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# The Previous Play Is Under Review

## Using Appellate Court Standards of Review to Understand NFL Instant Replay

BY TIP WONHOFF

**W**e have all been there — watching the last seconds of an exciting football game when a crucial play determines the outcome in our team's favor. Our team creates a turnover or completes a long touchdown pass to seemingly seal a victory.

But wait! Before we can allow ourselves to celebrate and finally relax after three hours of nail-biting, the officials need to take another look at the play. The referee flips on his microphone and utters those dreaded words: "The previous play is under review."

Immediately, the television commentators analyze slow-motion replays at every angle: "From this angle, it almost looks like the ball touched the ground before he secured it." Or, "Whoa, hold on. It looks here as if his knee may be down just before the ball comes loose."

But what gets lost in this analysis is the standard of review that referees must apply in evaluating these critical plays. Like an appellate court reviewing a trial court's decision, NFL officials apply a standard of review to determine whether to allow a ruling to stand or not. Sometimes uninformed NFL viewers — like sloppy attorneys — forget about the most important part of an appeal: the applicable standard of review.

In appellate practice, the standard of review is probably the single most critical consideration. There are numerous standards of review depending on the issue on

appeal, and some standards demand the appellant to make a more definitive showing than others. In criminal appeals, for example, when an appellant argues that the State presented insufficient evidence for the jury to convict him, appellate courts review the evidence presented at trial in a light most favorable to the State to determine whether any rational finder of fact could have found the crime's essential elements beyond a reasonable doubt. Moreover, a sufficiency challenge admits the truth of the State's evidence; the appellate court draws all reasonable inferences from the trial evidence in favor of the State and against the defendant. So if a jury convicts a defendant for assault, and witnesses offered conflicting accounts at trial, on appeal the appellate court will take the word of the State's witnesses. Clearly, in this scenario, the appellant must carry a heavy burden to secure a reversal for insufficient evidence.

**O**n the other hand, appellate courts apply a less stringent standard of review when they review questions of law. For questions of law, appellate courts perform a *de novo* review, meaning they review the matter anew and grant no deference to the trial court's ruling. Appellate courts will apply a *de novo* standard, for example, in reviewing alleged jury instruction errors, orders on motions for judgment as a matter of law, and matters of statutory interpretation or standing.

**I**n the course of litigation, one's tactical decisions can determine the applicable standard of review. If an appellant claims, for example, that a trial court erred in granting summary judgment to her opponent, an appellate court will review that summary judgment order *de novo*. But if that same appellant — instead of appealing the summary judgment order — moves the trial court to reconsider its summary judgment ruling and then appeals the order on the reconsideration motion, the appellate court will apply an abuse of discretion standard to review the reconsideration order. When an appellate court applies an abuse of discretion standard, it defers to the trial court and will only disturb the trial court's ruling if the trial court acted on untenable grounds or for untenable reasons. So when the appellant appealed the order on reconsideration rather than the summary judgment order, she made her path to a favorable appellate ruling more difficult.

These tactical litigation decisions, however, do not present themselves in quite the same way on an NFL field, where referees have a much easier time. Rather than having to determine the applicable standard of review, referees analyze all replay reviews under a single standard to evaluate questions of fact — not rule interpretations or questions of rule applicability. *Did* the ball cross the goal line? *Did* the receiver get *both* feet down in bounds? The *NFL Rulebook*, Rule 15, Section 9, outlines this standard: "A decision will be reversed only when the referee has *indisputable visual evidence* available to him that warrants the change."<sup>1</sup> Simple, right?

Similar to the sufficiency of the evidence standard discussed above, the NFL replay standard defers to the initial ruling. Referees cannot go under the hood to watch the replay and perform a do-over of the on-field ruling, in much the same way an appeals court cannot review a trial court's witness credibility determinations to change a trial court's findings of fact. Like appellate courts deferring to matters in which the trial court exercises its discretion, replay officials cannot perform a *de novo* review.

So when a referee rules on the field that a receiver caught and possessed the football before he stepped out of bounds, he exercises his discretion, the same way a trial judge exercises discretion in making a just and equitable property

distribution. To analogize NFL replays and appellate practice: if the appellant, a coach challenging an on-field play, cannot carry his burden, here, with indisputable visual replay evidence, the initial, on-field ruling, stands and will not be overturned after review.

**K**nowing what we know about standards of review, let us reflect on Golden Tate's now-infamous touchdown catch this past season against Green Bay on *Monday Night Football*. On a last-second play, Seahawks quarterback Russell Wilson threw a "Hail Mary" into the endzone, in which stood a group of Seahawks receivers and Packers defenders. Both Tate and Packers defender M.D. Jennings made a play on the ball, and in real time, many of us could not tell who within the huddled mass of players came down with the ball, if anyone. The on-field officials ruled that Tate and Jennings simultaneously possessed the ball, which, by rule, favors the offensive player and resulted in a touchdown. The Seahawks won the game as a result.

But first, the on-field ruling had to survive appeal on replay review: to overturn the referee's on-field call of a touchdown catch (a discretionary ruling) replays had to show *indisputable visual evidence* that Tate and Jennings did not simultaneously possess the ball in the end zone (or that Tate did not otherwise possess the ball). To put it another way, the review would affirm the touchdown, unless officials found no evidence of simultaneous possession or Tate's possession. They could not do this.

After review, officials let the on-field ruling stand. Presumably, the reviewing official analyzed all the angles, in slow motion, forward and backward, one frame at a time, and could still not find indisputable evidence to overturn the ruling. The replay evidence could not carry the burden required to survive the standard of review and overturn the initial ruling. Seahawks win.

The next time a football fan complains that referees should reverse an on-field ruling, remind that fan to consider the applicable standard of review and the high burden that the instant replay must satisfy. Then, tell that fan to be thankful that referees need only apply one standard of review, instead of the many that attorneys must sort through and consider in their appel-

late practice. **NWL**



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#### NOTE

1. (Emphasis added). Also, for college football fans, the *NCAA Rulebook*, Rule 12, Section 1, Article 2 similarly provides: "The instant replay process operates under the fundamental assumption that the ruling on the field is correct. The replay official may reverse a ruling if and only if the video evidence convinces him *beyond all doubt* that the ruling was incorrect. Without such *indisputable video evidence*, the replay official must allow the ruling to stand."

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