



Administrative Office of the Courts

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Supreme Court rules on a defendant's right to be present when a trial court responds to jury questions

SANTA FE – The state Supreme Court today upheld a Farmington man's sex crime conviction, ruling there was no effect on the jury's verdict by improper communications between the trial court and the jury outside of the defendant's presence.

The Court concluded that Joshua Freeman had a constitutional right to be present when the trial court addressed two questions from the jury after it had started to deliberate in his case but the error created by his absence did not impact the outcome of the trial.

The jury sent a note to the trial court asking it to distinguish between Freeman's charged crime – criminal sexual penetration II – and statutory rape. Jurors also asked about the legal definition of physical force. The trial court sent back answers that referred the jury to instructions it had initially received when Freeman was present in the courtroom during the trial.

In a unanimous opinion written by Justice C. Shannon Bacon, the Court held that "a presumption of prejudice arising out of improper communications between the court and the jury may be affirmatively rebutted by showing the communication merely referred the jury to previously given instructions because a restatement of the instructions does not impact the verdict."

Rules of procedure in criminal cases provide exceptions to the requirement for defendants to attend court proceedings. However, the justices determined that communications about the jury's questions in Freeman's case did not fall under exceptions for a "ministerial matter" or for hearings and conferences concerning a question of law.

The Court acknowledged that questions from juries often involve questions of law, but the justices declined to extend the hearings and conferences exception to a judge's communications with the jury. Although the exception is provided for in procedural rules, the Court explained, "we must not lose sight that a defendant's presence is an enshrined personal right granted by both the United States Constitution and the New Mexico Constitution. Any winnowing away of that constitutional right should be done with the utmost caution and care."

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To read the opinion in *State v. Freeman*, No. S-1-SC-40593, please visit the New Mexico Compilation Commission's website using the following link:

<https://nmonesource.com/nmos/nmsc/en/item/538287/index.do>