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### CRIME VICTIMS IN THE COURTROOM

*by Jay C. Howell*

In 1988, ninety percent of the voters in Florida approved an amendment to the Florida State Constitution. In essence, the language of the amendment allowed crime victims the right to be informed, to be present, and to be heard at critical stages of criminal justice proceedings, at least to the extent that these rights did not interfere with the constitutional rights of the accused. The Florida legislature also enacted a law clearly stating that a crime victim, or their next of kin, **may not be excluded** from any proceeding unless the judge determined the presence of the victim, or their family, to be prejudicial to the rights of the accused. In recent months, our Florida courts have been called on to interpret and explain the meaning of these statutory and constitutional rights.

In a recent criminal trial in West Palm Beach, the Defendant was convicted of first degree murder, robbery, and aggravated battery on a person 65 years of age or older. He was sentenced to three consecutive prison terms, including a life sentence on the count charging first degree murder. In his appeal, the Defendant argued that the State was given an unfair advantage when the **daughter-in-law of the deceased victim** was permitted to hear opening statements and the testimony of other witnesses before she testified at the trial. He argued that the daughter-in-law's trial testimony was significantly different than her previous deposition testimony and that this prejudiced and surprised him.

The case involved the murder of an elderly woman and the theft of a heavy link bracelet, which she owned for over thirty years. Though the Defendant's palm print was found near the victim's body, the Defendant argued that the palm print could have been left at the crime scene months prior to the murder when he was present in the home to inspect the victim's house for termites. The only other physical

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evidence that connected the Defendant to the crime was the heavy link bracelet sold to a jeweler by a friend of the Defendant shortly after the murder.

At the trial, the State attempted to prove that this bracelet was the **same** as that stolen from the victim at the time of the murder. The daughter-in-law of the victim testified that she was certain the bracelet recovered by the police had belonged to her mother-in-law. She acknowledged that during her pre-trial deposition, she had not been as certain in her identification because she did not have the benefit of comparing the actual bracelet to enlarged photographs of the victim with the bracelet.

The Fourth District Court of Appeal, reiterated the right of the victim's next of kin to be present at all stages of the trial so long as their presence is not prejudicial and did not interfere with the constitutional rights of the accused. The court also added that this right to be present at trial must yield to the Defendant's right to a fair trial and any doubts should be resolved in favor of the Defendant receiving a fair trial.

In rejecting the Defendant's argument, the court concluded that the accused did not demonstrate to the appellate court specifically **how he was prejudiced** by the daughter-in-law's presence in the courtroom prior to her own testimony. The daughter-in-law explained that the opportunity provided at her courtroom testimony for her to compare the actual bracelet with the enlarged photographs was the basis of the additional certainty that she expressed at trial. The court of appeal concluded that what prompted her to be so certain was **not** observing the prior witnesses' testimony, but rather the opportunity to compare the bracelet with the photographs. The court ruled that the trial court did not abuse its discretion in allowing the daughter-in-law to be present at the criminal trial.

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The legal issue presented by the presence of the victim or the victim's family at a criminal trial will continue to receive the attention of our appellate courts. This particular decision makes clear the requirement that the Defendant demonstrate with some specificity exactly **how** the presence of the victim or family member interfered with his rights. It should not be enough for the Defendant to merely object to the presence of the victim or witnesses without providing the trial court judge with definitive information regarding any claimed prejudice. This is a brand new appellate decision, decided on May 31, 2000 by the Fourth District Court of Appeal. The title of the case is *Cain v. State of Florida*, and its legal citation is 2000 WL 690136 (Fla. App. 4<sup>th</sup> District).\* Because it is a brand new decision, it is still subject to revision or withdrawal.

\*758 So.2d 1257