

**IN THE SUPERIOR COURT OF OCONEE COUNTY
STATE OF GEORGIA**

STATE OF GEORGIA

v.

CARLOS ALBERTO MEJIA

DEFENDANT.

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Case No.: 2023-CT-0125-N

ORDER

Ansley Pierce, by and through counsel, filed a Motion for Hearing on Marsy’s Law Violation and Motion to Recuse on October 5, 2023. On November 1, 2023, the movant appeared before the Court with counsel, Kevin Epps and Kristen Waller, for a hearing on the petition. District Attorney Deborah Gonzalez attended the hearing and argued on behalf of her office. Apprentice Assistant District Attorney Josh Neal appeared with her. Attorney Dustin Kirby, counsel for Defendant, attended the hearing; however, Defendant’s presence was waived by counsel.

In her motion, Movant asserts that her constitutional and statutory rights afforded by 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 denied by the Office of the District Attorney. Movant filed her motion pursuant to O.C.G.A. § 17-17-15(c)(2)(A), and specifically alleges that the following rights were violated: the right to timely and accurate notice of proceedings, the right to confer with the attorney pursuing the matter for the State, and the right to express an opinion regarding the outcome of the

case. The relief sought by Movant includes a finding that her rights under the Georgia Crime Victims' Bill of Rights and the Georgia Constitution were violated by the District Attorney, and an order recusing the Western Judicial Circuit District Attorney's Office from further prosecution in this matter. The District Attorney maintains that her office did not violate any of Movant's rights, and that the State has addressed Movant's concerns that the case be prosecuted. After considering the pleadings, testimony, and oral arguments, the Court hereby finds as follows:

This case began in the Probate Court of Oconee County following a car accident involving Movant and Defendant. After receiving citations for driving under the influence, hit and run, following too closely and open container, Defendant requested a jury trial, and the case was transferred to Superior Court. The case first came before the Superior Court on August 21, 2023. At that time, Defendant's counsel demanded that the matter be accused, and the Court reset the case for October 2, 2023 so that the District Attorney's office could file a formal accusation. Prior to the October 2 court date, Movant was contacted by a representative of the D.A.'s office and informed that Defendant would either enter a guilty plea or a formal accusation against him would be filed. She was not informed that the case could be dismissed.

When the case was called on October 2, the Court ascertained that an accusation had not been filed and determined that the case should be dismissed for want of prosecution. At this time, the District Attorney stated that an accusation had, in fact, been drafted as of August 21, 2023; however; the accusation had not been filed. The District Attorney then signed and submitted a dismissal of all charges, stating "not accused by

status calendar deadline” as the reason for the dismissal. After the October 2 court date, no one from the D.A.’s office contacted Movant to inform her that the charges had been dismissed. On October 16, 2023, the D.A.’s office presented the case against Defendant to the grand jury, which returned a true bill of indictment. On October 26, 2023, a representative from the D.A.’s office left a voicemail for Movant, asking for a return call. This was the first time Movant had heard from the D.A.’s office since before the October 2 court date. The indicted case remains pending as of this date.

To begin, under O.C.G.A. § 17-17-1(1), victims of crimes should be accorded the “right to reasonable, accurate, and timely notice of any scheduled court proceedings or any changes to such proceedings.” The D.A.’s office appropriately contacted Movant prior to the October 2 court date, yet it failed to contact her afterwards to inform her of the change in proceedings, namely, that rather than securing a guilty plea or filing an accusation, the District Attorney submitted a dismissal. This omission violated Movant’s right to reasonable, accurate, and timely notice of any scheduled court proceeding or any changes to such proceedings.

Next, O.C.G.A. § 17-17-1(4) affords victims “[t]he right to be heard at any scheduled court proceedings involving the release, plea, or sentencing of the accused.” In addition, O.C.G.A. § 17-17-11 provides that “[t]he prosecuting attorney shall offer the victim the opportunity to express the victim’s opinion on the disposition of an accused’s case...” Before this matter was dismissed, Movant was not provided an opportunity to be heard. The District Attorney contends that her office was precluded from notifying the victim prior to the dismissal by immediate order of the Court. The record shows, however,

that Ms. Gonzalez never asked for a break in the proceedings. She also contends that she had every intention of prosecuting the case on October 2, and that the failure to file an accusation before the status deadline was an oversight. The Court does not doubt the District Attorney's account; however, an oversight, regardless of how innocent, does not make for a valid excuse in the context of this statutorily mandated duty. Thus, Movant's right to be heard on the case disposition was violated.

Finally, O.C.G.A. § 17-17-15(c)(6) states that "[w]hen the victim's motion alleges potential failure by the prosecuting attorney, the prosecuting attorney may recuse in accordance with Code Section 15-18-5..." Movant has asked the Court to disqualify the District Attorney's office from further prosecution of this matter. At the November 1 hearing, the District Attorney announced that she did not intend to voluntarily recuse her office from prosecuting this case, but that she would defer to the Court's ruling on the issue. Given that the District Attorney has opted not to recuse at this time, the Court must consider whether appropriate grounds for disqualification exist.

There are two generally recognized grounds for disqualification of a prosecuting attorney. The first such ground is based on a conflict of interest, and the second ground has been described as "forensic misconduct." For example a conflict of interest has been held to arise where the prosecutor previously has represented the defendant with respect to the offense charged, or has consulted with the defendant in a professional capacity with regard thereto; such conflict also has been held to arise where the prosecutor has acquired a personal interest or stake in the defendant's conviction. In applying these standards, the reversal of a conviction due to such a conflict of interest requires more than a theoretical or speculative conflict. An actual conflict of interest must be involved.

Whitworth v. State, 275 Ga. App. 790, 793 (2005). The Marsy's Law violations in this case do not rise to the level of an actual conflict of interest. Moreover, the District

Attorney's actions were not so blatant or intentional as to suggest that she has a personal interest in the outcome of the case. Though, in the interest of all parties, the District Attorney may want to reconsider her decision not to voluntarily recuse and evaluate the impact of the Marsy's Law hearing on the case moving forward.¹

SO ORDERED this 17 day of November, 2023.



HONORABLE ERIC W. NORRIS
Chief Judge, Western Judicial Circuit

¹ Comment 15 to Rule 1.7 (Conflict of Interest: General Rule) of the Georgia Rules of Professional Conduct places the primary responsibility for resolving questions of conflict of interest on the lawyer undertaking the representation.

E. Norris 11/20/23