



Removing Spectators from the Courtroom

Author : Jeff Welty

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I recently presented a case law update at the DAs' conference, and there was a reasonable amount of interest in a case decided earlier this year by the Court of Appeals. The case is [State v. Dean](#), __ N.C. App. __, 674 S.E.2d 453 (2009), and the issue that I thought was most interesting had to do with the trial judge's decision to remove certain spectators from the courtroom.

Dean was a gang-related murder case from Durham. The defendant's first trial ended in a hung jury. During that trial, several jurors expressed concern for their safety, and spectators apparently "used cell phone cameras." (It isn't clear from the opinion how the cameras were used, but a possible inference is that they were used to photograph the jurors.)

The state decided to re-try the defendant. Shortly after the second trial began, a witness testified that one of the participants in the shooting was a spectator in the courtroom. A juror subsequently told the bailiff that several jurors were nervous about the apparent presence of gang members in the courtroom. The judge asked the person who had been identified as a participant in the shooting to approach the bench. Upon learning that he was a "co-defendant" in the case, the judge banned him and three of his companions -- all of whom were apparently wearing white shirts -- from the courtroom.

The defendant objected to the removal of his "friends and family support" without any evidence that they had done anything wrong. The judge noted that the excluded spectators had violated the court's rules by arriving late, coming and going while court was in session, and talking.

The Court of Appeals affirmed, finding that the defendant waived any constitutional arguments by failing to object on that basis during trial, and that the trial court's actions did not violate G.S. 15A-1033, which provides that "[t]he trial judge in his discretion may order any person other than a defendant removed from a courtroom when his conduct disrupts the conduct of the trial."

There are a few noteworthy things about *Dean*. First, although the trial judge found that the spectators had violated the court's rules, that appears to have been a bit of a pretext for removing spectators that were making the jurors uncomfortable -- after all, the judge didn't do anything about the talking, coming and going, etc., until the jurors expressed concern to the bailiff. But the Court of Appeals wasn't bothered by that at all, suggesting that the appellate courts aren't inclined to second-guess trial judges' courtroom management.

Second, and reinforcing the previous point, the Court of Appeals held that trial judges need not make explicit findings to support the removal of spectators. I'm not sure how far this principle extends -- for example, I suspect that the trial judge at least needs to find that the spectators are being disruptive -- but again, it signals deference to trial judges' decisions. Third, I'm not sure there's any support in law for the remedy -- a new trial -- requested by the defendant. After all, if anyone was harmed by the trial court's actions, it was the spectators, not the defendant. I did a quick Westlaw search and didn't find any cases granting new trials as a result of a judge improperly excluding spectators. Although the defendant in *Dean* argued that the exclusion was "structural error," the case he cited, *Neder v. United States*, 527 U.S. 1 (1999), doesn't support that claim, it just describes the concept of structural error.

As a final note, *Dean* has nothing to do with removing a disruptive *defendant*. That's possible in some circumstances, as provided in G.S. 15A-1032, but the procedure is much more involved and I would expect the appellate courts to scrutinize a trial judge's decision to remove a defendant very carefully.