

Indiana Court of Appeals Addresses Distinction between "Jury Discussions" versus "Jury Deliberations"

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The Indiana Court of Appeals recently reaffirmed the distinction between juror "discussions" and juror "deliberations." *Villalon v. State*, 2011 Ind. App. LEXIS 1637 (Ind. App. Ct. August 30, 2011).

Martin A. Villalon, Jr. was charged with fatally shooting a fifteen-year-old boy who Villalon mistakenly believed was a member of a rival gang. Villalon, himself a minor, was brought to trial before an Indiana jury. At trial, Villalon requested that alternate jurors be instructed not to participate in pre-deliberation jury discussions. Instead, the trial court instructed the jury pursuant to Indiana Jury Rule 20(a)(8), which provides that jurors, including alternates, are permitted to discuss the evidence among themselves in the jury room during recesses from trial when all are present, so long as they reserve final judgment until deliberations commence. The jury found Villalon guilty of murder, and the trial court sentenced him to sixty years imprisonment.

Villalon appealed his conviction on multiple grounds, including that the jury's pre-deliberation discussions were equivalent to deliberations and, therefore, he was denied his Constitutional right to a jury of twelve.

The Court of Appeals pointed out that it had twice before "rejected this same challenge to Jury Rule 20" and found "no error, constitutional or otherwise, in the trial court's implementation of Jury Rule 20." *Id.* at *19.

In *Weatherspoon*, the Court of Appeals addressed the same challenge to Jury Rule 20. *Weatherspoon v. State*, 912 N.E.2d 437 (Ind. Ct. App. 2009). There, the Court of Appeals acknowledged settled Indiana law that alternate jurors "may not participate in deliberations" and that a new trial may be granted if an alternate

juror does participate in deliberations. However, the *Weatherspoon* Court observed that the Indiana Supreme Court adopted Jury Rule 20(a)(8) notwithstanding that authority, thereby signaling that there is a distinction between "discussions" and "deliberations." *Id.* The *Weatherspoon* Court stated, "[w]e are not at liberty to rewrite the rules promulgated by our Supreme Court." As for the constitutionality of Jury Rule 20, the *Weatherspoon* court "simply note[d] that . . . there is no constitutional limit to the maximum number of jurors." *Id.* This suggests that there would be no clear constitutional violation even if there was not a distinction between discussions and deliberations. The Indiana Code, however, does state that if a defendant is charged with murder,

"the jury shall consist of twelve (12) qualified jurors." Ind. Code 35-37-1-1(b). Later in 2009, the Court of Appeals reasserted the reasoning of *Weatherspoon* in *Rice v. State*, 916 N.E.2d 962 (Ind. Ct. App. 2009).

Although *Villalon* marks the third time a challenge to Jury Rule 20(a)(8) has been rejected, this issue may not go away. Indeed, in *Weatherspoon* the court observed that although Jury Rule 20 was initially embraced because the Arizona Jury Project suggested such reforms were beneficial, even Arizona's analogous rule does not "include alternates in the discussion" and "is a civil rule, not a criminal rule." (emphasis in original). Further, subsequent to *Weatherspoon*, the Indiana Supreme Court "observed[d] in passing" that there may potentially be a distinction between jurors "sharing opinions" with one another and jury "deliberations," but that in the case it was considering, it did "not [need to] explore the nuances between 'shar[ing] opinions' and engaging in deliberations." *Treadway v. State*, 924 N.E.2d 621, n. 5 (Ind. 2010).

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