Rules of Criminal Procedure, No. ADM10-8049 (filed Oct. 17, 2022). As the committee explained:

[S]ince the adoption of the current rule 26.03, subdivision 20 in 2011, the rapid expansion of security cameras and body and squad cameras has dramatically increased the amount of audio and video evidence admitted at trial. The current rule requiring the judge and all parties to return to court for any audio or video evidence playback is disruptive and inefficient, and essentially prevents the jury's independent review of all the evidence. As the feedback throughout this Pilot made clear, jurors found the ability to view audio/video evidence as part of their deliberation process extremely helpful. The process ensures that jurors have the time they need to review and discuss all the evidence. The Committee agrees with those jurors who found the ability to review audio/video evidence during deliberation critical to the process.

Id. at 7. For these reasons, the committee recommended that the rules governing the Pilot Project be made permanent. The report recognized, however, that the use of audio and visual exhibits in the jury room is not feasible in every case due to factors such as technological or resource limitations. The committee thus recommended that language be added to the rule to make clear that the district courts are only required to permit audio and video evidence into the jury room when doing so is "feasible." The committee also recommended extending the rule to prohibit depositions submitted in lieu of live testimony from being allowed into the jury room as well as any audio or visual evidence that would unfairly deemphasize live testimony. Lastly, the committee included language in its report for a new comment to Rule 26.03.

By order filed on November 21, 2022, we established a period for the public to file written comments in response to the report filed by the committee. Order Establishing Comment Period on Proposed Amendments to the Minnesota Rules of Criminal Procedure, No. ADM10-8049 (Minn. filed Nov. 21, 2022). Only the Minnesota State Bar Association

Criminal Law Section Council (MSBA Criminal Law Section) filed a written comment. MSBA, Proposed Amendments to the Minnesota Rules of Criminal Procedure, No. ADM10-8049 (submitted Feb. 2, 2023). The MSBA Criminal Law Section proposed that in addition to the committee’s proposed “when feasible” language, the rule should also state that it only applies “when appropriate.” *Id.* The MSBA Criminal Law Section also requested that the rule be amended to only permit audio and video in the jury room “where the court makes a finding that there will be no undue prejudice to any party.” *Id.*

The court agrees that the committee’s proposed amendments to Rule 26.03 should be made permanent and a new comment adopted, with some minor changes for readability. We also agree with the MSBA Criminal Law Section that the concept of “prejudice” should be incorporated into Rule 26.03, but we modify the language of the rule to only require that the district courts consider prejudice when one of the parties objects to allowing audio or video evidence into the jury room on the ground that the party will suffer prejudice as a result. Finally, the qualifier “when feasible,” as proposed by the committee, is sufficient without the additional qualifier of “when appropriate” proposed by the MSBA Criminal Law Section.

IT IS HEREBY ORDERED that the attached amendments to the Rules of Criminal Procedure are prescribed and promulgated as shown below. The amendments are effective as of July 3, 2023.

Dated: February 24, 2023

BY THE COURT:

A handwritten signature in black ink, appearing to read "Lorie S. Gildea".

Lorie S. Gildea
Chief Justice

AMENDMENTS TO THE RULES OF CRIMINAL PROCEDURE

[Note: In the following amendments, deletions are indicated by a line drawn through the words and additions are indicated by a line drawn under the words.]

Rule 26.03. Procedures During Trial

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Subd. 20. Jury Deliberations and Verdict.

- (1) Materials Allowed in Jury Room. ~~The court must permit received exhibits or copies, except depositions and audio or video material, into the jury room.~~ Except as provided in this rule, the court must permit received exhibits or copies into the jury room including audio or video exhibits. The court may exclude audio or video exhibits from the jury room under the following circumstances: (a) if the court determines that allowing the exhibits into the jury room is not feasible, or (b) a party objects that allowing the exhibits into the jury room will result in prejudice to the party and the court makes a determination that the party is likely to experience prejudice. The court must not permit into the jury room depositions admitted in lieu of live testimony, or audio and video exhibits that contain oral statements that would unfairly deemphasize live testimony. The court may permit a copy of jury instructions into the jury room.
- (2) Requests to Review Evidence. The court may allow the jury to review specific evidence.
 - (a) If the jury requests review of specific evidence during deliberations, the court may permit review of that evidence after notice to the parties and an opportunity to be heard.
 - (b) Any jury review of depositions admitted in lieu of live testimony, ~~or and~~ audio or video ~~material~~ exhibits not permitted in the jury room under paragraph (1) of this rule, must occur in open court. The court must instruct the jury to suspend deliberations during the review.
 - (c) The prosecutor, defense counsel, and the defendant must be present for the proceedings described in paragraphs (a) and (b), but the defendant may personally waive the right to be present.

(d) The court need not submit evidence beyond what the jury requested but may submit additional evidence on the same issue to avoid giving undue prominence to the requested evidence.

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Comments

Rule 26.03, subd. 20(1) requires the court to permit certain audio or video exhibits into the jury room when appropriate and when feasible. It is critical that due care be taken by the parties when preparing and submitting audio/video exhibits and the equipment that will be used by the jury for playback in the deliberation room. The highest technical standards and security protocol must be applied to ensure that the exhibits and playback equipment do not contain or allow access to any unadmitted exhibits, the internet, or any other improper material. The judge should make a record that the parties have inspected and approve the exhibits and the equipment and agree regarding the items to be sent back with the jury. The judge should address any objections or concerns. The judge should also make clear what will be returned and what will and will not be preserved by the court or provided to a reviewing court in the event of an appeal.