

Jury View

Author : Jessica Smith

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In a post [here](#) I discussed a view of the person. In this post I'll address the more common issue of a jury view.

A trial judge may allow a jury view. G.S. 15A-1229(a). Typically it is of a crime scene but it can involve viewing large evidence that cannot be presented in the courtroom, such as a vehicle. 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). Factors that may be considered in the exercise of discretion include:

- the availability of photographs, diagrams or other material relating to the crime scene or object to be viewed; *compare, e.g.*, State v. Tucker, 347 N.C. 235, 240-41 (1997) (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), *with* State v. Gaines, 345 N.C. 647, 680 (1997) (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);
- 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) (defense request for jury view denied in part because it would slow the trial by several hours and other matters were on the calendar);
- weather conditions; *id.* at 354 (jury view denied in part because it was extremely hot outside and the jurors would be uncomfortable);
- the logistics of the jury view; State v. French, 342 N.C. 863, 867 (1996) (jury view involved at least forty police officers to maintain order and direct traffic); *Cathey*, 162 N.C. App. at 354 (jury view denied 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; *see, e.g.*, State v. Fleming, 350 N.C. 109, 134 (1999) (view granted over the defendant's argument that the scene had not been secured and could have been tampered with; trial court did not abuse its discretion by failing to question witnesses about tampering); and
- the probative value of the evidence. State v. Bond, 345 N.C. 1, 32-33 (1996) (jury view of the interior of a vehicle was probative).

One question that sometimes arises is whether the jury view constitutes 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.

If a jury view is ordered, the judge must order the jury to be conducted to the view 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) (disapproving of 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). The officer must be instructed not to communicate with the jury on any subject connected with the trial, to prohibit anyone else from doing the same, and to return the jurors to the courtroom without unnecessary delay or at a specified time. G.S. 15A-1229(a). The judge, prosecutor, and defense counsel must be present at the jury view. G.S. 15A-1229(a). The defendant has a right to be present, G.S. 15A-1229(a), but may waive that right in a non-capital case. Official Commentary to G.S. 15A-1229.

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).