

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE: ADMINISTRATIVE ORDER )  
REGARDING DETAINEE/ ) Misc. No. 2:20-mc-402-MRH  
ARRESTEE SCREENING AND )  
RELATED MATTERS )  
)



**ADMINISTRATIVE ORDER**

The Court will continue to endeavor to fully use video and other telecommunications tools to avoid the necessity of transporting a detained person to a Court facility for Court or other proceedings, for the protection of the health of all persons involved, including the detained person.

Nonetheless, in event such is not possible, the Court hereby ORDERS AND DIRECTS that until further notice, the detention centers, correctional centers, jails and correctional facilities where detainees for this Court are held shall screen all detainees from their facilities who are scheduled to appear in this Court as set out in this Order, including to determine their body temperature, immediately prior to their departure for any Court facility. Per CDC Guidelines, if the detainee's body temperature is 100.4 degrees Fahrenheit or above, such detainees should not be transported or produced, and the Court (via the Marshal) shall be notified forthwith. Further and in addition, each such detention center shall identify and withhold from transport any detainee (1) who is displaying any flu-like symptoms (e.g. persistent cough, severe headache, sore throat, and/or nasal discharge), or (2) who has tested positive or is presumed to be positive for the COVID-19 virus, or (3) who is currently under medical isolation or quarantine at the detention center (or who has been in or advised to be in such status outside of the detention center in the prior fourteen (14) days)), or (4) who has been exposed to a person tested to be

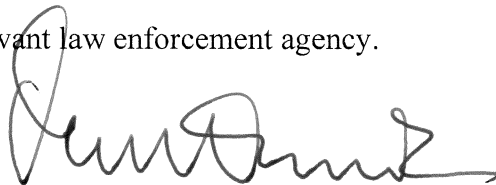
positive or who is presumed to be positive for the COVID-19 virus, or (5) who has travelled outside of the United States and returned to the United States in the prior fourteen (14) days.

The Marshal shall promptly notify the involved judicial officer if any detainee is withheld from transport due to this Order, and shall provide to each detention center the standard questionnaire used for Court visitor screening, for the use of the detention centers in conducting such screening.

The Marshal shall also apply the screening process applicable to visitors to any Courthouse or Court facility to arrestees entering a District courthouse or facility “from the street.” The Marshal shall also continue to apply his standard screening processes as were in place prior to this Order, and as may be modified by the Marshal based on updated guidance.

Further, each detention center shall promptly notify the Marshal for this District of any federal detainee who is in medical isolation or quarantine at their facility for any reason, promptly upon the entry of such detainee into such status. The Marshal shall then so notify the undersigned and the judicial officer who entered the Order of commitment of such status.

The Clerk’s Office is DIRECTED to transmit a copy of this Order to the U.S. Marshal, who shall advise each involved detention center of its content, and who shall provide a copy of same to each detention center and each relevant law enforcement agency.



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Mark R. Hornak  
Chief United States District Judge

March 23, 2020

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE: ADMINISTRATIVE ORDER )  
REGARDING COMPUTATION )  
OF TIME FOR FILING OF ) Misc. No. 2:20-mc-401-MRH  
INFORMATIONS OR )  
INDICTMENTS DUE TO )  
COVID-19 MATTERS )

**ADMINISTRATIVE ORDER**

IN FURTHERANCE of this Court’s prior Orders entered on March 16, 2020, March 19, 2020, April 3, 2020, and April 17, 2020 at the above-referenced Miscellaneous Number; and

CONSISTENT WITH this Court’s March 13, 2020, Order at Miscellaneous Number 2:20-mc-394-MRH; and

WHEREAS, the federal government has issued guidance regarding the immediate and ongoing need for extraordinary nationwide measures to restrict the amount of person-to-person contact and to mitigate the spread of COVID-19, including that gatherings of more than ten individuals are to be avoided;

WHEREAS, individuals who may be carrying the virus with or without symptoms – including grand jurors, court staff, court reporters, attorneys, witnesses, security personnel, and the general public – may come into close proximity with other persons;

WHEREAS, this Court canceled the grand jury session that had been scheduled to convene on March 17, 2020;

WHEREAS, pursuant to the March 19, 2020 Order entered in this matter, all grand jury sessions were suspended through April 3, 2020;

WHEREAS, pursuant to the March 19, 2020 Order entered in this matter, the time from March 13, 2020 through the earlier of April 15, 2020, or the date the grand jury reconvenes, is excludable time in terms of calculating the thirty-day period by which, pursuant to 18 U.S.C. § 3161(b), an indictment must be filed after an arrest on a complaint;

WHEREAS, pursuant to the April 3, 2020 Order entered in this matter, all grand jury sessions were suspended through April 17, 2020;

WHEREAS, pursuant to the April 3, 2020 Order entered in this matter, the time from April 15, 2020 to the earlier of April 29, 2020, or the date the grand jury reconvenes, is excludable time in terms of calculating the thirty-day period by which, pursuant to 18 U.S.C. § 3161(b), an indictment must be filed after an arrest on a complaint;

WHEREAS, pursuant to the April 17, 2020 Order entered in this matter, all grand jury sessions were suspended through May 1, 2020; and,

WHEREAS, pursuant to the April 17, 2020 Order entered in this matter, the time from April 29, 2020 to the earlier of May 12, 2020, or the date the grand jury reconvenes, is excludable time in terms of calculating the thirty-day period by which, pursuant to 18 U.S.C. § 3161(b), an indictment must be filed after an arrest on a complaint.

NOW, THEREFORE, in order to further public health and safety, and considering the ongoing guidance from national, state, and local officials that group gatherings continue to be limited,

IT IS HEREBY ORDERED that all grand jury sessions are hereby suspended through May 15, 2020.

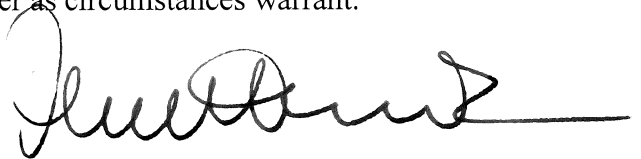
IT IS FURTHER ORDERED that the time from May 12, 2020 to the earlier of May 26, 2020, or the date the grand jury reconvenes, is excludable time in terms of calculating the thirty-

day period by which, pursuant to 18 U.S.C. § 3161(b), an indictment must be filed after an arrest on a complaint.

IT IS FURTHER ORDERED that, for the reasons set forth in the Administrative Order dated March 13, 2020, at Miscellaneous Number 2:20-mc-394-MRH, and in the Administrative Order dated March 16, 2020, at Miscellaneous Number 2:20-mc-401-MRH, the Court specifically finds and concludes that the ends of justice served by taking such action and by such a delay materially outweigh the best interests of the public and the defendants in a speedy trial. 18 U.S.C. § 3161(h)(7)(A). In making this decision, pursuant to 18 U.S.C. § 3161(h)(7)(B)(iii), the Court considered and determined that, due to the suspension of the grand jury, the arrests occurred at a time such that it is unreasonable to expect the return and filing of such indictments within the period specified in Section 3161(b).

IT IS FURTHER ORDERED that the Court may extend or otherwise modify the periods of suspension or exclusion by further Order as circumstances warrant.

May 1, 2020

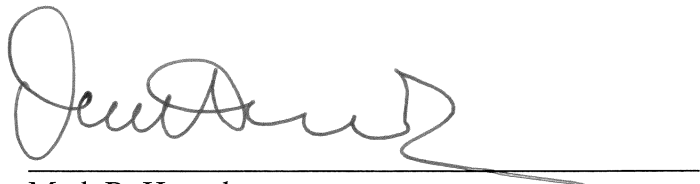
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Honorable Mark R. Hornak  
Chief United States District Judge

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE: ADMINISTRATIVE ORDER	)	
REGARDING COMPUTATION	)	Misc. No. 2:20-mc-401-MRH
OF TIME FOR FILING OF	)	
INFORMATIONS OR	)	
INDICTMENTS DUE TO	)	
COVID-19 MATTERS	)	
	)	

Due to the likely reduced ability to obtain a quorum of grand jurors in each Division of the Court, and in light of the effect of the public health recommendations on the availability of necessary personnel to be present in the courthouses and to serve the grand jury due to the COVID-19 virus (coronavirus) as more fully described in the Court's Administrative order at 2:20-mc-394-MRH, it is ORDERED that as to the computation of time for the filing of an information or indictment as set forth at 18 U.S.C. § 3161(b), the period of time from March 16, 2020 through April 15, 2020 is deemed excludable delay under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A), as the Court finds that the ends of justice served by taking that action outweigh the interests of the parties and the public to a speedy trial, for the reasons set forth in Administrative Order 2:20-mc-394-MRH. The Court may extend the period of exclusion as circumstances warrant.



Mark R. Hornak  
Chief United States District Judge

March 16, 2020

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

**FILED**

**MAR 19 2020**

CLERK U.S. DISTRICT COURT  
WEST. DIST. OF PENNSYLVANIA

IN RE: ADMINISTRATIVE ORDER )  
REGARDING COMPUTATION )  
OF TIME FOR FILING OF ) Misc. No. 2:20-mc-401-MRH  
INFORMATIONS OR )  
INDICTMENTS DUE TO )  
COVID-19 MATTERS )

IN FURTHERANCE of this Court's March 16, 2020, Order at the above-referenced  
Miscellaneous Number; and

CONSISTENT WITH this Court's March 13, 2020, Order at Miscellaneous Number 2:20-  
mc-394-MRH; and

WHEREAS, since the entry of the March 13, 2020, Order, the federal government has  
issued guidance regarding the immediate need for extraordinary nationwide measures to restrict  
the amount of person-to-person contact and to mitigate the spread of COVID-19, including that  
gatherings of more than ten individuals are to be avoided for at least two weeks; and

WHEREAS, individuals who may be carrying the virus with or without symptoms –  
including grand jurors, court staff, court reporters, attorneys, witnesses, security personnel, and  
the general public – may come into close proximity with other persons; and

WHEREAS, this Court canceled the grand jury session that had been scheduled to convene  
on March 17, 2020;

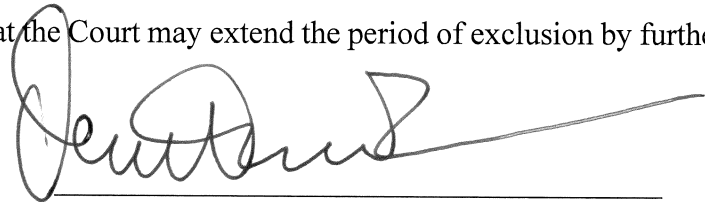
NOW, THEREFORE, in order to further public health and safety, IT IS HEREBY  
ORDERED that all grand jury sessions are hereby suspended through April 3, 2020.

IT IS FURTHER ORDERED, that the time from March 13, 2020 through the earlier of  
April 15, 2020, or the date the grand jury reconvenes, is excludable time in terms of calculating

the thirty-day period by which, pursuant to 18 U.S.C. § 3161(b), an indictment must be filed after an arrest on a complaint.

It is FURTHER ORDERED that, for the reasons set forth in the Administrative Order dated March 13, 2020, at Miscellaneous Number 2:20-mc-394-MRH, and in the Administrative Order dated March 16, 2020, at Miscellaneous Number 2:20-mc-401-MRH, the Court specifically finds and concludes that the ends of justice served by taking such action and by such a delay materially outweigh the best interests of the public and the defendants in a speedy trial. 18 U.S.C. § 3161(h)(7)(A). In making this decision, pursuant to 18 U.S.C. § 3161(h)(7)(B)(iii), the Court considered and determined that, due to the suspension of the grand jury, the arrests occurred at a time such that it is unreasonable to expect the return and filing of such indictments within the period specified in Section 3161(b).

IT IS FURTHER ORDERED, that the Court may extend the period of exclusion by further Order as circumstances warrant.

A handwritten signature in black ink, appearing to read "Mark R. Hornak", written over a horizontal line.

Honorable Mark R. Hornak  
Chief United States District Judge



**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE: ADMINISTRATIVE ORDER:	)	
INQUIRIES TO THOSE	)	
SEEKING/MAKING	)	Misc. No. 2:20-mc-426-MRH
COURTHOUSE ACCESS	)	
RELATIVE TO COVID-19	)	
MATTERS	)	
	)	

This Administrative Order is issued in response to the recent outbreak of novel coronavirus disease 2019 (COVID-19) in this District. This Court is closely monitoring developments with regard to COVID-19 matters. The Court is also closely monitoring the guidance issued by the Centers for Disease Control and Prevention (CDC), state and local public health authorities, and the Administrative Office of the United States Courts. The CDC has noted that the best way to prevent illness is to limit exposure to the virus and has recommended that precautions be taken to prevent such exposure and reduce the spread of the virus.

Pursuant to the available public health guidance, and in order to protect the health and safety of court personnel and all those entering courthouses, Court locations, and Court offices in this District, it is ORDERED the following measures will be implemented at all courthouses, Court locations, and Court offices in this District, effective immediately:

The following persons shall not enter any courthouse, Court location, or Court office, including Probation and Pretrial Services Offices, in this District, unless authorized by the undersigned:

1. Persons who, because of exposure to COVID-19 or travel to a country or region with an outbreak of COVID-19, have been advised to currently self-quarantine by any doctor, hospital, or health agency, or who are nonetheless currently engaged in self-quarantine;

2. Persons who reside with or otherwise have had close contact with someone who has been advised to currently self-quarantine by any doctor, hospital, or health agency, or who is currently self-quarantining in any event;
3. Persons who have been diagnosed with, or have had known contact with anyone who has been diagnosed with, COVID-19;
4. Persons who have travelled outside of the United States, and have returned to the United States in the fourteen (14) days prior to time entry to the courthouse or facility is requested;
5. Persons experiencing one or more symptoms of respiratory illness such as a fever, persistent cough, persistent nasal discharge, or shortness of breath.

Those seeking to enter Court facilities will be asked to confirm that none of the factors listed above applies to them. For those for whom one or more such factors apply, they will not be permitted to enter the facility, and will be directed to contact (by phone) the agency or organization that they were intending to visit to advise such agency or organization of their circumstances and obtain further direction. Those displaying any one of the above factors will not be permitted to enter the involved Court facility without approval from the Chief Judge of this Court, or his designee. If you believe that you have been wrongfully denied such entry, you may contact the Chief Judge's chambers at (412) 208-7433.

Any attorney or party who knows or has reason to believe that any participant in a scheduled hearing, trial, conference, deposition, or other proceeding meets any of the criteria set forth above shall promptly notify opposing counsel (and the Court, as appropriate) prior to any such proceeding.

If you have a scheduled appointment or you are otherwise required to appear at a courthouse, Court location, or Court office, including the Probation and Pretrial Services Office, in this District, and you are unable to appear because of the restrictions listed above, you should proceed as follows:

1. If you are represented by an attorney, please contact your attorney.

2. If you are an attorney or a pro se litigant and you are scheduled to physically appear in court before a judge of this Court, please contact that judge's chambers directly at the Chambers number listed on the Court's website.
3. If you are a pro se litigant and you are seeking to file papers with the Clerk's Office, please contact the Clerk's Office at (412) 208-7500.
4. If you are scheduled to meet with a probation officer or a pretrial services officer, please contact the Probation and Pretrial Services Office at the applicable number below:

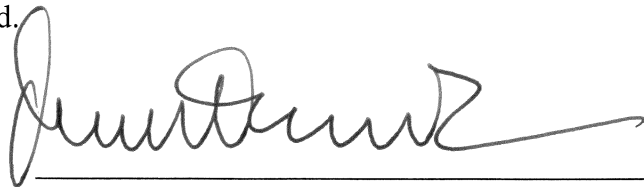
Pittsburgh: (412) 395-6907

Erie: (814) 464-9650

Johnstown: (814) 533-4540

5. If you are a juror or prospective juror (including a grand juror), please contact the Clerk's Office at (412) 208-7500.
6. For Court of Appeals matters, please contact the U.S. Court of Appeals for the Third Circuit at (215) 597-2995.
7. For all other matters or questions, please contact the Clerk's Office at (412) 208-7500.

These limitations apply to anyone entering Court facilities, including employees or those brought into any such facility by the U.S. Marshal or law enforcement, and will remain in place temporarily until they are modified by further Order. Nothing herein shall prohibit or otherwise limit the ability of the U.S. Marshal to screen those entering the cell block in accordance with the procedures established by the U.S. Marshal Service Prisoner Operations Division. This Order may be modified as further guidance is received.



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Mark R. Hornak  
Chief United States District Judge

March 20, 2020

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE: ADMINISTRATIVE ORDER )  
          CONCERNING JURY TRIALS ) Misc. No. 2:20-mc-394-MRH  
          AND CERTAIN OTHER )  
          PROCEEDINGS RELATIVE TO )  
          COVID-19 MATTERS )  
  )

WHEREAS, public health authorities have advised public and private agencies to promptly take necessary and appropriate precautions to reduce exposure to novel coronavirus (“COVID-19”) and slow the spread of the disease; and

WHEREAS, jury selection in this District frequently involves large jury venire pools, often consisting of many individuals in the age category identified by the Centers for Disease Control and Prevention as being particularly at risk, along with many individuals required to travel extensively; and

WHEREAS, circumstances regarding school closures will increase the impact on parents summoned for jury service; and

WHEREAS, the current limitations on reasonably available COVID-19 testing increases the uncertainty of the health status of summoned jurors and others; and

WHEREAS, as a public institution committed to the sound administration of equal justice under law, this Court believes that it should take reasonable and prudent actions to further that mission;

NOW, THEREFORE, in order to further public health and safety, the health and safety of Court personnel, counsel, litigants, other case participants, jurors, security personnel and the general public and in order to reduce the number of gatherings necessarily attendant to trial jury selection in all divisions of this Court, and in order to minimize travel by participants in

Court proceedings, (particularly travel by public conveyance), by virtue of the direction of the Board of Judges, and the provisions of 28 U.S.C. §§ 137(a), 139 and 452, the United States District Court for the Western District of Pennsylvania (“Court”) issues the following Order:

1. This Court, and the United States Courthouses in Pittsburgh, Johnstown, and Erie, will remain open for the conduct of official business, subject to the following:

2. Effective this date, all civil and criminal jury selections and jury trials in the Western District of Pennsylvania scheduled to begin before April 27, 2020 are continued pending further Order of the Court. The Court may issue further Orders concerning future general continuances of any matters as may be deemed necessary and appropriate. All jury selections and trials impacted by this Order will be reset by further Order of the assigned judicial officer.

3. All trial-specific or other deadlines or scheduling orders in all civil and criminal cases remain in effect unless modified by further Order of the Court or by Order of the assigned judicial officer. It is the sense of the Court that its judicial officers will apply the principles of flexibility and accommodation to reasonable requests for filing or scheduling adjustments necessitated by reasonable and fact-based travel, health or safety concerns, or advice or directives of public health officials.

4. Aside from ordering a jury trial, the judicial officer presiding over any action or proceeding may take, and is encouraged to take, such further actions and enter such Orders as are consistent with the substance and tenor of this Order and as may be lawful and appropriate to ensure the fairness of the proceedings and preserve the substantial rights of the parties in specific cases.

5. The Court is cognizant of the trial, procedural, and substantive rights of all litigants, and also particularly of the rights of criminal defendants to a speedy and public trial under the Sixth Amendment (and the particular application of that right in cases involving defendants who are detained pending trial). Any request by a criminal defendant or the United States in a criminal proceeding, or of a party to any civil action, seeking case-specific relief from any provision of this Order is to be directed to the Chief Judge via a Motion filed at Misc. No. 2:20-mc-394-MRH, with a copy of such Motion filed as a Notice on the case-specific docket. Any such request for relief will be resolved by the Chief Judge or his designee.

6. The time period of March 13, 2020 through April 27, 2020 shall be “excluded time” under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A), as the Court finds that the ends of justice served by taking that action substantially outweigh the interests of the parties and the public in a speedy trial. Therefore, absent further Order of the Court, the period of time from March 13, 2020, to April 27, 2020 is considered to be excluded time in *all* criminal proceedings in this Court pursuant to U.S.C. § 3161(h)(7)(A), the Court specifically finding and concluding that the ends of justice served by taking such actions and by such delay materially outweigh the best interests of the public and the defendants in a speedy trial. Specifically, such exclusion is necessary to assure that as to cases going to trial, a full, unhindered, continuously serving jury venire and seated jury in every case, which is central to the sound administration of justice, and such exclusion of time is necessary in cases not yet set for trial in order to address the reasonably anticipated difficulties in defense counsel quickly communicating or visiting with detained clients (including those detained in locales and facilities under a declared state of emergency), and the inherent delay in the scheduling of further trials as a consequence of the exclusion period

herein. The Court may by further Order extend the period of exclusion as circumstances may warrant, and the assigned judicial officer may by Order also do so as to any specific proceeding.

7. Individual judicial officers may continue to hold hearings, conferences, sentencings, change of plea hearings, and bench trials in the exercise of their sound discretion, and consistent with the principles of this Order and the sound administration of justice, and after such reasonable consultation with counsel as they may deem appropriate.

8. All judicial officers are encouraged to conduct proceedings by telephone or video conferencing where practicable and as permitted by law, and to take reasonable measures to avoid the necessity of out-of-town travel (especially by public conveyance) of any litigant, witness, counsel or the public. In furtherance of this Court's Alternative Dispute Resolution ("ADR") Policies and Procedures, the designated ADR neutral in any proceeding is hereby authorized to permit participation in any ADR proceeding via video and/or telephone conference, if in their judgment such will be effective and doing so will minimize travel (especially by public conveyance) by any participant. Further, all judicial officers are encouraged to consider minimizing the need for the physical appearance of a detained person for the protection of the health of such detained persons, counsel, Court and security personnel, other case participants and the public, unless such appearance is otherwise required by Fed. R. Crim. P. 43.

9. Criminal matters before Magistrate Judges, such as initial appearances, arraignments, detention hearings, and the issuance of search or other warrants, shall continue utilizing such procedures as they or the Court may direct which are consistent with the tenor of this Order and applicable law (including the use of video technology). Central Violations Bureau

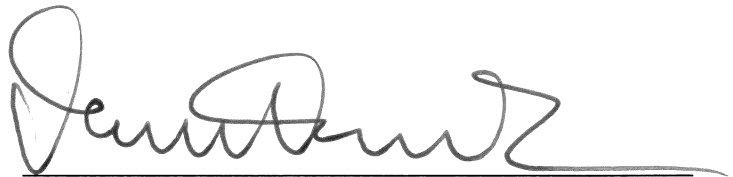
proceedings may be rescheduled or continued at the discretion and direction of the Chief Magistrate Judge.

10. Sitting grand juries in each division of the Court are authorized to continue to meet, subject to further Order of the Court.

11. Formal proceedings of the Court's RISE, Veterans', and BRIDGES Court Programs are held in abeyance until April 27, 2020, or further Order. The respective "special court" teams and the Probation Office may, at their election, conduct informal sessions and/or supervision via video or teleconference as they deem appropriate.

12. Non-case related meetings and events scheduled to occur at a Court facility prior to April 27, 2020 shall be rescheduled to a later date via the appropriate Court office. The Clerk's Office, Probation Office, and all other Court offices and services shall otherwise remain open subject to further Order of the Court.

13. The Chief Judge of the Bankruptcy Court for this District shall enter such Orders as she deems appropriate for the conduct of that Court's business.

A handwritten signature in black ink, appearing to read 'Mark R. Hornak', written over a horizontal line.

Mark R. Hornak  
Chief United States District Judge

March 13, 2020



2022 WL 3048787  
United States District Court, W.D. Pennsylvania.

J.D., et al., Plaintiffs,  
v.  
Benjamin PRICE, et al., Defendants.

Civil Action No. 2:20-cv-749

Signed August 3, 2022

Vice, Wilson Elser Moskowitz Edelman & Dicker LLP, McLean, VA, [Jonathan Dryer](#), [Pete Schwenker](#), Wilson Elser Moskowitz Edelman & Dicker LLP, Philadelphia, PA, for Defendant Delta Air Lines, Inc.

[Thomas Distefano](#), Rawle & Henderson, LLP, Pittsburgh, PA, [Maureen Elizabeth Daley](#), Pro Hac Vice, Rawle & Henderson LLP, Philadelphia, PA, for Defendants Host International, Inc., Hmshost Corporation.

### Synopsis

**Background:** Airplane passenger, who had allegedly been assaulted by another passenger, brought state court action against such other passenger, airline, and operators of restaurant that served such other passenger alcohol prior to flight, alleging injuries from assault and asserting claims for negligence, negligent infliction of emotional distress, and violation of Pennsylvania’s Dram Shop Act. After operators removed action, passenger filed motion in limine to permit live testimony by video at trial.

**Holdings:** The District Court, [William S. Stickman, IV](#), J., held that:

passenger failed to demonstrate good cause in compelling circumstances to warrant permitting live video testimony, and

court would deny, without prejudice, passenger’s motion to permit such testimony from particular witness.

Motion denied.

**Procedural Posture(s):** Other.

### Attorneys and Law Firms

[Amanda C. Dure](#), Pro Hac Vice, [Doug P. Desjardins](#), [Joseph L. Anderson](#), Pro Hac Vice, Pangia Law Group, Washington, DC, for Plaintiffs.

[Donald H. Smith](#), [Chloe C. Zidian](#), [Sunshine R. Fellows](#), Lewis Brisbois Bisgaard & Smith, Pittsburgh, PA, [Todd A. Gray](#), Lewis, Brisbois, Bisgaard & Smith, LLP, Cleveland, OH, for Defendant [Benjamin Price](#).

[Karen M. Maschke](#), Pro Hac Vice, MacDonald & Herforth, Moorestown, NJ, [Kathryn A. Grace](#), Pro Hac

## OPINION

[William S. Stickman IV](#), United States District Judge

### I. FACTUAL AND PROCEDURAL BACKGROUND

\*1 This case arises out of events that occurred on May 20, 2018, aboard Delta Air Lines Flight 1860 (“Flight”) from Pittsburgh International Airport to Hartsfield-Jackson Atlanta International Airport. According to the facts presented to the Court at the summary judgment stage, Defendant Benjamin Price (“Price”) was seated in seat 13A next to Plaintiff J.D. (“J.D.”),<sup>1</sup> who was in seat 13B. (ECF No. 79, p. 1); (ECF No. 84, p. 5); (ECF No. 86, p. 7). Prior to boarding the Flight, Price visited the TGI Fridays located in the Pittsburgh International Airport, which was owned and operated by Host and HMSHost. (ECF No. 79, p. 2); (ECF No. 84, p. 1); (ECF No. 86, p. 1). Over the course of approximately two hours, he ordered two 20-ounce Stella Artois beers and three two-ounce shots of 80 proof Crown Royal whiskey. (ECF No. 79, p. 21); (ECF No. 84, p. 1); (ECF No. 86, p. 1). Upon leaving TGI Fridays, the bartender who was waiting on Price gave him an additional smaller Styrofoam to-go cup that was filled with Crown Royal whiskey. (ECF No. 79, p. 22); (ECF No. 84, p. 2); (ECF No. 86, p. 3).

Price was the last person to board the Flight, and J.D. noticed he was “unstable,” staggering, grabbing a hold of other passengers’ seats to prevent himself from falling over, had a strong odor of alcohol, had red and glassy eyes, and had issues buckling his seat belt. (ECF No. 79, pp. 22, 24); (ECF No. 84, pp. 3, 5-6); (ECF No. 86, pp. 4,

7). The Flight left the gate at 3:39 p.m. (ECF No. 79, p. 22); (ECF No. 84, p. 3); (ECF No. 86, p. 4). Price “passed out” after getting situated. Approximately ten minutes prior to descent, Price woke up and cupped J.D.’s vagina. He then placed his hand on the inside of J.D.’s thigh and rubbed down her thigh.<sup>2</sup> (ECF No. 79, p. 25); (ECF No. 84, p. 8); (ECF No. 86, pp. 9-10). J.D. took hold of Price’s wrist for the remainder of the flight, which landed in Atlanta at 5:22 p.m. She requested assistance in arresting Price from Delta employees and the Atlanta Police Department, and she held him on the plane until the other passengers disembarked. (ECF No. 79, p. 25); (ECF No. 84, pp. 8-10); (ECF No. 86, pp. 10-11). Price exited the Flight and was placed under arrest for public drunkenness.<sup>3</sup> (ECF No. 79, p. 26); (ECF No. 84, pp. 10-11); (ECF No. 86, p. 13).

\*2 Plaintiffs commenced a civil action against Defendants in the Court of Common Pleas of Allegheny County, Pennsylvania, with the filing of a Complaint on January 6, 2020, an Amended Complaint on February 13, 2020, and a Second Amended Complaint on April 24, 2020.<sup>4</sup> (ECF No. 1). Defendants Host International, Inc. and HMSHost Corporation removed the case to this Court on May 22, 2020. (ECF No. 1). The case proceeded through discovery, and on November 3, 2021, the Court denied the summary judgment motions of Defendant Delta Air Lines, Inc. and Defendants HMSHost Corporation and HMS Host International, Inc. (ECF Nos. 91 and 92). That same day, a pretrial order was issued setting jury selection and trial for September 19, 2022, at 9:30 a.m. in Courtroom 8B, 8th Floor, Joseph F. Weis Jr. U.S. Courthouse, 700 Grant Street, Pittsburgh, Pennsylvania. (ECF No. 93).

On July 22, 2022, fifty-nine days before trial is set to commence, Plaintiffs filed a Motion in Limine to Permit Live Testimony by Video at Trial. (ECF No. 114). They want permission for the following witnesses to testify by video:

1. Out-of-State Medical Providers:

- a. Marion Alston, DNP, a treating nurse practitioner of J.D., located in Brunswick, Georgia.
- b. Virginia Holm, LCSW, a treating mental health therapist of J.D., located in Brunswick, Georgia.

2. Detective Nicholas Deaton, who observed and arrested Price for public drunkenness on May 20, 2018, in Clayton County, Georgia, located in the state of Georgia.

3. Delta Air Lines, Inc. Employees, including Flight Attendants, Red Coats, and Pilots:

- a. Dequavius Baker was a Flight Attendant on Flight 1860 on May 20, 2018, and he resides in Atlanta, Georgia.
- b. Jan Burton was a Gate Agent at Flight 1860’s arrival gate in Atlanta, Georgia on May 20, 2018, and he resides in Fairburn, Georgia.
- c. Bradford Frost was the First Officer on Flight 1860, and he resides in Mount Pleasant, South Carolina.
- d. Spencer Hutchinson was the Delta Red Coat, or security, in Atlanta on May 20, 2018, and he resides in Union City, Georgia.
- e. Captain James McKenzie, III was the Pilot-in-Command of Flight 1860, and he resides in Nashville, Tennessee.
- f. Suzan Shaw was a Flight Attendant on Flight 1860, and he resides in Winter Park, Florida.
- g. Juavesha Stephens was a Flight Attendant on Flight 1860, and he resides in McDonough, Georgia.

4. Dr. Harvey Rosen, PhD. Dr. Rosen is a retained expert of the Plaintiffs, and an economist. Dr. Rosen is located in Cleveland, Ohio. Plaintiffs represent that Dr. Rosen is immunocompromised, and must take precautions against contracting COVID-19 and other communicable diseases.

(ECF No. 114, pp. 2-3).

Plaintiffs contend that these witnesses should testify by videoconferencing because of (1) circumstances surrounding the COVID-19 pandemic, and (2) their out-of-state residences. (*Id.* at 7-9). Plaintiffs assert that Dr. Harvey Rosen is an immunocompromised individual who should be permitted to testify remotely. As to the other doctors, Detective Nicholas Deaton and the various Delta employees, Plaintiffs claim that testifying live in Pittsburgh, away from their home state, would be disruptive to the witnesses’ work schedules and duties.

Defendants vehemently oppose Plaintiffs’ motion. (ECF No. 116). They accurately note:

Plaintiffs’ claims arise out of

alleged injuries sustained on May 20, 2018, during a flight from Pittsburgh International Airport to Atlanta, Georgia. Plaintiffs were at that time and remain residents of the state of Georgia. The investigation surrounding the alleged incident took place in Georgia. Plaintiff J.D.'s medical treatment for her alleged injuries took place in Georgia--and yet, plaintiffs chose the Commonwealth of Pennsylvania as the forum for their lawsuit.

\*3 (ECF No. 116, p. 1). As to Marion Alston, Virginia Holm, and Detective Nicholas Deaton, all of whom reside in the state of Georgia, Defendants argue that Plaintiffs knew they would be calling these witnesses for at least two years and their proffered reason—inconvenience—is insufficient. (ECF No. 116, p. 2). As to Dr. Harvey Rosen, Defendants note that Plaintiffs chose him as their expert and make no offer of proof via affidavit or otherwise as to why and how he is immunocompromised or “why precautions cannot be taken to allow him to testify live at trial.” (ECF No. 116, p. 2). And, as explained above, as to the Delta employees, Defendants assert Plaintiffs’ request is baseless, as they have been informed that “Delta Airlines will make these employee witnesses available for live testimony at trial ....” (ECF No. 116, p. 3 n.1).

## II. ANALYSIS

### A. In-person testimony is a strong default under Rule 43.

Federal Rule of Civil Procedure 43(a) (“Rule 43(a)”), entitled “Taking Testimony,” states, in pertinent part:

**(a) In Open Court.** At trial, the witnesses’ testimony must be taken in open court unless a federal statute, the Federal Rules of Evidence, these rules, or other rules adopted by the Supreme Court provide otherwise. *For good cause*

*in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.*

Fed. R. Civ. P. 43(a) (emphasis added). The plain language of Rule 43 establishes that live testimony in open court is a deeply entrenched default that will only be excused when three factors are met—good cause, compelling circumstances, and appropriate safeguards.

The Advisory Committee Notes speak at length to the principle that in-person testimony is strongly favored and that remote testimony should properly be reserved for the most compelling and unforeseen situations:

Contemporaneous transmission of testimony from a different location is permitted only in showing good cause in compelling circumstances. *The importance of presenting live testimony in court cannot be forgotten. The very ceremony of trial and the presence of the factfinder may exert a powerful force for truth telling. The opportunity to judge the demeanor of the witness face-to-face is accorded great value in our tradition. Transmission cannot be justified merely by showing that it is inconvenient for the witness to attend trial.*

*The most persuasive showings of good cause and compelling circumstances are likely to arise when a witness is unable to attend trial for unexpected reasons, such as accident or illness, but remains able to testify from a different place.* Contemporaneous transmission may be better than an attempt to reschedule the trial, particularly if there is a risk that other—and perhaps more important—witnesses might not be available at a later time.




Other possible justifications for remote transmission must be approached cautiously. Ordinarily depositions, including video depositions, provide a superior means of securing the testimony of a witness who is beyond the reach of a trial subpoena, or of resolving difficulties in scheduling a trial that can be attended by all witnesses. Deposition procedures ensure the opportunity of all parties to be represented while the witness is testifying. An unforeseen need for the testimony of a remote witness that arises during trial, however, may establish good cause and compelling circumstances. Justification is particularly likely if the need arises from the interjection of new issues during trial or from the unexpected inability to present



testimony as planned from a different witness.

Good cause and compelling circumstances may be established with relative ease if all parties agree that testimony should be presented by transmission. The court is not bound by a stipulation, however, and can insist on live testimony. Rejection of the parties' agreement will be influenced, among other factors, by the apparent importance of the testimony in the full context of the trial.

**\*4 A party who could reasonably foresee the circumstances offered to justify transmission of testimony will have special difficulty in showing good cause and the compelling nature of the circumstances.** Notice of a desire to transmit testimony from a different location should be given as soon as the reasons are known, to enable other parties to arrange a deposition, or to secure an advance ruling on transmission so as to know whether to prepare to be present with the witness while testifying.

Fed. R. Civ. P. 43(a) advisory committee's note to 1996 amendment (emphasis added).



Courts interpreting Rule 43(a) have also recognized that in-person proceedings are strongly favored. *See, e.g.*,  *Draper v. Rosario*, 836 F.3d 1072, 1081-82 (9th Cir. 2016);  *Perotti v. Quinones*, 790 F.3d 712, 723 (7th Cir. 2015);  *United States v. Lawrence*, 248 F.3d 300, 304 (4th Cir. 2001). The United States Court of Appeals for the Seventh Circuit observed:

Videoconference proceedings have their shortcomings. “[V]irtual reality is rarely a substitute for actual presence and ... even in an age of advancing technology, watching an event on the screen remains less than the complete equivalent of actually attending it.”  *United States v. Lawrence*, 248 F.3d 300, 304 (4th Cir. 2001). “The immediacy of a living person is lost” with video technology.  *Stoner v. Sowders*, 997 F.2d 209, 213 (6th Cir. 1993). As the court in *Edwards v. Logan*, 38 F. Supp. 2d 463 (W.D. Va. 1999), observed, “Video conferencing ... is not the same as actual presence, and it is to be expected that the ability to observe demeanor, central to the fact-finding process, may be lessened in a particular case by video conferencing. This may be particularly detrimental where it is a party to the case who is participating by video conferencing, since personal impression may be a crucial factor in persuasion.” 38 F. Supp. 2d at 467.

 *Perotti*, 790 F.3d at 723-24.

There is no question that upon the advent of the COVID-19 pandemic courts turned to video testimony as a means of keeping the courts operating when much of society was shut down. Even as society returned to normalcy, courts have permitted the use of video technology in proceedings where warranted by the circumstances. Nevertheless, in this Court's assessment, the increased use of technology has demonstrated quite clearly why in-person proceedings are the strong default. It has also highlighted the inadequacies inherent in video proceedings. While video testimony may be an acceptable substitute in extraordinary circumstances, it is not the equivalent of, or comparable to, in-person testimony.

Experience over the last two-and-a-half years has demonstrated that, while comparatively more advanced than in the past, video technology still presents technological problems that can be distracting or even disruptive. The transition from in-person to video testimony has not been seamless. Screens freeze, audio garbles, and feedback screeches proceedings to a halt. The video feed drops, interrupting a witness mid-word or leaving a disembodied stream of words coming from a shadow avatar on a blank screen. All of these issues take time to resolve, prolonging the proceedings. As a result, in a jury trial, the perceived convenience of video testimony would be underwritten by the jurors' valuable time.

**\*5** In addition, expanded use of video technology has confirmed the observation of the cases cited in  *Perotti* and of the Advisory Committee that “the opportunity to judge the demeanor of a witness face-to-face is accorded great value in our tradition” and “the ability to observe demeanor, central to the fact-finding process, may be lessened in a particular case by video conferencing.” In-person testimony impacts both the factfinder's ability to size up a witness—how she answers a question, body language, demeanor, etc.—and, potentially, the witness's testimony itself. Placing a witness on the stand, mere feet from judge and jury and face to face with an opposing attorney, allows the jury to fully observe how a witness reacts in the crucible of cross examination which is, as John Henry Wigmore noted, “beyond any doubt the greatest legal engine ever invented for the discovery of truth.”  *United States v. Salerno*, 505 U.S. 317, 328, 112 S.Ct. 2503, 120 L.Ed.2d 255 (1992) (Stevens, J. dissenting) (citing 5 J. Wigmore, Evidence § 1367 (1974)). A witness has a very different experience testifying, even on cross examination, by speaking into a camera from the comfort of his or her home or office.

The Advisory Committee also aptly recognized that “[t]he

very ceremony of trial” aids in the truth telling and truth discovering process. The majesty of the law is not dependent upon the trappings of a federal courtroom, but there is no question that it is fostered by such an august setting. This stands in stark contrast to the perceived casual atmosphere of video proceedings and corresponding behavior that it has engendered. Since the increased use of video technology in 2020, this Court alone has encountered instances of participants eating, drinking, smoking, getting dressed, and going to the bathroom. This is in addition to other distractions, such as unusual filters, pets, ringing telephones, loud televisions, passers-by, and unconventional settings for court proceedings—such as cars, porches, backyards, and the neighborhood coffee shop.

While, as Plaintiffs’ motion observes, the pandemic led to the greatly increased use of video testimony, it cannot be maintained that video testimony has become the norm or should be routinely employed on a going-forward basis. Video testimony is not a practical equivalent to in-person testimony. Nor has its expanded use rendered it legally equivalent. Rather, as the plain language of [Rule 43\(a\)](#) provides, “[a]t trial, the witnesses’ testimony **must** be taken in open court ....” [Fed. R. Civ. P. 43\(a\)](#) (emphasis added). The presumption of in-person testimony will be overcome only upon a showing of “good cause in compelling circumstances and with appropriate safeguards.” *Id.* The Court must, therefore, examine whether Plaintiffs have met this burden.

### **B. Plaintiffs have not demonstrated good cause in compelling circumstances to permit video testimony of the witnesses identified in their Motion in Limine.**

The Court will first determine whether the on-going presence of COVID-19, alone, is sufficient to constitute “good cause in compelling circumstances” so as to warrant permission for the eleven witnesses identified by Plaintiffs to testify remotely. Plaintiffs argue that “throughout the pandemic, courts have held that circumstances surrounding the pandemic constituted good cause for permitting remote testimony.” (ECF No. 114, p. 6) (citing *Martinez v. Cont’l Tire the Ams., LLC*, 2022 WL 2290597, at \*1-2 (D.N.M. June 24, 2022)). They appear to argue that the existence of COVID-19, alone, is a showing of good cause and compelling circumstances that would be sufficient to permit video testimony. It is perhaps for that reason that they make no pandemic-related arguments or showings of specific cause for any of the witnesses except for Dr. Rosen, whom they represent is immunocompromised. Defendants counter

that merely pointing to the presence of COVID-19 is not sufficient to overcome the strong preference of in-person testimony set forth in [Rule 43\(a\)](#). The Court agrees with Defendants.

The world, the country, and the Court are not in the same position as in early 2020 when video technology first came into use in response to the pandemic. At that time, it was reasonable for courts to treat the pandemic, without more, as good cause and compelling circumstances for the use of video testimony. Much of the country was in lock down and the risks associated with COVID-19 in the community were still unknown. The Commonwealth of Pennsylvania—like most states—was in a state of emergency. Now, much has changed. The state of emergency has long since been lifted in the Commonwealth and in other states. Vaccines, therapeutics, and other treatments are available. The prevailing COVID-19 variants, while likely more contagious, are considerably less dangerous. Much, if not most, of society has returned to normal, reconciling itself to the fact that the novel coronavirus has become one of the many viruses that circulate in endemic cycles. There is no reason to presume that court proceedings are more hazardous than the rest of our re-opened society. It is no longer reasonable, therefore, to treat the mere presence of COVID-19—without more—as the good cause and compelling circumstances necessary to permit video testimony.

\*6 Plaintiffs’ arguments with respect to the two medical providers, the detective, and the Delta witnesses center on the fact that they all reside out of state and that it would be difficult and/or inconvenient for Plaintiffs and the witnesses to have them testify in person. But Plaintiffs chose this District as the forum for their action (having originally filed in Allegheny County). [Rule 43\(a\)](#) does not contemplate inconvenience or distance as alone constituting good cause and compelling circumstances that would warrant video testimony. Plaintiffs have offered nothing remotely approximating the illustrative example of good cause and compelling circumstances described by the Advisory Committee, such as “when a witness is unable to attend trial for unexpected reasons, such as accident or illness, but remains able to testify from a different place.”

The Advisory Committee also warned against delay in requesting leave to present testimony by video: “A party who could reasonably foresee the circumstances offered to justify transmission of testimony will have special difficulty in showing good cause and the compelling nature of the circumstances.” Plaintiffs cannot reasonably argue that they did not know where these witnesses reside

and/or work. They do not assert any late-breaking reasons rendering their presence at trial unusually inconvenient or impossible. They knew that trial was scheduled in this matter for months. Nevertheless, they waited until fifty-nine days before trial to file the instant Motion in Limine. This delay presents “special difficulty in showing good cause and the compelling nature of the circumstances.”

With respect to the medical providers, the detective, and the Delta witnesses, Plaintiffs have presented the Court with no grounds to overcome the strong preference for in-person testimony. The Court will deny Plaintiffs’ Motion in Limine with respect to these witnesses.

Dr. Rosen’s situation requires a different analysis. Plaintiffs represent that he is their retained economics expert and is located in Cleveland, Ohio. They contend that he should be permitted to testify remotely because he “is immunocompromised, and must take precautions against contracting Covid-19 and other communicable diseases.” Plaintiffs offer no details as to Dr. Rosen’s condition or his regular regimen of precautions, if any. Nor do they support their motion with any declaration or statement of Dr. Rosen himself.

As explained above, the current state of the COVID-19 pandemic is such that merely asserting a concern for avoiding the virus, even for those with individualized risk factors, should not be enough—without a more detailed showing—to warrant remote testimony. The Court will, therefore, deny Plaintiffs’ motion as to Dr. Rosen without prejudice to their right to file an amended motion setting forth specifics with respect to Dr. Rosen’s condition(s),

what precautions he takes to avoid COVID-19, and why testimony in this Court will present a risk greater than those encountered in Dr. Rosen’s personal and professional affairs. The Court notes that Dr. Rosen is not a party. Nor is he an involuntary fact witness. Rather, he is an expert offering his services to Plaintiffs. The Court believes that Defendants have a presumptive right to cross examine Dr. Rosen in front of the jury. Nevertheless, to the extent that Plaintiffs can demonstrate that Dr. Rosen’s condition is such that in-person testimony would pose a grave risk to Dr. Rosen *and* one which would be different than the conduct that he normally engages in as part of his regular personal and professional routine, the Court may find that good cause and compelling circumstances exist to rebut the presumption of in-person testimony and warrant remote participation.

### III. CONCLUSION

For the reasons set forth above, the Motion in Limine will be denied. Plaintiffs will be given leave to amend their Motion in Limine to make a more detailed showing as to Dr. Rosen within fourteen (14) days.

### All Citations


--- F.Supp.3d ----, 2022 WL 3048787, 113 Fed.R.Serv.3d 677

### Footnotes

<sup>1</sup> J.D. was traveling on official government duty in her capacity as an armed law enforcement officer. (ECF No. 67, p. 9). Her function as a law enforcement officer aboard the aircraft was to protect the cockpit, and she was not permitted to interfere with passengers unless requested to do so by the crew. (ECF No. 79, p. 24); (ECF No. 84, p. 7); (ECF No. 86, p. 9).

<sup>2</sup> Price pleaded guilty to assaulting J.D. on board the Flight pursuant to [18 U.S.C. § 113\(a\)\(5\)](#) and [49 U.S.C. § 46506\(1\)](#) at Case Number 1:19-CR-532-CCB in the United States District Court for the Northern District of Georgia. (ECF No. 81-17, p. 2).

<sup>3</sup> Price pleaded *nolo contendere* to public drunkenness at Case Number 2018CR04838 in the State Court of Clayton County, State of Georgia. (ECF No. 81-16, p. 2).

<sup>4</sup> Plaintiffs' Complaint alleges a violation of Pennsylvania's Dram Shop Act,  47 P.S. § 4-493. Their claims include negligence *per se* against Host International, Inc. ("Host") and HMSHost Corporation ("HMSHost") at Counts VII and VIII, as well as claims of negligence and negligent infliction of emotional distress against Delta Air Lines, Inc. ("Delta") at Counts IV and V. The Complaint also alleges loss of consortium against Host, HMSHost and Delta at Count IX. (ECF No. 22, pp. 9-20).