

Dear Justices of our esteemed Washington State Supreme Court:

The State is entitled to a fair trial, just as much as the defendant is. That fair process begins inside a courtroom, with the parties present and facing each other. That process is inhibited when the reliability of a remote network lies in the hands of a defendant and their choice of a remote system, be it a cellular phone, a tablet, or a computer network that may or may not be updated and functioning at the time of the court hearing.

In the instance where a defendant does not or cannot get to a consistent cellular zone for audio and visual clarity, the Court, even, is restricted in whether the hearing can proceed. Then, if the call is dropped or the network somehow fails, how does notice of a subsequent hearing get processed in an effective manner? For the many things that could go wrong with a possible unreliable network, it also hampers the open court format and, again, leaves the subject of notice very open-ended. The courts have opted to not issue bench warrants for missed hearings where these glitches have occurred. They tend to simply re-summons the defendant. It is not unusual that there is a second and third failure to appear after a summons has gone out again.

While a remote appearance can significantly impact pretrial hearings- and it has, the potential impacts at trial, I would think, are too risky to even consider for both the State and the defendant. During the onset of COVID-19, the State had situations where elderly witnesses asked to appear remotely and, without fail, the Court denied said request on the grounds that the defendant has the right to confront his accusers and defense argued that confrontation can only be done in person where they get to see the faces of the witnesses, read body language, and react to impromptu gestures that may be hidden by a camera (only partial view of a person's body on video). These same arguments should be considered for defendants and in-court trials, at the very least. Either the right to confront witnesses is a real thing or it is not, and this is based on argument that defense attorneys make for in-court appearances.

There have been instances where a defendant is a twin or has siblings who resemble them. We have recently had an issue where one brother has used the other brother's identity when being arrested. The photographs of the two brothers are similar. But for the fingerprints, the State would not know which brother was the true perpetrator. In a remote setting, this sham could not be cured. Remote trials would create excessive room for error and cause avoidable delays and possible appellate issues that would delay closure to many of the cases tried in a virtual setting.

The last factor, besides getting a conviction and securing sentencing, would be whether the jurors would now also appear in a virtual setting and, if not, I don't know how we would maintain their participation in a process that requires their presence and not that of the parties involved in the litigation.

These are just a few thoughts off the top of my head that, which, when I start to unravel, the complexities are beyond my ability to summarize in any succinct manner.

I know that, beyond what I can see, you remain committed to the fair administration of justice for all and, for that, I am extremely grateful. Thank you for your attention to this matter.

Diane Clarkson

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Thank you