

Smartphones, YouTube, and criminal contempt

Earlier this week, Anitra Burrows, a spectator at Bill Cosby’s sexual assault trial, was [found guilty of contempt of court](#) for posting recordings to YouTube of the closing arguments. A Pennsylvania trial court judge sentenced her to 50 hours of community service for her actions. She admitted she violated a court order, but apparently she had been willing to take the risk. According to ABC News, she “viewed Cosby’s celebrated sexual assault trial as the ‘one time’ she might produce a viral online video.” Pennsylvania courts have some pretty strict rules about recording trials. For this high-profile case in particular, though, the court had also [entered a specific decorum order](#) barring any recording or any communication from any device within the courtroom.

Of course, all this happened in the context of *Pennsylvania* court rules. So let’s look at whether a smartphone-wielding spectator in a *North Carolina* trial (civil or criminal) could be subject to a contempt order for similar behavior. I believe the answer is yes, under the right circumstances.

In North Carolina, **criminal contempt** of court is a quasi-criminal offense governed by [Chapter 5A](#). General Statute [5A-11](#) lists 12 exclusive categories of contemptuous behavior. In general, they involve willful acts that hinder the court’s ability to conduct orderly proceedings or administer justice. Some actions that typically come to mind are a party cursing at the judge during proceedings (see juicy examples from other states [here](#) and [here](#)), or a participant who refuses to sit down and be quiet. That behavior indeed qualifies, and it is covered by the first two categories in the list. But the statute also states that criminal contempt includes “[w]illful disobedience of...a court’s lawful order, directive, or instruction[.]” G.S. 5A-11(a)(3). That’s the type of violation that subjected Ms. Burrows to punishment in Pennsylvania. The trial court had entered a specific order to protect Mr. Cosby (as well as the witnesses, lawyers, and jury) from the negative effects of excessive coverage. Ms. Burrows *knew* about the order and posted her recording to YouTube anyway.

So the keys to this category of criminal contempt are (1) an applicable order, directive, or instruction of the court; and (2) the willfulness of the person who violates it.

The order. In North Carolina, General Rule of Practice 15 is the default court rule covering how and when court proceedings may be photographed, filmed, and broadcast. (For example, it strictly prohibits filming or photographing juries and certain types of witnesses.) Any media outlet hoping to cover a North Carolina proceeding should be on notice of Rule 15’s provisions and the prospect of contempt for violating them. Indeed some court districts have also incorporated Rule 15 into their own local rules (example [here](#) (Rule 14)), and other districts have created orders that constitute more specific versions of the rule (example [here](#)).

But what about a regular person, like Ms. Burrows, who is not representing a media source? Is she subject to Rule 15’s strictures? The scope of Rule 15 is a bigger question that probably deserves its own blog post. But for now I’ll say this: At the time the Rule was written—1990—the drafters

couldn't have imagined a world in which any person in the courtroom could carry a little phone capable of recording and transmitting the trial to an unlimited audience. In 2017, anyone can become a broadcaster, of sorts, by streaming over Facebook or YouTube. But it hardly seems fair to apply that kind of historical hindsight to the 27-year-old language of Rule 15.

So the type of order more likely to *safely* apply to a spectator is either a broadly-applicable local court rule or, better yet, a specific order covering the particular case or proceeding. (As I noted earlier, Rule 15 is the “default” rule, but in any given case, the presiding judge has the final say as to what types of electronics will be allowed in his or her court.) A North Carolina trial judge certainly has the discretion to enter a “decorum order”—directed to all participants and spectators—like the one in the Cosby trial. These are not uncommon in high-profile cases. The National Center for State Courts now has a [Web page](#) dedicated to encouraging tools like these in well-publicized proceedings.

Willfulness. Even if a clear “order, directive, or instruction” is in place, and it has been violated, there can be no contempt ruling without a finding that the violation was “willful.” For decorum orders and similar orders governing electronics in the courtroom, this means that a spectator has to have had reason to *know about it*. This was an easy finding for the judge in the Cosby case: The trial court had taken pains to ensure that all spectators knew the rules, and court security regularly patrolled the courtroom looking for violators. One [article](#) reported that even the famous Gloria Allred was sent out of the courtroom when her phone rang.

Posting the relevant parts of the order on the courtroom doors is certainly helpful as a starting place. Announcing the rule to the crowd at the start of court, and periodically throughout, is even better. Passing out copies of the order to the spectators and participants? Not a bad idea.

In the end, if a judge is able to find willful disobedience, he or she may punish the person with: censure (pretty rare); imprisonment up to six months; a fine not exceeding \$500; or any combination of the three. [G.S. 5A-12](#). So, as a direct sentence, the community service Ms. Burrows received in Pennsylvania would not have been an option under the strict language of Chapter 5A. How about as a condition for a suspended jail sentence? Yes, as a general proposition, that seems plausible.

As a practical matter, judges in this State make it a common practice to warn their courtrooms about the rules for phones and electronics. To preserve contempt as an enforcement tool, however, courts can take extra notification measures to ensure that they will be able to find “willfulness” as required by Chapter 5A.