

IN THE SUPERIOR COURT OF ATHENS-CLARKE COUNTY

STATE OF GEORGIA

STATE OF GEORGIA

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v.

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Case No. SU-22-CR-0321

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Related Case: SU-23-CR-0477

LUKE HARRISON WALDROP,

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DEFENDANT.

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ORDER

Susan Wilson, by and through counsel, filed a Motion for Hearing on Marsy's Law Violation on October 10, 2023. The State filed their Response to Motion for Hearing on Marsy's Law Violation and Request to Dismiss on November 3, 2023. A hearing was held on November 6, 2023. Attorneys Kevin Epps, Lane Fitzpatrick, and Claire Kimbrell appeared on behalf of the Movant. District Attorney Deborah Gonzalez attended the hearing and Assistant Attorney Robert Wilson attended the hearing and spoke on behalf of the District Attorney's office. Defendant's presence was waived by counsel. After considering the pleadings, testimony, and oral arguments, the Court hereby finds as follows:

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. Movant filed her Motion pursuant to O.C.G.A. § 17-17-15. Movant specifically alleges that she was not provided prompt notice of the September 21, 2023 scheduled plea proceeding for the Defendant, was improperly excluded from the proceeding, and had no meaningful opportunity to exercise her rights under Marsy's Law.

In their response, the State requested that the Movant's Motion be dismissed due to lack of standing to bring the action. The State alleges that the Movant and the deceased victim were never officially married and therefore Movant is not considered a victim under O.C.G.A. § 17-17-3. In response to Movant's allegations, the State contends that they attempted to contact Movant regarding the plea negotiation at the same time that the deceased victim's sister was contacted. The State also contends that they did notify the sister of the deceased, who they allege is the only victim entitled to notice under O.C.G.A. § 17-17-3, entitled to notice. The State alleges that the sister of the deceased declined to attend the plea hearing and that The State made the Court aware that the sister was in disagreement with the plea.

At the hearing on November 6, 2023, Movant argued that she is a victim under O.C.G.A. § 17-17-3 because she and the deceased victim were common law married. The State argued that

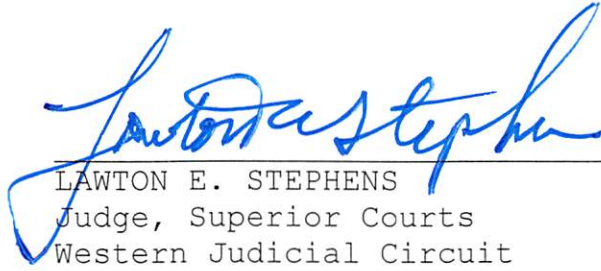
Movant did not hold herself out to the District Attorney's office as the wife of the deceased victim.

As to the issue of the marriage between the Movant and the deceased victim, under O.C.G.A. § 19-3-1.1, "[n]o common law marriage shall be entered into in this state on or after January 1, 1997. Otherwise valid common law marriages entered into prior to January 1, 1997 shall not be affected by this code section and shall continue to be recognized in this state." *Franklin v. Franklin*, 253 Ga. App. 147 (2002) articulates three elements that have to be established for common law marriage to exist. The Court of Appeals held that when the alleged marriage is unlicensed and non-ceremonial, the burden is on the proponent to prove that a common law marriage existed. In order for a common law marriage to come into existence, the parties must be able to contract, must agree to live together as man and wife, and must consummate the agreement. In this case, the Court finds by a preponderance of the evidence that Movant was the spouse of the deceased and that all of the required elements to establish a common law marriage are present here and existed prior to January 1, 1997.

Because Movant was the spouse of the deceased victim, under O.C.G.A. § 17-17-3, she was a victim and was entitled to all of the rights established by O.C.G.A. § 17-17-1 et. seq. Furthermore, the Tracker notes along with former Victim Advocate

Alice Hayes' testimony establish that the State always considered Movant as the primary victim in the case. Under O.C.G.A. § 17-17-1, Movant was entitled to reasonable, accurate, and timely notice of all scheduled court proceedings. Movant would have been entitled to the right to be heard at a scheduled plea and sentencing hearing. Notice of the plea date scheduled for September 21, 2023 was sent to the District Attorney's office on August 29, 2023. Based on the testimony of Movant and Victim Advocate Simona Arroyo, Movant was not contacted about the plea date and proposed plea offer until between 8:30 a.m. and 9:00 a.m. on September 21, 2023, the morning of the plea hearing. Movant was not able to answer the call because she was at work and was not made aware that there was a plea hearing or a plea deal until after the hearing had taken place. The Court finds that Movant was not promptly notified in this case because the morning of the hearing is not prompt notification and Movant had no meaningful opportunity to exercise her rights. Movant should have been given the opportunity to make a victim impact statement at the appropriate time. For all of the reasons listed above, the Court finds that the District Attorney's office violated the rights of the Movant afforded by the Georgia Crime Victims' Bill of Rights and the Constitution of the State of Georgia.

SO ORDERED this 21ST day of November 2023, nunc pro tunc
to November 6, 2023.


LAWTON E. STEPHENS
Judge, Superior Courts
Western Judicial Circuit

11-21-23

eFiled - copy to D. Gonzalez, R. Wilson, K. Epps, L. Fitzpatrick,
C. Kimbrell, R. Ballard
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