

IN THE COURT OF COMMON PLEAS  
TRUMBULL COUNTY, OHIO

STATE OF OHIO

PLAINTIFF

VS

ANTHONY CIOFFI, JR.

DEFENDANT

) CASE NO. 96 CR 599

)

) JUDGE MITCHELL SHAKER

)

) MEMORANDUM IN OPPOSITION TO

) REQUEST FOR DEPOSITION

)

) SERVICE

)

The defendant in this case has been indicted on October 8th, 1996 for life offenses relating to alleged allegations of abuse against Matthew Cioffi occurring on or about the sum of 1992.

The State of Ohio now wishes to further shortcut the constitutional rights of the defendant by having this matter recorded.

The minor child in this case has previously denied sexual abuse when questioned about same by health experts. The minor child's allegations of sexual abuse coincide with domestic relations proceedings on issues of visitation being conducted in the Mahoning County Court of Common Pleas. The mother of the minor child has made numerous contradictory statements regarding issues of child abuse and previous threats against the defendant that she would proceed in just this type of action.

The office of the Trumbull County Prosecuting Attorney has now served as a tool for the mother of said minor children in an effort to convict the defendant.

Only in confrontation with this witness can the defendant receive a fair trial particularly in light of these issues.

The State of Ohio has failed in its Motion to provide any specific purpose or reason for or

evidence of any kind or nature for this request. The State of Ohio cannot have this request granted on the "bear wish list" set forth in a Motion unsupported by documented evidence. The defendant demands an evidentiary hearing on this issue if the Court is considering granting same.

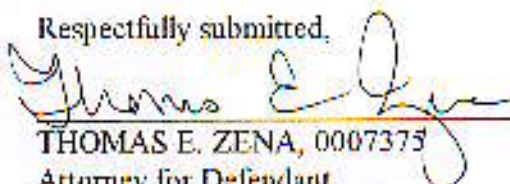
Live testimony is demanded in any criminal prosecution where reasonably possible. State v. Storch, 66 Ohio St.3d 280 (1993). The Supreme Court has specifically stated that the presumption and requirement for face to face confrontation is especially strong where the trial Court is on notice as to situations when the child might be under the significant pressure of one party as opposed to the other especially in ongoing disputes and animosity. (At 293).

In the case bar, these children have been under the continuing control and custody of the mother who is the bases of these allegations. Anthony Cioffi, Jr., except on one occasion has not seen these children in the past four years. The occasion that he did visit with the children was done so in the presence of the natural mother. This man has had no contact with these children of any kind and these allegations are solely the result of his attempt to secure visitation through the Common Pleas Court.

To allow the child to appear and testify in "comfortable settings" to avoid the anxiety related to these accusations denies the defendant of his constitutional rights of both due process and equal protection. There has been no evidence of any kind presented by the State of Ohio which in any way satisfies the requirements of this statute. The fact that a child is afraid to testify, (which has yet to be proven) should not be considered as a factor in significant emotional harm.

A blanket statement to this effect cannot be considered by the Court as instructive on the issue of live testimony. State v. Sibert, 98 Ohio App. 3d 412 (1994).

Respectfully submitted,



THOMAS E. ZENA, 0007373

Attorney for Defendant

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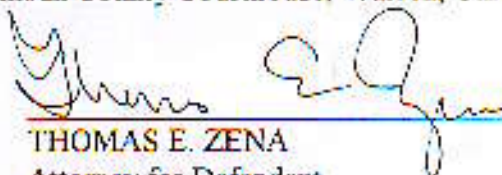
Suites 101 & 103

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#### SERVICES

A copy of the foregoing has been forwarded to the Honorable Mitchell F. Shaker and Thomas Wrenn, Prosecuting Attorney, Trumbull County Courthouse, Warren, Ohio.



THOMAS E. ZENA

Attorney for Defendant