

## A Masked Trial: Florida's First "Remote" Jury

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August 2020

The Eleventh Judicial Circuit in Miami-Dade County held Florida's first "remote trial." Jury selection was conducted remotely through Zoom, and the actual trial occurred in the courtroom with social distancing and masks. This article addresses how the Court conducted the trial, observations gleaned during the proceeding and the prevalence of remote trials during the COVID-19 pandemic going forward.

By way of background, Chief Justice Canady of the Florida Supreme Court established the Workgroup on the Continuity of Court Operations and Proceedings During and After COVID-19 (the "Workgroup") to plan for steps that Florida courts will take as COVID-19 restrictions are lifted while balancing public health and safe court operations. The Workgroup has a number of defined duties, including examining proceedings and the use of remote technology, identifying issues, proposing guidance, recommending proceeding priorities, identifying monitoring metrics, and proceedings that can continue remotely after COVID-19. The Workgroup is comprised of a variety of judges, court staff, court clerks, and attorneys. Chief Justice Canady also charged the Workgroup with developing the Remote Civil Jury Trial Pilot Program (the "Pilot Program"). The Pilot Program would establish a framework and identify the logistics of trying a case remotely. The Workgroup would limit the Pilot Program to civil cases in five judicial circuits, and all parties must consent to participation in the Pilot Program. The Workgroup selected the following five Judicial Circuits: the Fourth Judicial Circuit (Clay, Duval, and Nassau counties), the Seventh Judicial Circuit (Flagler, St. Johns, Putnam, and Volusia Counties), the Ninth Judicial Circuit (Orange and Osceola counties), the Eleventh Judicial Circuit (Miami-Dade County), and the Twentieth Judicial Circuit (Charlotte, Collier, Glades, Hendry, and Lee counties).

The Eleventh Judicial Circuit in Miami-Dade County went forward with Florida's first trial through the Pilot Program in July, with Judge Beatrice Butchko presiding. *People's Trust Ins. Co. vs. Yusem Corchero*, 2019-18363-CA-01 (Fla. 11th Cir. Ct. Jul. 14, 2020). The case involved an insurance company's action against a homeowner for breaching an election-to-repair clause when a dispute arose regarding the scope and manner of repairs. The homeowner counterclaimed for damages due to the unfinished work.

Although touted as the first "remote trial", only jury selection occurred remotely, with the judge, jurors, and attorneys connected through Zoom. Remote jury selection was quite casual. Some jurors connected with phones and the majority with computers or laptops. Some jurors appeared to be doing other activities on their screen during jury selection. While most of the jury selection questions fell in line with a typical insurance case, much of the time was also spent on COVID-related issues. The actual trial occurred inside the courthouse, with the jurors spaced apart in masks, and the judge, bailiff, clerk, and attorneys in masks at their respective tables. The Court broadcasted the proceedings on YouTube.com. The jurors were spaced about six feet apart in chairs. Witnesses on the stand had Plexiglas barriers. The attorneys stood at a podium to deliver opening and closing statements, and the

Judge stood in front of the jurors for jury instructions. Although participants attempted to remain distant from one another, there were many instances of close contact with shuffling around in the courtroom.

In watching parts of jury selection and the trial, I have a few take-home points.

The first is technology and presentation. For conducting a remote jury selection, investing or selecting the proper technology is important. With the juror's first impression of the attorney coming through the screen, proper lighting is a must. A good-quality microphone will also assist in the attorney's presentation. Eye contact with the camera, rather than the screen, is an awkward necessity. A high-speed connection may also reduce lag and enhance the attorney's communication with the jurors and the court.

Second, evaluating the credibility of witnesses takes a hit with masks. With witnesses covering their faces with masks, jurors will have a hard time reading the facial expressions of a witness. Attorneys with a non-credible client or witness may escape scrutiny. On the other hand, an attorney with a super-credible witness may not come across as believable while wearing a mask. More emphasis will be placed on attire, gait, posture, and voice quality, so witness preparation must adjust accordingly.

Third, attorneys should think twice about pushing through a jury trial under these circumstances. Jury selection was too causal. The inherent distractions of jurors on their computers or phones (with the ability to switch screens or browser tabs) is concerning. The trial itself also had a great deal of emphasis on COVID-19 issues, which distracts from the substance of the trial itself. Unless an attorney wants jurors distracted from the substance of the trial, a remote trial is a questionable choice for any case let alone a high-stakes matter.

Lastly, and most importantly, health concerns are significant for a "socially-distant" trial. An attorney, client, or witness with health concerns may consider opting-out or objecting to a socially-distant trial. When the Judge or the Bailiff handed out materials, there was close contact with the jurors. The attorneys bellowing opening and closing statements rendered the masks less effective. People moving into and out of the courtroom came in close contact with each other. Jurors sitting indoors in relatively-close proximity to each other for hours at a time is also a significant risk.

As for the outcome of the trial, the insurance company lost and the homeowners won on their counterclaim for damages. The Court did not poll the jurors so we don't have much insight on the outcome. From my observations, the insurance company's theory that the homeowner was non-cooperative did not pan out during testimony, as the homeowner was articulate (even with a mask), dressed professionally, and was non-combative during cross-examination.

Florida's first "remote" trial went rather smoothly with all of the hurdles and new technology involved. Practitioners can evaluate whether to participate in their own remote trial when considering the above points. Hopefully, the pandemic passes soon, the necessity of trials conducted in masks is in the past, and the *option* for remote proceedings (when advantageous) remains.

Stay up to date by monitoring the latest COVID-19 resources on our [CORONAVIRUS RESOURCE CENTER](#).

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