

5/08/20

TELEPHONIC AND VIDEO HEARINGS COLLOQUY

United States v. Defendant, #_ :___ - ___

This [-----] hearing is being conducted by video conferencing as a result of the findings and authorization set out in the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), [H.R. 748](#), P.L. 116-136 (Mar. 27, 2020); the Administrative Office’s Update on CARES Act Provisions for Criminal Proceedings; and District of Maine General Orders 2020-1 (superseded), 2020-2 (superseded in part), 2020-3 (superseded) and 2020-4. Persons granted remote access to proceedings are reminded of the general prohibition against photographing, recording, and rebroadcasting of court proceedings. Violation of these prohibitions may result in sanctions, including removal of court issued media credentials, restricted entry to future hearings, denial of entry to future hearings, or any other sanctions deemed necessary by the court.

QUESTIONS FOR DEFENDANT’S COUNSEL

[Defense counsel], have you discussed with Defendant his/her decision to waive the right to be physically present for this [-----] hearing?

Based on your discussions with Defendant, is it your understanding that Defendant intends to waive the right to be physically present? Do you believe that any such waiver by Defendant will be a knowing and voluntarily waiver of the right to be physically present?

QUESTIONS FOR DEFENDANT

Defendant, if at any time during this hearing you would like to speak with your lawyer, please let me know and I will give you the opportunity to have a private conversation with your lawyer. Do you understand?

Do you understand that you are not required to be [-----] by video conferencing but could insist on your right to be physically present?

Do you understand that if you decide today that you've changed your mind about being physically present for [-----], you could still assert your right to be physically present?

Do you understand that if you chose to appear in person, I would continue, meaning postpone, today's proceeding to be conducted on a future date?

If that happened, I would not be able to tell you today when the proceeding would be scheduled. The court would have to evaluate when it would be reasonable, given the coronavirus pandemic, to conduct open court proceedings. Do you understand?

Have you discussed with your lawyer your decision to appear by video conferencing for your [-----] as opposed to being physically present?

Did you have enough time to do that?

Did your lawyer describe to you your right to be physically present? Did your lawyer answer all your questions to your satisfaction?

I understand from your lawyer that you've decided to waive, meaning to give up, your right to be physically present. Is that true?

Has any promise been made to you in order to get you to give up your right to be physically present?

Has anyone threatened you or pressured you in order to get you to give up your right to be physically present?

Do you understand that your family members and other supporters have the right to attend this proceeding and that arrangements have been made for them to dial in to this proceeding?

Do you understand that the fact that this proceeding will be conducted by video conference does not diminish the legal significance of this proceeding?

Do you understand that you will be bound by what happens during this proceeding?

You are currently appearing by videoconference, and I cannot see everything and everyone that is in the room with you. Is there anyone or anything currently exerting any influence over you to waive your right to be physically present in the courthouse for this proceeding?

Considering all that I've just explained to you, do you still wish to give up your right to be physically present for your [-----] hearing? Do you wish to proceed with your [-----] hearing today, participating by video conference?

OPPORTUNITY FOR COUNSEL TO TAKE POSITION

[Government Counsel] – What is the position of the government on proceeding with today's hearing by video conference, as opposed to continuing this hearing until after the COVID-19 pandemic has subsided?

[Defense Counsel] – What is the position of defense counsel on proceeding with today's hearing by video conference, as opposed to continuing this hearing until after the COVID-19 pandemic has subsided?

IF THE ANSWERS ARE SATISFACTORY

I conclude that the defendant has voluntarily and knowingly waived the right to be physically present for today's proceedings because, under Section 15002(b)(4) of the CARES Act, the defendant has consented to proceeding by video conference after consultation with counsel.

I further find that it is appropriate, in this case, to proceed in this manner, without the defendant being physically present in the courtroom, to avoid the unprecedented and unacceptable health risk to the defendant, the attorneys and all court staff caused by the COVID-19 pandemic.

I also find that proceeding in this manner serves the end of justice because the defendant is reasonably requesting [-----] and, under the circumstances, the proceeding cannot be further delayed without serious harm to the interests of justice. In light of the most fundamental notions of due process and under these extraordinary circumstances there is no just reason for Defendant's [-----] hearing to be delayed.

Accordingly, the court authorizes Defendant to appear and participate by video conference as a remedy narrowly tailored to protect a compelling state interest in health and safety and to serve the ends of justice.