

San Antonio Express-News
Metro / South Texas Page 1B
Court OKs televised testimony

Kate Hunger Express-News Staff Writer

Publication Date : November 30, 1999

The U.S. Supreme Court upheld rulings Monday that allow children who testify in sex abuse cases to do so from a comparatively less-threatening place: in front of a camera, in another room.

The ruling, while not a precedent, allows Texas courts to continue allowing young victims of or witnesses to such crimes to testify by closed-circuit television.

With Justices Antonin Scalia and Clarence Thomas dissenting, the high court found the Texas Court of Criminal Appeals was correct in rejecting the appeal of a Texas man convicted in 1995 of sexually assaulting a 13-year-old girl.

Both the 13-year-old and a 6-year-old who witnessed the assault were allowed to testify in Burnet County via closed-circuit television.

A judge allowed the arrangement after prosecutors said confronting Jeffrey Steven Marx in court would be too traumatic for the youths.

Marx, who was sentenced to 23 years, contended that the closed-circuit testimony denied him his Sixth Amendment right to confront those testifying against him.

Specifically, he challenged the testimony of the 6-year-old, who witnessed but was not the victim in the case on trial.

Bexar County attorneys and judges say such closed-circuit testimony is used sparingly here.

One high-profile case in which the alternative method was used was the 1988 trial of Antonio Gonzales, who got 99 years for the murder of 5-year-old Yvette Moreno. Her sister, Yolanda, testified from a distance, terrified of her mother's common-law husband.

Sometimes children's fear makes testifying a near impossibility, 226th District Judge Sid Harle said.

"We had one not too long ago where I think it would have been a perfect opportunity for it," he said, recalling a child who had to be dragged, shaking, into the courtroom, only to refuse to testify.

Although she had not read the opinion when reached Monday afternoon, Bexar County District Attorney Susan Reed found the ruling encouraging.

"As a judge, I did it once," she said, adding, "Now that we have a ruling and that's all cleared up, we will be much more anxious to use it."

Texas law allows judges to make the call as to whether the circumstances are dire enough to warrant the exception.

Citing a recent trial that almost included closed-circuit testimony, 186th District Judge Sam Katz called

it a balancing act.

"What we looked at in that particular case is you balance the defendant's right to confrontation with the child's right to essentially be free from trauma in testifying," Katz said.

Local defense attorney Pat Hancock said he would be concerned about having a witness in another room, even though closed-circuit testimony is real-time and allows for question-and-response exchanges.

"There's something about coming in there and as a witness - whether a child or an adult - to be put in a situation where you know the truth is absolutely important," Hancock said.

"It's a definite disadvantage" for the defense, he added.

Physical distance probably was a plus for the defense in the Marx case, 4th Court of Appeals Justice Tom Rickhoff said.

"It's very unlikely that (children) are telling a complete lie with detail when they are 6 years old," he said.

The Supreme Court ruled in a 1990 Maryland case that a defendant's right to confrontation is not necessarily undermined by testimony occurring outside of the defendant's presence.

In his dissenting opinion, Scalia writes that the Texas case goes even further and that, "If the decision here is correct, the right to confrontation of allegedly abused child witnesses has not simply been watered down, it has been washed away."

The Associated Press contributed to this report.