

Question: May a North Carolina district court judge in a driving while impaired trial allow a defendant to record the proceeding with his own equipment?

Answer: Yes, such a recording is within the judge's discretion. Not only may such a recording be fashioned in a way to cause the least disruption, it will more importantly preserve the proceeding's veracity and the defendant's rights.

Pursuant to NCGS § 15A-1241(a), every superior court trial judge is required to ensure that a court reporter make a true, complete, and accurate record of all statements from the bench and all other proceedings. However, North Carolina district court proceedings are not required to be transcribed or recorded.. Pursuant to Rule 7 of the North Carolina Rules of Court, . . . , Appeals from Judgements and Orders of Superior Courts and District Courts, a defendant may pay for a transcription of district court proceedings by a court reporter. The issue is whether a defendant may record the proceeding with his own equipment.

North Carolina Rules of Court General Rules of Practice for the Superior and District Court. Supplemental to the Rules of Civil Procedure, Rule 15(b), applying to "*Electronic Media and Still Photography Coverage of Public Judicial Proceedings*," strongly defers to the U.S. Constitution's First Amendment right of freedom of speech. **(E)lectronic media and still photography coverage of public judicial proceedings shall be allowed in the appellate and trial courts of this state, subject to the conditions below.**¹

A district court defendant always has the right to appeal his unrecorded district court judgement against him and receive a de novo trial in superior court.. N.C.G.S.§ 15A-1431. As the North Carolina Supreme Court said, "The purpose of our de novo procedure is to provide all criminal defendants charged with misdemeanor violations the right to a 'speedy trial' in the District Court and to offer them an opportunity to learn about the State's case without revealing their own. In the latter sense, this procedure can be viewed as a method of 'free' criminal discovery. State v. Brooks, 287 N.C. 392, 406 (1975).

A defendant in criminal superior and district court has Constitutional rights. Arguably a criminal district court judge's not allowing a defendant to record and transcribe his own proceeding

¹ Canon 3(A)(7) of The North Carolina Code of Judicial Conduct, pertaining to *media* provides, "A judge should exercise discretion with regard to permitting broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during civil or criminal sessions of court or recesses between sessions, pursuant to the provisions of Rule 15 of the General Rules of Practice for the Superior and District Courts."

violates such defendant's right to a fair and speedy trial guaranteed in the Sixth Amendment to the United States Constitution. By the time a misdemeanor appeal is heard in superior court, many months, even years, will have passed, the judge will be different, the district attorney may be different and the only ones who can remember the previous testimony, besides the State's agents, are the defendant and his attorney, if he still has the same one. Without a memorialization the defendant will find it impossible to impeach a witness who testifies differently in the second trial.

A judge's duty is to make sure that justice is served. *"A heavy obligation rests on trial judges to effectuate the fair-trial guarantee of Sixth Amendment. U.S. v. Columbia Broadcasting System, Inc., 497 F.2d 102, 104 (1974). In fact, a judge is not a passive bystander in the arena of justice or a spectator at a sporting event; rather he or she has the most pressing affirmative responsibility to see that justice is done in every case." U.S. v. McCord, 509 F.2d 334, 348 (1974).*

Pursuant to NCGS § 15A-954, on defendant's motion, a judge must dismiss the charges stated in a criminal pleading if it determines that: . . .
."(3) The defendant has been denied a speedy trial as required by the Constitution of the United States and the Constitution of North Carolina or
(4) The defendant's constitutional rights have been flagrantly violated and there is such irreparable prejudice to the defendant's preparation of his case that there is no remedy but to dismiss the prosecution."

Therefore, a good argument can be made that the judge must dismiss charges against a defendant if it determines that defendant has been denied a speedy trial and his constitutional rights to a fair trial have been violated with irreparable prejudice to him.