

**IN THE COURT OF COMMON PLEAS CUYAHOGA COUNTY, OHIO
CRIMINAL DIVISION**

STATE OF OHIO, : **CASE NO. [REDACTED]**
Plaintiff, :
v. : **JUDGE [REDACTED]**
[REDACTED], :
Defendant. :

**VICTIM X.X.’S MOTION TO EXERCISE THE RIGHT TO BE PRESENT
AND THE RIGHT TO BE HEARD**

Now comes X.X., a crime victim in this matter, by and through undersigned counsel, and hereby respectfully requests that this Court uphold and enforce her rights to be present and heard during all hearings and court dates, including the trial, during this criminal justice matter pursuant to Evidence Rule 615, Revised Code Section 2930.09, and Ohio Constitution, Article I, Section 10a(A)(2), (3). The reasons for this motion are set forth more fully in the attached Memorandum in Support.

Respectfully submitted,

/s/ Christopher D. Woeste _____
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MEMORANDUM IN SUPPORT

Ohio law affords crime victims constitutional and statutory rights including the right to be present at all public proceedings involving the criminal offense and the right to be heard at any of these proceedings. *See* Ohio Constitution, Article I, Section 10a(A)(2), (3).

I. X.X. MEETS THE LEGAL DEFINITION OF “VICTIM,” AND, THEREFORE, HAS THE LEGAL RIGHTS TO BE PRESENT AND TO BE HEARD THROUGHOUT THE CASE.

Ohio Constitution, Article I, Section 10a(D), in pertinent part, provides the following:

“Victim” means a person against whom the criminal offense * * * is committed or who is directly and proximately harmed by the commission of the offense or act. The term “victim” does not include the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor, or incapacitated victim.

X.X. meets the definition of “victim” pursuant to Ohio law. X.X. reported to law enforcement that she was a victim of rape and kidnapping perpetrated by Defendant. X.X. was directly and proximately harmed by the commission of Defendant’s criminal offenses. As a victim, X.X. has numerous rights under Ohio law, including the right to be present and the right to be heard during criminal justice proceedings where her rights are implicated.

Ohio Constitution, Article I, Section 10a(A)(2) provides victims the right “upon request, to reasonable and timely notice of all public proceedings involving the criminal offense or delinquent act against the victim, and to be present at all such proceedings.”

Moreover, crime victims have the right to be heard in any public proceeding involving release, plea, sentencing, disposition, parole, or any time a victim’s right is implicated. *See* Ohio Constitution, Article I, Section 10a(A)(3).

Under a plain language analysis of this provision, a victim has an unambiguous right to

be present at trial and any stage of the case that is public and involving the criminal offense. The unambiguous language of a statute is to be given its plain and ordinary meaning. *See Taber v. Ohio Dept. of Human Serv.*, 125 Ohio App.3d 742, 747, 709 N.E.2d 574 (10th Dist. 1998); *Specialty Restaurants Corp. v. Cuyahoga Cty. Bd. Of Revision*, 96 Ohio St.3d 170, 2002-Ohio-4032, 772 N.E.2d 1165, ¶ 11 (“When a statute is unambiguous in its terms, courts must apply it rather than interpret it.”).

This right to be present during a criminal trial has further support in Ohio’s Rules of Evidence and Revised Code. *See* Evid.R. 615 (B)(4); R.C. 2930.09. Evidence Rule 615, which allows exclusion of witnesses at the request of a party, contains an explicit exception for crime victims. *See* Evid.R. 615 (B)(4) (providing that the rule does not authorize the exclusion of “a victim of the charged offense to the extent that the victim’s presence is authorized by the Ohio Constitution or by statute enacted by the General Assembly.”). Revised Code Section 2930.09 provides:

A victim in a case may be present whenever the defendant * * * in the case is present during any stage of the case against the defendant * * * that is conducted on the record, other than a grand jury proceeding, unless the court determines that exclusion of the victim is necessary to protect the defendant’s * * * right to a fair trial.

In *State v. Maley*, the First District ruled that a trial court did not abuse its discretion in allowing a crime victim to be present throughout the entire trial. *See State v. Maley*, 1st Dist. Hamilton No. C-120599, 2013-Ohio-3452, ¶ 1. The court held

that for a defendant to show that a victim’s presence would result in an unfair trial, she must present particularized evidence that the victim’s testimony will be so affected by the victim’s presence during the testimony of other witnesses that her right to a fair trial would be violated. General assertions that it is possible are insufficient.

Id. at ¶ 7.

Of course, this was not a novel decision. Seven other appellate courts in Ohio, including the Eighth District, have upheld victims' constitutional and statutory rights to be present absent a particularized showing that a defendant's right to a fair trial will be violated. *See State v. Hines*, 3d Dist. Marion No. 9-05-13, 2005-Ohio-6696, ¶ 20; *State v. Pickett*, 4th Dist. Athens No. 15CA13, 2016-Ohio-4593, ¶ 19; *State v. Klusty*, 5th Dist. Delaware No. 14 CAA 07 0040, 2015-Ohio-2843, ¶ 32; *State v. Zientek*, 6th Dist. Sandusky No. S-12-032, 2013-Ohio-4836, ¶ 16 (holding "R.C. 2930.09 permits a victim to be present at any stage of the criminal proceeding unless doing so fatally prejudiced the fairness of the trial."); *State v. Board*, 8th Dist. Cuyahoga No. 83832, 2004-Ohio-5215, ¶ 10; *State v. Ricco*, 11th Dist. Lake No. 2008-L-169, 2009-Ohio-5894, ¶ 27 (holding "[i]t is the defendant's burden to show that the presence of the alleged victim compromises the defendant's right to a fair trial."); *State v. Marshall*, 12th Dist. Butler No. CA2008-03-093, 2009-Ohio-2197, ¶ 44.

In *State v. Board*, the Eighth District found that the victim's presence at the trial table to assist with the prosecution was permissible even after the victim had outbursts during the trial. *Board* at ¶ 9-10 ("Though [the victim] spoke out during trial, it is clear from the transcript that the court disregarded her outbursts and admonished her and the prosecutor.").

The weight of authority in Ohio favors the protection of X.X.'s rights to be present and heard.

II. CONCLUSION

For all the aforementioned reasons, Victim X.X. respectfully requests that this Court uphold and enforce her rights as a victim, including the rights to be present and heard.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby state that a copy of the foregoing Motion was served upon the following through the Cuyahoga County electronic filing system and/or hand delivery on this ___th day of October, 2019:

[REDACTED]

[REDACTED]

Respectfully submitted,

/s/ Christopher D. Woeste
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