



Sample brief in support of the use of a dog in the courtroom

State's Motion to Permit Courthouse Dog to Accompany Witness

The State requests that the court allow Dog Name _____ to be present in the courtroom with Witness Name _____ when he/she testifies. Dog's Name _____ presence will neither prejudice the defendant nor give extra credence to Witness Name's _____ testimony.

a) Evidence Rule and Case Law

ER 611 (a) provides: "The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment." The standard of review for alleged violations of ER 611 is manifest abuse of discretion. See State v. McDaniel, 83 Wash.App 179, 185, 920 P.2d 1218 (1996). Insert your State's standard of review.

Although there is no case law on an assistance dog accompanying a witness to the stand, there is precedent for a vulnerable witness being allowed to take a comfort item with them while testifying.

In State v. Cliff, 116 Idaho 921, 782 P. 2d 44 (1989) an eight year old victim of sexual assault entered the courtroom carrying a doll as she walked to the witness stand. At the request of the defendant the jury was excused and the defendant registered his objection to the child appearing in court with a doll. The state was allowed to produce testimony as a foundation for allowing the witness to possess a doll while she testified. The court-appointed guardian ad litem for the child testified that during the preliminary hearing the victim started to have dry heaves while on the stand and had to be taken to a restroom. The guardian also testified that when the victim got upset she tended to wring her hands, put her hands on her face and chew her nails. It was the guardian's opinion that being able to hold the doll would give the child something to do with her hands.

After hearing evidence, the court concluded that the doll could have a calming effect on the witness. The court further concluded that the benefit of having coherent testimony from the witness outweighed any possible prejudice to the defendant and that allowing the child to possess a doll on the stand was a less stringent measure than some that had been accepted by the United States Supreme Court, or required by some state statutes. Following the hearing, the court allowed the witness to take the stand while carrying her doll.

Cliff appealed stating that the ruling violated his due process right to a fair trial and also violated his constitutional right of confrontation. The defendant did not contend that he was prohibited from facing the witness in court. Instead he urged that allowing the witness to have the doll as a “psychological security blanket” hampered his right of cross-examination.

The appellate court disagreed with this argument stating that the Confrontation Clause grants only “an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.” In the present case, the defendant was allowed to face the witness in court and was allowed wide latitude in questioning the witness. Under these facts the court found no violation of the defendant's right of confrontation.

The defendant also argued that allowing the child-witness to appear before the jury holding a doll interfered with his due process right to a fair trial. The claim was made that by allowing the child to hold a doll, the trial court allowed the prosecution to highlight the vulnerability of the witness and thus prejudice the defendant by increasing the juror's natural sympathy toward the witness.

The court also rejected this claim stating that although every person accused of a public offense has a right to a fair and impartial trial, in cases, such as this, where it is necessary to receive testimony from young children, the trial court must strike a balance between the defendant's right to a fair trial and the witness's need for an environment in which he or she will not be intimidated into silence or to tears.

In State v. Hakimi, 124 Wash.App. 15, 98 P.3d 809 (2004), review denied by 154 Wash. 2d 1004, 113 P.3d 482 (2005), the court held that in a prosecution for child molestation of two seven-year-old girls, the trial court did not abuse its discretion by permitting the girls to carry a doll to the witness stand, when they did not carry them while being interviewed by child interview specialist. The court found that those interviews presented an entirely different environment than a public courtroom, and that the trial judge weighed the interests of the two victims and any potential prejudice to the defendant in allowing the girls to testify while holding a doll. While considering the matter the trial court stated, “It seems to me, children do present different issues and different considerations in terms of being witnesses in different cases. They have a peculiar need to find some security in an otherwise insecure setting, I suspect.”

In State v. Smith 119 P.3d 411 (2005) the court made a similar ruling stating the defendant failed to establish the existence of clear and unequivocal rule of law prohibiting the conduct of a fifteen year old child holding a teddy bear while testifying.

b) Argument

It is well accepted in medical and academic fields that a friendly dog can decrease anxiety and sympathetic nervous system arousal by providing a pleasant external focus for attention, promoting feelings of safety and providing a source of contact comfort. **1,2,3.**

Relate interaction between dog and witness to demonstrate that the dog has had a calming effect on the person.

Insert Experience and Training of Dog's Name_____

Example- Astro was trained as service dog by Canine Companions for Independence (CCI). CCI is a non-profit organization that trains four types of dogs- service dogs (primarily mobility assistance), skilled companion dogs for the physically or emotionally disabled, hearing dogs for the hearing impaired, and dogs for facility teams. Facility teams are made up of a dog and a trained handler. Facility dogs also carry most of the skills of service dogs as well as the specialized skills for whatever type of facility the dog will be working in. Dogs that graduate from Canine Companions for Independence have a one million dollar liability insurance policy. This organization has placed facility dogs in a courthouse setting since 2004. 4.

Astro has been in training for two years and knows approximately forty commands. CCI determined that Astro's temperament was best suited to work in a public setting and placed him at the Dawson Place Child Advocacy Center to work as a facility dog. He usually makes the visit to the advocacy center or the courthouse a pleasant experience. Astro's greatest strength is his ability to calm and comfort others in stressful situations. Astro provides emotional support to all those involved in the criminal justice system.

d) Conclusion

Dog's Name_____ is highly trained and well behaved and will sit or lie down calmly as the witness testifies. His/her presence will make the interrogation and presentation effective for the ascertainment of the truth, avoid needless consumption of time should the witness need to be excused to regain a calm emotional state and protect the witness from harassment or undue embarrassment. Since Astro provides emotional support to all those involved in the criminal justice system his presence will neither prejudice the defendant nor give extra credence to Witness name's _____ testimony.

As such, the State requests that this accommodation be made for witness name _____.

Respectfully submitted,

1. Allen, Karen. "Are Pets a Healthy Pleasure? The Influence of Pets on Blood Pressure." Current Directions in Psychological Science 12 (2003): 236-39.

This article reviews the support for the observation that the presence of a friendly pet can help an individual cope with a stressful situation.

2. Jenkins, Judy L. "Physiological effects of petting a companion animal." Psychological Reports 58 (1986): 21-22.

This article reports that for subjects ranging in age from 9 to 58 years old, petting their dog lowered their blood pressure.

3. Nagengast, Sunny L., Mara M. Baun, Mary Megel, and J. M. Leibowitz. "The effects of the presence of a companion animal on physiological arousal and behavioral distress in children during a physical examination." Journal of Pediatric Nursing 12 (1997): 323-30.

In this study, preschool children had lower blood pressure, heart rates, and behavioral distress when a companion animal was present during a physical examination.

4. See www.caninecompanions.org