

Indiana Supreme Court Addresses the Use of Cell-Phones by Jurors During Deliberations

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In *Henri v. Curto*, 908 N.E.2d 196, 202 (Ind. 2009), the Indiana Supreme Court admonished trial courts to discourage or prevent jurors from using electronic communication devices during deliberations, though holding in the case before it that a juror's receipt of an incoming cell-phone call during deliberations did not result in the need for a new trial.

"...The best practice is for trial courts to discourage, restrict, prohibit, or prevent access to mobile electronic communication devices by all persons except officers of the court during all trial proceedings, and particularly by jurors during jury deliberation."

The plaintiff and defendant were university students who had engaged in sexual intercourse in a dorm room. The plaintiff sued the defendant seeking civil damages for rape. The defendant denied the rape and argued that the act was consensual. A six-person jury with five women and one man found in favor of the defendant. The jury had been instructed, "Once you begin your deliberations, do not use cellular telephones or any other device to communicate with anyone outside the jury room. If you need to make a telephone call during deliberations, inform the bailiff." *Id.*

Several days after the trial, one of the jurors contacted plaintiff's counsel and executed an affidavit detailing, among other things, an instance in which one of her fellow jurors took an incoming

cell-phone call. The affidavit stated that, "while deliberation was ongoing, the mobile telephone of one juror rang. That juror... appeared to turn the telephone off. Deliberation continued and her telephone rang again. At that point she left the jury room to get the bailiff. She returned with the bailiff, and the bailiff stood in the doorway of the jury room while [the other juror] took the call. I was able to hear [the other juror] tell the other party to the telephone call that she would get to class as soon as she could." *Id.*

The Court concluded that the plaintiff had not "established that the alleged receipt of a cell phone call with the apparent approval of the bailiff constituted misconduct, and has shown either gross misconduct nor probable harm. Reversal and a new trial are not warranted on this issue." *Id.*

The Court went on to "observe that permitting jurors, other trial participants, and observers to retain or access mobile telephones or other electronic communication devices, while undoubtedly often helpful and convenient, is fraught with significant potential problems impacting the fair administration of justice. These include the disclosure of confidential proceedings or deliberations; a juror's receiving improper information or otherwise being influenced; and a witness's or juror's distraction or preoccupation with family, employment, school or business concerns. These and other detrimental factors are magnified due to swift advances in technology that may enable a cell phone user to engage in text messaging, social networking, web access, voice recording, and photo and video camera capabilities among others. The best practice is for trial courts to discourage, restrict, prohibit, or prevent access to mobile electronic communication devices by all persons except officers of the court during all trial proceedings, and particularly by jurors during jury deliberation." *Id.* at 202-203.