


IN THE SUPERIOR COURT OF ATHENS CLARKE COUNTY
STATE OF GEORGIA

FILED IN OFFICE
ATHENS-CLARKE COUNTY
STATE OF GEORGIA

2023 JUL -3 PM 4: 12

STATE OF GEORGIA)
)
v.)
)
MICHAEL LARECO DANIEL,)
Defendant.)

CASE #: SU22CR0888

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RESPONDENT’S BRIEF CLARIFYING THE ISSUES FROM
THE HEARING HELD ON JUNE 29, 2023,
ON THE MOTION FOR CONTEMPT

COMES NOW ATTORNEY KENNETH DIOUS, on behalf of the Respondent, District Attorney Deborah Gonzalez (hereinafter “D.A. Gonzalez”), and clarifies the issues from the hearing held on June 29, 2023, on the Motion for Contempt against D.A. Gonzalez.

On May 19, 2023, D.A. Gonzalez admitted to a violation of Marsy’s Law by her Office in regard to the case *State v. Michael Lareco Daniel*. D.A. Gonzalez then recused her Office and submitted a letter of recusal to the Prosecuting Attorney’s Council (PAC) asking that they reassign the cases with this Defendant. Recusal is provided for in Marsy’s Law as a remedy for its violation. O.C.G.A. § 17-17-15 (1). It is the understanding of D.A. Gonzalez that once recused or conflicted out of a case her office is not to have anything else to do with it. PAC reassigned those cases to the Alcovy Circuit.

D.A. Gonzalez made a Motion to Quash the Subpoena presented by Movant in relation to the Marsy’s Law hearing on May 18, 2023. In her motion, D.A. Gonzalez outlined a series of arguments to support the Motion to Quash, including that the subpoenas were overbroad, unreasonable, oppressive, and that it would infringe — and seeks to pierce — the privileged and protected communications and work product of the State and her office.

The Court denied D.A. Gonzalez’s Motion on May 19, 2023. At the hearing, Attorney Epps asked for the Rule of Sequestration to be implemented. The Court asked D.A. Gonzalez to select who would be in the courtroom — her, or her Assistant District Attorney (A.D.A.) Robert Wilson — as both were subpoenaed as witnesses for the hearing. During the break, it was determined that Mr. Wilson would be in the courtroom because he was handling the rest of the hearing. D.A. Gonzalez waited in the hallway outside the courtroom with the other witnesses, based on the instructions of the Court.

Once the Motion to Quash was denied, the Court asked D.A. Gonzalez to produce the documents. D.A. Gonzalez left the courtroom and got in contact with the Athens-Clarke County Government Information Technology (ACCGOV I.T.) department to have them run a

search. That initial search, limited to the parameters asked for in the subpoena, produced only 19 results. D.A. Gonzalez then asked the I.T. department to run an expanded search. That resulted in 42 matching documents.

As D.A. Gonzalez was requesting for the results to be printed, the Court adjourned, and she was informed that the Court had given the Office 15 days to produce and submit the records. D.A. Gonzalez then resumed her work of tirelessly protecting the well-being of our community members and upholding the values of justice, as Georgia law requires her to do under O.C.G.A. § 15-18-6.

As the Court is aware, the D.A. Office is understaffed, and with caseloads for each A.D.A. at over 700 cases, including for D.A. Gonzalez personally, it is imperative that the D.A. and her staff prioritize tasks to be completed and prioritize their timing to meet specific deadlines. As the Court gave the office 15 days, D.A. Gonzalez focused on the most pressing issues and case matters that were coming up for court and had deadlines prior to the 15-day deadline of the Order of the Court. The Court could have ordered less time, but it did not. The Court could have amended its order to shorten the time and given notice to the D.A. to provide the documents in less time, but it did not. The Court in its Order, granted 15 days for the production of the documents, and that is what D.A. Gonzalez relied on and complied with.

On June 2, 2023, D.A. Gonzalez provided the documents requested in the subpoena that were in her control and that matched the subpoena's narrow request, and per the Court's Order, before the 15-day deadline was up, complying with the Court's Order. Thus, any criticism of any alleged delay is factually and legally irrelevant and unfounded and does not address whether contempt happened.

The documents provided matched the criteria requested in the subpoena – what was related to the *Michael Lareco Daniel* case (the case the Marsy's Law hearing was being conducted for), "Selma" and "fair and just prosecution." Considering the sizable number of emails that D.A. Gonzalez receives on a daily basis, and to eliminate unnecessary waste of limited resources for non-responsive results, the request was put in to find documents from January 1, 2023, to May 19, 2023, a time period most likely to produce results that matched the criteria and would be related to the case at hand.

Attorney Epps brought the Motion for Contempt — regarding his subpoena — based on the erroneous presumption that D.A. Gonzalez's response to that subpoena should provide all records related to a prior Open Records Request (ORR) response that he received on May 22, 2023. (Movant's Exhibit 6). But at the hearing, D.A. Gonzalez distinguished the broad ORR request from Attorney Epps' later, narrower subpoena. That distinction is as follows:

(A) The ORR request was very broad – requesting every email from January 1, 2021, to present that contained the words "fair and just prosecution." That request produced 1,345 records, nearly all of them unrelated to the Marsy's Law case at issue, and all lawfully requiring D.A. Gonzalez to conduct screening, in case

redaction was required, to comply with Georgia laws related to privacy and privilege, such as O.C.G.A. § 50-18-71 and *King v. State*, 535 S.E.2d 492 (2000). ***(B) But the narrower search criteria from Mr. Epps' actual, separate subpoena produced only 42 documents, which D.A. Gonzalez did not screen or redact, and which she provided to Mr. Epps within the time that the Court told her to. Thus, when D.A. Gonzalez produced those 42 documents, she complied with Mr. Epps' subpoena and with the Court's Order.***

D.A. Gonzalez also indicated that a search of her texts on her business phone did not provide any matches to the subpoena request. This business phone is used for D.A. Office purposes, is paid for by the D.A. Office, and is separate from D.A. Gonzalez's purely personal cell phone, which is paid for by D.A. Gonzalez herself exclusively from private funds and exclusively for her private use, which does not include any business of her District Attorney Office.

Under Georgia law, “[i]n order for one to be held in contempt, there must be a willful disobedience of the court’s decree or judgment.” *Simpkins v. Simpkins*, 278 Ga. 523, 524 (Georgia 2004); *Sullivan v. Harper*, 352 Ga.App. 427, 433 (Ga. App. 2019). Thus, “contempt” is commonly defined as “willful disobedience to, or disregard of, a court order or any misconduct in the presence of a court.” D.A. Gonzalez did not willfully disobey or disregard an order of the court. She complied with the Court’s Order that was issued on May 19, 2023, according to her understanding of what was required of her. If anything, this issue is one of misunderstanding of what exactly the Movant wanted and when the Court wanted it. There also is a misunderstanding in regard to what D.A. Gonzalez was lawfully able to produce pursuant to recusal law regarding the requested information from the *Michael Lareco Daniel* case, because D.A. Gonzalez’s understanding was that she could not do anything with a case once her office was recused, including getting any information from the Tracker case management system. Thus, D.A. Gonzalez’s actions were limited to what the law allowed.

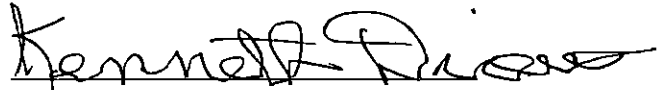
The Court states it may need the information requested in the subpoenas to decide whether to vacate the Nolle Prosequi in the *Michael Lareco Daniel* case. That case is now reassigned to the Alcovy Circuit, which will have the opportunity to review all the facts and evidence of the case in more detail. The Alcovy Circuit will be able to make a more informed decision as to the disposition of the case. Even if the Court decides to vacate the Nolle Prosequi, it will still be up to the Alcovy Circuit to determine how to proceed once it is an active case again. Thus, the victim in this case has not been permanently harmed, because the Nolle Prosequi remains reversible before the end of the term of Court, and the Court can do so without any additional information from D.A. Gonzalez. At this point, the correct hearing to vacate the Nolle Prosequi would be between the new prosecutor and Michael Lareco Daniel’s defense.

Based on the above, D.A. Gonzalez provided the matching documents within the time provided for by the Court, and complied with the Court’s Order, and should not be held in Contempt.

Finally, in reference to Attorney Epps' contention that he is not interested in monetary gain: Attorney Epps did present a bill for his services, and he made a motion for D.A. Gonzalez to personally pay him legal fees of more than \$14,000 if D.A. Gonzalez were to be found in contempt. None of that was contemplated to be provided for through Marsy's Law. Attorney Epps went on to declare in open court, to all who were in attendance, that if D.A. Gonzalez admitted she was in contempt, then he would waive his fee. But in criminal court, there is a line of questioning to ensure that any admission or plea of guilt is done freely and voluntarily, without any threat or promise made to benefit or penalized the person requested to do the admission/plea. In addition, D.A. Gonzalez has taken an Oath to do her job "faithfully and impartially and without fear, favor, or affection discharge my duties as district attorney and will take only my lawful compensation." O.C.G.A. § 15-18-2; see O.C.G.A. § 16-10-2(a). Thus, in light of her Oath, and in light of the facts presented that prove D.A. Gonzalez was not in contempt, she will not be taking Attorney Epps' offer.

The District Attorney's Office has admitted a violation of the Marsy's Law. The Nolle Prosequi can be vacated if the new prosecutor and/or the Court decides to do so. If the case is reinstated, the prosecution will resume and the alleged victim in this case will have the opportunity to be heard with all her rights respected.

Respectfully submitted this 3rd day of July, 2023.



Kenneth Dious

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CERTIFICATE OF SERVICE

I certify that I have caused a copy of the foregoing **RESPONDENT'S BRIEF CLARIFYING THE ISSUES FROM THE HEARING HELD ON JUNE 29, 2023, ON THE MOTION FOR CONTEMPT** to be served upon Movant's Attorney Kevin Epps via email to:

Kevin Epps
Epps, Holloway, DeLoach & Hoipkemier, LLC
kevin@ehdhlaw.com

This 3rd day of July, 2023.



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