

COA Opinion: Trial court's admission of witness testimony via video conference was reversible error when the state did not articulate an interest that would outweigh a defendant's right to confrontation, and where defendant objected to such testimony

12. January 2011 By Jason Byrne

On January 11, 2011, the Court of Appeals published its *per curiam* opinion in [People v. Buie, No. 278732](#). Previously, the Court of Appeals had addressed this defendant's appeal that his convictions for criminal sexual conduct, and related charges, should be vacated on the grounds that the trial court violated his Confrontation Clause rights by allowing a physician and a DNA analyst to testify via video technology. In that previous appeal (which we discussed in a [prior blog entry](#)), the Court of Appeals found that a trial court must make specific findings that the video testimony is necessary to further a state interest important enough to overcome a defendant's right to confrontation. That prior panel also concluded that, pursuant to MCR 6.006(C)(2), such video testimony could only be permitted if (1) the defendant was present or waived that right; (2) there was a showing of good cause, and (3) the parties consent. The Court of Appeals remanded the matter to the trial court for an evidentiary hearing on those issues, and the trial court found no error. Now, in reviewing that decision, the Court of Appeals noted that the state has not identified any specific interest that was served by the video testimony. The Court of Appeals found that while the trial court cited cost savings, efficiency and related interests in its decision, it did not articulate how those interests outweighed the defendant's confrontation rights. Additionally, the Court of Appeals found that although defense counsel may have agreed to video testimony, the defendant did not personally agree to such testimony and even had his attorney place that objection on the record. Under these circumstances, the Court of Appeals found that admission of video testimony was plain error and, because of the importance of the challenged testimony in securing the convictions, warranted reversal. Judge Whitbeck authored a [concurring opinion](#) emphasizing the importance of the Confrontation Clause.