

11.15. Viewing of Premises (CPLR 4110-c; CPL 270.50)

(1) Civil proceeding.

When during the course of a trial the court is of the opinion that a viewing or observation by the jury of the premises or place where alleged injuries to person or property were sustained in an accident or occurrence claimed to have been the cause thereof or of any other premises or place involved in the case will be helpful to the jury in determining any material factual issue, it may in its discretion, at any time before the commencement of the summations, order that the jury be conducted to such premises or place for such purpose in accordance with the provisions of this rule.

(2) Criminal proceeding.

When the court is of the opinion that a viewing or observation by the jury of the premises or place where an offense on trial was allegedly committed, or of any other premises or place involved in the case, will be helpful to the jury in determining any material factual issue, it may in its discretion, at any time before the commencement of the summations, order that the jury be conducted to such premises or place for such purpose in accordance with the provisions of this rule.

(3) Common Procedural Requirements.

(a) The jury must be kept together throughout under the supervision of an appropriate public servant or servants appointed by the court, and the court itself must be present throughout. *In a civil proceeding*, the parties to the action and counsel for them may as a matter of right be present throughout, but such right may be waived. *In a criminal proceeding*, the

prosecutor, the defendant, and counsel for the defendant may as a matter of right be present throughout, but such right may be waived.

(b) The purpose of such an inspection is solely to permit visual observation by the jury of the premises or place in question, and neither the court, the parties, counsel nor the jurors may engage in discussion or argumentation concerning the significance or implications of anything under observation or concerning any issue in the case.

Note

This rule reproduces CPLR 4110-c and CPL 270.50. Subdivision (1) of each statute is reproduced in subdivisions (1) and (2) of this rule, except that the last word, “rule,” in each subdivision is substituted for the word “section” in each statute. Subdivision (2) of each statute is reproduced in subdivision (3) (a) of this rule, with two minor exceptions: the opening words, “In such case,” are omitted and the words in italics are added. Subdivision (3) of each statute is reproduced in subdivision (3) (b) of this rule.

Rule 11.15 authorizes the court in both civil and criminal proceedings to order in its discretion that the jury be taken to a physical site that is at issue in a case, and given the opportunity to observe that site, with parties and counsel present, but without discussion or argument at the site. The court may order an inspection upon a finding that it “will be helpful to the jury in determining any material factual issue.” (*See People v Alston*, 24 AD3d 391, 391 [1st Dept 2005] [court properly exercised its discretion in denying defendant’s request for a visit to the crime scene; “(p)hotographs of the scene, as well as the testimony of the eyewitnesses and defendant’s investigator, permitted the jury to determine whether the eyewitnesses were able to make reliable identifications of defendant from their nearby vantage point”]; *People v Wilson*, 225 AD2d 497, 498 [1st Dept 1996] [the trial court properly denied a deliberating jury’s request to see the apartment window through which an eyewitness viewed the crime scene when the court discovered that there had been a “substantial change” in the condition of the window by “the addition of an air conditioner and the partial destruction of the window bars”]; *People v Rao*, 107 AD2d 720, 720 [2d Dept 1985] [denial of a request to view the scene of the crime was not an abuse of discretion as the crime had occurred in late November and the trial took place in late June;

consequently, there were alterations in the natural light and artificial illumination from street lamps and store fronts, and the foliage on trees was substantially different]; *People v Hamel*, 96 AD2d 644, 645 [3d Dept 1983] [ordering a view of the apartment where murder occurred was a proper exercise of discretion as “layout of (shooting victim’s) apartment was sufficiently uncommon that reconstruction of the location of each room from verbal descriptions and photographs alone would create a perplexing image for the jurors”].)