

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON

2 FOR THE COUNTY OF CROOK

3 STATE OF OREGON,

4 Plaintiff,

5 vs.

6 GERALD KELLER,

7 Defendant.

) Case No.: MI100163
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)
) MEMORANDUM IN SUPPORT OF MOTION
) FOR ORDER TO SHOW CAUSE WHY
) VICTIM'S RIGHTS HAVE NOT BEEN VIOLATED
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10 INTRODUCTION

11 The victim in this case, Ben Renfro, has filed a Claim of Violation of Crime Victim's Rights
12 and requested an order requiring the defendant to show cause why the victim's rights have not
13 been violated.

14 The victim is represented by Janine Robben of the Oregon Crime Victims Law Center.

15 At the time she prepared this claim and motion, the defendant was facing misdemeanor
16 charges which could have been tried to a jury selected from persons who had been influenced by
17 the defendant's conduct.

18 Subsequently, the State reduced the misdemeanor charges to violations, which will be
19 heard by the trial court and the Court set this motion for hearing immediately before trial on July
20 19.

21 Consequently, the relief requested in the victim's Claim of Violation cannot be performed
22 by the defendant before trial.

23 Therefore, the victim requests that the Court, in lieu of his previously requested relief, find
24 the defendant to have violated one of more of the victim's rights, as listed in his Motion for an
25 Order to Show Cause and order the defendant to immediately cease and desist from making
comments to the media or individuals about the victim's honesty, posting signs about the victim's

1 honesty or otherwise publicly disparaging the victim, with any such signs in the vicinity of the
2 courthouse having to be removed by the defendant prior to trial of this case.

3 Violation of such order would be punishable by contempt of court.

4 The purpose of the cease and desist order is to punish the defendant for his violation of the
5 victim's rights; to ameliorate the chilling effect the defendant's conduct has had on the victim's
6 willingness to come forward and testify and to reduce the chilling effect the defendant's conduct
7 may have had other existing or potential victims whose places of employment, political beliefs or
8 other attributes may not be agreeable to the defendant.

9 Even though this request will not be heard until immediately before trial, the relief
10 requested is not moot. The Court has yet to try the case and other proceedings, e.g., sentencing
11 will take place if the defendant is convicted of one or both charges. (Should the defendant be
12 convicted, the victim also will ask the court to include the provisions of the cease-and-desist order
13 in the judgment.)

14 BASIS FOR CLAIM OF VIOLATION

15 The victim's Claim of Violation was filed pursuant to the following:

- 16 • Article I, Section 42 (1) of the Oregon Constitution, which states that Constitutional
17 crime victims' rights exist in Oregon "To preserve and protect the right of crime
18 victims to justice * * * to accord crime victims due dignity and respect and to
19 ensure that criminal * * * proceedings are conducted to seek the truth as to the
20 defendant's innocence or guilt, and also to ensure that a fair balance is struck
21 between the rights of crime victims and the rights of criminal defendants in the
22 course and conduct of criminal * * * proceedings * * *";
- 23 • Article I, Section 43 (1) of the Oregon Constitution, which states that "To ensure
24 that a fair balance is struck between the rights of crime victims and the rights of
25 criminal defendants in the course and conduct of criminal proceedings, the
following rights are hereby granted to victims in all prosecutions for crimes: (a)
The right to be reasonably protected from the criminal defendant * * *

1 throughout the criminal justice process * * *";

- 2 • His right to privacy under the U.S. Constitution. *Griswold v. Connecticut*, 381 U.S.
3 479 (1965) and
4 • ORS 147.500 *et seq.*, which establishes a procedural framework for the assertion
5 and evaluation of claims of rights violations.

6 **ADDITIONAL POINTS AND AUTHORITIES**

7 Under Oregon Rule of Professional Conduct 3.6 (1), "A lawyer who is participating * * * in
8 the * * * litigation of a matter shall not make an extrajudicial statement that the lawyer knows or
9 reasonably should know will be disseminated by means of public communication and will have a
10 substantial likelihood of materially prejudicing an adjudicative proceeding in the matter."

11 While the conduct in this case was engaged in by the defendant, not his lawyer, it had the
12 exact effect that this rule governing lawyers was adopted to deter: creating a substantial likelihood
13 of materially prejudicing a trial. In fact, the defendant could have had no other purpose in mind.

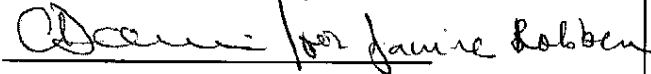
14 Perhaps because of the existence of this rule, the victim is unaware of any appellate cases,
15 in Oregon, in which a victim's rights similarly have been prejudiced. Therefore, at oral argument on
16 this motion, the victim's attorney will rely on the following case from another jurisdiction:

- 17 • *Fischetti v. Scherer*, A.D. 3d 89840 N.Y.S.2d 575 (2007): Petitioner's challenge of an
18 order barring him from publishing a rape victim's name in the media to solicit
19 others who may have been accused by her, perhaps falsely. Held: the petitioner
20 failed to demonstrate that the challenged order improperly violated his First
21 Amendment rights or his client's Sixth Amendment right to the effective assistance
22 of counsel. The appellate court, in citing cases upholding limits on attorneys'
23 speech, noted that "In such instances, the attorney's First Amendment rights are
24 overcome by concern for the parties' fair trial rights. The permissible prohibitions
25 discussed in those matters, relating to speech which threatens a party's right to a
fair trial, are not necessarily the only circumstances in which a reasonable limit may
be placed upon speech in connection with a criminal matter. Other important

1 interests may also justify a reasonable limitation on free speech. It is appropriate to
2 take into consideration here both the privacy interests of the complainant herself,
3 and the interest of the State in encouraging victims of such crimes generally to
4 report these offenses without fear of exposure.”

5 Dated July 18, 2011.

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7 Respectfully submitted by:

8  for Janine Robben

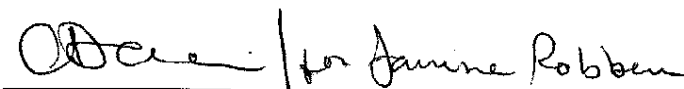
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CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2011, I served true copies of the foregoing document,
the victim's Memorandum in Support of his Motion to Show Cause on counsel for the
parties as follows:

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Janine Robben

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