

Judge E. Faye Peterson
Courtroom 4, Second Floor
Hinds County Courthouse

STANDING ORDER

RE: Witness Testimony via Virtual Platform/ePlatform During Jury Trials

In balancing the ongoing health risks created by the coronavirus (COVID-19) with the courts' constitutional and statutory obligation to remain open and accessible, this Court finds it necessary to detail its decision to permit the use of closed circuit witness testimony during trial.

In the prior Standing Order RE: Jury Trials signed September 11, 2020, this Court stated:

The parties may request a witness provide testimony via an eplatform. Witnesses may be virtually present for testimony using audiovisual equipment inside the courtroom. Counsel must provide the Court with the necessary contact information to join the witness to the proceeding.

The Court, being fully equipped with audiovisual equipment capable of providing closed circuit testimony as well as livestreaming, deems it necessary to advise all counsel that our Supreme Court has established that the use of closed circuit technology during jury trials does not violate the Confrontation Clause.

As it relates to the Confrontation Clause of the Sixth Amendment, the United States Supreme Court, as reiterated by the Supreme Court of Mississippi, stated:

The Confrontation Clause of the Sixth Amendment, made applicable to the States through the Fourteenth Amendment, provides: "In all criminal prosecutions, the accused shall enjoy the right... to be confronted with the witnesses against him."

....

We have never held, however, that the Confrontation Clause guarantees criminal defendants the **absolute** right to a face-to-face meeting with the witnesses against them at trial.

....

The central concern of the Confrontation Clause is to ensure the reliability of the evidence against a criminal defendant by subjecting it to rigorous testing in the context of an adversary proceeding before the trier of fact.

....

[W]e have never insisted on an actual face-to-face encounter at trial in **every** instance in which testimony is admitted against a defendant.

....

In sum, our precedents establish that “the Confrontation Clause reflects a **preference** for a face-to-face confrontation at trial, a preference that “**must occasionally give way to considerations of public policy and the necessities of the case.**”

Rollins v. State, 970 So. 2d 716 (Miss. 2007) (citing *Maryland v. Craig*, 497 U.S. 836, 110 S.Ct. 3157, 111 L.Ed.2d 666 (1990)) (emphasis added).

In keeping with the guidance set forth above, the Confrontation Clauses in the Constitution of the United States and the State of Mississippi and the general welfare and health of all citizens of this State, either party with prior notice to the court and opposing counsel is permitted to use closed circuit testimony during trial.

SO ORDERED this the day of February, 2021.



HONORABLE E. FAYE PETERSON
CIRCUIT COURT JUDGE

GUIDELINES FOR CLOSED CIRCUIT
WITNESS TESTIMONY DURING TRIAL

1. The witness must use audiovisual equipment capable of video and audio connections, preferably a laptop, desktop, or tablet. Cell phones are not permitted.
2. The witness must be seated in a private, secure environment free from distractions with no other persons present.
3. Any and all exhibits intended for the witness must be pre-marked and in court. The witness should be provided with a copy of the pre-marked exhibits.
4. There should be no eating, drinking, or use of tobacco products by the witness during his or her testimony.
5. The witness should be properly dressed and otherwise act accordingly. The witness should appear as though he or she were physically present in court.

The Court will conduct an inquiry outside the presence of the jury to ensure compliance with the measures and guidelines above.