



Evidentiary Suppression Hearing Held Via Zoom Is Constitutional

The Zoom video-conferencing platform has rapidly been adopted by both Massachusetts courts and many practitioners as a practical alternative to holding in-person legal proceedings. In *Commonwealth v. Masa*, a criminal defendant (“Masa”) recently challenged the Massachusetts Superior Court’s decision to hold a suppression hearing via Zoom. Masa argued that holding the hearing via Zoom would violate his constitutional right to confront the witnesses against him and violate the public’s right to attend the proceeding.

The Superior Court (Salinger, J.) recognized that an evidentiary hearing on a motion to suppress is a “critical stage of the proceedings.” Nevertheless, the Court overruled Masa’s objection to the Zoom suppression hearing, finding that it was necessary to deny Masa’s right to face and examine witnesses in the same physical space in order to protect the health and safety of all participants in light of the ongoing public health emergency in Massachusetts. The Court stated that confined, closed environments, such as courtrooms, increase transmissibility of the coronavirus, and being present where a witness testifies at length without a mask (as effective cross-examination requires a witness’s face to be visible) increases one’s risk of contracting COVID-19.

The court also found that conducting the hearing via Zoom would adequately protect Masa’s constitutional right to confrontation. The court explained that the right to confront witnesses is not absolute and may bow to accommodate other legitimate interests in the trial process. The court further explained that proximate physical presence “is not the essence of confronting a witness; what matters most is the ability of a defendant to test and challenge a witness’s testimony through cross-examination.”

Finally, the Court held that allowing full public access to the Zoom proceeding satisfies constitutional requirements. As with the right of confrontation, the Court explained that the public trial right is not absolute and the public may be denied access to court proceedings where doing so is necessary to avoid prejudice to some overriding interest. Here, the Court found that it could successfully provide public access to the Zoom hearing to anyone who wished to observe.

Decisions such as *Masa* serve as an indication that Zoom proceedings will continue to be used by Massachusetts courts for the foreseeable future.

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