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FILED
NOV 10 2016

DAVID H. YAMASAKI
County Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY _____ DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

THE PEOPLE OF THE STATE OF CALIFORNIA,)	Criminal Case No. 213515
)	
Plaintiff,)	PEOPLE’S SUPPLEMENTAL:
)	
v.)	THE RIGHT OF THE VICTIM’S
)	FAMILY TO ATTEND ALL OF
ANTOLIN GARCIA-TORRES,)	THE PROCEEDINGS
)	
Defendant.)	
_____)	

This motion addresses the question raised by the Court whether there is a federal due process right to witness exclusion. There is not. As the California Constitution grants Sierra’s family the right to attend all public proceedings, this Court should permit them to attend over defendant’s objection.^{1/} Any other interpretation would make our California Constitution a dead letter.

The California Constitution gives the victim, and family members of the victim, the right to be present at “all public proceedings, including delinquency proceedings ... at which the defendant and the prosecutor are entitled to be present, and [at] all parole or other post-conviction

^{1/} The People attempted to resolve this issue with counsel, however the defense “ha[s] issues with” all the proposed civilians (selected friends of Sierra) prior to Sierra’s mother’s and her sister’s taking the witness stand. Counsel did not explain why they have an issue or any rationale for their objection.

1 release proceedings." Cal. Const. Art. I, § 28(b)(7). This constitutional right trumps Evidence
2 Code section 777. *See People v. Navarro* (1972) 7 Cal.3d 248, 260 ("Wherever statutes conflict
3 with constitutional provisions, the latter must prevail.").

4 A criminal defendant does not have a federal constitutional right to exclude witnesses.
5 "Neither this court nor the Supreme Court has ever held that the failure to exclude witnesses can
6 violate due process." *Larson v. Palmateer* (9th Cir. 2008) 515 F.3d 1057, 1065. Subsequent to
7 the Ninth Circuit making clear there is no authority for such a right, the California Supreme Court,
8 in *People v. Tully* (2012) 54 Cal.4th 952, summarily rejected an argument claiming a federal due
9 process violation for failure to exclude witnesses^{2/} stating that the defendant's arguments "are
10 entirely without merit." *Id.* at 1005.

11 *Tully* argued that (1) "his rights to a fair trial and due process" were violated when the trial
12 court permitted the victim's family members to be present at the trial and before their penalty phase
13 testimony, and (2) the trial court's failure to exclude the victim's family members violated former
14 Penal Code section 1102.6, because their presence at trial "created a substantial risk of influencing
15 or affecting the content of their penalty phase testimony."^{3/} *Id.* Rejecting both arguments,^{4/}
16 including the defendant's due process argument, the Court stated: "our rejection on the merits of
17 the claim actually raised in the trial court necessarily leads to rejection of the newly applied
18 constitutional 'gloss' as well." *Id.* at 1003 fn. 19 (internal quotations omitted). *Tully* was a death
19 penalty case.

20 Numerous courts agree that the mere presence of a witness or victim in the courtroom does
21 not violate a defendant's right to a fair trial under federal due process. *See, e.g. Proctor v. State*

22
23 ^{2/} *Tully* was tried before the enactment of Marsy's law and therefore it was not addressed by
the trial court.

24 ^{3/} This "substantial risk" language was repealed in 1995 by A.B. 149.

25 ^{4/} The court noted that former Penal Code section 1102.6 was "clear that the victim is 'entitled
26 to be present' subject only to the finding that his or her presence would pose 'a *substantial risk* of
27 influencing or affecting the content of any testimony," and concluded that the presence of the
28 victim's family members at trial posed no such risk. *Tully, supra*, 54 Cal.4th at 1006 (emphases
in original).

1 (Alaska Ct. App. 2010) 236 P.3d 375, 380 (“the Due Process Clauses of the state and federal
2 constitutions do not grant a general right to exclude witnesses from the courtroom during the
3 testimony of other witnesses”); *State v. Gertsch* (Idaho 2002) 49 P.3d 392, 400 (noting that
4 defendant pointed to no controlling authority for the proposition that the victims’ presence affected
5 his due process rights); *State v. Fulminante* (Ariz. 1999) 975 P.2d 75, 92 (agreeing with other
6 states’ interpretations of the victim’s right to be present, and finding defendant’s due process rights
7 were not violated by the victim’s presence in the courtroom); *Stephens v. State* (Ark. 1986) 720
8 S.W.2d 301, 303 (finding that defendant did not demonstrate “how the presence of the victim was
9 so fundamentally or inherently unfair as to deprive him of a fair trial”); *State v. Williams* (N.J.
10 Super. Ct. App. Div. 2008) 960 A.2d 805, 815 (rejecting defendant’s argument that the victim’s
11 presence in the courtroom after the victim testified violated defendant’s right to a fair trial where
12 defendant had not pointed to any federal constitutional right to trump the victim’s state
13 constitutional right to be present). The California Constitution stands on firm ground with respect
14 to whether Sierra’s mother and sister may attend the entirety of the proceedings whether they are
15 witnesses or not.

16
17 CONCLUSION

18 The weight of authority, indeed the People could find nothing to the contrary, is that there
19 is no federal due process right to witness exclusion.

20 DATED: November 9, 2016

21
22 Respectfully submitted,

23 JEFFREY F. ROSEN
District Attorney

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26 DAVID R. BOYD
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