Serial: **233043**

FILED
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OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

IN THE SUPREME COURT OF MISSISSIPPI

No. 2020-AD-00001-SCT
&
No. 89-R-99038-SCT

IN RE: EMERGENCY ORDER RELATED TO CORONAVIRUS (COVID-19)

EMERGENCY ADMINISTRATIVE ORDER-15

1. As the national and state emergencies created by Coronavirus (COVID-19) continue, in my capacity as chief administrative officer of all courts in the state, I find an additional Emergency Administrative Order is necessary.

2. Emergency Administrative Order-14 reiterated that "[a]ll courts are urged to limit in-person, courtroom contact as much as possible by utilizing available technologies, including electronic filing, teleconferencing, and videoconferencing."

3. On March 25, 2020, the Attorney General for the State of Mississippi and the State Public Defender filed a Joint Motion for Partial Temporary Suspension of Rule 1.8(c) of the Mississippi Rules of Criminal Procedure[1] and sought permission "to allow the use of interactive audiovisual equipment to conduct probation violation hearings, felony plea hearings, and sentencing hearings." The pleading maintained that "such a temporary suspension of Rule 1.8(c) . . . would not prejudice the detainees, but would allow the courts

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[1]Rule 1.8(c) of the Mississippi Rules of Criminal Procedure provides that "[a]ppearance by interactive audiovisual equipment, including video conferencing, may be permitted in the discretion of the court at any proceeding except that this Rule shall not apply to any trial, probation violation hearing, or any felony plea and/or sentencing." MRCrP 1.8(c).

to continue to conduct hearings while minimizing the risk of exposure to all involved, including court personnel, law enforcement officers, and detainees."

4. On March 26, 2020, the Court entered Emergency Administrative Order-7 which "temporarily suspended" Rule 1.8(c) and allowed the use of "interactive audiovisual equipment" to conduct probation-violation hearings and felony-sentencing hearings.[2]

5. On March 27, 2020, the President of the United States signed the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The CARES Act authorized federal courts to use video teleconferencing, under certain circumstances, for various criminal proceedings during the COVID-19 emergency, including felony pleas under Rule 11 of the Federal Rules of Criminal Procedure. *See* CARES Act, H.R. 748. The Judicial Conference of the United States found that conditions due to this national emergency have affected and will continue to materially affect the functioning of the courts generally. Federal district courts across the nation have since authorized video teleconferencing for felony-plea proceedings.[3]

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[2]The Order added that if "interactive audiovisual equipment" is used in such proceedings:

> (1) a full record of the proceedings shall be made, which may include an electronic recording (digitally or on tape);
> (2) the court shall determine that the defendant knowingly, intelligently, and voluntarily agrees to appear at the proceeding by interactive audiovisual means; and
> (3) provisions shall be made to allow for confidential communications between the defendant and counsel before and during the proceeding.

Furthermore, the Order emphasized that it did not "suspend any requirement for defense counsel to participate in such proceedings . . . ."

[3]https://www.thomsonreuters.com/content/dam/ewp-m/documents/thomsonreuters/en/pdf/other/covid-19-roundup-court-closures-continue.pdf

6. Emergency Administrative Order-14 reaffirmed, in pertinent part, that:

> to the extent that the utilization of remote technologies is prohibited, unavailable, or otherwise not feasible, certain in-person proceedings shall continue to be conducted by all local and state courts including, but not limited to:
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> a. Proceedings directly related to:
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> . . .
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> (10) Obtaining arrest and search warrants, and other proceedings required by law enforcement;
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> (11) Felony plea hearings;
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> . . . .

7. Preliminarily, insofar as any prior Emergency Administrative Order is interpreted to require law enforcement to obtain arrest and search warrants in-person, the Court expressly clarifies that video conferencing is permissible with respect to such proceedings.

8. Furthermore, since the entry of Emergency Administrative Order-7 on March 26, 2020, the increased transmission of the COVID-19 virus has continued to impair the normal functioning of Mississippi state courts. While the situation remains fluid, the Court continues to strive in balancing the health risks presented by COVID-19 with the courts' constitutional and statutory duty to remain open and accessible. To that end, the Court finds the evolving circumstances warrant revisiting the issue of whether to temporarily suspend Rule 1.8(c) as it pertains to the use of "interactive audiovisual equipment" in "felony plea" hearings. Accordingly, the Attorney General for the State of Mississippi and the State Public Defender shall provide supplemental briefing on the temporary suspension of Rule 1.8(c)

regarding "felony plea" hearings. Additionally, the bench, the bar, and any interested parties shall be provided the opportunity to comment on same. The supplemental briefing and comments shall be filed with the Court on or before 5:00 p.m. on Friday, August 21, 2020.

IT IS THEREFORE ORDERED that videoconferencing is a permissible means for law enforcement to obtain arrest and search warrants.

IT IS FURTHER ORDERED that the Attorney General for the State of Mississippi and the State Public Defender shall provide supplemental briefing on the temporary suspension of Rule 1.8(c) of the Mississippi Rules of Criminal Procedure regarding "felony plea" hearings. All supplemental briefing shall be filed on or before 5:00 p.m. on Friday, August 21, 2020.

IT IS FURTHER ORDERED that the bench, the bar, and any interested parties shall file their comments on the temporary suspension of Rule 1.8(c) of the Mississippi Rules of Criminal Procedure regarding "felony plea" hearings. All such comments shall be filed with the Court on or before 5:00 p.m. on Friday, August 21, 2020.

SO ORDERED, this the 5 day of August, 2020.

MICHAEL K. RANDOLPH,
CHIEF JUSTICE