

JURY VIEW

Jessica Smith, UNC School of Government (November 2012)

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I. Jury View of Crime Scene or Evidence.

A. Jury View Permissible. The trial judge may allow a jury view. G.S. 15A-1229(a).

1. **May Be of Place or Items.** Typically a jury view is of a crime scene. See, e.g., *State v. Fleming*, 350 N.C. 109, 134 (1999) (crime scene). However, sometimes it involves viewing large evidence that cannot be presented in the courtroom, such as a vehicle. See, e.g., *State v. Tucker*, 347 N.C. 235, 240-41 (1997) (vehicle); *State v. Bond*, 345 N.C. 1, 32-33 (1996) (same).
2. **Request for Jury View.** Most commonly, a jury view is requested by a party. However, a jury view also may be requested by the jury, see *State v. Watson*, 294 N.C. 159, 170-71 (1978) (trial court did not abuse its discretion by denying the jury's request for a jury view), or ordered on the judge's own motion. *State v. Smith*, 13 N.C. App. 583, 585 (1972) (judge so ordered in a case decided prior to enactment of G.S. 15A-1229).

B. Discretionary Decision. The decision whether to allow a jury view is in the trial judge's discretion, and that decision will not be disturbed absent an abuse of discretion. G.S. 15A-1229(a); see, e.g., *Fleming*, 350 N.C. at 134; *State v. Gaines*, 345 N.C. 647, 680 (1997). Factors that may be considered in the exercise of discretion include, but are not limited to:

- the availability of photographs, diagrams or other material relating to the crime scene or object to be viewed; compare *Tucker*, 347 N.C. at 240-41 (no abuse of discretion where trial court allowed a jury view of a police vehicle that the defendant shot during the incident over the defendant's argument that the view was cumulative in light of available photographs), and *State v. French*, 342 N.C. 863, 867 (1996) (no abuse of discretion where trial court allowed a jury view of the murder scene notwithstanding the defendant's objection that "voluminous evidence" was introduced as to the premise's layout), with *Gaines*, 345 N.C. at 680 (no abuse of discretion where trial court denied a defense motion for a jury view of the crime scene where

- photographs and measurements enabled the jury to reconstruct the scene), *and State v. Simpson*, 327 N.C. 178, 193 (1990) (no abuse of discretion where trial court denied defendant's request for a jury view of the scene where photographs and diagrams helped the jury visualize the scene);
- witness testimony regarding the event or location in question; *Tucker*, 347 N.C. at 240-41 (allowing a jury view of a police vehicle that the defendant shot during the incident over the defendant's argument that the jury view was cumulative in light of witness testimony); *see also Smith*, 13 N.C. App. at 585-87 (1972) (in a case decided prior to the enactment of G.S. 15A-1229, the trial court did not abuse its discretion by allowing a jury view where it helped the jury to better understand confusing witness testimony regarding the scene);
 - the length of time required for the jury view; *State v. Cathey*, 162 N.C. App. 350, 354 (2004) (no abuse of discretion where trial judge denied a defense request for a jury view in part because granting it would slow the trial by several hours and other matters were on the calendar);
 - weather conditions; *id.* at 354 (no abuse of discretion where trial judge denied the defendant's request for a jury view in part because it was extremely hot outside and the jurors would be uncomfortable);
 - the logistics of the jury view; *French*, 342 N.C. at 867 (1996) (noting that a jury view of the crime scene involved at least forty police officers to maintain order and direct traffic); *Cathey*, 162 N.C. App. at 354 (no abuse of discretion where trial judge denied the defendant's request for a jury view in part because it was not logistically simple to accomplish);
 - whether the scene or item to be viewed remains in the same condition as it was at the time of the incident; *Fleming*, 350 N.C. at 134 (no abuse of discretion where the trial court granted the State's request for a jury view of the crime scene over the defendant's argument that it had not been secured and could have been tampered with; trial court did not abuse its discretion by failing to question witnesses about tampering); *State v. Bond*, 345 N.C. 1, 32-33 (1996) (trial court did not abuse its discretion in allowing jury view of a car in which the defendant and the victims had travelled, even though the vehicle had changed condition since the commission of the crime); and
 - the probative value of the evidence. *Bond*, 345 N.C. at 32-33 (jury view of the interior of a vehicle was probative).

The judge also has discretion to decide how the jury view will be conducted. *State v. Duvall*, 50 N.C. App. 684, 701 (1981) (no abuse of discretion when trial court ordered a jury view of an automobile to be conducted during the day even though the defendant first observed the car at night), *reversed on other grounds by* 304 N.C. 557 (1981).

- C. Witness Testimony.** The trial court, in its discretion, may permit a witness under oath to testify at the site of the jury view and point out objects and physical characteristics material to his or her testimony. G.S. 15A-1229(b). Any such testimony must be recorded. G.S. 15A-1229(b).
- D. Demonstrations.** It appears that demonstrations may be done during the jury view. *Williams v. Bethany Volunteer Fire Dept.*, 307 N.C. 430, 433-37 (1983) (at a jury view in a civil automobile collision case, the jury was asked to listen to a

fire truck's siren as the truck approached). Whether to allow a demonstration is within the judge's discretion. *State v. Williams*, 355 N.C. 501, 573-74 (2002) (no abuse of discretion where the trial court did not allow the defendant to conduct a demonstration during a jury view of the crime scene).

- E. Nature of the Evidence.** Clearly, if a witness testimony is allowed at the jury view, see Section I.C. immediately above, that testimony may be substantive evidence. But what of the jury view itself? Is it substantive or illustrative evidence? North Carolina law is somewhat murky on the issue. ROBERT P. MOSTELLER, ET AL., *NORTH CAROLINA EVIDENTIARY FOUNDATIONS* 12-4(A) (2d ed. 2006). One leading commentator has suggested that "the view should be regarded as a part of the trial and as taking place in a courtroom without walls." KENNETH S. BROUN, 2 *BRANDIS & BROUN ON NORTH CAROLINA EVIDENCE* 979 (7th ed. 2011). Under this approach, evidence of the jury view would be treated as either real and/or illustrative evidence in accordance with traditional evidence rules.
- F. Procedure.**
- 1. Jury in Custody of an Officer.** If a jury view is ordered, the judge must order the jury to be conducted to the place in question in the custody of an officer. G.S. 15A-1229(a). The officer should be someone with no connection to the case. *Cf. State v. Taylor*, 226 N.C. 286, 289-90 (1946) ("The practice of putting the jury in the custody of an officer who has actively investigated the evidence or has become a witness for the State is not to be approved").
 - 2. No Communication with Jury.** The officer must be instructed not to communicate with the jury on any subject connected with the trial and to prohibit anyone else from doing the same. G.S. 15A-1229(a). The only exception to this rule is when the judge allows witness testimony during the view, as discussed above in Section I.C.
 - 3. Return of the Jury.** The judge must instruct the officer to return the jurors to the courtroom without unnecessary delay or at a specified time. G.S. 15A-1229(a).
 - 4. Who Must Be Present.** The judge, prosecutor, and defense counsel must be present at the jury view. G.S. 15A-1229(a). The defendant is entitled to be present at the view by the jury. G.S. 15A-1229(a). In non-capital cases, a defendant may waive his or her right to be present. Official Commentary to G.S. 15A-1229. Additional issues that may arise in capital cases regarding the defendant's right to be present are outside of the scope of this section.
 - 5. The Media.** As a general rule, criminal trials are open to the public. Thus, unless the trial court makes the necessary determination that a jury view be closed, the media may be present at the jury view. *State v. Davis*, 86 N.C. App. 25, 33 (1987) (defendant was not prejudiced by the press' presence at the jury view).
 - 6. Questions by Jurors.** At least one case held that no error occurred when the trial court allowed the jurors to state questions at the jury view, when the questions were tightly controlled and recorded by the court reporter. *Davis*, 86 N.C. App. at 33.

- II. Jury View of a Person.** In certain circumstances, the trial court may allow the jury to view a person in the courtroom.
- A. View of the Defendant.** The State may require a defendant to stand or otherwise exhibit himself or herself before the jury. Doing so does not violate the privilege against self-incrimination because that privilege “offers no protection against compulsion to submit to fingerprinting, photographing, or measurements, to write or speak for identification, to appear in court, to stand, to assume a stance, to walk, or to make a particular gesture.” *Schmerber v. California*, 384 U.S. 757, 764 (1966). The privilege protects a defendant “only from being compelled to testify against himself, or otherwise provide the State with evidence of a testimonial or communicative nature.” *Id.* at 761. Furthermore, “compulsion which makes a suspect or accused the source of ‘real or physical evidence’ does not violate [the privilege].” *Id.* at 764; see also 1 KENNETH S. BROUN, BRANDIS & BROUN ON NORTH CAROLINA EVIDENCE § 126 (7th ed. 2011) (discussing the privilege against self-incrimination); *State v. Suddreth*, 105 N.C. App. 122, 127-28 (1992) (requiring the defendant to put on an executioner’s mask similar to one worn by the perpetrator and to stand in front of the jury did not violate the privilege against self-incrimination); *United States v. Turner*, 472 F.2d 958, 959-60 (4th Cir. 1973) (requiring the defendant to put on a wig and sunglasses to enable the jury to compare his physical appearance with photographs of the bank robber did not violate the defendant’s right against self-incrimination). Nor does this procedure violate the due process clause of the federal or state constitutions. *State v. Perry*, 291 N.C. 284, 291 (1976).
- B. When Allowed.** A view of the person has been allowed in the following circumstances:
- to show the presence or absence of scars; *State v. Sanders*, 280 N.C. 67, 71 (1971) (at the prosecutor’s request the defendant was required to remove his shirt and undershirt to impeach his testimony that the victim cut him with a razor-like instrument); *State v. Foster*, 293 N.C. 674, 683 (1977) (not error to allow the jury to view scars from accomplice’s wounds allegedly inflicted by the victim);
 - to speak a word or phrase for purposes of voice identification in court; *State v. Locklear*, 117 N.C. App. 255, 258-60 (1994) (defendant was asked to speak the words allegedly used during the crime); *State v. Thompson*, 129 N.C. App. 13, 20-21 (1998) (same; citing *Locklear*).
 - to wear a mask or other disguise; *Perry*, 291 N.C. at 288-92 (defendant required to put on an orange stocking mask allegedly worn by the perpetrator); *Suddreth*, 105 N.C. App. at 127-28 (1992) (defendant required to put on an executioner’s mask like one worn by the attacker).
 - to display teeth; *State v. Summers*, 105 N.C. App. 420, 422-23 (1992) (defendant required to display his teeth in a case where the victim described the assailant as a person with missing teeth).
 - to view a child; *State v. Green*, 55 N.C. App. 255, 257 (1981) (a child may be exhibited to show a resemblance to the alleged father in a case involving the father’s failure to support an illegitimate child).
- C. Limiting Instruction May Be Required.** When a view of the person is allowed, a limiting instruction may be required. In one case where the defendant was

required to stand before the jury and repeat two phrases allegedly stated by the robber for the purposes of voice identification, the trial court gave the following instruction:

[I instruct you that] [t]he mere fact that the court has requested and required the defendant to demonstrate her voice to you in no way is indicative of any fact that she may have been present on that occasion or that she made any statements like that on that occasion.

In other words, it was merely for the purpose of illustrating and demonstrating her voice to the witness in this case and to you members of the jury, that is, to provide a voice exemplar or example for the witness to compare her memory against. And it is in no way indicative of any substantive fact that occurred on that day.

The witness—the defendant in this case has not testified and her statement of those words, as requested by the court, is no testimony at all.

If you understand this limiting instruction, please raise your hand.

State v. Thompson, 129 N.C. App. 13, 21 (1998); see also State v. Locklear, 117 N.C. App. 255, 259-60 (1994) (similar instruction given).