

**IN THE SUPERIOR COURT OF ATHENS-CLARKE COUNTY
STATE OF GEORGIA**

STATE OF GEORGIA,)
)
vs.)
)
LUKE HARRISON WALDROP,)
DEFENDANT.)

CASE NO. SU-22-CR-0321
Related Case: SU-23-CR-0477


ELISA ZARATE, Clerk

MOTION FOR HEARING ON MARSY’S LAW VIOLATION

COMES NOW SUSAN WILSON, (hereinafter “Movant”), victim in the above-styled case, by and through counsel, and shows the Court as follows:

1.

Movant is the surviving spouse of James V. Jones, the deceased victim in the indictment against Luke Harrison Waldrop (the “Defendant”), Criminal Action File No. SU-22-CR-0321. Because James V. Jones is deceased, Movant has standing as the victim to file this motion pursuant to O.C.G.A. § 17-17-3 (10) (B) (i).

2.

This motion is being filed no later than twenty (20) days of the denial of the constitutional and statutory rights afforded to Movant pursuant to the Georgia Crime Victims’ Bill of Rights (“Marsy’s Law”) as codified in O.C.G.A. § 17-17-1 *et seq.* and the Constitution of the State of Georgia, Article I, Section I, Paragraph XXX.

3.

Pursuant to Marsy’s Law, Movant made a written request to the prosecuting attorney to be notified of all proceedings and provided valid contact information to the prosecuting attorney’s office.

4.

Upon information and belief, on August 29, 2023, Criminal Action File No. SU-22-CR-0321 was placed on the Court's September 21, 2023 plea calendar and the September 25, 2023 trial calendar.

5.

Upon information and belief, on September 21, 2023, at the scheduled plea proceeding, District Attorney Deborah Gonzalez (the "District Attorney") moved the Court to enter nolle prosequi for all charges against the Defendant: Homicide by Vehicle in the first degree (two counts), D.U.I. alcohol, and Reckless Driving. Subsequently, the Court granted the Motion to Enter Nolle Prosequi and the District Attorney filed an accusation against the Defendant consisting of charges of Homicide by Vehicle in the second degree and Improper Passing of a Bicycle. The Defendant pleaded guilty to the accused charges and was sentenced to twenty-four (24) months of probation and was required to complete forty (40) hours of community service, a defensive driving course, and pay fines in the amount of \$2,652.50.

6.

Movant was not provided notice of the scheduled plea proceeding by the prosecuting attorney and therefore did not attend the proceeding on September 21, 2023. If provided with notice of the scheduled proceedings, Movant would have exercised her right to attend the September 21, 2023 plea proceeding, and, if necessary, the September 25, 2023 trial week.

7.

Upon information and belief, Movant was unable to answer a telephone call from the Western Judicial Circuit District Attorney's Office (the "District Attorney's Office") the morning of September 21, 2023.

8.

Later that day, at approximately 5:00 PM, Movant spoke with Victim Advocate Simona Arroyo (“Ms. Arroyo”), wherein she learned that the prosecuting attorney and the Defendant had entered a plea agreement. Only then, after the plea agreement had been accepted by the Court, did anyone from the District Attorney’s Office explain the terms of the plea agreement to Movant.

9.

Shocked by the case resolution, Movant contacted Ms. Arroyo again on September 25, 2023 to ask various questions about the plea agreement. On September 26, 2023, the District Attorney sent an e-mail message to Movant in an apparent effort to answer Movant’s questions about the plea agreement. The District Attorney confirmed that her office had merely “attempted to notify you [Movant] and the victim’s sister **the day of the plea** based on notes that we received the night before.” (Emphasis added).

10.

Further, the e-mail message contains a chart detailing “all the contact that has been made to you [Movant] since the case came into [the District Attorney’s Office].” Prior to September 21, 2023, the last contact between the District Attorney’s Office and Movant occurred on September 30, 2022, **a year prior to the date of the plea hearing.** (Emphasis added).

11.

Additionally, the e-mail message states, “[v]ictims have the right to be heard; which did happen because we informed the court on the record of the victim’s wishes for jail time.”

12.

Pursuant to O.C.G.A. § 17-17-1 (3), victims have “the right to not be excluded from any scheduled court proceedings.” O.C.G.A. § 17-17-8 (b) states, “[i]f requested in writing by the

victim and to the extent possible, the prosecuting attorney shall give prompt notification of any scheduled court proceedings and notice of any changes to that schedule.” Prompt notification is defined as “notification given to the victim as soon as practically possible so as to provide the victim with a meaningful opportunity to exercise his or her rights pursuant to this chapter.” O.C.G.A. § 17-17-3 (9).

13.

Movant was not provided prompt notice of the September 21, 2023 scheduled plea proceeding, was improperly excluded from the proceeding, and had no meaningful opportunity to exercise her rights under Marsy’s Law.

14.

Relatedly, pursuant to O.C.G.A. § 17-17-1 (4), victims have the “**right to be heard** at any scheduled court proceedings involving the release, plea, or sentencing of the accused.” (Emphasis added). O.C.G.A. § 17-17-11 elaborates, “[t]he prosecuting attorney shall offer **the victim** the opportunity to express **the victim’s opinion** on the disposition of an accused’s case, including the views of the victim regarding plea or sentencing negotiations.” (Emphasis added). Read together, Marsy’s Law grants Movant the opportunity to speak, for herself, at plea proceedings.

15.

Despite the District Attorney’s contention that the Movant had been heard by the Court because the prosecuting attorney had “informed the court on the record of the victim’s wishes for jail time,” this statement is facially false. At the time that the plea was accepted on September 21, 2023, Movant, as victim, had no knowledge of the proposed plea or any of its contents. Movant had not been provided the opportunity to express her opinion on the proposed plea to the

prosecuting attorney. Similarly, Movant was excluded from the plea hearing and divested of her right to be heard by the Court.

WHEREFORE, the Movant respectfully prays for relief as follows:

- (a) That this Court immediately schedule a hearing on Movant's *Motion for Hearing on Marsy's Law Violation* with notice to both the State and the Defendant;
- (b) That this Court issue an Order requiring the District Attorney, the Victim Advocate, and the District Attorney's Office immediately preserve all Tracker notes, emails, written communications from Movant, case file and any other documents, whether digital or paper, now in the possession of the District Attorney's Office;
- (c) That this Court find that Movant's rights under the Georgia Crime Victims' Bill of Rights as codified in O.C.G.A. 17-17-1 *et seq.*, and the Constitution of the State of Georgia, Article I, Section I, Paragraph XXX were violated by the prosecuting attorney on September 21, 2023;
- (d) For such other and further relief as allowed by Marsy's Law and the Georgia Crime Victims' Bill of rights;
- (e) For any additional relief that the Court deems just and proper in this case.

Respectfully submitted this 10th day of October, 2023.

**EPPS, HOLLOWAY, DELOACH &
HOIPKEMIER, LLC**

By: /s/ Kevin E. Epps
Kevin E. Epps
Georgia Bar No. 785511

By: /s/ M. Claire Kimbrell
M. Claire Kimbrell
Georgia Bar No. 54667P
*Provisionally Licensed Attorney Practicing
Under the Supervision of Kevin E. Epps*

1220 Langford Drive
Building 200-101
Watkinsville, Georgia 30677
(706) 508-4000
kevin@ehdhlaw.com
claire@ehdhlaw.com

By: /s/ Lane Fitzpatrick
Lane Fitzpatrick
Georgia Bar No. 262275
Attorneys for Movant

Post Office Box 660
Danielsville, GA 30633
(706) 296-1968
lane.fitzlaw@gmail.com

**IN THE SUPERIOR COURT OF ATHENS-CLARKE COUNTY
STATE OF GEORGIA**

STATE OF GEORGIA,)	
)	
vs.)	CASE NO. SU-22-CR-0321
)	SU-23-CR-0477
LUKE HARRISON WALDROP,)	
DEFENDANT.)	

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing *Motion for Hearing on Marsy's Law Violation* upon the following via Statutory Electronic Service and Electronic Transmission:

District Attorney Deborah Gonzalez (Deborah.Gonzalez@accgov.com)
Victim Advocate Simona Arroyo (simona.arroyo@accgov.com)
Robbie M. Ballard, Attorney for Defendant (ballard@hbbfirm.com)

This 10th day of October 2023.

**EPPS, HOLLOWAY, DELOACH &
HOIPKEMIER, LLC**

By: /s/ Kevin E. Epps
Kevin E. Epps
Georgia Bar No. 785511
Attorney for Movant

1220 Langford Drive
Building 200-101
Watkinsville, Georgia 30677
(706) 508-4000
kevin@ehdhlaw.com