

RESTRAINING THE DEFENDANT DURING TRIAL

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I. Authority. G.S. 15A-1031 authorizes the use of physical restraints on a defendant (or witness) in the courtroom under certain circumstances.

II. Standard. G.S. 15A-1031 provides that a trial judge may order a defendant (or witness) to be subjected to physical restraint in the courtroom when the judge finds the restraint to be reasonably necessary to:

- maintain order,
- prevent the defendant's escape, or
- provide for the safety of persons.

III. Procedure. If the judge orders a defendant (or witness) restrained, the judge must:

- Enter in the record, out of the presence of the jury and in the presence of the person to be restrained and that person’s counsel, if any, the reasons for the judge’s action.
- Give the restrained person an opportunity to object.
- Unless the defendant or his attorney objects, instruct the jurors that the restraint is not to be considered in weighing evidence or determining the issue of guilt.

G.S. 15A-1031.

If the restrained person contests the stated reasons for restraint, the judge must conduct a hearing and make findings of fact. *Id.*

IV. Discretionary Decision. A judge’s decision to employ restraints is reviewed for abuse of discretion. *See, e.g.,* State v. Stanley, ___ N.C. App. ___, 713 S.E.2d 196, 199 (2011); State v. Simpson, 153 N.C. App. 807, 809 (2002). When exercising its discretion, a trial court may consider, among other things:

- the seriousness of the charge;
- the defendant's temperament and character;
- the defendant’s age and physical attributes;
- the defendant’s past record;

- the defendant's past escapes, attempted escapes, or evidence of a present plan to escape;
- the defendant's threats to harm others or cause a disturbance;
- the defendant's self-destructive tendencies;
- the risk of mob violence or of attempted revenge by others;
- the possibility of rescue by other offenders still at large;
- the size and mood of the audience;
- the nature and physical security of the courtroom; and
- the adequacy and availability of alternative remedies.

Stanley, 713 S.E.2d at 200 (quoting *State v. Tolley*, 290 N.C. 349, 368 (1976)) (holding that the trial judge did not abuse his discretion when he ordered that the defendant remain restrained throughout the trial because the defendant was then serving an active sentence for second-degree murder and kidnapping, making it too dangerous for the general public and court officials to have the defendant unsecured); see also *Simpson*, 153 N.C. App. at 809 (no abuse of discretion when during the defendant's armed robbery and habitual felon trial the trial judge had the defendant restrained because of the defendant's prior conviction for prison escape).

The last factor included in the list above is the adequacy and availability of alternative remedies. Such remedies will vary depending on the individual case but may include:

- Informing the defendant, out of the presence of the jury, of the required conduct and the consequences for failure to behave appropriately.
- Ordering a recess to allow the defendant to calm down.
- Requiring additional court security personnel in the courtroom. *State v. White*, 349 N.C. 535, 560-61 (1998) (noting that the trial judge initially declined to have the capital defendant shackled and as a lesser measure ordered that there be more bailiffs and more security personnel in the courtroom).

V. Preference Against Restraints. Although a trial judge may order the use of restraints as indicated above, the appellate courts have expressed a preference against the practice, particularly the use of shackles. The North Carolina Supreme Court has stated that shackling of a defendant should be avoided because it (1) may interfere with the defendant's thought process or ability to communicate with counsel; (2) may interfere with the dignity of the trial process; and (3) is likely to create a prejudice in the minds of the jurors, suggesting that the defendant is an obviously bad and dangerous person who is guilty. *State v. Tolley*, 290 N.C. 349, 366 (1976); *Stanley*, 713 S.E.2d at 199-200 (citing *Tolley*).

VI. Constitutional Issues. Judges should be careful to avoid the use of restraints in a manner that could deprive a defendant of his or her right to a fair trial. *Simpson*, 153 N.C. App. at 809 (referencing due process and fair trial guarantees of the Fourteenth Amendment to the United States Constitution and Art. I, Sec. 19 of the North Carolina Constitution).

VII. Practical Considerations.

- A. Types of Restraints.** Typically, the restraints used are wrist and/or ankle shackles. However, in extreme situations, other types of restraints may be required, such as securing the defendant to a chair or use of a mask. *State v.*

Forrest, 168 N.C. App. 614, 620-21 (2005) (the trial court did not abuse its discretion by ordering that the defendant be handcuffed, secured to his chair, and use of a mask; the defendant was on trial for attempted first-degree murder and two counts of habitual misdemeanor assault arising out of a brutal attack on his former attorney and his subsequent biting of a sheriff's deputy, which occurred in the courtroom during a previous trial and after which it took five men to subdue the defendant; at the hearing on the defendant's objection to being restrained, the State forecast evidence of defendant's guilty plea from another incident where he attacked a former attorney while incarcerated; the defendant spat on a sheriff's deputy shortly before being brought into court for pretrial proceedings and interrupted the proceedings at various times with profane outbursts; during the pretrial proceedings, the defendant was eventually removed from the courtroom to a nearby room, where he "continue[d] to speak very loudly and abusively to the security officers ... in their presence and in the hearing of the Court;" the defendant relayed to his counsel threats to disrupt the trial if he was required to appear in court while physically restrained).

B. Preventing Jurors from Viewing Restraints. To protect the defendant's constitutional rights, the judge should undertake to prevent the jury from viewing the defendant in restraints. This may involve:

- Having the defendant brought to and from the courtroom outside of the presence of the jury.
- Having the defendant brought to and from the witness stand outside of the presence of the jury.
- Using table skirts or other barriers to prevent the jury from seeing the defendant's restraints.

VIII. A Last Resort: Removing the Defendant from the Courtroom. If order and safety cannot be assured through the use of physical restraints or if restraints cannot be administered in a way that ensures a fair trial, the trial judge may need to consider removing the defendant from the courtroom. For a discussion of that procedure, see the section entitled *Criminal Trial in the Defendant's Absence*, in this benchbook.