

Accommodating Jurors with Disabilities

The process of jury selection is crucial in any trial. This phase of a trial is called voir dire. During voir dire, the lawyers for each side question prospective jurors. When lawyers pick jurors, they want to ensure a fair trial for their clients. So lawyers are allowed to excuse prospective jurors from their cases. They can do so either for no reason they need to explain (with a couple of exceptions involving juror race and gender)—which is called a peremptory challenge, or they can challenge a juror “for cause”.

A challenge for cause is a legal reason why a potential juror should not be allowed to sit on the jury. If one of the lawyers challenges a potential juror for cause, the trial judge decides if that person must be excused.

Ohio has a law setting forth reasons why a prospective juror can be challenged for cause. Some of the disqualifiers in the statute are a criminal conviction, having an interest in the case, being related to, married to, or employed by a party or the party’s lawyer, or the juror discloses by answers that he or she cannot be fair and impartial, or will not follow the law given by the court. There can be other reasons as well.

An unusual challenge for cause—one not based on any of the statutory grounds—came up in a case decided by the Ohio Supreme Court in early March. The case is State

v. Speer. The issue was whether a hearing impaired juror should have been excused for cause in a murder case.

Ohio has made significant strides in ensuring that all persons, including those with disabilities, have access to the courts, including the chance to serve on juries. The Ohio Supreme Court has taken a leading role in this area. The Court promulgates rules of superintendence, one of which provides that the opportunity for jury service should not be denied or limited on the basis of disability. Local courts are required to make reasonable accommodations for jurors with physical disabilities. In addition, in 2003, the Ohio Supreme Court established an Interpreter Services Program, dealing both with those with limited English proficiency and with hearing-impaired individuals in the court system.

In the Speer case, the Court was called upon to weigh the right of the accused to a fair trial against the right of citizens with impairments and disabilities to serve on juries. The context of the case is quite fascinating.

Scott Speer and Jim Barnett were co-workers and close friends. But they also argued quite heatedly about money. Barnett owed Speer quite a lot of it. Still, in August of 2003, the two went boating together on Speer's boat. Although they'd planned to spend the night on an island, there were no hotel rooms to be had. So Speer decided to return to the marina, even though high winds and waves were forecast. In the early morning hours Speer encountered four to six foot waves. At some point, Barnett fell out of the boat. Speer spent some time trying to find him, but then felt he needed to

leave the area for his own safety. He also placed a 911 call to the Coast Guard, reporting what had happened.

The next day, Barnett's body washed ashore. An investigation by the Ohio Department of Natural Resources determined that Speer's drinking, speed, and reckless boat driving had contributed to Barnett's death. Although a copy of the report was sent to the local prosecutor's office, Speer was not charged with any crime.

One year later, Speer told a friend that he had pushed Barnett off his boat. Ultimately, this information got to the authorities. Speer was indicted on charges of aggravated vehicular homicide, involuntary manslaughter, murder and aggravated murder.

At Speer's trial, one of the prospective jurors told the court during the voir dire examination that she suffered from a hearing impairment. She was questioned extensively by both sides, and was able to answer all questions. Because the prosecution intended to rely strongly on the tape of Speer's 911 call to the Coast Guard, Speer's lawyer asked the court to remove the hearing-impaired juror for cause. The Court refused, deciding the juror's impairment could be accommodated by letting her sit where she could read lips. She was seated as a juror. When the tape was played, she read the simultaneous transcription of the tape.

Speer was acquitted of the two murder charges, but convicted of the vehicular homicide and involuntary manslaughter charges. On appeal, he challenged the seating of the hearing-impaired juror, arguing his due process rights had been violated.

In a 5-2 decision authored by Justice Terrence O'Donnell, the high court agreed with Speer. The central role of the 911 tape was key to the majority decision. The prosecution argued that Speer's calm tone and demeanor on the tape provided evidence of his guilt. The defense argued that the fact that he clearly was not slurring his words on the tape proved he wasn't drunk or reckless.

The Court felt that reading a transcription of the tape did not provide the juror with the nuances necessary to evaluate this crucial piece of evidence. Because the juror "could not perceive whether there was urgency in Speer's voice, whether he slurred his speech, or whether he sounded deceptive or hesitant", she could not include those evaluations in coming to her verdict. In short, because the accommodations by the court could not enable the juror to perceive and evaluate the evidence, the court concluded that Speer did not get a fair trial. Speer's due process rights trumped the rights of the hearing-impaired juror in this case.

Justice Judith Lanzinger, joined by Justice Robert Cupp, dissented. Lanzinger pointed out that Speer's lawyer did not object during the trial to the accommodations made for the juror during the playing of the 911 tape, and never asked that she be replaced by an alternate juror.

Regardless of the outcome of this case, the majority of the Court made it clear that a hearing impairment by itself is not grounds to remove a prospective juror from jury service.