

Alabama Rules of Criminal Procedure

Rule 22. Deliberation of jury.

Rule 22.2. Further review of evidence and additional instructions.

After the jurors have retired to consider their verdict, if they request to have any testimony repeated, or if they or any party requests additional instructions, the court may recall the jurors to the courtroom and order the testimony read or give appropriate additional instructions. The court may also order other testimony read or give other instructions, so as not to give undue prominence to the particular testimony or instructions requested. Such testimony may be read or such instructions given only after notice to the parties.

Committee Comments

Rule 22.2 is consistent with Rule 45, A.R.App.P.:

“No judgment may be reversed or set aside, nor new trial granted in any civil or criminal case on the ground of misdirection of the jury, the giving or refusal of special charges or the improper admission or rejection of evidence, nor for error as to any matter of pleading or procedure, unless, in the opinion of the court to which the appeal is taken or application is made, after an examination of the entire cause, it should appear that the error complained of has probably injuriously affected substantial rights of the parties.”

See *Morrow v. State*, 52 Ala.App. 145, 290 So.2d 209 (Ala.Crim.App.1973), writ denied, 292 Ala. 743, 290 So.2d 213 (1974), cert. denied, 419 U.S. 853, 95 S.Ct. 97, 42 L.Ed.2d 85 (1974); *Autry v. State*, 34 Ala.App. 225, 38 So.2d 348 (1949) (to allow the jury to rehear testimony is a matter addressed to the sound discretion of the trial court); *Fitchard v. State*, 424 So.2d 674 (Ala.Crim.App.1982); *Harris v. State*, 371 So.2d 979 (Ala.Crim.App.), writ denied, 371 So.2d 984 (Ala.1979); *Martin v. State*, 371 So.2d 460 (Ala.Crim.App.1979); *Cooper v. State*, 340 So.2d 91 (Ala.Crim.App.1976); *Mullins v. State*, 344 So.2d 539 (Ala.Crim.App.), cert. denied, 344 So.2d 543 (Ala.1977) (where there was some conflict between requested testimony and statement the witness gave the officer, the trial court exercised sound discretion in having testimony of both witnesses read to the jury).

Alabama case law is substantially in accord with Rule 22.2, *Jenkins v. State*, 51 Ala.App. 521, 287 So.2d 233 (1973). ABA Standards for Criminal Justice, *Trial by Jury* 15-4.3 (2d ed. 1986), sets forth the circumstances in which additional instructions may be given, and basically provides that additional instructions will not be given if the request concerns matters not in evidence or

questions of law not pertinent to the case, or calls upon the judge to express an opinion on a factual matter. The court may simply review the original instructions unless they are not adequate. The court may also go beyond the bare requested additional instruction and repeat other instructions, if doing so is necessary to avoid placing undue emphasis on a particular instruction. Of course, even without a request, the court may recall the jury and give additional instructions if doing so is necessary to correct an erroneous instruction, to clarify an ambiguous instruction, or to inform the jury on a pertinent point of law which should have been, but was not, covered in the original instructions.