Order

Michigan Supreme Court
Lansing, Michigan

May 22, 2026

Megan K. Cavanagh,
Chief Justice

Brian K. Zahra
Richard H. Bernstein
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas
Noah P. Hood,
Justices

SC: 168364-5 & (59)
COA: 365011, 368313
Macomb CC: 2020-001556-FC

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

ROBERT LEE HICKS,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the February 13, 2025 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court. The motion to dismiss is DENIED.

HOOD, J. (*concurring*).

I respectfully concur in the denial of the application for leave to appeal. I write separately because this case presents yet another Confrontation Clause violation without redress, and I hope to highlight this recurring issue. I continue to question our ability to measure prejudice when it comes to Confrontation Clause violations.

This case started with defendant Robert Lee Hicks and Adam Cartwright committing a series of crimes between March 31, 2020, and April 1, 2020. The Macomb County case, from which this appeal stems, relates to Hicks and Cartwright stealing items from Natasha Brown, including her van and wallet, while one of them had a gun. Hicks and Cartwright fled in her van, loaded the items from it into a different stolen car, and began driving again. The police pursued them. After a multi-hour chase, Hicks and Cartwright crashed the car, and the police arrested them. The prosecution charged Hicks with carjacking, armed robbery, and receiving and concealing stolen property. Cartwright pleaded guilty. Hicks went to trial.

Among the various issues Hicks raises, Hicks argues that the trial court violated his Confrontation Clause rights by allowing his former codefendant, Cartwright, to testify via Zoom videoconference from the Michigan Department of Corrections (MDOC).

On the fourth day of trial, on July 22, 2022, the trial judge informed the parties that Cartwright would be available to testify by Zoom. Hicks made multiple explicit objections.

He noted his right to "face [his] accuser." The trial court noted its preference for his in-person testimony but indicated that the MDOC did not accommodate Cartwright's in-person appearance.

At the request of Hicks's defense attorney, Daniel Garon, a record was made regarding Cartwright's appearance. The prosecutor said that her office had prepared the writ for July 22 and sent it to the MDOC, which sent a confirmation but gave the date of August 2. Garon said, "Apparently, the Department of Corrections has made Mr. Cartwright available by Zoom. . . . So, the question then becomes defendant's right of confrontation in court versus the judicial economy of confrontation by Zoom and proceeding in a normal course, and I'll leave that to the Court's discretion." Then the following exchange occurred:

> *The Court*: Well, personally, I prefer everyone to be in person, but I know our state court administrator's office and some of the rules we got from the Supreme Court said we are supposed to accommodate not in person as much as possible. I do less of it probably than most courts, but apparently the Ionia Correctional Facility hasn't given us a choice, despite having a writ to get him here physically. They have got him here on Zoom, so I think we're going to have to proceed that way.
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> *Defendant Hicks*: I firmly object to that, your Honor. I—
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> *Mr. Garon*: Mr. Hicks, your objection is noted on the record, so there's—that's—there's nothing else that we need to do in order to preserve your appellate rights. We've made our objection, the objection is noted, the Court of Appeals will look at it and decide the issue.

At the defense's request, the prosecution made an offer of proof. The prosecutor questioned Cartwright outside the presence of the jury. The defense had an opportunity to question him.

Then the trial judge said, "[I]f we want Mr. Cartwright to testify, we have to have him testify now. Are we going to bring the jury in?" "Yes," said Garon. The judge asked, "Mr. Hicks, you want Mr. Cartwright to testify?" Hicks responded that "[t]his was not done properly" and took issue with what Cartwright had said, claiming that he was lying. Defense counsel noted that Hicks exercised his rights under the res gestae rules to have Cartwright appear to testify, despite the testimony apparently being unfavorable. Then the following exchange occurred:

> *The Court*: So, how are we proceeding? Are we going to have Mr. Cartwright testify in front of the jury, or are we not?
>
> *Defendant Hicks*: Yes, we are.

I write separately for two reasons: (1) to acknowledge that a Confrontation Clause violation occurred, and (2) to address waiver. Whether a defendant was denied the right to confront a witness is a constitutional question that is reviewed de novo. *People v Jemison*, 505 Mich 352, 360 (2020). But a Confrontation Clause violation is subject to harmless-error review. See *id*. at 367 (remanding for the trial court to determine whether the violation was harmless).

At the threshold, the Court of Appeals incorrectly concluded that Hicks waived the confrontation issue. Waiver is "the intentional relinquishment or abandonment of a known right." *People v Carter*, 462 Mich 206, 215 (2000) (quotation marks and citations omitted). To waive a right, the party must "clearly express[] satisfaction with a trial court's decision[.]" *People v Davis*, 509 Mich 52, 64 (2022) (quotation marks and citation omitted). The reason Cartwright testified at trial was that Hicks insisted on securing Cartwright's testimony. The Court of Appeals concluded that Hicks waived the confrontation issue because after the offer of proof regarding Cartwright's testimony, Hicks said he still wanted to proceed with Cartwright before the jury. Considering his prior explicit objections, I do not read his failure to repeat his confrontation objection as waiver. At that point, the trial court made it clear that Hicks's choice was to either proceed without Cartwright's testimony or to consent to his testimony by video conference. So the issue is not waived.

And a Confrontation Clause violation did occur. The Sixth Amendment of the United States Constitution and Article 1, § 20 of the Michigan Constitution guarantee criminal defendants the right to be confronted with the witnesses against them. See US Const, Am VI; Const 1963, art 1, § 20. The Confrontation Clause has four elements: "(1) physical presence, (2) an oath, (3) cross-examination, and (4) observation of demeanor by the trier of fact[.]" *People v Buie*, 285 Mich App 401, 408 (2009) (quotation marks and citation omitted). When combined, these elements ensure "that evidence admitted against an accused is reliable and subject to . . . rigorous adversarial testing . . . ." *Maryland v Craig*, 497 US 836, 846 (1990).[1] Though reliability had long been a touchstone of Confrontation Clause jurisprudence, in *Crawford v Washington*, the United States Supreme Court established a bright-line rule requiring a face-to-face encounter for all testimonial evidence. *Crawford v Washington*, 541 US 36, 61-63, 68-69 (2004). See also *Jemison*, 505 Mich at 360-366 (reconciling *Crawford* with the prior, narrower holding in *Craig*). Unless a witness is unavailable and the defendant had a prior opportunity to cross-examine them, *Crawford* requires face-to-face cross-examination for testimonial evidence. *Jemison*, 505 Mich at 361-362, citing *Crawford*, 541 US at 68.

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[1] This Court has interpreted the holding in *Craig* as limited to its specific facts in order to reconcile that case with *Crawford*. See *Jemison*, 505 Mich at 355-357.

Here, Cartwright testified by videoconference over Hicks's multiple explicit objections. The lack of a physical presence during his testimony, which is to say, the lack of a face-to-face confrontation, necessarily violated the Confrontation Clause.

Acknowledging that the error occurred, we still apply harmless-error review—even for preserved Confrontation Clause errors. *Coy v Iowa*, 487 US 1012, 1021-1022 (1988). See also *Jemison*, 505 Mich at 366-367 (finding a Confrontation Clause violation under *Crawford* and remanding to the Court of Appeals to determine whether the violation was harmless). Hicks cannot establish prejudice. The police arrested him after an extended police chase in a vehicle that he and Cartwright had stolen earlier that night. The witness at the heart of his confrontation claim—his codefendant—directly implicated him. So, the error in allowing Cartwright to testify remotely was harmless. I therefore concur in the denial order.

Finally, I again question our ability to adequately or consistently measure the prejudice resulting from Confrontation Clause violations, particularly when such violations concern an integral aspect of criminal trials. See *Jemison*, 505 Mich at 362-365. See also *People v Brown*, 351 Mich App ___, ___ (May 2, 2024) (Docket No. 359376) (HOOD, J., concurring in part and dissenting in part); slip op at 3-10. If a Confrontation Clause violation never results in prejudice, at some point we will have to ask whether the right actually exists, or whether we have mischaracterized the nature of the right.

I, Elizabeth Kingston-Miller, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 22, 2026

Clerk