

VIDEO NARRATION TESTIMONY

A video is about to be presented to you/you were presented with a video during the trial.¹ It is always within the special function of the jury to determine the facts. This includes what is or is not depicted on the video, and what significance, if any, that has.

In this case, [name of narrating witness] (will be narrating/narrated) a video. [Name of narrating witness] was not an eyewitness to the events depicted on the video and did not observe the events as they happened. Rather, the witness's testimony is based on their viewing of the video after the incident occurred.²

This testimony (has been/was) permitted only for the limited purpose of:

- (1) providing context for the video such as the location of the recorded events and/or the location and/or angle of the camera that made the recording; **and/or**
- (2) explaining the length of the video, whether redactions were made, and/or when it will be fast forwarded; **and/or**
- (3) focusing your attention to a specific (individual, action, and/or circumstance) allegedly depicted in the video; **and/or**
- (4) offering an opinion about the identity of an individual allegedly depicted on the video, based on the witness's firsthand familiarity with the defendant or other firsthand observation. Specifically, in this case, the witness's opinion testimony is based on viewing the video and [basis for opinion.] **and/or**
- (5) [any other purpose the court deems appropriate].

You may not consider [name of narrating witness]'s narration or other comments on the video for

¹ The proponent of video narration testimony should provide notice of the proposed testimony pretrial; and a Rule 104 hearing should be conducted to address areas of dispute. State v. Watson, 254 N.J. 558, 569 (2023).

² There may be instances where a witness who participated in an event has firsthand knowledge of only some parts of a recording, but also offers narration testimony about other parts of the recording that they did not personally observe. In those instances, the court should specify the aspects of the witness's testimony to which jury instruction applies.

any other purpose.³ The narrating witness's testimony may assist you in deciding what the video shows. However, you are not bound by the narrating witness's testimony and you may reject any narration testimony. You should consider each opinion and give it the weight to which you deem it is entitled, whether that be great, slight, or none at all. Ultimately it is up to you, and you alone, to decide for yourselves what the video shows and what it does not show. It is also up to you to determine how much weight to give the video evidence.

In other words, it is the role of the jury to decide the significance and import of the video, as well as anything shown in the video. I also remind you that the ultimate determination of whether or not the State has proven defendant's guilt beyond a reasonable doubt is to be made only by the jury.

³ The narrating witness may not provide continuous, running commentary on the video. They "can provide objective, factual comments but not subjective interpretations; they may not comment on facts that are reasonably in dispute which should be left for the jury to decide; and they should not offer testimony based on inferences drawn from other evidence." *Id.* at 569.