

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

STATE OF GEORGIA)
)
vs.) CASE NO.: SU-22-CR-0321-S
) SU-23-CR-0477-S
LUKE HARRISON WALDROP,)
)
Defendant.)
_____)

TRANSCRIPT OF HEARING ON MARSY'S LAW VIOLATION

Heard before the Honorable Lawton E. Stephens, Judge of
the Superior Courts of the Western Judicial Circuit, in the
Athens-Clarke County Courthouse, 325 East Washington Street,
Athens, Georgia, on November 6, 2023.

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I N D E X

MOVANT'S WITNESSES

SUSAN WILSON

Direct examination.	17
Cross-examination.. . . .	45
Redirect examination	47

ALICE HAYES

Direct examination.	51
Cross-examination.. . . .	60

DEBORAH GONZALEZ

Cross-examination.. . . .	69
Continued cross-examination.. . . .	123

SIMONA ARROYO

Direct examination.	105
Cross-examination.. . . .	122

MICHAEL PROCHASKA

Direct examination.	140
Cross-examination.. . . .	141

JOSH NEAL

Direct examination.	142
Cross-examination.. . . .	145
Redirect examination.	146

STATE'S WITNESSES

DEBORAH GONZALEZ

Direct examination.	148
Recross-examination.. . . .	153

ARGUMENT:

Mr. Fitzpatrick.	163
Mr. Wilson.. . . .	173
Mr. Epps.. . . .	182

THE COURT'S RULING.	190
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MOVANT'S EXHIBITS

ADMITTED

1	Emails between Susan Wilson and Alice Hayes.	22
2	Email from Deborah Gonzalez to Susan Wilson.	24
3	Trial notice.	25
4	Transcript of guilty plea.	25
5	Motor vehicle crash report.	28
6	Letter from Alice Hayes to Susan Wilson.	54
7	Tracker notes.	56
8	Response to motion by Deborah Gonzalez.	73
9	Emails between Deborah Gonzalez and Lynn Bradberry.	74
10	Various interoffice emails.	76
11	Letter to the editor.	87
12	Email.	Not admitted
13	Tab Hunter email with status of cases.	159
14	Transcript from September 21, 2023.	126
15	Writing by Deborah Gonzalez.	132
16	Notice of filing subpoenas.	162

STATE'S EXHIBITS

ADMITTED

1	Email dated 9/21/23 12:25 a.m.	150
2	Email dated 9/2/23 12:28 a.m.	151

1 THE COURT: We've got a Rule 22 request that we'll --

2 MR. FITZPATRICK: Your Honor, I'll go get Mr. Epps.

3 THE COURT: Oh, yeah. We've got a Rule 22 request
4 from Ms. -- from Joan Rhoden. Okay, let me -- when Mr.
5 Epps comes in, we'll have you come up to the podium.

6 So we've got a Rule 22 request from Joan Rhoden.

7 MR. EPPS: No objection for us, Your Honor, on the
8 Rule 22 request.

9 THE COURT: Well, let me find out exactly what the
10 purpose of it is. Come on up, please, Ms. Rhoden. If
11 you'd just come up to the podium, please. And you are Ms.
12 Joan G. Rhoden?

13 MS. RHODEN: I am.

14 THE COURT: And yesterday at 2:42 p.m. you faxed a
15 notice of -- a request to use a recording device. So
16 exactly what recording device did you want to use?

17 MS. RHODEN: It is an iPhone and it's listed there,
18 iPhone.

19 THE COURT: And you wanted to -- to take a video of
20 the proceedings --

21 MS. RHODEN: No. Just the audio.

22 THE COURT: -- or just audio record the proceedings?

23 MS. RHODEN: Yes sir.

24 THE COURT: And what would you be using that for?
25 What would be the purpose of that recording?

1 MS. RHODEN: In order to be able to quote accurately
2 anything that was said --

3 THE COURT: Okay.

4 MR. RHODEN: -- within the courtroom rather than
5 trying to from memory.

6 THE COURT: And are you in the news media?

7 MS. RHODEN: No, I'm not.

8 THE COURT: So just you are here as a spectator; is
9 that correct?

10 MS. RHODEN: I am.

11 THE COURT: Okay. All right. So does the State have
12 any objection?

13 MR. WILSON: Your Honor, I unfortunately do, Your
14 Honor. And my objection is going to be based on the
15 technology that's involved. I understand the Rule 22.
16 I've looked at it. I mean -- but an iPhone is also a
17 camera, Your Honor.

18 THE COURT: Yeah.

19 MR. WILSON: It's also a video recorder. I don't
20 know what the exact purpose is. There is a transcript
21 being taken of all these proceedings, Your Honor, and I
22 think that's the most accurate way to -- if there needs to
23 be a quote of things --

24 THE COURT: Right.

25 MR. WILSON: -- a transcript is the appropriate way

1 to do it. I don't think there's a showing that this is a
2 necessity for her to record what's out -- this is an open
3 courtroom, Your Honor.

4 THE COURT: Right.

5 MR. WILSON: Everybody has been -- there's been
6 notice. I understand -- I understand that -- the goal
7 behind Rule 22, Your Honor, but I don't think that that
8 would be appropriate in this circumstance --

9 THE COURT: Right. Okay.

10 MR. WILSON: -- just because of what -- the ways I
11 said that --

12 MR. EPPS: Judge Stephens --

13 THE COURT: Yes sir.

14 MR. EPPS: -- I just want to point out she filed the
15 same Rule 22 in a Marsy's Law case last week. There was
16 no objection from the State. She used the recording
17 device and --

18 THE COURT: I'm sorry. Ms. Rhoden filed a --

19 MR. EPPS: She did in the Marsy's Law case in Oconee
20 County involving Ms. Pierce. There was no objection by
21 Ms. Gonzalez. She abided by the Court's ruling and just
22 recorded it.

23 THE COURT: Okay.

24 MR. EPPS: I understand what Mr. Wilson is saying is
25 that it's a video and also a recording. But if the Court

1 directs her just to record it, I don't see that being an
2 issue.

3 THE COURT: All right. Ms. Rhoden, I'll grant your
4 request but it can only be a recording and not -- not any
5 kind of video.

6 MS. RHODEN: I understand.

7 THE COURT: Is that -- is that --

8 MS. RHODEN: I understand.

9 THE COURT: So where is your iPhone going to be?

10 MS. RHODEN: Right in the top of my purse there.

11 THE COURT: Okay. All right. So -- thank you.

12 The first thing we need to talk about, I think, Mr.
13 Epps, is the State's motion to dismiss based on the status
14 of your petitioner. So I'm going to let the State go
15 first on their motion and then I'll let you respond.

16 MR. EPPS: Yes, Your Honor.

17 MR. WILSON: Thank you, Your Honor.

18 THE COURT: Mr. Wilson.

19 MR. WILSON: Thank you, Your Honor. Ms. Wilson is
20 not a covered victim as far as Marsy's Law. She -- unless
21 there's some evidence that she is in fact a spouse or a
22 blood relative.

23 THE COURT: Right.

24 MR. WILSON: That's what Marsy's Law was. And it's
25 very specific, Your Honor. I think -- I think -- I mean,

1 that's what -- I don't -- we haven't seen any proof of a
2 marriage or anything other than a domestic --

3 THE COURT: Right. Do you --

4 MR. WILSON: Yes.

5 THE COURT: Do you want to -- do you want to put up
6 some evidence on your motion?

7 MR. WILSON: Your Honor, I didn't -- I didn't want to
8 put up -- I did not, Your Honor. But I do think that they
9 do have a burden, being the Movant in this party, to show
10 that the law does apply to her.

11 THE COURT: All right.

12 MR. WILSON: But that's -- that's our argument, Your
13 Honor. Without -- without any showing that she is
14 actually a victim as far as Marsy's Law defines it, I
15 don't think she has standing to come in front of the Court
16 and ask for this.

17 THE COURT: Okay. Mr. Epps?

18 MR. EPPS: Yes, Your Honor. Let's start here. If we
19 are going -- well, let me back up. I don't even think
20 they have a right to file a motion to dismiss at this
21 point, Your Honor, under the Marsy's Law. You know, this
22 is now my third iteration of Marsy's Law in this circuit.
23 Obviously, this is the first time before you, Judge
24 Stephens, as it relates to this.

25 I would note that Ms. Gonzalez and her office in the

1 two Marsy's Law hearings prior to us has recognized that
2 the statute clearly states that their only right that they
3 have to be here is to be present. Ms. Gonzalez has in the
4 Marsy's Law hearing last week acknowledged that they
5 cannot object, they cannot cross-examine, they cannot
6 participate in the Marsy's Law hearing based on the
7 language of the statute that says that all they are
8 allowed to do is to be present.

9 So at first their response, which is a response and
10 inside their response is the motion to dismiss, you have
11 to address whether or not they even have the ability to do
12 that. But that being said, Judge Stephens, is this. They
13 -- they seem to be suggesting that as we step in here
14 today that we have some type of burden of -- to prove that
15 she is the common law wife or has been married to the
16 victim. We will do that. You will have evidence as it
17 relates to that. That's a motion for summary judgment.
18 That's not a motion to dismiss. But if you want to go
19 straight on a motion to dismiss and on pleadings, so I
20 want to just point you to it. Paragraph 1 of our motion:
21 Movant is the surviving spouse of James V. Jones, the
22 deceased victim in the indictment against Luke Harrison
23 Waldrop. Judge Stephens, there's your pleading; right?

24 So on the motion to dismiss, and I cite *Anderson v.*
25 *Flake*, on a motion to dismiss standard. May I approach,

1 Your Honor?

2 THE COURT: Yes sir.

3 MR. EPPS: And I have a copy of *Anderson v. Flake*
4 that talks exactly as it relates to a motion to dismiss.
5 And I know the Court is very well aware of the standard,
6 but if you go to paragraph 2, headnote 4, it lays it out:
7 A motion to dismiss for failure to state a claim upon
8 which relief may be granted should not be sustained unless
9 the allegations of the complaint disclose with certainty
10 that the claimant would not be entitled to relief under
11 the state of provable facts asserted in support thereof;
12 and the movant establishes that the claimant could not
13 possibly introduce evidence within the framework of the
14 complaint sufficient to warrant a grant of relief sought.
15 And if, within the framework of the complaint, evidence
16 may be introduced which will sustain a grant of the relief
17 sought by the claimant, the complaint is sufficient and a
18 motion to dismiss should be denied. In deciding a motion
19 to dismiss, all pleadings are to be construed most
20 favorably to the party who filed them and all doubts
21 regarding such pleadings must be resolved in the filing.

22 Well, paragraph 1 has to be viewed in the most
23 favorable light, Judge. We stated that she was the
24 spouse. And if I may, Judge, proffer this. Her office,
25 Ms. Gonzalez's office, since the very beginning of this

1 case has treated Ms. Wilson as the spouse of the deceased.
2 I have Alice Hayes here, the victim advocate before she
3 left this office, who is going to testify that Ms. Wilson
4 held herself out to be the spouse and it was never in
5 doubt in Ms. Gonzalez's office that she was the spouse.

6 Furthermore, after this plea was entered into Ms.
7 Wilson wrote an email to the District Attorney's Office
8 with nine separate questions regarding this plea. Ms.
9 Gonzalez responded personally to that email. In that
10 email which I will introduce to you today, Ms. Gonzalez
11 recognized Ms. Wilson as the victim in this case. Then
12 they file a response with you that says that she was not
13 the wife of the deceased. Judge, they have been
14 contacting her for years as the victim in this case
15 through emails, their Tracker notes that we have show that
16 she's been doing this. It is completely disingenuous.
17 And quite frankly, to tell this Court that this woman
18 should not receive her day in front of you under Marsy's
19 Law is offensive.

20 So I will prove it if you want it. But on a motion
21 to dismiss standard, they are wrong as to what we need to
22 do.

23 THE COURT: Well, let me just say I'm going to let
24 you go forward but you have to prove that she's a victim
25 under §17-17-3 as defined in subsection 11.

1 MR. EPPS: And we are prepared to do that, Judge
2 Stephens.

3 THE COURT: You're going to have to prove that she's
4 a victim, which to me means you're going to have to prove
5 that she's the spouse of the deceased. So I'm going to
6 let you go forward but you're going to have to prove her
7 status as the spouse of the deceased, okay?

8 MR. EPPS: Yes sir, we'll do it.

9 THE COURT: All right.

10 MR. EPPS: Yes sir.

11 THE COURT: All right. Did y'all want to make
12 opening statements then before we go forward or do you
13 just want to get into the evidence?

14 MR. EPPS: A couple of just housekeeping matters,
15 Judge, if I may before opening statements. I'd like to
16 invoke the Rule. But before we invoke the Rule we have
17 numerous subpoenas out and we have requested certain
18 documentation from those witnesses, including Ms. Gonzalez
19 and the others. And before the hearing begins, I'd like
20 to have that information. They are all subpoenas issued
21 to people in her office outside of Alice Hayes and I'd
22 like to have that information for the purposes of this
23 hearing.

24 THE COURT: Subpoenas for what? Documents?

25 MR. EPPS: Documents, Tracker notes, case files.

1 THE COURT: All right.

2 MR. EPPS: The case is now closed, Your Honor, and
3 we're looking for that information.

4 THE COURT: All right. Mr. Wilson, do you want to
5 respond to that?

6 MR. WILSON: Well, Your Honor, we have had -- I do
7 have -- I am prepared to comply with the discovery --

8 THE COURT: Okay.

9 MR. WILSON: -- request. However, I do want to just
10 state for record --

11 THE COURT: Sure.

12 MR. WILSON: -- I don't think that this is an
13 appropriate forum for a discovery request for subpoenaing
14 records.

15 THE COURT: But you have the documents and you're
16 willing to turn them over to Mr. Epps?

17 MR. WILSON: I do.

18 THE COURT: Okay. Go ahead then. Thank you. So are
19 both sides invoking the Rule?

20 MR. EPPS: Yes, Your Honor.

21 THE COURT: Mr. Wilson, are you invoking the Rule of
22 Sequestration on your side for your witnesses or for Mr.
23 Epps' witnesses?

24 MR. WILSON: I don't believe so, Your Honor.

25 THE COURT: No? Okay. So, Mr. Wilson, can you

1 identify the witnesses that you're going to call and I'll
2 subject them to the Rule of Sequestration? Do you have
3 witnesses you intend to call in the hearing?

4 MR. WILSON: I did not -- I did not have any
5 witnesses for the State.

6 THE COURT: Okay. All right.

7 MR. WILSON: But I think -- I think -- no.

8 THE COURT: All right.

9 MR. WILSON: Long answer, no.

10 THE COURT: Okay. All right.

11 MR. EPPS: So, Your Honor, we would invoke the Rule
12 as to Ms. Gonzalez, Mr. Neal, Ms. Simona Arroyo, and Alice
13 Hayes.

14 THE COURT: They're not witnesses.

15 MR. EPPS: Well, we've --

16 THE COURT: They've indicated they're not going to be
17 called as witnesses.

18 MS. GONZALEZ: Not by the State.

19 MR. EPPS: We plan on calling them, Your Honor.

20 THE COURT: You subpoenaed them?

21 MR. EPPS: Yes, Your Honor.

22 THE COURT: Okay.

23 MR. EPPS: Yes.

24 THE COURT: All right.

25 MR. EPPS: So we would ask that they --

1 THE COURT: So those who are subpoenaed, you'll need
2 to wait in the hall until called.

3 MR. WILSON: Your Honor, I would -- I would -- I
4 would object to Ms. Gonzalez being sequestered from this
5 hearing, Your Honor. Under Marsy's Law §17-17-15, the
6 D.A. has a right to be here.

7 THE COURT: Okay.

8 MR. WILSON: And so I don't think it's appropriate to
9 send her out.

10 THE COURT: All right.

11 MR. WILSON: I think she needs to be here or she has
12 a right to be here.

13 THE COURT: Would you like for me to exempt her from
14 the Rule of Sequestration?

15 MR. WILSON: Thank you.

16 THE COURT: All right. Do you want to be heard?

17 MR. EPPS: We would not -- we would not ask for you
18 to be exempt.

19 THE COURT: Okay.

20 MR. EPPS: The D.A.'s office has a right to have
21 someone present -- here present, Judge. Not participate.
22 Nothing. So Mr. Wilson is obviously speaking on behalf of
23 the District Attorney's Office. She is a witness. She
24 has been properly subpoenaed and we'd ask that she be
25 sequestered.

1 THE COURT: Well, under §17-17-15 I'm going to hold
2 that she's exempt from the Rule. I'm going to allow her
3 to be exempt from the Rule of Sequestration and remain in
4 here to assist. Okay?

5 MR. EPPS: Thank you, Your Honor.

6 THE COURT: All right.

7 MR. EPPS: With that, Mr. Fitzpatrick is going to
8 call our first witness in this case.

9 THE COURT: All right, sir. You may proceed.

10 MR. FITZPATRICK: Thank you, Your Honor. I call Ms.
11 Susan Wilson.

12 THE COURT: Come on up. If you'll raise your right
13 hand, please, to take an oath.

14 [Witness is sworn by the Court.]

15 THE COURT: Have a seat, pull up to the microphone,
16 make sure you speak loudly enough for everyone to hear.
17 And I'm going to ask you to state your name and spell your
18 first name and your last name for the court reporter.

19 THE WITNESS: My name is Susan Wilson. S as in
20 Samantha, U, S as in Susan, A, N as in Nancy. Wilson, W
21 as in Wanda, I as in Imogen, L as in Lucy, S as in
22 Samantha, O as in Olga, N as in Nancy.

23 THE COURT: All right. Thank you. You may question
24 the witness.

25 MR. FITZPATRICK: Thank you, Your Honor.

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SUSAN WILSON

Called as a witness by the Movant, having first been duly sworn, is examined and testifies as follows:

DIRECT EXAMINATION

BY MR. FITZPATRICK:

Q Ms. Wilson, when did your relationship with Mr. James Jones, the deceased, begin?

A A little bit before 1985.

Q And how old -- how old are you at the time?

A Because of the timing of our meeting, I was between 22 and 23 years old. And he was 31.

Q Thank you, ma'am. And did y'all begin living together at that time?

A Soon after.

Q So did you live continuously together soon after you met in 1985 until his death in 2022?

A Yes.

Q Tell us --

A We were only apart for a few months while he was in Oman.

Q Okay. Tell the Court, did y'all have any financial

1 accounts together?

2 A Yes, we did.

3 Q And did y'all sleep together?

4 A Yes.

5 Q Tell the Court what things y'all did together.

6 A Everything pretty much. Anything that people
7 cohabiting did. We went on trips, hiking, rock climbing, ice
8 climbing, kayaking, many things outdoors, bicycle riding. We
9 often took friends of ours with us to teach them rock climbing.
10 We also worked for a while in a garage together while he was
11 trying to set up a body shop. We -- several years later I
12 began working as the unit director of a Boys and Girls Club.
13 He volunteered there to help clean and to help with the kids.
14 And after the staff of the organization learned that he had
15 been working as my de facto janitor, they were able to find
16 money in the budget to fund his position. So we could say that
17 he worked for me for a year or so. And --

18 Q Did --

19 A Yes?

20 Q -- did you consider Mr. Jones your husband?

21 A Yes, I did.

22 Q Did he consider you his wife?

23 A Yes, he did.

24 Q Did you hold yourself out as a married couple?

25 A Yes, we did.

1 Q Okay.

2 A Although he preferred the term partner.

3 Q Pardon me?

4 A He preferred the term partner, as he felt it was a
5 more accurate description than husband and wife.

6 Q Okay. But that was just y'all's choice?

7 A That was our choice.

8 Q You did not go through a ceremonial marriage, did
9 you?

10 A No, we did not.

11 Q Okay. During this ordeal after Mr. Jones was killed,
12 did you have regular contact with a victim's advocate from the
13 District Attorney's Office?

14 A Until September of -- September 30th.

15 Q Of what year?

16 A Of that year.

17 Q 2022?

18 A 2022.

19 Q Let me show you what I've marked as Movant's Exhibit
20 1 and ask you to identify this set of documents, please, ma'am.
21 Are these email conversations between you and Ms. Alice Hayes
22 who was a victim's advocate in the District Attorney's Office
23 at that time?

24 A Yes, they are.

25 Q Did she ever question you as not being a victim in

1 this case?

2 A No, she did not.

3 Q Did she ever question you about your status as being
4 married or not married to Mr. Jones?

5 A No, she did not.

6 Q Did she ever even ask you if you were formally
7 married to Mr. Jones?

8 A I don't recall.

9 Q Okay. You said that this contact continued until
10 September '22. Now, let's go back and get the date that Mr.
11 Jones was killed.

12 A March 3rd.

13 Q Of what year?

14 A 2022.

15 Q Okay. And in the last contact you had with Ms. Hayes
16 in September of 2022, did you inquire about the status of the
17 case? In fact, did you inquire about the status of the case on
18 a regular basis?

19 THE COURT: Would you hold on one second, please?

20 THE WITNESS: Yes.

21 THE COURT: Could you hold on one second.

22 All right. Sorry about that. You may proceed.

23 BY MR. FITZPATRICK: [Resuming]

24 Q Let me ask the last question again. On a regular
25 basis did you inquire of Ms. Hayes about the status of the

1 criminal case against the defendant who had run over your
2 husband?

3 A I did. My next to last communication with her does
4 inquire about that. If you'd like, I can read it.

5 Q Sure.

6 A September 27th. I hope you've been doing -- there
7 was previous things about personal issues and in the next
8 paragraph I asked I hope you've been doing well and that your
9 last communication was not to send me important news like trial
10 dates or charge dismissals. Please send me an email to let me
11 know that you got this and if there is anything you think I
12 should know about the case or anything else. In her response
13 she says I don't have any updates for you about the case at
14 this time but you are also welcome to call or email to check.
15 I'd be happy to chat with you whenever it's convenient for you.
16 That's from September 28th. The -- at some point during these
17 -- I could find it for you if you have a few minutes to wait.
18 Also in phone calls I -- she did tell me that because of the
19 caseload and how busy they were, there would probably be no
20 movement on the case for some time and in fact it might be a
21 year or more before it made it onto the court calendar, much
22 less appeared before a judge.

23 MR. FITZPATRICK: Your Honor, I offer into evidence
24 Movant's Exhibit 1.

25 THE COURT: Any objection, Mr. Wilson?

1 MR. WILSON: No objection, Your Honor.

2 THE COURT: Admitted.

3 BY MR. FITZPATRICK: [Resuming]

4 Q So after September 28th and 29th of 2022, when was
5 the next communication you received from the District
6 Attorney's Office?

7 A September 21st, 2023.

8 Q Would you tell the Court about that.

9 A Yes. I teach GED and English as a second language
10 courses at Athens Technical College. On the morning of
11 September 21st, I was in class and had turned my ringer down so
12 as not to disturb the students. I checked my phone during
13 class and saw that I had gotten a call from the victim
14 advocate's office and reached back out after my classes were
15 over, but that was not until late in the afternoon. At that
16 point there was no voicemail left. When I called back, I was
17 told by a new victim's advocate that the D.A. and the defendant
18 had appeared before a judge with a plea bargain and that plea
19 bargain had been accepted which reduced the charges that were
20 originally place on the accident report by the police from
21 vehicular homicide in the first degree with DUI to vehicular
22 homicide in the second degree, reducing the charge from a
23 felony to a misdemeanor, and that the sentence had been reduced
24 to probation, community service, and a roughly \$2,000 fine with
25 no jail time.

1 Q Did you subsequently have an email exchange with
2 another victim's advocate in the District Attorney's Office?

3 A The communication I received -- I had on September
4 21st was with Serona [sic] whose last -- Arroyo -- not my
5 original victim's advocate. I was told that Alice Hayes was no
6 longer with the office.

7 Q Let me show you what I've marked as Exhibit M-2 and
8 would you explain to the judge what we have here. Identify
9 that for the Court.

10 A Yes. This is an email from Deborah Gonzalez after my
11 initial contact with Serona Arroyo. I was understandably not
12 very capable of formulating questions about the case. Over the
13 course of the evening questions did arise. I sent her a list
14 of them. The next morning apparently she handed them to the
15 District Attorney and the District Attorney sent me responses
16 to each of those questions.

17 Q Did you receive a reply from the District Attorney
18 herself?

19 A Yes, I did.

20 Q At any time did she ever question your status as
21 being married, either by ceremony or by common law, to Mr.
22 Jones?

23 A I -- no.

24 Q Throughout --

25 A None -- in none of these answers and in none of the

1 emails that are listed -- that I sent to you that are listed
2 here is there any question of my marital status.

3 Q In all the emails both from Ms. Hayes and Ms. Arroyo
4 and the District Attorney herself, did they refer to you as the
5 victim?

6 A Yes.

7 MR. FITZPATRICK: Your Honor, I offer into evidence
8 Movant's Exhibit 2. M-2.

9 THE COURT: Any objection? Any objection from the
10 State?

11 MR. WILSON: No, Your Honor.

12 THE COURT: Admitted.

13 BY MR. FITZPATRICK: [Resuming]

14 Q After September 21 of 2023, did you find out how long
15 the court proceeding on September 21 had been scheduled?

16 A Not from the District Attorney's Office, no.

17 Q Well, did you find out otherwise?

18 A I found out in conversation with you and --

19 Q Let's look at Exhibit M-3. After September 21 of
20 2023, did you see a copy of Exhibit M-3?

21 A No.

22 Q Did you find out the date that the hearing for
23 September 21 had been scheduled?

24 A No.

25 Q Okay. Do you know now when it was scheduled?

1 A According to this it says the defendant will be
2 called for a plea calendar on September 21st, 2023 at 9:00 a.m.
3 and a trial calendar on September 25th, 2023 at 9:00 a.m.

4 Q And what was the date of that, please, ma'am?

5 A I am looking for it. 29th August 2023.

6 Q Okay.

7 MR. FITZPATRICK: Your Honor, I offer into evidence
8 Exhibit M-3.

9 MR. WILSON: No objection, Your Honor.

10 THE COURT: Admitted.

11 BY MR. FITZPATRICK: [Resuming]

12 Q Since September 21 of 2023, have you read a copy of
13 the transcript of the guilty plea that was entered on September
14 21 of 2023?

15 A Yes, I have.

16 Q Let me show you what I've marked as Exhibit M-4 and
17 would you identify that report, please.

18 A That is -- this is a copy of a transcript of the
19 guilty plea by Luke Harrison Waldrop in case number
20 SU23CR0477S.

21 MR. FITZPATRICK: Your Honor, I offer into evidence
22 Exhibit M-4.

23 THE COURT: Any objection?

24 MR. WILSON: No, Your Honor.

25 THE COURT: Admitted.

1 BY MR. FITZPATRICK: [Resuming]

2 Q Let me show you -- and just hold onto that for a
3 moment. Let me show you what I've marked as Exhibit M-5. Do
4 you recognize that, please, ma'am?

5 A Very well.

6 Q Tell the Court what that is, please.

7 A This is the Georgia Motor Vehicle crash report from
8 March 3rd, 2022 at 11:06 involving the death of James Vivean
9 Jones in an accident between a bicycle and a driver, Luke
10 Waldrop.

11 Q Did you obtain a copy of this before September 21 of
12 this year?

13 A Yes. Very shortly after the accident happened when
14 they concluded their investigation.

15 Q And did you read the entire report?

16 A Yes.

17 Q And let's talk about the information in that report.

18 MR. FITZPATRICK: First of all, I offer into evidence
19 Exhibit M-5.

20 THE COURT: Is there an objection, Mr. Wilson?

21 MR. WILSON: There is, Your Honor.

22 THE COURT: Okay.

23 MR. WILSON: I think we're far afield of why we're
24 here today, Your Honor. And I do -- I do question the
25 relevancy of an accident report which is obviously a

1 hearsay document and they're trying to admit it through --
2 through Ms. Wilson. I don't think she's proper foundation
3 for this.

4 THE COURT: What about that, Mr. Fitzpatrick?

5 MR. FITZPATRICK: Well, Your Honor, as I understand,
6 looking at the Georgia Crime Victims Bill, it doesn't
7 really talk about whether there can be -- first of all,
8 there can be any objections to any evidence at all. The
9 prosecuting attorney just has a right to be present. It
10 doesn't say anything about objections. If the legislature
11 of Georgia had wanted the prosecuting attorney's office to
12 be a party to the hearing, to participate in the hearing,
13 to object, to cross-examine witnesses, it would have said
14 so. So if we look to the legislative intent of the
15 Georgia Crime Victims law, then I would suggest to you
16 that we take it on its face and it simply says a
17 prosecuting attorney has the right to be present. It
18 doesn't say to participate in any way whatsoever.

19 Furthermore, the purpose of this, along with Exhibit
20 M-4 which has already been introduced, is you will get to
21 hear from Ms. Wilson what she would have said had she had
22 proper notice of the hearing on September 21 --

23 THE COURT: Right.

24 MR. FITZPATRICK: -- to point out the discrepancies
25 between what was said in the transcript of the guilty plea

1 versus what was noted on the Motor Vehicle Crash Report
2 which she --

3 THE COURT: All right. I'll allow it.

4 MR. FITZPATRICK: Thank you.

5 THE COURT: I'll overrule the objection.

6 MR. FITZPATRICK: Your Honor, may I hand you a copy?

7 THE COURT: Are you tendering M-5?

8 MR. FITZPATRICK: Yes, M-5.

9 THE COURT: It's admitted over objection.

10 MR. FITZPATRICK: Thank you.

11 BY MR. FITZPATRICK: [Resuming]

12 Q So let's look at M-5 because we're talking about what
13 happened when your husband was killed. First of all, let's
14 look on the second page. It says the bicycle had a working
15 headlight. Would you agree with that?

16 A Yes.

17 Q Tell the Court what kind of headlight that your
18 husband had on his bicycle.

19 A This was an LED light. I do not remember the brand
20 name but it is one -- it was -- the reason he got it was
21 because it was one of the brightest lights around and he was --

22 Q And it also says there was a flashing red LED light
23 facing the rear.

24 A Yes.

25 Q Would you agree with that?

1 A Oh, yes.

2 Q That was on his bicycle at all times?

3 A Yes.

4 Q Okay. And it says he was wearing bright yellow
5 clothing and a helmet.

6 A Yes.

7 Q Would you agree with he was wearing bright yellow
8 clothing?

9 A He always wore the helmet. He always wore bright
10 clothing.

11 Q Now, have you looked back at what the status of the
12 moon was that night?

13 A Yes.

14 Q What was it?

15 A It was just after the new moon.

16 Q And do you know precisely where this crash took
17 place?

18 A Very well.

19 Q And would you tell the Court if there's any light in
20 the area?

21 A There is a traffic light at the corner of Westchester
22 and Tallassee.

23 Q And is there any street lights in that area?

24 A There is a street light there.

25 Q Okay. Now looking on at page 3 of this report, did

1 the author of this report make any information -- give any
2 information about the status of the driver, what he was --

3 A In the report he states Driver 1 was determined to be
4 under the influence at the time of the crash. After the DUI
5 investigation was concluded, he was arrested and transported to
6 the Clarke County Jail where he was issued citations for DUI,
7 vehicular homicide first degree, and failure to provide
8 clearance passing a bicycle. If I may volunteer, on the first
9 page where you have the check for suspect at fault, the check
10 is under Luke Waldrop's name.

11 Q Okay. And Driver 1 is identified as Mr. Waldrop;
12 correct?

13 A Yes.

14 Q Let's go on to the next page of the report, actually
15 two pages over, and this is information presented or written by
16 Joey Lewis of the Clarke County Police Department. Did he note
17 any information about the condition of the driver, Mr. Waldrop?

18 A Yes. He notes that Mr. Waldrop displayed physical
19 manifestations -- quote, physical manifestations of alcohol
20 impairment such as bloodshot watery eyes, thick slurred speech,
21 and swaying back and forth as he was talking with others,
22 unquote.

23 Q And let's turn to the next page. Does Mr. Lewis go
24 on to say what he personally observed?

25 A Yes. The bicyclist was wearing a typical, quote,

1 road bicycle suit that consisted of a bright yellow top and had
2 a red LED light attached to the rear of the bicycle, still
3 blinking as we investigated. The bicycle also had a front
4 headlight on the bicycle and was still illuminating. Collision
5 caused the bicyclist to become ejected from the bicycle and his
6 body struck the windshield of the Honda. The collision then
7 redirected his body to fly off the windshield and land in the
8 ditch on the northeast shoulder of Tallasse Road. Later on,
9 quote, I met with Waldrop and I observed he was displaying
10 physical manifestations of alcohol impairment such as bloodshot
11 watery eyes, thick slurred speech, and he was swaying back and
12 forth and side by side as he moved -- as he stood, unquote. I
13 can add more.

14 Q Okay. So were tests administered then, these field
15 tests?

16 A Yes.

17 Q And did Mr. Waldrop, for lack of a better word, fail
18 each of these tests -- most of these, if not all of these,
19 tests?

20 A Most of them. He's failed -- he -- a total of -- he
21 discusses the nystagmus in his gaze, noting vertical nystagmus,
22 the onset of nystagmus prior to 45 degrees in both of his eyes,
23 distinct and sustained nystagmus at maximum deviation in both
24 of his eyes. In the walk-and-turn test he was unable to
25 maintain balance while listening to the instructions and broke

1 the instruction test multiple times. He used his arm for
2 balance while walking down and back. He missed heel-to-toe
3 multiple times. He stepped off line. He made an improper
4 turn. He spun around on his left heel and lost his balance.
5 That was six of six clues. On a later test the detective --
6 the officers observed five of eight clues in the one-leg stand.
7 And then in another test three of four clues were observed of
8 apparently impairment.

9 Q And you read all of this shortly after the crash on
10 March the 3rd?

11 A Not immediately after but a few days.

12 Q Yes. Now, turn over to the next test, next page.
13 Does it go on to give more information on more tests that were
14 administered at the site?

15 A I can read the details of the tests that I just
16 described.

17 Q Well, let's just summarize. First of all, was there
18 a walk-and-turn test?

19 A Yes.

20 Q And what was he unable to do?

21 A I'm sorry. I've lost --

22 MR. WILSON: Your Honor, I'm going to repost my
23 objection, Your Honor, as far as relevance and scope of
24 this hearing. She's reading --

25 THE COURT: Well, the document speaks for itself, Mr.

1 Fitzpatrick.

2 MR. FITZPATRICK: All right, sir.

3 THE COURT: So I don't know whether or not we need to
4 have her read it. It's already been admitted over
5 objection from the State. So maybe we should move on.

6 MR. FITZPATRICK: I will move on, Your Honor.

7 THE COURT: All right.

8 BY MR. FITZPATRICK: [Resuming]

9 Q So you became familiar with this document?

10 A Yes.

11 Q So let's look back at the transcript of the guilty
12 plea. Turn to page 13 where Mr. Ballard says the area where
13 this occurred is dark. There are no lights. Is that accurate?

14 A No.

15 MR. WILSON: Your Honor, once again, I'm going to
16 object to this transcript.

17 THE COURT: Yeah, I'll have to sustain that
18 objection.

19 MR. WILSON: Thank you.

20 BY MR. FITZPATRICK: [Resuming]

21 Q Is there information in the transcript that had you
22 been in court on September the 21st that you would have pointed
23 out to the Court in your victim's statement before the Court
24 imposed sentence?

25 A Yes.

1 Q And is there contradictory evidence stated by Mr.
2 Ballard in the transcript that is contradictory to the police
3 report itself?

4 MR. WILSON: Your Honor, I'm --

5 THE WITNESS: Yes.

6 MR. WILSON: -- I'm going to renew my objection.

7 THE COURT: I sustain the objection. The document
8 speaks for itself, and the transcript is in evidence.

9 MR. FITZPATRICK: Okay.

10 BY MR. FITZPATRICK: [Resuming]

11 Q So let's talk about what you would have said to the
12 Court if you had been present on September the 21st of this
13 year at that court proceeding, if you had been given notice,
14 reasonable notice.

15 A Shall I make my statement now?

16 Q Yes ma'am. You can say whatever you would like to
17 say.

18 A Your Honor, District Attorney Gonzalez, other
19 attorneys, distinguished personnel of the Court, and guests, I
20 would like to take advantage of the opportunity presented to me
21 at this time to speak to this matter. If I may, I would like
22 to crave the Court's indulgence so that I may give some
23 background to the requests being made today.

24 Six hundred and thirteen days ago a little before
25 midnight on a Thursday, a man died in a traffic accident.

1 While that may not seem like earth shattering news -- heaven
2 knows, hundreds, perhaps hundreds of thousands of people die in
3 traffic accidents every year in the United States -- it was
4 noteworthy to me and others for several reasons.

5 First, this was one of only 11 traffic fatalities in
6 Athens-Clarke County in 2022. And when your fatality rate for
7 any category is that low, any deaths deserve notice and
8 examination.

9 Second, the victim was riding a bicycle, which makes
10 this death a concern to the cycling community of Athens-Clarke
11 County which faces very real safety concerns every day and has
12 -- has for over 50 years if not longer.

13 Next, this fatality occurred on what is considered by
14 not only pedestrians, cyclists, and drivers, but those members
15 of the government tasked with making travel in our community
16 safer, one of the most dangerous roads in Clarke County. This
17 is rather graphic proof that major changes need to be made to
18 the whole road, not just the recent changes to the bridge.

19 Finally, for me at least, the most noteworthy thing
20 was that the victim was one of the two most important men in my
21 life. My best friend, my teacher and coach, simultaneously my
22 biggest supporter and strongest reality check, my in-house
23 tailor, mechanic, counselor, support staff in some of my most
24 important jobs, my partner in so many things, my husband of 37
25 years, James Vivean Jones, Jr. In many ways my life ended that

1 night as well.

2 Jim, an experienced caver, rock climber, bicyclist,
3 hiker, and martial artist, had always stressed preparedness for
4 anything in any risky endeavor and that any member of a group
5 should be able to rescue themselves should something happen to
6 the group leader. I discovered that I was completely
7 unprepared for the abrupt and brutal loss of my emotional
8 roadblock and -- bedrock. I'm sorry.

9 I didn't realize it at the time, but I froze, unable
10 to make any significant decisions in anything like a timely
11 fashion even with the help and prodding of my longtime friends.
12 I fled to the comfort of work, to the classroom that in spite
13 of its own special stresses was a refuge where I could feel in
14 control and capable of helping my students acquire the skills
15 they needed to improve their lives even as the rest of my own
16 life was disintegrating in spite of everything I was trying to
17 do.

18 I went from trying to get a mortgage for the house we
19 had been renting for almost 30 years to frantically searching
20 for a new place that I could afford to rent on my salary alone
21 when my landlady accepted a cash offer from the next-door
22 neighbor and I lost the home of my heart.

23 Soon after all of that I reached out to a local
24 lawyer who Jim had known well who specialized in accident cases
25 involving bicyclists and he started working with a lawyer for

1 another firm on filing auto insurance claims. They also
2 examined the photos and evidence from the scene of the accident
3 to prepare an analysis.

4 In April a victim advocate from the Office of the
5 District Attorney reached out to me. After some false starts
6 we had several meetings to discuss my situation and resources
7 that she could connect me with. During those conversations I
8 did ask her to keep me informed about the case's progress, and
9 she said that she would. In June I received an email from her
10 saying that the arraignment for the driver, a man named Luke
11 Waldrop, would be in a week and that I could attend if I
12 wished. I did indeed and took the day off work. Two friends
13 came with me for moral support. We waited several hours
14 without hearing his name called. The advocate, Alice Hayes,
15 got phone calls at several points during the proceedings, and
16 after one of them, came over to me to report that Waldrop had
17 entered a guilty plea the day before and, therefore, would not
18 be appearing in court. She did not seem to know how that would
19 affect the case but said that she would inform me as soon as
20 she heard anything.

21 Over the next few months I was not able to meet with
22 her as often as I wanted because of working, packing up the
23 house to move, and looking for another place to live. We did
24 communicate by email and had some in-person meetings which were
25 mostly centered around discussing possible rental assistance

1 and counseling. During those meetings and in at least one
2 email I did ask her for updates on the case and when it might
3 go to trial. She said at least once that she wasn't sure,
4 especially considering the caseload that the office had and
5 that it would probably be for one to two years before it was
6 put on the court calendar.

7 The last email I received from her was on September
8 30th, although, of course, I did not know it was the last one.
9 And it was a response to an email I had sent her in which I
10 apologized for not answering her email sooner and asking if she
11 had known anything more about the case. Subsequent events to
12 be detailed below took over my attention in the ensuing months.
13 In moments when I had a chance to think about it, I would
14 realize that I had not heard anything from her in some time but
15 I trusted that she would let me know if there were any
16 happenings related to the case. This was a comfort to me in
17 the next few months, as they proved to be a test to put it
18 mildly.

19 The summer following Jim's death would mark the two-
20 year anniversary of my mother's death which had happened in
21 August of 2020 following a slow decline from bipolar disorder
22 into dementia. My father had wrecked his own health trying to
23 take care of her by himself. And as a result of the depression
24 he suffered in the months after, he began having problems with
25 his heart which resulted in the installation of a pacemaker.

1 Continued problems led to a diagnosis of chronic heart failure
2 which meant he now had to follow a strict medication regime not
3 dissimilar to the one he had to make sure my mother followed.

4 In spite of everything, he began taking an interest
5 in life again to the point where he joined my younger sister
6 and her husband on a cross-country western states tour in the
7 fall of 2022. Not long after their return, a fall in his home
8 led to a visit to the emergency room and thence to his
9 admission as his doctors tried to figure out why he had fallen
10 and why he was not improving. A week after his admission a
11 sudden change in his condition prompted them to move him to the
12 ICU. And a few days after that, his condition declined
13 suddenly and he suffered a heart attack which actually stopped
14 his heart. They were able to bring him back to life but not to
15 full consciousness, and they told us he would never survive
16 without the respirator they had had to put him on. My siblings
17 and I agreed that he would not want to live that way. And on
18 October 27th we let the doctors take him off the respirator and
19 sat with him as he slipped away from us, seven months after a
20 drunk driver had torn Jim away from me.

21 I had now lost the two most important men in my life
22 and wanted nothing to do with the world. However, I could not
23 bear to be alone at home with nothing to distract me from my
24 grief and feelings of guilt and what if. What if he had not
25 been called to work that afternoon to cover for a sick co-

1 worker? What if I had gone to get him instead of -- when he
2 got off work instead of letting him ride, which he loved? What
3 if I had realized sooner how late he was and had gone to look
4 for him? What if, what if, what if.

5 Work was a refuge and I threw myself into it,
6 spending 12-hour days on the Athens Tech campus. Jim's sister,
7 who lived nine hours away in Virginia, and I had agreed that I
8 would serve as administrator of his estate. So any spare time
9 I had was devoted to settling his affairs and helping my
10 siblings start on my father's far more complicated financial
11 and real estate situation. My new life was becoming my new
12 normal and the walls between the shattered pile of despair, oh
13 so slowly setting up my new rental home, and the busy coping
14 teacher that I was at work were getting higher.

15 A year and a week after the one-year anniversary of
16 Jim's death I had to euthanize one of our pets because of a
17 spinal tumor that took him from happy, bouncing, inquisitive,
18 loving to wobbling to almost completely paralyzed and
19 incontinent in a matter of three weeks. Needless to say, the
20 walls I was erecting had taken a severe battering.

21 I tell you this -- I tell you all these details not
22 to play on your sympathy or to try to feel sorry for me. I'm
23 still here, after all. I don't know how many people would
24 still be here under these circumstances. I tell you this so
25 that you understand how desperately I needed to believe that

1 after all that trauma crashing into my life every six to seven
2 months like defective clockwork that there would be some kind
3 of justice for Jim. His killer had pled guilty after all or at
4 least that was my understanding. Surely all that remained was
5 deciding how much time he would serve and where. I did not
6 expect to hear from the D.A.'s Office soon. I had been told
7 after all by my victim advocate that their office was very busy
8 working multiple cases and it might be two years or more before
9 his case was even put on a court calendar much less brought
10 before a judge but she would keep me informed. She had sent me
11 notice about the arraignment after all in time for me to get
12 away from campus and attend. Surely she would inform me when
13 the sentencing would happen, and I could see the man who had
14 killed Jim and know that he would serve time. In retrospect
15 this was probably hopelessly naive, but you tell yourself what
16 you need to to get through the day, especially when you're not
17 sure why you even bother.

18 The morning of September 21st my phone rang during
19 the first class of the day. We have already talked about that.
20 There had been no word from the office for almost a year for
21 either me or his sister. Nothing. Not a voicemail, not an
22 email, not a text, not even a call and hang up. There was no
23 chance to express my thoughts on the deal and say how much I
24 did not agree to the terms. Not even a notice that a deal had
25 been made and what the terms were. Neither of us, myself his

1 wife, or Jim's sister who was close to his age were given a
2 reasonable opportunity to appear in the hearing and express our
3 objections in person.

4 So why am I bringing this motion? I have already
5 told people that I don't expect justice for Jim anymore. The
6 verdict has been rendered. However, I want my chance to
7 present his side and my side of the case, a chance he never got
8 and what I want to do now. When you read the description in
9 the papers, a 67-year-old security guard riding his bicycle
10 home after work, I know what most people imagine. A creaky old
11 geezer wobbling down the side of the road on a junker bike
12 getting in people's way and taking up space on a road he has no
13 business being on. Nothing could have been further from the
14 truth. This was a man who was still vibrant, still vital,
15 still with the glazing, rapacious curiosity that he had all his
16 life about the world, the intellect, and huge appetite for
17 knowledge, the intellect that impressed university professors
18 and his friends, some of whom said that he changed their lives
19 through the course of their discussions. He was still vital,
20 still active, planning to ride the Continental Divide trail
21 after -- when he had a chance.

22 I am still in shock that this force of life, of
23 intellect, of whatever you care to name it is gone as the
24 result not of a health issue like my father or my mother, not
25 as a result of what I always expected to happen to him, an

1 accident or a failure of a rock face as he was climbing up it.
2 No, it was the result of a drunk driver not paying attention to
3 what he was doing.

4 I was promised that I would be informed of what
5 happened in the course of these events. I never -- after
6 September 30th, I was not. I don't know why. I've never
7 received a satisfactory explanation for that. And the answers
8 I got in response to my questions, there were nine of them,
9 were not satisfactory. I am outraged by what happened. I am
10 still outraged. My hope is that no one, not even my -- I won't
11 say my worst enemy -- but not even someone that I truly dislike
12 should ever, ever have to go through what I have been through
13 over the last 613 days.

14 And I apologize for going overtime, but it had to be
15 said.

16 Q And if I may, I need to ask just a few more
17 questions.

18 A That's fine.

19 Q When you and Jim began your relationship in 1985,
20 were you both of sound mind?

21 A Yes.

22 Q Did either of you have a living spouse of a previous
23 undissolved marriage?

24 A No.

25 Q Were y'all related to each other by blood or marriage

1 within the prohibited degree of third cousins?

2 A No.

3 Q And did you in fact enter into an oral marriage
4 contract where you considered yourself husband and wife?

5 A Yes.

6 MR. FITZPATRICK: Your Honor, that's all the
7 questions I have of this witness.

8 THE COURT: Cross-examination, Mr. Wilson?

9 MR. WILSON: Your Honor, may I have about a five-
10 minute break?

11 THE COURT: All right. We'll take a five-minute
12 recess.

13 [Brief recess is taken.]

14 THE COURT: All right. So, Ms. Wilson, if you'll
15 please resume the witness stand.

16 MR. FITZPATRICK: Your Honor, I'd like to --

17 THE COURT: Where is Ms. Wilson?

18 MR. FITZPATRICK: -- impose an objection to cross-
19 examination. O.C.G.A. §17-17-15 at (c)(3) simply says if
20 the court conducts a hearing, the prosecuting attorney and
21 the defendant shall have a right to be present at such
22 hearing. And that's the extent of the legislature's
23 ruling -- not ruling, but content on this matter.

24 THE COURT: Right.

25 MR. FITZPATRICK: I just object that the prosecuting

1 attorney has no right to cross-examination.

2 THE COURT: Well, I think they're entitled to due
3 process at the very least. So I'll allow it.

4 MR. FITZPATRICK: Thank you.

5 THE COURT: You may cross-examine the witness.

6 MR. WILSON: Thank you, Your Honor.

7

8 CROSS-EXAMINATION

9

10 BY MR. WILSON:

11 Q Ms. Wilson --

12 A Yes.

13 Q -- did you -- did you receive an insurance settlement
14 in regards to this case?

15 A Auto insurance.

16 Q From whom?

17 A Both my auto insurance company and his, which
18 happened to be the same company.

19 THE COURT: When you say his, you're talking about --

20 THE WITNESS: Jim Jones'.

21 THE COURT: Okay.

22 THE WITNESS: No. Luke Waldrop's. Sorry.

23 BY MR. WILSON: [Resuming]

24 Q Did you receive the proceeds from that settlement?

25 A Yes, I did. But I'm not -- I did not -- this was

1 done at the urging of the lawyers who worked with me on the
2 claims.

3 Q Did you ever explain to anyone in the D.A.'s office
4 that you were a domestic partner, not a -- not married?

5 A No one ever asked.

6 Q Did you --

7 MR. WILSON: Excuse me just for a moment.

8 BY MR. WILSON: [Resuming]

9 Q Did you receive life insurance proceeds from him?

10 A That was a tale.

11 Q I'm sorry?

12 A The short answer is no.

13 Q Do you know why not?

14 A Because the company that he worked for lost his
15 application to have me named the beneficiary. He could have
16 named anyone a beneficiary.

17 Q Do you know who was -- who they -- who they were paid
18 to?

19 A As far as I know, there were no life insurance
20 benefits paid to anyone.

21 Q Not his sister?

22 A No.

23 Q Okay.

24 MR. WILSON: Nothing further, Your Honor.

25 THE COURT: All right. Redirect?

1 MR. FITZPATRICK: Your Honor, I have one question --

2 THE COURT: Go right ahead.

3 MR. FITZPATRICK: -- one question on redirect. Well,
4 more than one question. I'm sorry.

5 THE COURT: That's all right. Go ahead.

6

7

REDIRECT EXAMINATION

8

9 BY MR. FITZPATRICK:

10 Q Did Jim -- did Jim wear sunglasses when he was riding
11 a bicycle at night?

12 A He wore what are known -- if he felt he needed to
13 protect his eyes, he wore what are known as transitions lenses.
14 These lighten in low light conditions so that you can see and
15 darken in bright conditions. I do not -- they would have been
16 irrelevant in this accident because he was struck from behind.

17 Q Well, did you find any sunglasses when you went to
18 the scene the next day?

19 A No.

20 Q Have you seen any sunglasses since then?

21 A No.

22 Q Has anyone told you Jim was wearing sunglasses?

23 A No.

24 MR. FITZPATRICK: Thank you, ma'am. That's all the
25 questions I have.

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THE COURT: Recross?

MR. WILSON: No, Your Honor.

THE COURT: All right. May the witness be excused?

MR. EPPS: Be excused but remain in the courtroom,
Your Honor.

THE COURT: Any objection to her being excused?

MR. WILSON: No, Your Honor.

THE COURT: All right. You're free to go or stay,
whatever you wish to do.

THE WITNESS: Thank you.

THE COURT: All right. You may call your next
witness.

MR. EPPS: Call Alice Hayes to the stand, Your Honor.
She's back in --

MR. WILSON: Your Honor, before we get started on Ms.
Hayes --

THE COURT: Yes.

MR. WILSON: -- I would state, Your Honor, for the
record that I think whatever we've done here complies with
the standards of a hearing that is afforded to a crime
victim under Marsy's Law. Even assuming arguendo that she
is the spouse, she's had her chance to talk to the Court.
She's had her chance to state to the Court what her
opinions were, how she was upset with the matter, and that
is what the law affords her the right to do, assuming she

1 is a victim. And so that's been done, Your Honor. So
2 there's really -- I don't -- I don't see any need at all
3 to continue to have this hearing.

4 THE COURT: Well, I mean, are you conceding there was
5 a violation of Marsy's Law, Mr. Wilson?

6 MR. WILSON: No, Your Honor.

7 THE COURT: Because it's the burden of proof of the
8 person that filed the complaint and you can't limit the
9 number of witnesses for them to call if that's what
10 they're trying to establish unless you're conceding it.

11 MR. WILSON: Well, we're not conceding it, Your
12 Honor.

13 THE COURT: Okay.

14 MR. WILSON: But I just --

15 THE COURT: Right.

16 MR. WILSON: The statute points out what happens
17 during the hearing and that's already -- that's already
18 happened.

19 THE COURT: Right. Well, but, I mean, the petitioner
20 has filed the petition and they get to call the witnesses
21 they need to call in an attempt to establish a violation
22 is my reading of the law. So I'm not going to limit the
23 number of witnesses as long as they have relevant
24 information to present. So I'll overrule your objection.

25 MR. WILSON: Yes sir.

1 THE COURT: Call your next witness.

2 MR. EPPS: Thank you, Your Honor. We call Alice
3 Hayes to the stand.

4 THE COURT: All right. If you'll raise your right
5 hand, please, to take an oath.

6 [Witness is sworn by the Court.]

7 THE COURT: Okay. Please have a seat. Are y'all --

8 MR. FITZPATRICK: Your Honor, these were two
9 potential witnesses. We're not going to call them.

10 THE COURT: Yeah, so why don't you -- I don't want
11 them just sitting in the jury box.

12 MR. FITZPATRICK: I'm sorry. I didn't want to
13 interrupt.

14 THE COURT: Just sit out there in the gallery with
15 everybody else, please. Thank you.

16 Could you please spell your name.

17 THE WITNESS: Yes. It's Alice Hayes. A-L-I-C-E, H-
18 A-Y-E-S.

19 THE COURT: All right.

20

21 ALICE HAYES

22

23 Called as a witness by the Movant, having first been duly
24 sworn, is examined and testifies as follows:

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DIRECT EXAMINATION

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BY MR. EPPS:

Q Good morning, Alice.

A Morning.

Q Were you previously employed by the District Attorney's Office of the Western Circuit?

A Yes, I was.

Q And what position did you hold there?

A I was a victim advocate.

Q And as part of your victim advocate duties, were you assigned to various cases within the District Attorney's Office?

A Yes, I was.

Q Was one of the cases that you were assigned to handle was the victim in the Luke Harrison Waldrop case?

A Yes, it was.

Q And as part of those duties, did you speak with the victim throughout the process that you were employed with the District Attorney's Office?

A Yes, I did.

Q And you were the initial victim advocate on this case?

A Yes, that's right.

Q And when did you stop becoming the victim advocate in

1 this case?

2 A July 2023.

3 Q And did you receive -- did you have specific training
4 as a victim advocate in this case?

5 A I did, yes.

6 Q Well, I shouldn't say in this case, but as a victim
7 advocate?

8 A Yes, I did.

9 Q What was that training you received?

10 A All victim advocates received a -- I believe it's a
11 40-hour training online offered through the Office of Victim
12 Service Technical Assistance and Training, OVC TTAC. In
13 addition to that, there would be one-off trainings on
14 additional victim advocacy topics as and when scheduling
15 allowed. There were also yearly trainings on -- you know, I
16 think there was a civil rights training that had to be
17 completed every year. A GCIC training, I believe, had to be
18 completed yearly.

19 Q And when you originally start out with a case where
20 there is a victim involved in that case, as part of the
21 procedure of the District Attorney's Office is a letter sent to
22 the victim explaining their rights and what they could do as a
23 victim in the case?

24 A Yes. We send out a -- I'm sorry, I'm still kind of
25 in the habit of saying we. They send out a -- what we kind of

1 refer to as an initial contact packet. Contains a cover
2 letter, along with forms, including victim impact statement,
3 restitution form.

4 Q Is it a common practice of the District Attorney's
5 Office to send these letters to people who are not victims of
6 crimes?

7 A I mean, we send them to victims in cases.

8 Q Let me show you what's been -- what I've marked as M-
9 6. Do you recognize that document?

10 A I do.

11 Q What is that document?

12 A This is what I referred to as the cover letter that
13 goes with the initial contact packet. It's a letter to Susan
14 Wilson letting her know, you know, that I'm the victim advocate
15 in the case, letting her know kind of what's enclosed, giving
16 an overview of her rights as a victim.

17 Q And was that letter sent on April 15th of 2022?

18 A Yes, it was.

19 Q Is it identifying Susan Wilson as the victim in this
20 case?

21 A Yes.

22 MR. EPPS: Your Honor, we would tender M-6 into
23 evidence.

24 THE COURT: Any objection, Mr. Wilson?

25 MR. WILSON: To the letter that she mailed out, I

1 assume?

2 THE COURT: M-6 I believe it's numbered.

3 MR. WILSON: May I see it just for --

4 MR. EPPS: I gave you a copy of it.

5 MR. WILSON: It's this one?

6 MR. EPPS: Yes sir.

7 MR. WILSON: Okay. No, Your Honor.

8 THE COURT: All right. It's admitted without
9 objection. Would you put a sticker on that, please. I
10 want you to get the court reporter's exhibit stickers on
11 each of your exhibits, please.

12 MR. EPPS: Sure, Your Honor.

13 BY MR. EPPS: [Resuming]

14 Q Ms. Hayes, did you have an opportunity to discuss
15 with Ms. Wilson whether or not she was the spouse of the
16 ultimate deceased in this case?

17 A Yes.

18 Q Did you hold her to be the spouse of the victim, the
19 deceased, in this case?

20 A Yes, I did.

21 Q Did you have any reason ever to doubt that she was
22 the spouse of the deceased of this case?

23 A No. I mean, when we spoke she referred to the
24 deceased as her husband.

25 Q As part of your duties -- as part of your duties as

1 victim advocate do you use a system inside the District
2 Attorney's Office called Tracker?

3 A Yes.

4 Q And as part of Tracker do you put information in
5 there so that the entire office is aware of the case?

6 A Yes, we do.

7 Q And when you were the victim advocate in this case,
8 did you update Tracker with any communication that you had with
9 the deceased's spouse, Ms. Wilson?

10 A Yes, I did.

11 Q And did you have constant contact with her via text
12 message, emails, and phone calls throughout the process?

13 A I did. There was a period of time where
14 communication kind of, I guess, dropped off the radar which I
15 -- do I need to elaborate or --

16 Q Let me show you what's been marked as M-7.

17 A Thank you.

18 Q Give you an opportunity to look at that.

19 A Okay.

20 Q And let me just ask you does this appear to be the
21 Tracker notes for the system involving Mr. Waldrop's case?

22 A Yes, that's what this is.

23 MR. EPPS: Your Honor, we would tender M-7 into
24 evidence.

25 THE COURT: Any objection, sir, Mr. Wilson?

1 MR. WILSON: No, Your Honor. No, Your Honor. I'm
2 sorry.

3 THE COURT: Admitted.

4 BY MR. EPPS: [Resuming]

5 Q If you'll flip with me to page 17 of that exhibit.
6 Let me know when you're there.

7 A Okay.

8 Q And you see there Victim Services note for Susan
9 Wilson? Bottom of the page.

10 A I'm so sorry. I'm looking at the wrong page. I'm
11 sorry. Yes, I do.

12 Q Were those entered by you on 4/15 of 2022 at 4:57
13 p.m.?

14 A Yes, they were.

15 Q And is that where you returned the victim's call, you
16 introduced yourself and confirmed Ms. Wilson's relationship to
17 James Jones and they were partners for 37 years?

18 A Yes.

19 Q Partners.

20 A Yes.

21 Q I notice an accent, Ms. Hayes.

22 A Yes.

23 Q Are you English?

24 A Yes, I am.

25 Q When you use the term partners in your notes, what

1 are -- is that sort of an English thing?

2 A It is. We just -- you know, it's a distinction. It
3 implies a more serious relationship than like
4 boyfriend/girlfriend. It's a fairly common usage.

5 Q Did you -- did you intend when you put partners in
6 there to somehow say that Ms. Wilson was not the spouse of the
7 deceased?

8 A No.

9 Q Did anyone while you were victim advocate, Ms.
10 Gonzalez, Mr. Wilson, anyone, come to you during your tenure as
11 victim advocate and question the relationship between Ms.
12 Wilson and the deceased?

13 A No, they did not.

14 Q In your tenure as victim advocate are you familiar
15 with Marsy's Law?

16 A Yes, I am.

17 Q Are you familiar with the requirement that reasonable
18 notice be given to any victim?

19 A Yes.

20 Q And as the spouse of the deceased, does Ms. Wilson
21 stand in the position of the victim for Marsy's Law purposes?

22 A Yes.

23 Q And do you -- in your opinion, under Marsy's Law and
24 as a victim advocate, if the District Attorney's Office has not
25 made direct contact with a victim prior to a plea, what are you

1 supposed to do?

2 A In those situations before a victim advocate -- so
3 myself or, you know, when it's happened in other cases -- has
4 asked the ADA for a continuance and let the ADA know we have a
5 victim that they might want to be here, they might not, we
6 haven't been able to make direct contact with them to confirm.
7 And I've seen continuances granted for that reason.

8 Q When you talked to Susan -- Ms. Wilson -- did she
9 refer to James as her husband?

10 A Yes.

11 Q As a victim advocate of the District Attorney's
12 Office, were you known to ask a lot of questions inside the
13 office?

14 A Yes, I was.

15 Q Would you at one point go on to your supervisor and
16 confirm whether or not Susan should be contacted as a victim in
17 this case?

18 A If I'd had any doubt, then yes, I would have done --

19 Q Did you ever have any doubt?

20 A Not that I can recall.

21 Q Ms. Hayes, as a former victim advocate of the
22 District Attorney's office of the Western Circuit, do you want
23 to tell the Court as it relates to Marsy's Law as to any
24 trouble that you've seen as it relates to victims and the
25 contact and any violations of Marsy's Law?

1 MR. WILSON: Your Honor, I object to the question.

2 This is not what this hearing is about.

3 THE COURT: I sustain the objection.

4 BY MR. EPPS: [Resuming]

5 Q Is there any -- let me ask this question. Let me ask
6 it this way. You handled this case as a victim advocate for
7 how long, Ms. Hayes?

8 A It would have been from -- I mean, from when the case
9 came to our office.

10 Q Yes.

11 A I could probably tell you exact notes if I can refer
12 --

13 Q Sure.

14 A -- sorry -- exact dates if I can refer to these
15 notes. So the first note I see here -- I don't know if this is
16 all of the notes. I no longer have access to Tracker. So I'm
17 just relying on what's in front of me. The first note I see
18 here, I see a date of March 9th, 2022 is when the case was
19 imported from CCH. So I would have been the victim advocate
20 from then up until my last day in the office.

21 Q Does that indicate your last entry in Tracker for the
22 office?

23 A Yes. Let's see. My last entry was November --
24 sorry, not November -- September 30th, 2022.

25 Q When was the next entry for the victim advocate of

1 the case?

2 A September 21, 2023.

3 Q And if a plea is negotiated prior to a plea calendar
4 before Judge Stephens, and the day before or the day of a
5 victim is contacted by the D.A.'s office, is that reasonable
6 notice under Marsy's Law?

7 MR. WILSON: Your Honor, I -- I object.

8 THE COURT: I sustain the objection to the question.

9 BY MR. EPPS: [Resuming]

10 Q Would you have advised a continuance?

11 A Yes, I would have done --

12 MR. EPPS: No further questions, Your Honor.

13 THE COURT: Cross-examination, Mr. Wilson.

14 MR. WILSON: Thank you.

15

16 CROSS-EXAMINATION

17

18 BY MR. WILSON:

19 Q Ms. Hayes, when you make notes it's -- I mean, you
20 can agree it's very important to be very accurate about what
21 you put into a record; correct?

22 A Yes.

23 Q And you -- I'm going to draw your attention to, I
24 think it is the same thing as 17 -- page 17 of 18.

25 A Okay.

1 Q Thank you. And you said partners. You used partners
2 in reference to your understanding of the relationship between
3 Ms. Wilson and Mr. Jones. That has a specific meaning;
4 wouldn't you agree?

5 A I mean, again, to me it's -- you know, it's a
6 Britishism. For lack of better word, a Britishism.

7 Q It's a Britishism?

8 A Yeah. That's not a word.

9 Q Which means what?

10 A Just a term in British English that's used. Maybe
11 not as common over here.

12 Q What does that mean to you? Is that the same as
13 being married?

14 A Not necessarily.

15 Q Okay.

16 A But to me it means -- again, you know, as I said
17 earlier, it means -- you know, it's a -- it's a serious
18 relationship; whereas, boyfriend/girlfriend, they could have
19 been dating a day or they could have been dating a year, you
20 know.

21 Q Sure. Sure. But a serious relationship is not a
22 marriage; correct?

23 A Not necessarily.

24 Q Okay. And it's important -- you agree that it's
25 important to be very accurate in those notes; correct?

1 A Yes.

2 Q So if she was in fact a -- if she was in fact
3 married, you would have put that in the notes; correct? You
4 would not have referred to her as a partner. You would have
5 referred to her as his spouse; correct?

6 A Yes, I would have.

7 Q Okay. And you put notes down -- you had -- you had
8 several conversations with Ms. Wilson; correct?

9 A Yes.

10 Q And you put notes down about a -- I'm going to draw
11 your attention to page 8 of 18.

12 A Okay. Okay.

13 Q I'm going to -- and this was a victim's -- this was
14 actually an in-person meeting that you had with Ms. Wilson;
15 correct?

16 A Can I review the notes real quick just to check?

17 Q Absolutely.

18 A Okay. Yes, it was an in-person meeting.

19 Q And that occurred on the 10th day of August of 2022;
20 correct?

21 A Yes.

22 Q And your notes state that -- that you mentioned that
23 the sister got the insurance settlement.

24 MR. EPPS: Your Honor, I'm going to object. And I
25 think what Mr. Fitzpatrick --

1 THE COURT: On what grounds?

2 MR. EPPS: Sure. It's under §17-17-15. And I'll
3 tell you why, Judge -- as procedurally why this cross-
4 examination is a problem within these proceedings, because
5 what he's going to ask is he's intentionally trying to
6 impeach the victim. Under §17-17-15(6), if you take a
7 look at this, Judge, it says when the victim's motion
8 alleges potential failure by the prosecuting attorney, the
9 prosecuting attorney may recuse in accordance with
10 O.C.G.A. §15-8-5 and §15-8-65 as applicable. When the
11 victim's motion alleges potential failure by the Court,
12 which we're not doing, the judge may recuse himself.

13 Now, the District Attorney's Office is directly
14 adversarial to the victim. I could understand the Court
15 giving them due process as it relates to whether or not
16 there's a common law marriage. But, Judge, you've got --
17 you've got a situation -- I want to professionally and
18 ethically think about this, and this is why in previous
19 Marsy's Law proceedings they did not cross-examine, they
20 acknowledged that they were not supposed to cross-examine,
21 and that's what the statute and the legislature intended.
22 Now, you've got a situation where ethically Mr. Wilson and
23 Ms. Gonzalez is challenging the very victim they
24 represented.

25 THE COURT: Well, the document is a document that you

1 put in evidence.

2 MR. EPPS: One hundred and ten percent, Judge.

3 THE COURT: So it seems like to me that they would
4 have the opportunity to cross-examine the witness on a
5 document that you put in evidence.

6 MR. EPPS: It's not the nature of -- Judge Stephens,
7 it's not the nature of what the document is. It's the
8 nature of what they're doing. Judge Stephens, if I
9 represented someone, right, if I am the attorney and
10 professionally and ethically I represent someone and I
11 turn around later in that proceeding and I start cross-
12 examining witnesses and the individual as to that client,
13 as to that person, you would look at me and say, Mr. Epps,
14 are you now at this point placing yourself in an
15 adversarial position of the very person you represented?
16 And they're doing that, Judge Stephens. And that's why it
17 said they have the right to be present. It does not say
18 that they have the right to participate. And I come back
19 to this, Judge Stephens. This office in previous Marsy's
20 Law hearings have acknowledged that and now they're
21 standing up and cross-examining these folks.

22 It's a -- they're placing themselves in a Marsy's Law
23 violation again. Because think about this. If you go
24 back to what -- §17-7-1 states that the declaration of the
25 policy -- if you state under O.C.G.A. §17-7-1 that the

1 policy of Marsy's Law states that the victim has a right
2 to be treated fairly and with dignity by all criminal
3 justice agencies involved in the case. Criminal justice
4 agencies is defined their office. Can they stand up with
5 a straight face and say by trying to impeach the woman who
6 lost her husband and by cross-examining these folks that
7 they are treating her with the integrity and dignity that
8 their office is required to do? And you can't. That's
9 why they are able to participate but not cross-examine,
10 Judge.

11 THE COURT: Hold on a second. Let me see -- I'm
12 going to look at Title 15.

13 All right. Do you want to be heard, Mr. Wilson?

14 MR. WILSON: Your Honor, this is -- yeah. Yes, of
15 course I do. Thank you, Your Honor. This is not -- to
16 characterize this as impeaching of a witness, Your Honor
17 -- I think the main question is -- and maybe we haven't
18 had those in the past -- is is Ms. Wilson a victim
19 according to --

20 THE COURT: All right. So you're asking her a
21 question of -- for that one -- to support your motion to
22 dismiss.

23 MR. WILSON: Right, that she does --

24 THE COURT: Yeah.

25 MR. WILSON: Yeah. I mean, and that's where it's --

1 that's where it is, Your Honor.

2 THE COURT: Okay. I'll allow the question for that

3 --

4 MR. WILSON: Thank you.

5 THE COURT: -- for that limited purpose.

6 MR. WILSON: Thank you.

7 BY MR. WILSON: [Resuming]

8 Q You put a note in regarding insurance; correct?

9 A On that same page 8. 8 of 18?

10 Q Yes.

11 A Yes, I think I did see that.

12 Q And you put a note in that she did not receive a
13 settlement but that the sister was going to share some money
14 with her; correct?

15 A Yes, I do see that.

16 Q So the sister received insurance money from the death
17 of Mr. Jones?

18 MR. EPPS: Objection. Relevance. It --

19 THE COURT: I sustain the objection to that question.

20 MR. EPPS: Thank you.

21 THE COURT: The document speaks for itself. And so
22 anyway, the question is improper. So I'll sustain the
23 objection by Mr. Epps.

24 MR. WILSON: Yes sir. May I just have just one
25 moment, Your Honor? I apologize.

1 THE COURT: Yes sir. Of course.

2 BY MR. WILSON: [Resuming]

3 Q Did you always contact the victim on this case?

4 A Sorry. Are you asking like did somebody else contact
5 the victim instead of me or --

6 Q Well, when you were there --

7 MR. EPPS: Objection. Relevance.

8 THE COURT: What was the question? If you'll let him
9 finish the question. What are -- what are you asking her,
10 Mr. Wilson?

11 MR. WILSON: Thank you, Your Honor. I'm asking her
12 if she was always the person that always contacted the
13 victim, Ms. Wilson, in this case.

14 THE COURT: Are you asking her if she was the only --

15 MR. WILSON: Yes.

16 THE COURT: -- victim advocate assigned to Ms.
17 Wilson?

18 MR. WILSON: No. No. If she was the only one that
19 contacted her.

20 THE COURT: Okay. Do you know the answer to that
21 question?

22 THE WITNESS: As far as I know, I was.

23 MR. WILSON: Okay.

24 THE WITNESS: If I could look over the notes quickly,
25 I can check and see if anyone else is on there, up until I

1 left the office, I mean.

2 BY MR. WILSON: [Resuming]

3 Q Could you please do that.

4 A Yeah, sure. So unless I'm overlooking something --
5 and, of course, again, I don't have access to Tracker, I don't
6 know if this is all of the notes from Tracker or just a portion
7 of them.

8 Q So I guess the answer would be I don't -- I'm not
9 really sure.

10 A I apologize. There is -- I see one incident where
11 another victim advocate contacted Ms. Wilson and that was
12 regarding crime victim's compensation because we had a -- at
13 the time we had an advocate who was -- that was their role was
14 crime victim's compensation. But other than that, until I left
15 the office, I was the victim advocate who was in contact.

16 Q Thank you.

17 A You're welcome.

18 MR. WILSON: Nothing further.

19 MR. EPPS: No further questions, Your Honor.

20 THE COURT: All right. May the --

21 MR. EPPS: We'd ask that the witness be excused.

22 THE COURT: Any objection?

23 MR. WILSON: No, Your Honor.

24 THE COURT: All right. You're free to go. Thank
25 you.

1 THE WITNESS: Thank you. Do I leave this here?

2 THE COURT: Call your next witness.

3 MR. EPPS: I call Ms. Deborah Gonzalez to the stand.

4 THE COURT: All right. Come on up. Will you help
5 her? Could you give her some assistance, please, Ms.
6 Dillard?

7 BAILIFF: Oh, yes sir.

8 THE COURT: Thank you. All right. If you'll please
9 raise your right hand.

10 [Witness is sworn by the Court.]

11 THE COURT: All right. If you'll state your name and
12 spell it for the court reporter.

13 THE WITNESS: Yes. Deborah Gonzalez. D-E-B-O-R-A-H,
14 G-O-N-Z-A-L-E-Z.

15 THE COURT: Thank you.

16

17 DEBORAH GONZALEZ

18

19 Called as a witness by the Movant, having first been duly
20 sworn, is examined and testifies as follows:

21

22 CROSS-EXAMINATION

23

24 BY MR. EPPS:

25 Q Ms. Gonzalez, as you know, my name is Kevin Epps.

1 And I represent the victim and the spouse of the deceased in
2 this case. You are the sitting District Attorney of the
3 Western Circuit?

4 A Yes.

5 Q And as part of your duties as District Attorney, you
6 represent the victims in this case -- in cases?

7 A Yes, that's what the office does.

8 Q You also have victim advocates that serve in that
9 role to advocate for victims; is that right?

10 A Yes, we do.

11 Q And prior to coming to this hearing today have you
12 reviewed the file of State of Georgia versus Luke Harrison
13 Waldrop?

14 A Not the entire file.

15 Q When you say not the entire file, what have you
16 reviewed?

17 A I reviewed the victim contacts on Tracker and the
18 basic information on Tracker because this was to be a hearing
19 on Marsy's Law.

20 Q Well, on 9/21/2023, you -- have you reviewed the --
21 let me back up. Strike that. Have you reviewed the transcript
22 of the plea hearing in front of Judge Stephens?

23 A Yes.

24 Q And you were present that day for the plea hearing;
25 is that correct?

1 A Yes.

2 Q And in fact, Judge Stephens asked specific questions
3 about victim contact as it relates to this case and you
4 responded to those questions; did you not?

5 A I did.

6 Q What knowledge did you have prior to entering into
7 this plea of victim contact?

8 MR. WILSON: Your Honor, I -- I -- I do object to the
9 leading nature of these questions. They've all been
10 leading and I think they need to be a little more --

11 MR. EPPS: I should've said that I'm calling her for
12 the purposes of cross-examination, Your Honor, but in this
13 Marsy's Law hearing --

14 THE COURT: I'll allow the question.

15 MR. EPPS: Thank you.

16 THE COURT: Go ahead.

17 BY MR. EPPS: [Resuming]

18 Q What did you go -- because I got your response to
19 your subpoena, all right, all emails and contacts and text
20 messages and everything and I've been through it for this
21 hearing. What did you do prior to stepping in front of Judge
22 Stephens to know about victim contact in this case?

23 A I asked my victim advocates if victims had been
24 contacted.

25 Q Who did you ask?

1 A I asked Simona Arroyo, who is the victim advocate,
2 and also Lynn Bradberry who is a victim advocate. She's now
3 the interim director.

4 Q Okay. And what did you ask them?

5 A I asked were the victims contacted, were they given
6 the information about the plea.

7 Q You said something very important right there. You
8 said victims, plural; right?

9 A Yes, because some cases have multiple victims. So I
10 say victim or victims. They could have multiple ones.

11 Q Right.

12 A I just ask in general, have you contacted the
13 victims. We had multiple cases that day.

14 Q Now, you have filed a response to the motion for
15 Marsy's Law personally, haven't you?

16 A Yes. In response to the motion for the violation
17 that you made.

18 Q Okay. I'm going to show you what's been marked as M-
19 8.

20 A Thank you.

21 Q Is that your response?

22 A Yes, it is.

23 MR. EPPS: Your Honor, we would tender M-8 into
24 evidence.

25 THE COURT: Any objection?

1 MR. WILSON: I think it's already been filed, Your
2 Honor, so no objection.

3 THE COURT: Is that the -- what's filed with the
4 clerk?

5 THE WITNESS: Yes.

6 THE COURT: Okay. I'll admit it.

7 BY MR. EPPS: [Resuming]

8 Q So as part of your response, you are challenging that
9 Ms. Wilson was the spouse of Jim; is that right?

10 A I'm challenging that Ms. Wilson has status for the
11 Marsy's Law under whether she is a spouse or not.

12 Q What evidence do you have that she was not the
13 spouse?

14 A Everything that we saw in Tracker and our
15 conversations have been that she was a partner, that she did
16 not hold herself out as a spouse. When I received this, I also
17 went in to see if Georgia was -- how they viewed these kinds,
18 and it said that Georgia was not a common law marriage state.
19 And then I asked, you know, what were the factors. It did say
20 something about grandfathering them in, but one of the factors
21 was that they had to hold themselves out as husband and wife.
22 And when I looked at the Tracker notes, what was there was --
23 and you had it in the other exhibit -- that Alice had put in
24 that they were partners is the way that they did that.

25 Q Did you ever contact Alice Hayes to say what she

1 meant by partners?

2 A No, I did not. She was not working at the office
3 anymore.

4 Q Did anyone in your office contact Alice Hayes to see
5 what she meant by partners?

6 A No. Again, she was no longer working at the office.

7 Q But you had the ability to contact her, Ms. Gonzalez?

8 A I don't have her information.

9 Q Show you what's been marked as M-9 as a part of your
10 subpoena production. Do you recognize this document?

11 A Yes.

12 Q Is this an email between you and Lynn Bradberry?

13 A Yes, it is.

14 MR. EPPS: Your Honor, we would tender M-9 into
15 evidence.

16 THE COURT: Any objection?

17 MR. WILSON: No, Your Honor.

18 THE COURT: Admitted.

19 BY MR. EPPS: [Resuming]

20 Q And Lynn Bradberry is your interim director of victim
21 advocacy?

22 A Yes, she is.

23 Q And in this on October 30th, after the Marsy's Law
24 violation was filed, you wrote good morning, Lynn. Can you
25 please send me the statute where a victim is defined that

1 you're relying on that Susan Wilson is not a victim? She is
2 listed as a spouse in the Marsy's Law violation. And she gave
3 you that statute?

4 A Yes, she did.

5 Q So it was Lynn Bradberry who first brought to your
6 attention the issue of whether or not she was a spouse?

7 A I don't remember if it was Lynn or if we had further
8 conversations prior to this. But I know that this was part of
9 when I was looking at how is a victim defined. I had also
10 asked her, since she is the interim director, what was the code
11 or how she was defining it. So I was asking for information.

12 Q And you looked at the statute?

13 A I did.

14 Q All right. Show you what's been marked as M-10. And
15 this is again an email exchange that you gave me pursuant to
16 the -- to your subpoena. Do you recognize this email exchange
17 between you and Ms. Arroyo?

18 A Yes.

19 Q Robert Wilson. Lynn Bradberry. Do you recognize
20 this exchange?

21 A Yes.

22 Q And this is regarding the Marsy's Law?

23 A Yes.

24 MR. EPPS: Your Honor, we would tender M-10 into
25 evidence.

1 THE COURT: Any objection?

2 MR. WILSON: No, Your Honor.

3 THE COURT: Admitted.

4 BY MR. EPPS: [Resuming]

5 Q So as you already know, Ms. Wilson wrote nine
6 questions to the victim advocate regarding this case; you know
7 about that?

8 A Yes.

9 Q And you ultimately responded to those nine questions
10 via email; right?

11 A Yes, I did.

12 Q But based on this email exchange, Lynn Bradberry
13 wrote the responses to all of those questions; not you?

14 A She gave me the first draft of the questions as we --
15 and then I sent them.

16 Q You -- did you change them at all?

17 A You know, I can't remember right now, you know, if I
18 changed any particular thing. I probably made sure things
19 maybe were -- were best. But she is the interim director of
20 victim services and so I thought she would have answers that I
21 didn't have.

22 Q Okay. Can you flip back with me to the second to
23 last page of that exhibit for Simona Arroyo, the email to you?

24 A Yes.

25 Q Do you see question nine that was written by Susan

1 Wilson, is there anything that victim survivors can do to
2 reject or protest the judgment?

3 A Yes.

4 Q Do you see that question?

5 A Yes.

6 Q All right. So just so that we're clear about your
7 response, is that your response to her is on -- if you'll flip
8 with me, one, two, three, four pages into that exhibit,
9 question nine.

10 A Yes.

11 Q You wrote victims have the right to be heard which
12 did happen because we informed the Court on the record of the
13 victim's wishes for jail time. However, the ultimate
14 prosecutorial decision on what happened with the criminal case
15 is in the discretion of the District Attorney. Did I read that
16 correctly?

17 A Yes.

18 Q So when you wrote that response, you did not question
19 Ms. Wilson as being a victim in this case, did you, Ms.
20 Gonzalez?

21 A I don't think it -- it states anything here whether I
22 was making an assumption of whether she was a victim or not.

23 Q Okay. Let me just do --

24 A It was a general question that she asked about
25 whether victims -- is there anything that the victim survivors

1 can do to reject or protest the judgment. She didn't say is
2 there anything that I can do as a victim. She just said in
3 general. And so I wrote that answer in general. That's how I
4 was answering it.

5 Q Did you at anytime -- let me ask this question, Ms.
6 Gonzalez. Do you make it a habit to contact non-victims of
7 cases that reach out to you?

8 A I make it a habit to respond to people who reach out
9 whether they're victims or not. Lots of people reach out to me
10 and I do try to be responsive and answer them.

11 Q All right. You've been in here because Judge
12 Stephens excluded you from the sequestration. You've been in
13 here to hear the evidence?

14 A Yes.

15 Q Okay. You've heard Ms. Wilson testify during the
16 entire proceeding; correct?

17 A I did.

18 Q You've heard her say that she was -- they were
19 husband and wife; you heard that?

20 A I also heard her say up here that they preferred the
21 term partner.

22 Q Listen to my question and respond to it, please. You
23 heard her say that they were husband and wife? You heard that?

24 A I heard her answer that question to you. But I also
25 heard her say that they preferred the term partners.

1 Q You were in here for Ms. Hayes' testimony?

2 A Yes.

3 Q And you know what imputed knowledge on a district
4 attorney's office is? Do you know what that is?

5 A Yes.

6 Q What is it?

7 A It means that the D.A. as head of that office is
8 imputed to have knowledge that other people who work for her or
9 him would have.

10 Q And you heard Ms. Hayes say that she never doubted
11 that they were husband and wife, and that Ms. Wilson told her
12 that they were husband and wife; you heard that testimony?

13 A I did hear that, yes.

14 Q So I'm going to ask you a very simple question. Now
15 that you have heard the victim speak, the wife of the deceased
16 stated with 100 percent certainty, and your former victim
17 advocate who was the only one that had contact with this victim
18 except for one time, are you withdrawing the contention that
19 Ms. Wilson was the spouse -- was not the spouse of the
20 deceased?

21 A I am not withdrawing the contention in terms of
22 whether she has standing as a victim under the law as defined
23 in the definition of victim, that she was not a spouse and,
24 therefore, not a victim.

25 Q Okay. Do you know when common law marriage was --

1 was abolished?

2 A I believe based on the research there was something
3 about 1997.

4 Q Okay. If they have held themselves out as husband
5 and wife for 37 years, would that be prior to 1997?

6 A If they held themselves out, but we have no
7 indication whether they did or not prior to 1997. It had never
8 been asked to them.

9 Q You -- you didn't hear her testimony, Ms. Gonzalez?

10 A Yes, I did hear her testimony. And again she did not
11 say that they were husband and wife. She kept referring back
12 to the term of partner.

13 Q Let me ask you this question. Outside of the one
14 note of partner that you allege as evidence that they were not
15 common law married, what other evidence do you have?

16 A The fact that she did not receive the insurance
17 directly to her, that it was paid out to his sister. And my
18 understanding was that when that happened, it was because she
19 was not listed as his spouse.

20 MR. EPPS: Objection. Objection, Your Honor. This
21 calls for hearsay. She's going clear -- she's talking
22 about forms and beneficiary forms.

23 THE COURT: You asked her the question. So I'll
24 allow the answer.

25 BY MR. EPPS: [Resuming]

1 Q Have you seen the beneficiary form?

2 A No, I have not.

3 Q Do you know that as part of life insurance policies
4 that you can leave beneficiaries that are not your spouse?

5 A Yes, you can.

6 Q Okay. So you don't know what that form said, do you?

7 A I know what we were told, just like we're relying on
8 what she told us.

9 Q And you don't know whether or not any previous forms
10 indicated whether or not Ms. Wilson was the spouse, do you?

11 A There was nothing that was brought to us listing her
12 as a spouse.

13 Q All right. Would you agree with me based on the
14 Tracker notes that no one contacted Ms. Wilson for a year prior
15 to the plea hearing?

16 A Yes, I would agree with you in that.

17 Q Would you agree with me -- let's see if we can agree
18 on this -- that on the morning of the plea hearing, based on
19 your own response, that you left -- that your office left a
20 voicemail with Ms. Wilson's phone?

21 A That was my understanding.

22 Q Okay. Who did that?

23 A I believe it was the victim advocate.

24 Q And who was the victim advocate?

25 A Simona Arroyo.

1 Q So she did not have direct contact with the victim
2 that morning?

3 A From what I understand, no.

4 Q Okay. And then Ms. Wilson called back and spoke to
5 your victim advocate after the plea was entered?

6 A Yes.

7 Q And it was then and only then that she was told about
8 the plea deal?

9 A So I don't know exactly what was told in that
10 conversation. I wasn't part of it. But I would think that
11 that was when she was told.

12 Q Well, you reviewed everything as it relates to the
13 victim in Marsy's Law prior to entering in here, didn't you?

14 A I reviewed what I had, yes.

15 Q Okay. Did you review the Tracker notes?

16 A Yes.

17 Q Okay. I'll let Judge Stephens take a look at the
18 Tracker notes and speak for themselves. So when you told --
19 when Judge Stephens asked in the transcript whether or not the
20 victims had been contacted in this case, who were you saying
21 that had been contacted?

22 A The victim.

23 Q Who?

24 A The victims of the case.

25 Q Who are the victims of the case?

1 A The sister --

2 Q What the sister's --

3 A -- of the deceased, Melody.

4 Q Who?

5 A Melody.

6 Q Where does she live?

7 A I do not know where she lives.

8 Q You don't know that she lives in Virginia based on

9 the Tracker notes?

10 A I don't have the notes all in front of me.

11 Q They're right in front of you.

12 A Oh, I'm sorry. I did not realize that.

13 Q Let me just help you, see if we can move it along.

14 Based on the Tracker notes it was my client that gave the

15 contact information for the sister, didn't she? Are you aware

16 of that?

17 A I'm trying to find it in the notes.

18 Q Go to page 17 for me. And just so we're clear,

19 throughout these Tracker notes, Ms. Wilson is referred as to

20 the victim throughout these Tracker notes, isn't she?

21 A There is a V.

22 Q Right. And right above that V, it says victim

23 services notes for Susan Wilson; do you see that?

24 A I do.

25 Q And then it says victim services notes for Susan

1 Wilson and then victim service notes for Melody Ann Jones; do
2 you see that?

3 A Yes.

4 Q So throughout your Tracker system, you identified as
5 victim services for Susan Wilson; do you see that?

6 A Yes, I do.

7 Q And if you see at the bottom of those Tracker notes,
8 V stated that James Long has a living relative, his sister
9 Melody Jones. Ms. Wilson did not have contact info for her
10 when we spoke but said if I email her, she will respond with
11 contact info and she's able to look it up; do you see that?

12 A I do.

13 Q And then on 4/20/22 under victim services notes for
14 Susan Wilson, Alice asked me to reach out to the family member
15 about CVC. What's CVC?

16 A Crime Victims Compensation.

17 Q And I called Ms. Wilson and she told me that V's
18 sister paid for the funeral bills. She will send me the
19 contact information for an application.

20 A Yes.

21 Q And that application was filed in your office?

22 A Yes.

23 Q Okay. So you did receive the sister's information
24 from the victim, Ms. Wilson?

25 A That's what it says here.

1 Q And as part of your procedures as it relates to
2 contacting victims, we went through this with Ms. Hayes with M-
3 6, that you send out letters -- cover letters to victims; is
4 that correct?

5 A Yes.

6 Q And that was sent to Susan Wilson; is that correct?

7 A So I didn't send it myself. I -- I would say --

8 Q Imputed knowledge; right?

9 A Okay.

10 Q Imputed knowledge. So whatever your office does, you
11 do; right?

12 A Yes.

13 Q So you, Ms. Gonzalez, sent a letter to Ms. Wilson
14 stating her victim's rights?

15 A I did not personally send a letter to Ms. Wilson. I
16 have victim advocates who do this. This is part of their
17 responsibility and roles. They have the procedure. They send
18 it out. I do not personally watch every single victim advocate
19 to every single letter that they send to every single victim.

20 Q Imputed knowledge. You know that; right?

21 A I know that's imputed knowledge. But I also think
22 that you need to be less disingenuous about how much effect I
23 have of sending one particular letter out.

24 THE COURT: Any further questions?

25 MR. EPPS: Yes, Your Honor.

1 BY MR. EPPS: [Resuming]

2 Q Have you reviewed Marsy's Law, Ms. Gonzalez?

3 A Yes.

4 Q Have you reviewed O.C.G.A. §17-17-1?

5 A Yes.

6 Q Are you aware under §17-17-1 that victims have the
7 right to reasonable, accurate, and timely notice of any
8 scheduled court proceeding or any changes in such proceeding?

9 A Yes.

10 Q And are you familiar under §17-17-1, subsection 9,
11 the right to be treated fairly and with dignity by all criminal
12 justice agencies involved in the case?

13 A Yes.

14 Q And criminal justice agencies involve you?

15 A Yes.

16 Q Show you what's been marked as M-11. In response to
17 the Marsy's Law filing, did you write a letter to the editor to
18 the *Oconee County Enterprise*?

19 MR. WILSON: Your Honor, I'm going to object at this
20 point. I can't see any possible relevance that this has
21 to any witness testimony --

22 THE COURT: May I see the document?

23 MR. WILSON: -- that Ms. Gonzalez --

24 THE COURT: All right. I'll let you respond to the
25 objection, Mr. Epps.

1 MR. EPPS: Yes, Your Honor. In response to the
2 Marsy's Law violation, Ms. Gonzalez went to the press and
3 commented on this case directly. She made certain
4 assertions and she made certain admissions. And that
5 within itself is a Marsy's Law violation under §17-17-1
6 that you must find.

7 THE COURT: I'll allow it.

8 MR. EPPS: We'll tender M-11, Your Honor.

9 THE COURT: Admitted over objection.

10 MR. WILSON: Over objection. Thank you, Your Honor.

11 THE COURT: Yes.

12 BY MR. EPPS: [Resuming]

13 Q Ms. Gonzalez --

14 A Yes.

15 Q -- you made the personal decision to go to the press
16 and comment about the victims in this case, didn't you?

17 A I made a decision to respond to questions that were
18 made to us by the press.

19 Q No ma'am. Let me ask that question one more time.
20 When you say Gonzalez' response, you voluntarily sent a letter
21 to the editor, didn't you?

22 A We sent a response to the editor based on questions
23 that they asked us about the Marsy's Law violation.

24 Q Okay. And in that you commented in the press about
25 the victims in this case?

1 A Not about the victims but about the contact that we
2 had with the victim.

3 Q Right. And I'll let Judge Stephens read that for
4 himself. But you specifically -- well, let me just read it so
5 I can ask you the question.

6 MR. WILSON: Your Honor, I do object to him reading
7 this as far as --

8 MR. EPPS: I've got to narrow down what I'm asking,
9 Judge, and --

10 THE COURT: Is there a specific part of the letter
11 that you want to ask her about?

12 MR. EPPS: Yes, Your Honor.

13 THE COURT: All right. I'll allow it.

14 BY MR. EPPS: [Resuming]

15 Q So in the case that we had last week in Marsy's Law
16 you did not comment on it because it was still an active case;
17 right?

18 A Yes.

19 Q But -- so when you say in the case of one victim,
20 you're talking about this case, aren't you? That's in the
21 third paragraph of the letter to the editor.

22 A Yes.

23 Q And then you go on to write, I once did -- I once did
24 --

25 A And that once is a typo on their part.

1 Q Okay.

2 A It should be office.

3 Q Our office did its due diligence in contacting the
4 victim's family multiple times and keeping them informed as the
5 case details were available; is that right?

6 A Yes.

7 Q You didn't contact anybody in this case for a year,
8 is that right --

9 A Yes.

10 Q -- based on the Tracker notes?

11 A Based on the Tracker notes.

12 Q When was the plea deal officially decided in this
13 case?

14 MR. WILSON: Your Honor, I -- I -- I do -- I object
15 to that. I mean, the --

16 THE COURT: On what grounds?

17 MR. WILSON: Well, Your Honor, on the grounds that
18 it's speculative, Your Honor, and it would go into things
19 that aren't relevant to -- I mean, the present -- the
20 presentment of a plea deal happened in front of the Court.
21 When it occurred I don't think is really relevant to this
22 discussion as far as -- as far as victim notification,
23 Your Honor.

24 THE COURT: Okay. All right. How is it relevant,
25 Mr. Epps?

1 MR. EPPS: Well, there's a couple of things, Your
2 Honor. I have another exhibit which I'm about to
3 introduce from Ms. Gonzalez and her office that said that
4 trying to contact a victim about a proceeding a day before
5 violates Marsy's Law. In this case they contacted the
6 victim via voicemail the day of. They -- to a defense in
7 their response and they -- they raised this as a specific
8 defense, Ms. Gonzalez did in their response. They stated
9 the State attempted to make contact with both the sister
10 of the deceased and the movant regarding the plea
11 negotiation prior to the plea being finalized in court.

12 THE COURT: All right. I'll allow the question.

13 MR. EPPS: Thank you.

14 BY MR. EPPS: [Resuming]

15 Q Now --

16 A Please repeat it. I'm sorry.

17 Q Sorry?

18 A Please repeat the question. I'm sorry.

19 Q Sure. Sure. So, Ms. Gonzalez, as part of that email
20 packet that I introduced to you, with the exchanges of that,
21 you actually reached out to Robert Wilson to determine if the
22 plea was a fair plea after it had been entered, didn't you?

23 A If it's in the email, then I did it.

24 Q Sure.

25 A I can't see it.

1 Q Okay. So here's my question. When was the plea deal
2 finalized by your office?

3 A The plea deal was finalized when we presented it to
4 the judge.

5 Q So you did not have negotiations with the defense
6 attorney prior to the plea hearing?

7 A Unfortunately, I don't know because that was done by
8 the ADA who was here previously and I was just filling in on
9 that day. So I don't know about the plea negotiations that had
10 happened.

11 Q So you stood up in front of Judge Stephens and was
12 the supervising attorney that day of the plea deal; is that
13 right?

14 A Yes.

15 Q And the question I have, and it was raised with this,
16 is did your office offer the plea or did the defense offer the
17 plea?

18 A And I think in my answer I said I don't know who
19 offered the plea first.

20 Q Okay.

21 A Sometimes it's the State, sometimes it's defense. I
22 did not know who had offered that particular plea to begin
23 with.

24 Q Okay. So who -- do you have -- as you sit here today
25 and now that you've reviewed the file, do you have any idea who

1 offered the plea?

2 A No. I still don't know because it wasn't put into
3 notes whether it came from the defense first or whether it came
4 from the State.

5 Q All right. So here's my next question to you. Do
6 you agree with me that contacting the victims, and even if as
7 you define it, the sister is the only victim and Ms. Wilson is
8 not, do you agree with me that contacting the victims the day
9 of the plea is a Marsy's Law violation?

10 A No, I do not. What I believe is that we should
11 notify the victims as soon as we can.

12 Q So when you say as soon as you can, that would be
13 when a plea agreement has been entered -- or has been agreed
14 upon; right?

15 A Sometimes. I mean, sometimes what we try to do now
16 is before a plea agreement is even finalized with the
17 defendant, we reach out to the victims first. We've made sure
18 that we've put that in because of this Marsy's Law violation so
19 that it would not happened again.

20 Q Okay. So let me ask you this question. Do you
21 believe that it's a Marsy's Law violation to write a letter to
22 the editor where you discuss your office's due diligence to
23 victims of a family's case? Do you believe that that's a
24 Marsy's Law violation?

25 A I do not. The case was closed and we were just

1 responding to what the newspaper had asked us.

2 Q Okay.

3 A They wanted a statement.

4 MR. EPPS: One moment, Your Honor.

5 THE COURT: Would you like some water?

6 THE WITNESS: No, thank you.

7 BY MR. EPPS: [Resuming]

8 Q I'm going to show you what's been marked as M-12.
9 This is one of the responses to your open records request -- to
10 our open records request that we sent you as it relates to
11 Marsy's Law. Give you an opportunity to review this. Do you
12 recognize this document, Ms. Gonzalez?

13 A It's been a while.

14 Q You reviewed it?

15 A Yes, I reviewed it.

16 Q And this is you responding to one of your ADAs in
17 your office about notice and what is required of Marsy's Law;
18 is that right?

19 A Yes.

20 MR. WILSON: Your Honor, I'm going to -- I'm going to
21 object to the -- to the -- the email -- or I'm -- I'm
22 going to strictly -- or absolutely object to anybody
23 reading the email itself. I -- I think -- I would object
24 to relevant -- on relevancy basis as far as this Marsy's
25 Law hearing, why that is relevant to this hearing.

1 However, I -- I would strongly object to reading that
2 email. I don't think that's appropriate -- the way to
3 cross-examine.

4 THE COURT: I'll hear from you, Mr. Epps.

5 MR. EPPS: Yes, Your Honor. This email is from
6 Mikaela Silkey Henderson and this is an email discussing a
7 movement of hearings that happened in Judge Haggard's
8 courtroom, and it was brought to her attention by Mr. John
9 Batchelor that there were 21 victims on the calendar that
10 next day. And he states my position is that kind of short
11 notice does not comply with Marsy's Law that guarantees
12 every victim the right to reasonable and timely notice of
13 court proceedings.

14 THE COURT: I sustain the objection.

15 MR. WILSON: Thank you, Your Honor.

16 BY MR. EPPS: [Resuming]

17 Q Ms. Gonzalez -- Ms. Gonzalez, this defendant was
18 charged with two counts of homicide by vehicle in the first
19 offense in its original indictment, one count of DUI and one
20 count of reckless driving; is that right?

21 A I believe it was one vehicular homicide. I don't
22 have the indictment in front of me.

23 Q Okay.

24 A And I don't want to misstate anything.

25 Q Ultimately, an amended accusation was filed in this

1 case where it was -- the defendant was charged with a --
2 amended -- I'm sorry -- was charged with second degree homicide
3 by vehicle. Are you aware of this?

4 A Yes.

5 Q And do you know who prepared that accusation?

6 A No, I don't. Right off the bat, I do not.

7 Q Okay. All right. And you understand under Marsy's
8 Law that when you stood in front of Judge Stephens as it
9 relates to the plea that happened on September 21st, 2023, that
10 Marsy's Law specifically states that the victim has -- had the
11 right to talk about the disposition of the case to Judge
12 Stephens; you're familiar with that?

13 A Yes.

14 Q You would agree with me that no victims in this case,
15 either the sister or Ms. Wilson, on that day did not have the
16 opportunity to speak to Judge Stephens? Just yes or no. Do
17 you agree with me on that?

18 A Do I agree that they didn't have the opportunity?

19 Q Correct.

20 A I agree that neither one of them was there. I agree
21 that the sister was contacted to see if she wanted to come in.

22 Q I -- I understand that it is your position that you
23 contacted the -- the sister. Did you ask her if she could come
24 and be -- if she wanted to come and be present?

25 A Yes, she was asked -- based on what I was told on

1 that conversation, she was asked if she wanted to be present,
2 if she wanted to give a victim impact statement, or if she
3 wanted the victim advocate to even read an impact statement if
4 she wanted to send it.

5 Q Who asked that?

6 A I believe Simona asked that.

7 Q You believe that Simona Arroyo asked that question?

8 A Arroyo, yes.

9 Q Okay. And you would agree with me that Ms. Wilson
10 never was given that opportunity or was asked that question?

11 A Now when I look at the stuff that we have, yes, I
12 agree that she wasn't asked that question. At the time when I
13 asked Simona were victims contacted, I was given a yes.

14 Q So you understood at that point that victims included
15 Ms. Wilson?

16 A No. I included victims in general. I was asking
17 about the calendar. All of the victims -- we have multiple
18 cases, right, and so I was asking were all the victims notified
19 for all of those cases. The response I got back was yes.

20 Q All right. Let me ask -- see if I can get to this
21 very, very simply here. Prior to the plea being -- are you
22 with me, Ms. Gonzalez?

23 A Yes.

24 Q Prior to the plea being entered, did your office
25 review the accident report?

1 A On that day, no.

2 Q Okay. Prior to the plea being entered, had your
3 office obtained any hospital records regarding the defendant?

4 A That I do not know to respond to you.

5 Q Well, you do know that because in the email exchange
6 that you had with Mr. Wilson he said that the hospital denied
7 your subpoena request. Are you familiar with that?

8 A That's right. They denied it so they would not take
9 the blood that was requested. Yes.

10 Q But you asked for -- you asked further. You asked
11 for additional medical records from the hospital; is that
12 right?

13 A If there were any, yes.

14 Q And your office never filed any motion with Judge
15 Stephens as it relates to those records?

16 A We never received any is my understanding.

17 Q Because they refused.

18 A Yes.

19 Q Okay. So let me see if --

20 A They -- they refused to do the blood. Right?

21 Q Well, they refused to respond to your subpoena,
22 didn't they?

23 A Yes.

24 Q Okay. So let me ask a very simple question and then
25 maybe we can wrap this up. The things we agree on is that a

1 victim has a right to speak when the disposition of a case of a
2 defendant is before the Court. We agree on that; right?

3 A Yes.

4 Q You agree with me that the victim has a right under
5 the statute to have reasonable notice and accurate notice and
6 timely notice under Marsy's Law. You agree with me on that;
7 right?

8 A Yes.

9 Q You agree with me that Ms. Wilson never received the
10 notice because she only got a voicemail. No one from your
11 office contacted her and said there's going to be a plea this
12 afternoon and asked her if she wanted to be present. That
13 didn't happen. You agree with me?

14 A I was told that it did happen.

15 Q Okay.

16 A So that's why I went forward with the plea.

17 Q Let's see if I can do it this way. Do you agree with
18 me that no one with your office, live, spoke with Ms. Wilson on
19 the phone other than leaving her a voicemail? You would agree
20 with me?

21 A Yes.

22 Q Okay. And you would agree with me that you never
23 told Judge Stephens that you had only left a voicemail and that
24 Ms. Wilson was not contacted or spoke to live? You would agree
25 with me that -- in the transcript?

1 A I did not speak those words, no.

2 Q Okay. And you would agree with me -- would you agree
3 with me that if Judge Stephens finds that Ms. Wilson was the
4 spouse of the defendant, the failure to allow her to speak in
5 front of Judge Stephens is a Marsy's Law violation?

6 A I can't say what the judge is going to decide here.

7 Q I'm not asking you that. Listen to my question.
8 What I'm asking you is if Judge Stephens -- because you filed a
9 motion to dismiss asking this Court to find her not the spouse
10 of the defendant. You're aware of that; right?

11 A Yes.

12 Q And if you -- and that's the -- and that's the only
13 grounds that you say that Ms. Wilson here does not have
14 standing to be here; right?

15 A Yes.

16 Q Okay. If Judge Stephens finds that there's standing
17 and denies your motion to dismiss and Ms. Wilson was never
18 given the opportunity to step before him and give this very
19 powerful statement she just gave to you and your office, that
20 that is a Marsy's Law violation. Would you agree with me?

21 MR. WILSON: Your Honor, I do object -- I object to
22 the hypothetical.

23 THE COURT: I sustain the objection.

24 BY MR. EPPS: [Resuming]

25 Q All right. As you sit here today, Ms. Gonzalez, do

1 you believe that you are serving as a victim advocate in this
2 case as the D.A.; do you agree with that?

3 A I don't understand the question --

4 Q Sure.

5 A -- because I am not a victim advocate.

6 Q You don't advocate for victims as the District
7 Attorney?

8 MR. WILSON: Your Honor, I -- I object to -- now
9 we're getting argumentative, Your Honor.

10 THE COURT: I sustain the objection to the specific
11 form of that last question. Did you have any other
12 questions you wanted to ask?

13 MR. EPPS: I do, Your Honor.

14 THE COURT: Go right ahead, please.

15 BY MR. EPPS: [Resuming]

16 Q Ms. Gonzalez, your office was the -- throughout this
17 whole process for a year and right up to the plea treated Ms.
18 Wilson as a victim in this case; is that fair? Do you agree
19 with me on that?

20 A I think they treated her as someone who needed help.
21 There are times that we have individuals that we help who are
22 not technically defined as victims, but we still help them.
23 And I know that Alice did a lot with Ms. Wilson, including
24 helping her when she needed housing and lodging.

25 Q So I'm going to ask this one last question and I'm

1 done. As you sit here today, do you believe challenging Ms.
2 Wilson as a spouse in this case, after she's testified that she
3 is, is the proper thing to do as the District Attorney and a
4 victim advocate?

5 MR. WILSON: Your Honor, I object.

6 THE COURT: I sustain the objection.

7 MR. WILSON: Thank you.

8 BY MR. EPPS: [Resuming]

9 Q I'm going to try this one last time with a question
10 and see if I can get through this. You have not recused
11 yourself in this case; you agree with me on that?

12 A The case is closed.

13 Q Listen -- listen to my question. As part of the
14 Marsy's -- I just need a yes or no so I can move past this
15 portion. You agree with me, because we've done this before,
16 the statute allows for your office to recuse or the judge to
17 decide if you should recuse yourself; you agree with me on
18 that?

19 A Yes. But the case is closed, so there's nothing to
20 recuse ourselves from.

21 Q And based on your answer, you were just -- you were
22 not representing Ms. Wilson as a victim in this case prior to
23 this Marsy's Law violation. Is that your answer? Was your
24 office not representing Ms. Wilson as a victim in this case; is
25 that your answer?

1 A I'm not sure I understand the question because --

2 Q Well, you filed a response where you defined what a
3 victim is in a case; correct?

4 A Yes. We were looking at -- when we filed our
5 response to the violation, we looked at that she did not have
6 standing to bring in the Marsy's Law violation because she
7 doesn't fall within the legal definition of victim as specified
8 by the code.

9 Q I understand that. So I'm going to ask this very
10 simple question. Prior to this Marsy's Law hearing, did -- are
11 you saying you did not represent Ms. Wilson as a victim in this
12 case -- your office?

13 MR. WILSON: Your Honor -- Your Honor, I'm going to
14 object again. I think I've already objected to that
15 question. It's changed a little bit, but the form of the
16 question is the objectionable part of the question.

17 THE COURT: I'll allow it. I'll allow that one
18 question.

19 BY MR. EPPS: [Resuming]

20 Q Okay. Do you understand my question?

21 A Please repeat it.

22 Q Prior to this Marsy's Law hearing are you stating to
23 this Court that your office did not hold and represent Ms.
24 Wilson as the victim in this case based on everything in
25 Tracker and everything that's in front of you? Is that your

1 position?

2 A She's listed as -- for services.

3 Q Yes or no, please, and then explain your answer. Yes
4 or no. Yes or no and then explain your answer.

5 A No and yes.

6 Q It's what?

7 A No and yes.

8 Q What do you mean by no and yes?

9 A No, because it's not -- she's not listed as a victim
10 as defined by the law; right? Yes, should -- should that law
11 be changed to include people who are not listed as spouse who
12 do not fall within the definition as it is in the law right
13 now; right? That can be changed by legislation. But right now
14 the law as it is, as it defines the victim, does not include
15 her.

16 MR. EPPS: Your Honor, I'm going to object as non-
17 responsive to this question. It's very simple. I -- I
18 know that it --

19 THE COURT: I'll allow -- I mean, you're asking her
20 for a legal conclusion. So she stated it.

21 MR. EPPS: All right. So --

22 THE COURT: I think she's answered -- I think she's
23 responded to the question.

24 MR. EPPS: All right. Your Honor, that's all the
25 questions I have.

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THE COURT: All right. Do you have any other evidence you're going to present?

MR. EPPS: Just a moment, Judge Stephens.

THE COURT: All right.

MR. EPPS: Yes. I would like to call the current victim advocate, Simona Arroyo.

THE COURT: Who's your next witness?

MR. EPPS: That's who I'm calling, Your Honor, the current victim advocate, Simona Arroyo.

THE COURT: All right. Come on up. If you'll come on up to the witness stand, please. If you'll please raise your right hand to take an oath.

[Witness is sworn by the Court.]

THE COURT: All right. If you'll please state your name and spell your first name and your last name for the court reporter.

THE WITNESS: My name is Simona Arroyo, S-I-M-O-N-A, A-R-R-O-Y-O.

SIMONA ARROYO

Called as a witness by the Movant, having first been duly sworn, is examined and testifies as follows:

DIRECT EXAMINATION

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BY MR. EPPS:

Q Good afternoon, Ms. Arroyo. Were you the -- are you a victim advocate in the District Attorney's Office for the Western Circuit?

A Yes, I am.

Q How long have you been a victim advocate here?

A About a month -- about a month or so.

Q So a month from today?

A I apologize. I don't recall the exact date.

Q Let me see if I can get to it this way. Did you have a previous position in the District Attorney's Office?

A Yes, I did. I was a legal assistant.

Q For who?

A For the Western Judicial Circuit.

Q Okay. And then you transitioned into a victim advocate?

A Yes. Sometime in September.

Q So when were you assigned to the Luke Harrison Waldrop case?

A To be honest with you, I don't recall the exact date.

Q Okay. Would it be helpful for you to review the Tracker notes in this case to refresh your memory as to that? Would Tracker help you identify when you came onto this case as

1 a victim advocate?

2 A It would not. It wouldn't, no.

3 Q Would it be safe to say that your first entry as a
4 victim advocate would indicate when you were the victim
5 advocate in this case?

6 A Not necessarily, no.

7 Q Okay. So as the victim advocate of this case, were
8 you involved in the plea hearing before Judge Stephens?

9 A No, I was not.

10 Q Did you make any contact with the victims of this
11 case prior to the plea hearing before Judge Stephens?

12 A I did make contact, yes.

13 Q Who did you make contact with?

14 A I made contact with several victims.

15 Q Okay. Tell me the names.

16 A For this particular case?

17 Q Just for -- just for Luke Harrison Waldrop's case,
18 who were the victims you contacted?

19 A I contacted his sister and I contacted Susan.

20 Q Susan Wilson?

21 A Yes, I did.

22 Q And you contacted them as the victims of this case?

23 A I contacted the sister as the victim of the case.

24 Q Okay. And then you contacted Ms. Wilson as what?

25 A As a courtesy.

1 Q As a courtesy?

2 A Yes.

3 Q Okay. And when did you contact them?

4 A I contacted them the morning of the plea hearing
5 date.

6 Q What time?

7 A I don't specifically recall. Between 8:30 and 9:00.

8 Q Okay. And the plea hearing in front of Judge
9 Stephens was at what time?

10 A I believe it was -- I believe it was at 9:30.

11 Q Okay. Are you familiar with Marsy's Law as a victim
12 advocate?

13 A I am familiar with the basics of who gets contacted
14 and their rights to be heard.

15 Q Okay.

16 A I do know the minimum basics, the minimal basics.

17 Q All right. And so as a minimum basics you are aware
18 under Marsy's Law that victims are entitled to reasonable,
19 accurate, and timely notice of any hearings concerning their
20 case?

21 A I do. I am aware of that.

22 Q As you sit here today do you believe that contacting
23 a victim an hour before the plea hearing before Judge Stephens
24 is reasonable, timely, and accurate notice?

25 A Considering that I didn't get the information to

1 provide -- any information to provide the victims until
2 midnight -- after midnight that night, I mean, I contacted them
3 as soon as I got into the office.

4 Q Who provided you that contact information? Who
5 provided you that information after midnight?

6 MR. WILSON: Your Honor, I don't see the relevance of
7 that, Your Honor.

8 THE COURT: I'll allow it.

9 THE WITNESS: The previous ADA for this courtroom, he
10 sent all of his information in and sent all the
11 information to me. It was -- it was after midnight when I
12 received -- when I received it.

13 BY MR. EPPS: [Resuming]

14 Q And that was Tab?

15 A That was.

16 Q Had he been -- had he been terminated from the
17 District Attorney's Office by that time?

18 A He did not. He was not terminated, no.

19 Q Had he resigned?

20 A He had.

21 Q So let me see if I understand this correctly. A
22 former ADA that had resigned sent information to you after
23 midnight stating the plea for cases that morning before Judge
24 Stephens; that's what happened?

25 A To my understanding, yes.

1 Q So how did you receive that information?

2 A Via email.

3 Q Okay. So I asked for a subpoena -- in my subpoena I
4 asked for emails concerning that. And I looked at your entire
5 packet and I do not have that email. Where is that email?

6 A It was not specifically for this case. It was for
7 all cases. All cases. And I am no longer working open records
8 requests. So I don't know what happened with that request.

9 Q No ma'am. I'm not doing it during open records
10 requests. This was a subpoena issued under this case. And you
11 -- you did respond to that subpoena; did you not?

12 A I did.

13 Q And as part of that I asked for any information,
14 emails, text messages, or correspondence regarding this case;
15 did I not?

16 A Yes.

17 Q And you have supplied Tracker and some emails as it
18 relates to that; is that right?

19 A I believe that it was Tracker. And I'm not for sure
20 about the emails. I did not -- I didn't pull my own emails.
21 That was done for me.

22 Q Who did that?

23 A To my understanding it was IT.

24 Q Who in IT?

25 MR. WILSON: Your Honor, I do object. We're getting

1 very far afield.

2 THE WITNESS: I don't know.

3 MR. EPPS: I do not think we're getting very far
4 afield.

5 THE COURT: I'll allow it.

6 MR. EPPS: Thank you.

7 BY MR. EPPS: [Resuming]

8 Q Do you have that email with this plea agreement and
9 when you got it and who you got it from and who was CC'd on it?
10 Do you have that?

11 A I believe I do in my emails, yes.

12 MR. EPPS: Your Honor, I'd take a short break and ask
13 that -- I know that we're -- it's 1:10, but I -- I would
14 like that email in response to my subpoena, Your Honor. I
15 think it's very telling as it relates to this case.

16 THE COURT: Do you want to be heard on that, Mr.
17 Wilson?

18 MR. WILSON: I don't -- I don't know what was --
19 that's -- I'll attempt to get it.

20 THE COURT: All right. We'll take a 10-minute
21 recess.

22 MR. EPPS: Thank you.

23 THE COURT: Thank you.

24 [Brief recess is taken.]

25 THE COURT: All right. So we're waiting for Mr.

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Wilson?

MR. EPPS: Yes, Your Honor.

THE COURT: Okay. So is Ms. Arroyo still -- is she back there?

MR. WILSON: They were -- they were on their way down on the elevator, Your Honor.

THE COURT: Oh, all right. That's fine. All right. If you'll come on back up to the witness stand, please, Ms. Arroyo. All right. You may resume your questions, Mr. Epps.

MR. WILSON: Your Honor, before we get any further into it, I did -- I did have -- the email that was -- that was referred to was pulled. Your Honor, this is an email with attachments. I'll let the Court look at it, obviously.

THE COURT: Okay.

MR. WILSON: But I think the attachments are all work product, Your Honor, attorney work product for -- and they're all for different cases, Your Honor. And I certainly don't think that should be entered in as an exhibit.

THE COURT: Okay.

MR. WILSON: May I approach?

THE COURT: Sure.

MR. WILSON: Thank you.

1 THE COURT: Why don't y'all let him take a look at it
2 and then see what --

3 MR. WILSON: Sure.

4 THE COURT: So do you want to mark it as what?

5 MR. EPPS: M-13, Your Honor?

6 THE COURT: All right. I'll take a look at it.
7 Would you like some water?

8 THE WITNESS: Please.

9 THE COURT: All right. Could you -- Ms. Dillard,
10 would you please get Ms. Arroyo some water.

11 THE WITNESS: Thank you.

12 THE COURT: So, Mr. Epps, you've had a chance to
13 review it. Do you want to respond to the objection?

14 MR. EPPS: Yes, Your Honor. A couple of points. So
15 they're taking an exception to this as attorney work
16 product. I note that that email is from Tab Roberts who
17 I've already established --

18 THE COURT: From who?

19 MR. EPPS: I'm sorry. Tab -- What's his last name,
20 Judge?

21 THE COURT: Tab Hunter.

22 MR. EPPS: Hunter? Mr. Hunter. Sorry, I didn't -- I
23 confused the names there. But I've already established
24 Mr. Hunter had already resigned as a member of the
25 District Attorney's Office at that point. Also, I would

1 note that it's sort of incomplete, Judge. Take a look at
2 the second page. It has a message as to -- it says Tab --

3 THE COURT: Okay.

4 MR. EPPS: -- I need -- I need the pleas for
5 tomorrow. We don't know who that's from.

6 THE COURT: All right. Well, you can ask her about
7 that but I don't --

8 MR. EPPS: Sure.

9 THE COURT: -- I don't know that it's going to be
10 admissible for the entirety of the entire document. The
11 first case on the document is probably the only one that's
12 really relevant.

13 MR. EPPS: I don't need any -- and, Your Honor --

14 THE COURT: So I'm going to let you show this to her
15 and then question her about it but I'm not going to let
16 the entire document go in for the record.

17 MR. EPPS: So redact it except as to the --

18 THE COURT: Well, we'll see.

19 MR. EPPS: All right.

20 THE COURT: Just go ahead and ask her.

21 BY MR. EPPS: [Resuming]

22 Q Ms. Arroyo, so let me ask you this question. As you
23 stood up on the stand here today, you were very aware of this
24 email; is that correct?

25 A Yes.

1 Q So you did receive my subpoena.

2 A Yes.

3 Q And it was your testimony that you had IT search for
4 this.

5 A I did not have IT search for that. It was my
6 understanding that IT searched for the emails that were in
7 question.

8 Q All right. On break did you speak to anyone?

9 A I did not.

10 Q Okay. Did you go and retrieve this email yourself?

11 A I did.

12 Q Okay. So Tab Hunter sent you an email on Thursday,
13 September 21st, 2023 at 12:25 a.m.?

14 A Yes.

15 Q Is that in response to your email that says Tab, I
16 need a list of each case with any plea offer made and the
17 defense?

18 A That is not my -- that is not -- that's not me.

19 Q Who is that?

20 A I don't know.

21 Q Where did you get this attachment?

22 A That attachment was with that email.

23 Q All right. I'm confused. So help me. This is from
24 Tab Hunter --

25 A Yes.

1 Q -- to Deborah Gonzalez --

2 A Yes.

3 Q -- and Jennie De La Vega, Felicia Fortson, Lynn
4 Bradberry, you, Martha Perkins, and the subject is Judge Lawton
5 E. Stephens plea calendar, Tab Hunter, status, trial calendar.
6 Okay. Did I read that correctly?

7 A Yes.

8 Q So you're saying at this point that this attachment
9 is from Tab Hunter?

10 A Yes.

11 Q And so you became aware of the plea agreement as it
12 relates to Luke Harrison Waldrop from Tab Hunter?

13 A Yes.

14 Q And Tab Hunter had resigned and was no longer an
15 attorney of the District Attorney of the Western Circuit at
16 that point?

17 A I don't know when it was official.

18 Q But it was prior to this Thursday, September 21st,
19 2023 date?

20 A As far -- as far as I know.

21 Q Okay. And so you understand and I'm just -- and
22 we're going to have to recall Ms. Gonzalez, but I wanted to see
23 what your knowledge is -- is that Tab Hunter had no authority
24 as an assistant D.A. for any member of the District Attorney to
25 enter into plea deals or to offer up plea deals for the

1 District Attorney's Office?

2 A I'm not an attorney. So I'm not familiar with that
3 at all.

4 Q Did you find it unusual that you received an email
5 from Tab Hunter that was no longer with the District Attorney's
6 Office making a plea agreement offer in a case involving these
7 victims?

8 A I did not because, again, I'm not an attorney.

9 Q All right. The plea was entered in front of Judge
10 Stephens based on Tab Hunter's recommendation, wasn't it?

11 A I was not in here for that. So I don't know.

12 Q So wait a minute, and I've read this transcript, so I
13 need to understand this. On the morning of the plea deal, an
14 hour before the plea was done, you were the only person to have
15 had contact with the victims in this case; is that correct?

16 A That is correct. I was in an office contacting them
17 while the rest of the team came into court.

18 Q Okay. So at this point, proceedings had begun in
19 Judge Stephens' office and you were just then making contact
20 with the victims in the case; is that fair?

21 A That is fair.

22 Q So when they told Judge Stephens that they had been
23 in contact with the victim on the transcript, that's not true,
24 is it?

25 A That is true because I had spoken to the sister --

1 MR. WILSON: Your Honor --

2 A -- prior to them coming into the court.

3 MR. WILSON: -- I would object to that as lack of
4 personal knowledge. I don't know how she --

5 THE COURT: I'll allow it.

6 BY MR. EPPS: [Resuming]

7 Q So let's go to this question. When did you make
8 contact with the sister in Virginia; what time?

9 A Between 8:30 and 9:00.

10 Q When did you leave a voicemail for Ms. Wilson?

11 A After I completed the phone call with the sister.

12 Q Which would have been what time?

13 A Prior to right -- right -- prior -- prior to court.
14 It was prior to them coming into court.

15 Q What did the sister tell you in Virginia?

16 A She said I am not happy with that. And I said I
17 understand you -- I understand, I will relay that to the ADA.
18 And then she asked if I had spoken with Susan. I said I have
19 not had time to contact her. She said Susan will not be happy
20 with that, either. I'm going to tell you that now. Do you
21 want me to call her? Have you called her? I said I have not
22 called her. She said do you want me to call her? I said
23 that's fine, I'm going to call her after we hang up. And at
24 that point in time prior to the team walking out, I said I've
25 already spoken to Waldrop's [sic] sister. She has stated that

1 she is not happy with this offer. And she has also stated that
2 Susan -- that Susan will not be happy, either. And then they
3 proceeded to come in.

4 Q Is that the entirety of your conversation with the
5 victim in Virginia?

6 A That is not. That was more than 30 minutes on the
7 phone with her.

8 Q Did you offer her the opportunity to be present in
9 front of Judge Stephens -- the sister in Virginia to be present
10 in Judge Stephens to speak her opinion about the disposition?

11 A I did not because I was aware at that point in time
12 that she's in Virginia. So I did not.

13 Q Okay. And the only thing that you did as it relates
14 to Ms. Wilson is that you left her a voicemail the morning of
15 the plea?

16 A That is correct.

17 Q And you did not speak with her again until after the
18 plea had been entered.

19 A That is correct.

20 Q And when the phone call was done with the sister and
21 you left the voicemail, did you come into Judge Stephens'
22 courtroom?

23 A I did not.

24 Q So how did you relay this -- who -- let me back up.
25 Strike that. Who exactly did you relay to in the office the

1 sister's disappointment with this case?

2 A The team. The entire team that was in there.

3 Q Well, who do you -- who is team?

4 A It was Deborah, Josh, and Lynn Bradberry.

5 Q Okay. You understand under Marsy's Law that a victim
6 has a right to be present in the courtroom to state their
7 opinion as to the disposition of the case?

8 A I understand that now.

9 Q Now you do?

10 A Yes.

11 Q And you understand that that victim was not awarded
12 that right under Marsy's Law?

13 A The sister?

14 Q Yes.

15 A I do.

16 Q Okay. And you understand -- so you're familiar with
17 what Ms. Gonzalez has stated in her motion to dismiss, that Ms.
18 Wilson was not the wife of the deceased; you understand that?

19 A I do understand that, yes.

20 Q Did you ever, as victim advocate, ask Ms. Wilson if
21 she was the wife of the deceased?

22 A I did not ask her if she was the wife of the
23 deceased. I had not been in -- I didn't get a chance to speak
24 with her prior to that date.

25 MR. EPPS: Your Honor, we would -- Your Honor, we

1 would tender M-13 into evidence with the specific
2 understanding that it only relates to the plea offer that
3 was made in this case regarding Mr. Waldrop. The rest of
4 it is not relevant to this case, Your Honor.

5 THE WITNESS: May -- may -- may I add to that?

6 THE COURT: Absolutely. Go ahead.

7 THE WITNESS: When I was at a time crunch and I did
8 make the determination of which person to contact first, I
9 did see that it was noted that Ms. Wilson was the partner
10 of 37 years. So at that time I did decide that the sister
11 had priority because she did -- she was the relative and
12 so I did contact the sister first. And that's the order
13 that I went in because at that time I did have knowledge
14 that she had stated that she wasn't the wife.

15 MR. EPPS: Judge, may I on that -- I don't know what
16 that was in response to my tendering, but may I question
17 that for a second?

18 THE COURT: Go ahead.

19 BY MR. EPPS: [Resuming]

20 Q That note that you've seen was in Tracker in the very
21 beginning of the case by Ms. Hayes; correct?

22 A That is correct.

23 Q You've been in contact with Ms. Hayes since she's
24 left this office?

25 A I have not.

1 Q You knew that she went and worked for the University
2 of Georgia and you had her --

3 A I do not.

4 Q -- Ms. Hayes provided her information to you.

5 A I do not.

6 Q And so you never reached out to Ms. Hayes to ask her
7 what she meant by partner, did you?

8 A I did not.

9 Q And you never reached out to Ms. Wilson and asked her
10 if she was the common law wife or the wife of the defendant --
11 I mean, of the deceased?

12 A I did not. I made that determination also by other
13 notes that were in Tracker.

14 Q All right.

15 MR. EPPS: Your Honor, back to the matter at hand, I
16 tender M-13 into evidence.

17 THE COURT: Redacting the balance of it --

18 MR. EPPS: Yes.

19 THE COURT: -- besides number 1. Any objection?

20 MR. WILSON: Your Honor, I think -- I think the
21 entire attachment should be redacted along with the --
22 with the -- any plea offer in this case because I do think
23 it's -- it just is work product. I mean, it's full of the
24 mental impressions --

25 THE COURT: Well, I guess the only -- the relevance

1 of the document would be -- would be the timing, I
2 suppose. So for that matter, that's in the record. So
3 I'll sustain the objection. I don't think we need the
4 document to go in. It's already been -- the relevant
5 portions of it have already been positively testified to.
6 So I agree with you.

7 MR. WILSON: Thank you, Your Honor.

8 MR. EPPS: That's all the questions I have for her at
9 this time.

10 THE COURT: All right. Do you have questions you
11 want to ask Ms. Arroyo, Mr. Wilson?

12

13 CROSS-EXAMINATION

14

15 BY MR. WILSON:

16 Q Do you have -- do you have personal knowledge of Mr.
17 Hunter's status at the time of the plea hearing? Did you know
18 what his status was as an employee?

19 A I did not.

20 Q Okay. Then you wouldn't be privilege to those
21 communications?

22 A I would not be privileged to those communications.

23 Q But he was -- he was an ADA the day before; correct?

24 A That is correct.

25 Q Did you see him in the -- you saw him in the office

1 as an ADA; correct?

2 A That is correct.

3 Q Okay.

4 MR. WILSON: Nothing further, Your Honor.

5 THE COURT: All right. May the witness be excused?

6 MR. EPPS: I would not excuse her. I'd ask her to
7 remain outside, Judge, in case --

8 THE COURT: All right. So you're excused subject to
9 being recalled.

10 THE WITNESS: Thank you.

11 THE COURT: All right. We're going to take our lunch
12 recess. So we'll be in recess until 2:45. All right?

13 MR. EPPS: Thank you, Your Honor.

14 MR. WILSON: Thank you, Your Honor.

15 [Recess is taken.]

16 THE COURT: All right. Mr. Epps --

17 MR. EPPS: Yes, Your Honor.

18 THE COURT: -- any further evidence?

19 MR. EPPS: Yes, Your Honor. We recall Deborah
20 Gonzalez to the stand.

21 THE COURT: All right. You may proceed.

22 MR. EPPS: All right. Thank you, Judge.

23

24

CONTINUED CROSS-EXAMINATION

25

1 BY MR. EPPS:

2 Q Ms. Gonzalez, I want to show you what's been marked
3 as M-13. This is the email that I just went over with Ms.
4 Arroyo.

5 A Yes.

6 Q You're familiar with this email?

7 A Yes.

8 Q Let me ask you a very particular question. You got
9 the subpoena related to what you should've brought to this
10 hearing; is that correct?

11 A Yes.

12 Q Yet I didn't get this email in the packet that was
13 distributed to me originally from your office, did I?

14 A I don't believe so, no.

15 Q And Ms. Arroyo said that you had IT search?

16 A Yeah. And I think it's because it doesn't have
17 Waldrop in the heading; right? It just says trial calendar.
18 It didn't say Waldrop or any of the other individuals here. I
19 think that's why it didn't show up on the search.

20 Q Okay. So the attachment that was to M-13 --

21 A Uh-huh [affirmative].

22 Q -- at the top says Tab, I need a list of each of the
23 cases with any plea offer made and the defense attorney. Who
24 sent that?

25 A I believe I did because he was not -- he had stated

1 he was not going to be in court on that Thursday.

2 Q Right. Because he had resigned the day before?

3 A He had stated that and we were still talking about
4 not him leaving.

5 Q You had been talking to him about not leaving?

6 A Yes. About not accepting his resignation and talking
7 about what had happened, why he wanted to resign, and, you
8 know, what we could do. And he said he definitely would not be
9 in on Thursday. And so I said, well, if I'm going to cover
10 your plea, I need to know where you have been with all the
11 defense attorneys. And what I mean by been, I mean, you know,
12 the negotiations that they had.

13 Q Let me show you what's been marked as M-14. So it's
14 your position that when he sent that email that he had not
15 resigned from your office? Is that your official position?

16 A He had put in a resignation and then I was trying to
17 convince him not to resign yet.

18 Q That's not what you told Judge Stephens on September
19 21st, 2023, is it?

20 A No.

21 Q You see that M-14 is the colloquy between Judge
22 Stephens and Deborah Gonzalez at the conclusion of the court
23 proceedings on September 21st, 2023?

24 A Yes.

25 Q Do you see that?

1 A Yes, I do.

2 Q And that was the same day that you entered into the
3 plea involving the victim Ms. Wilson, isn't it?

4 A Yes, it is.

5 Q And you made that plea based on the recommendation of
6 Tab Hunter, didn't you?

7 A Yes. Based on what he told me was the status of his
8 conversations with the defense attorneys that he had had up to
9 that point.

10 MR. EPPS: Your Honor, we would tender M-14 into this
11 -- into evidence.

12 THE COURT: Any objection?

13 MR. WILSON: It -- it is record, Your Honor.

14 THE COURT: All right. Admitted.

15 BY MR. EPPS: [Resuming]

16 Q All right. If you'll flip with me to page one --

17 MR. WILSON: Your Honor, although I -- I do -- I do
18 object to reading -- reading the transcript on an
19 unrelated -- I mean, this is not -- I don't know how this
20 is going to be related to this. And I do object to the
21 reading of the transcript --

22 THE COURT: All right.

23 MR. WILSON: -- before a question is asked.

24 THE COURT: Well, I wasn't sure what the question was
25 going to be. Let me hear the question first. Then I can

1 rule on your objection.

2 MR. WILSON: Thank you.

3 MR. EPPS: Sure. So, Judge, I was going to clarify
4 with her that -- that -- what had happened at that point
5 is she'd asked specifically to -- to speak with you. And
6 you asked for the court reporter to take it on the record.
7 She specifically said to you, Your Honor, Mr. Hunter left
8 your courtroom yesterday, which would've been September
9 20th, and resigned, which is the reason I had to even come
10 in even with you.

11 THE COURT: Okay.

12 MR. EPPS: So I am pointing out to the fact --

13 THE COURT: I'll allow it.

14 MR. EPPS: Thank you.

15 BY MR. EPPS: [Resuming]

16 Q So let me do this. You see page two?

17 A Yes.

18 Q Ms. Gonzalez, it states which is -- well, let -- hold
19 on, let me back up. You at that point had decided on your own
20 that you wanted to make an announcement to Judge Stephens,
21 didn't you?

22 A I wanted to talk to him. Yes.

23 Q And you said so, Your Honor, I would just like to
24 make one announcement. I see that we have done -- that we
25 don't have any cases left for trial. And Judge Stephens says

1 that's right. And you said at this point. And the Court said
2 yeah. And then you state yeah, which is -- and you state which
3 is good because, Your Honor, Mr. Hunter left your courtroom
4 yesterday and resigned, which is the reason I had to come even
5 with you. Did I read that correctly?

6 A Yes, he did resign.

7 Q So --

8 A But I was still talking with him to see if he would
9 not leave.

10 Q So which one is it now, Ms. Gonzalez? Did he resign
11 or did he not resign?

12 A He resigned but we were still in conversation. There
13 was a chance that he was not going to leave the office.

14 Q All right. So we're in agreement that he resigned on
15 the day before; correct?

16 A We're in agreement that he handed it in and said he
17 wanted to resign. Yes.

18 Q Ms. Gonzalez, you stated affirmatively to Judge
19 Stephens that Mr. Hunter had resigned the day before? Yes or
20 no, please.

21 A I did tell him that because at that point Mr. Hunter
22 still had not done a final decision whether to stay or not.

23 Q You didn't say that to Judge Stephens, did you?

24 A No, I did not because I had no idea whether Mr.
25 Hunter was going to stay or not.

1 Q Well, you didn't hold back there. You went on your
2 official Facebook account at -- for Deborah Gonzalez and you
3 stated to the public that he resigned because of how Judge
4 Stephens treated him, didn't you?

5 A I went on my personal --

6 MR. WILSON: Your Honor, I'm -- I'm objecting at this
7 point.

8 THE COURT: What's the relevance of this, Mr. Epps?

9 MR. EPPS: Absolutely. Well, I guess -- is that his
10 objection; relevance, Judge?

11 MR. WILSON: That would be.

12 THE COURT: I assume so. What is the relevance of
13 this?

14 MR. EPPS: Absolutely. Judge, she stood before you
15 and made a recommendation on a plea to an ADA that was no
16 longer with her office. Marsy's Law specifically allows
17 for victims of cases to speak with the prosecuting
18 attorneys of their case. This guy made an oath which he
19 had to swear before a judge -- I shouldn't say this guy.
20 That's inappropriate. Mr. Hunter made an oath --

21 THE COURT: What about -- what's relevant to what --
22 what Ms. Gonzalez posted?

23 MR. EPPS: So -- so she says on Wednesday Tab Hunter
24 walked out of Judge Stephens' courtroom and resigned.

25 THE COURT: Okay.

1 MR. EPPS: I'm just proving her credibility and she
2 just --

3 THE COURT: All right. I'll allow that question.

4 MR. EPPS: Thank you.

5 BY MR. EPPS: [Resuming]

6 Q So you decided to go on Facebook and announce what
7 happened in court, didn't you?

8 A Yes, on my personal Facebook account, I did.

9 Q Oh, okay. Well, let me ask you a question. This was
10 official work of the District Attorney that you put on your
11 personal Facebook page, didn't you?

12 A I often --

13 Q Yes or no?

14 A Yes.

15 Q Okay. You --

16 A But it is also -- if you finish reading what I
17 actually put in there, I was talking about how I was feeling
18 about it.

19 Q Right. I understand that. I'll get that -- you
20 block people from your personal Facebook page, don't you?

21 A No. My personal Facebook page is based on who
22 friends me. That's very --

23 Q Right. And you've never rejected anyone?

24 MR. WILSON: Your Honor, I --

25 THE WITNESS: There are people that I don't know, but

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MR. WILSON: Is this relevant?

MR. EPPS: Sure it is.

MR. WILSON: I mean, whether or not -- whether or not she's --

THE COURT: How is this relevant, Mr. Epps?

MR. EPPS: If she -- Judge, she is putting out direct information as to the D.A. in this -- about her office and she's rejecting people -- I will tell you multiple -- that's a constitutional violation and a Marsy's Law violation.

THE WITNESS: It's a personal Facebook account.

THE COURT: Hold on. Wait a minute. Let me rule on the objection first.

MR. EPPS: So it goes exactly to being treated with integrity, and the victims have a right of the prosecuting agency --

THE COURT: All right. I sustain the objection.

MR. EPPS: All right.

BY MR. EPPS: [Resuming]

Q Let me just do this. M-15; show it to you. You wrote on Wednesday Tab Hunter walked out of Judge Stephens' courtroom and resigned, didn't you? That's what you told the public on your personal web page, didn't you?

A Yes.

1 MR. EPPS: Your Honor, I'd tender M-15.

2 THE COURT: Any objection?

3 MR. WILSON: Your Honor, I do object for -- object as
4 to relevance, whether it can be tendered in. I -- I guess
5 he can tender it in, but I do object to the exhibit as --

6 THE COURT: I'll admit it.

7 BY MR. EPPS: [Resuming]

8 Q All right. Now let's go to M-2. So you wrote back
9 to Ms. Wilson to her nine questions, didn't you?

10 A Yes.

11 Q I've got it. I have it right here. You wrote back;
12 right?

13 A Yes.

14 Q This is already into evidence. One of the questions
15 that was asked by Ms. Wilson, who put the plea on the table,
16 our office or the defense office; right?

17 A Yes.

18 Q And your response to question two: our system does
19 note -- our system does not note who initiated the plea.

20 A Yes.

21 Q By the time that you wrote that information to Ms.
22 Wilson, as we have already established, you reached out to Tab
23 Hunter and asked him what plea offers had been made to the
24 defense counsel and the defense; isn't that correct?

25 A I reached out to Tab Hunter because I had to cover

1 his courtroom the next day and I needed to know where he was on
2 all of these cases.

3 Q As a Marsy's Law --

4 A And this asked -- the question that she asked is who
5 initiated it. Again, I don't know if the defense came to Tab
6 or if Tab came to the defense first. All I know is that these
7 were the pleas that he said were -- that had been communicated
8 with the defense.

9 Q Read what you wrote at the top of M-12. Tab, I need
10 a list of each case with any plea offer made. Did I read that
11 correctly?

12 A Yes.

13 Q And at that point he responds with the plea offer
14 that had been made in Mr. Hunter's [sic] case, doesn't he?

15 A Yes. But I --

16 Q So your office made the plea offer in this case?

17 A No. When she says who initiates it, I don't know who
18 initiated the conversation to begin a plea. Sometimes it's my
19 office, sometimes it's a defense attorney. This is when a plea
20 is made; right? When I asked what are the pleas that you have
21 in place, what have you spoken to with the defense attorneys,
22 this is what he gave me. But it doesn't tell me if he was the
23 one who started the conversation or if they did. And that's
24 how I interpreted that question. Who initiated the plea, to me
25 that's saying who started the conversations. Did defense come

1 to you with something or did you go to the defense with
2 something. I don't know that answer.

3 Q Oh, yes, you do because of the next sentence. You
4 haven't read all of it in your answer. Our judges do request
5 that a plea offer is made in each case. So you just told her
6 that Judge Stephens requires that a plea offer be made in every
7 case, didn't you?

8 A Yes, but it still doesn't answer the question of who
9 initiated the conversation.

10 Q Ms. Gonzalez --

11 A It just says that we need to have a plea offer.

12 Q So if you have to have a plea offer, Ms. Gonzalez,
13 who makes the plea offer? Your office; right?

14 A The final one makes it -- yes, my office. But before
15 that many times defense attorneys will come to us, they will
16 come to an ADA, they will say I want to talk to you about this
17 case. These are how I see it. This is what we want to talk to
18 you about. These are thoughts that we have. There is a
19 conversation that happens between the State and the defense
20 before a plea is ever put together.

21 Q And you've never -- all those great words you just
22 told everyone, including the judge, was not written in this
23 email about that, was it? You didn't say that, did you?

24 A No, because the way I understood her question when
25 she asked who initiated the plea, to me, it was very simple,

1 was it the defense who started with the plea or was it the
2 State. And I did not have that answer.

3 Q Ms. Gonzalez, you didn't even write this. Lynn in
4 your office wrote this, didn't she?

5 MR. WILSON: Your Honor, I -- I -- I object at this
6 point. It's argumentative.

7 THE COURT: Sustained.

8 MR. EPPS: All right. Let me just get to this point.

9 THE COURT: And I want you to back up a little bit
10 from the witness.

11 BY MR. EPPS: [Resuming]

12 Q Read the last sentence of question -- of answer
13 number two to question number two.

14 A We do have a note that our victim advocate attempted
15 to notify you and the victim's sister the day of the plea based
16 on notes that we received the night before. Meaning, the plea
17 that we received on this day that you see here that was at
18 12:25 a.m.

19 Q Right.

20 A That -- that to me -- I said the night before. It
21 could've been early morning because it's 12:25 a.m. But I was
22 telling her we attempted based on what we got.

23 Q Right. So let me circle the wagon to what I'm trying
24 to do here. That note that you were referring to when you
25 answered Ms. Wilson was from Mr. Hunter after midnight;

1 correct?

2 A Yes. The list of where he was in his conversations
3 with the defense attorneys. Yes.

4 Q Every ADA that works in your office must take an oath
5 before serving underneath you; correct?

6 A Yes.

7 Q You proceeded ahead on a plea agreement with an ADA
8 who had resigned from your office and was no longer subject to
9 that oath; isn't that correct, Ms. Gonzalez?

10 A Not necessarily because we were still in
11 conversations for him to stay. Many times people will say I
12 quit a job and then they talk with their boss and they don't
13 actually leave.

14 Q And you never said those words to Judge Stephens or
15 in your Facebook post to the community that you were still in
16 negotiations with him to not resign; right, Ms. Gonzalez?

17 MR. WILSON: Your Honor, asked -- asked and answered.

18 MR. EPPS: It's not.

19 THE COURT: I'll allow it.

20 BY MR. EPPS: [Resuming]

21 Q So I'm going to do this again. The only reason that
22 we know the truth -- and I'm getting to this transcript -- is
23 that you told Judge Stephens on the record that he had resigned
24 the day before. And you told the public that he had resigned
25 on Wednesday, the day before, because of actions that took

1 place in this court, didn't you?

2 A I did.

3 Q And that is either not true; right? Or it is true;
4 right?

5 A Again, somebody can say to their boss I resign or I
6 quit and they can keep talking to their boss about not leaving.
7 It's not always just clear-cut. And because he was a good ADA
8 for me, I didn't want him just to leave. And I was trying to
9 bring him back.

10 Q Right. You were trying to bring him back and you
11 allowed him to have access to a victim's file. Did he send
12 that from the ACCGOV email? Because I don't see it at the top.
13 Where did that come from?

14 A I -- I don't know because it doesn't say here his
15 email.

16 Q So if -- did you cut him off?

17 A But I --

18 Q Did you -- listen to my question. Did you cut him
19 off from email and cut him off from the ability to access files
20 in this court?

21 A No, because his resignation wasn't effective until
22 eight o'clock on that Thursday. And this was sent before eight
23 o'clock on that Thursday because I still needed to get from him
24 where he had stood with the defense attorneys. I needed to
25 come into court with Judge Stephens and I needed to know where

1 these cases were. And so I asked him to make sure he got me
2 that information so that I could have it for court the next
3 day. And that's all he did.

4 MR. EPPS: Yeah. No further questions, Your Honor.

5 THE COURT: All right. Any further evidence you want
6 to present? Are you resting?

7 MR. EPPS: No, Your Honor.

8 THE COURT: Do you have other evidence?

9 MR. EPPS: Yes.

10 THE COURT: All right. You can step down. We'll let
11 you --

12 MR. WILSON: Well, may I -- may I ask a question just
13 briefly?

14 THE COURT: We'll let you do that when he's finished.

15 MR. WILSON: I'm sorry. Oh, okay.

16 THE COURT: He called her for cross. So you can ask
17 her questions after he finishes.

18 MR. WILSON: Sure. Thank you.

19 THE COURT: I'll give you full opportunity for that.
20 So you may step down for now.

21 THE WITNESS: Okay. Thank you.

22 THE COURT: All right. Call your next witness,
23 please.

24 MR. EPPS: I call Michael Prochaska to the stand,
25 Your Honor.

1 THE COURT: All right. Has he been subject to the
2 Rule?

3 MR. EPPS: No, Your Honor. They waived -- they --
4 they did not invoke the Rule, Your Honor.

5 THE COURT: They didn't?

6 MR. EPPS: No, they did not.

7 MS. GONZALEZ: We didn't have a list of his
8 witnesses, Your Honor, to invoke the Rule.

9 THE COURT: Well, all right. Okay. Come on up.
10 I'll ask you to raise your right hand to take an oath.

11 [Witness is sworn by the Court.]

12 THE COURT: State your name, please, and spell your
13 first name and last name for the court reporter.

14 THE WITNESS: My name is Michael Prochaska.

15 MR. EPPS: You can put your hand down, Michael.
16 There you go.

17 THE WITNESS: Thank you. M-I-C-H-A-E-L, Prochaska,
18 P-R-O-C-H-A-S-K-A.

19

20 MICHAEL PROCHASKA

21

22 Called as a witness by the Movant, having first been duly
23 sworn, is examined and testifies as follows:

24

25

DIRECT EXAMINATION

1 BY MR. EPPS:

2 Q Michael, prior to me just calling you as a witness,
3 had I -- had I told you I would be calling you as a witness
4 here today?

5 A No, you did not.

6 Q Michael, have you heard the testimony of Ms. Gonzalez
7 when she said that her letter to the editor was in response to
8 a request from the *Oconee Enterprise*?

9 A Yes, I did.

10 Q Is that a true statement?

11 A So to give some context, we were given a statement
12 from Gonzalez's office, and I could give you the exact date
13 when we received that if you want.

14 Q When was that?

15 A Can I check my phone? It's on my phone.

16 Q Yes sir.

17 A Okay. It's in my email. So it will take a minute.

18 Q That's okay.

19 A Okay. We received the statement from the District
20 Attorney's Office on Friday, October 27th at 3:36 p.m.

21 Q And are you the editor in chief of the *Oconee*
22 *Enterprise*?

23 A Yes sir.

24 Q Do you oversee all of your reporters and any requests
25 to Ms. Gonzalez's office?

1 A Yes.

2 Q And did your office -- did the *Oconee Enterprise* make
3 an official request to Ms. Gonzalez or her office to provide
4 that letter to your newspaper?

5 A No, we did not.

6 MR. EPPS: Thank you, Your Honor. No further
7 questions.

8 THE COURT: Cross-examination?

9 MR. WILSON: May I just have a moment, Your Honor?

10 THE COURT: Sure.

11

12 CROSS-EXAMINATION

13

14 BY MR. WILSON:

15 Q Do you recall in what form that -- that was sent?
16 Was that -- was that -- and I -- maybe I can clarify. Was that
17 a letter to the editor or was that an official statement?

18 A Can I look at it again?

19 THE COURT: Sure.

20 THE WITNESS: Okay. Thank you very much.

21 MR. WILSON: Sure.

22 THE WITNESS: So it was an official statement after
23 our newspaper had written a story. And I made the
24 decision to run it as a letter to the editor as opposed to
25 say a followup story that includes her response.

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MR. WILSON: Nothing further.

MR. EPPS: Nothing further from us, Your Honor.

THE COURT: All right. You may step down.

MR. EPPS: We call Joshua Neal to the stand.

THE COURT: Joshua Neal. If you'll raise your right hand please to take an oath.

[Witness is sworn by the Court.]

THE COURT: All right. Please state your name and spell it for the court reporter.

THE WITNESS: Josh Neal. J-O-S-H, N-E-A-L.

THE COURT: Thank you.

JOSH NEAL

Called as a witness by the Movant, having first been duly sworn, is examined and testifies as follows:

DIRECT EXAMINATION

BY MR. EPPS:

Q Mr. Neal, I know we've had the pleasure of meeting last week in court and so I'm just going to move this along. Right now you serve as an apprentice of the District Attorney's Office?

A Yes.

1 Q And you're waiting to take the Bar and then get your
2 Bar results?

3 A Yes.

4 Q On that day in this case that we are here on of *State*
5 *of Georgia versus Luke Harrison Waldrop*, you handled the plea
6 colloquy to Judge Stephens that day?

7 A I did.

8 Q And at that time you were practicing under the -- you
9 were practicing under the ability of the Bar to be able to do
10 so --

11 A Yes.

12 Q -- with a supervising attorney?

13 A Yes.

14 Q Okay. And the -- I have very limited questions for
15 you and it's this: Did you prepare the amended accusation in
16 the case?

17 A I did not.

18 Q Was that prepared by Mr. Hunter?

19 A I am unsure.

20 Q Okay. I'm going to show you what's been marked as M-
21 12 -- M-13, I'm sorry. This is an email from Tab Hunter to Ms.
22 Gonzalez.

23 A Okay.

24 Q And I see on this email that you are not CC'd on it.
25 Have you seen this email regarding the plea recommendation in

1 the Hunter -- in the *Waldrop* case?

2 A I have not.

3 Q How were you relayed the information as to the plea
4 that was supposed to be before Judge Stephens that day?

5 A It was delivered to me by Ms. Gonzalez at the podium.

6 Q Okay. And did you ultimately file the amended
7 accusation in the case?

8 A I did not.

9 Q All right. Were you ever made aware by any victim
10 advocate in the District Attorney's Office of any disagreement
11 that the victims had in this case?

12 A I believe that they were -- I believe I was informed
13 that the victims were disappointed about not receiving jail
14 time for the defendant.

15 Q Who told you that?

16 A I believe it was Lynn Bradberry.

17 Q Lynn Bradberry told you that?

18 A Yes. Yes.

19 Q When were you told that piece of information?

20 A During court -- that term of court that day.

21 Q All right. I read the transcript and I've seen that
22 when Judge Stephens asked specifically if the victims -- if the
23 victims had any statement or objected to that and at that point
24 you did not know; is that right?

25 A Yes.

1 Q And ultimately did you -- and you had said that your
2 victim advocate was not in the -- not in the courtroom that
3 day; is that right?

4 A She had stepped out for just a moment.

5 Q Okay. And then ultimately did you receive that
6 information when the victim advocate came back in and told you
7 that?

8 A Yes.

9 Q Okay. And that happened while the plea was going on?

10 A Yes, but I'm not sure if that information was
11 gathered at that time or if that was just when I was receiving
12 that information.

13 Q I understand. But from your standpoint, the person
14 handling the plea agreement and was doing the plea colloquy,
15 that was the first time you had become aware that the victims
16 were objecting to that?

17 A Yes.

18 MR. EPPS: That's all the questions I have.

19 THE COURT: Any questions for Mr. Neal?

20 MR. WILSON: Yes.

21

22 CROSS-EXAMINATION

23

24 BY MR. WILSON:

25 Q Did you -- were you asked on the record whether or

1 not -- during the colloquy were you asked about the -- whether
2 or not the victims agreed with the -- with the plea agreement?

3 A I believe so, yes.

4 Q And did you -- did you state what you learned?

5 A I did, yes.

6 Q And what was that?

7 A Is that they opposed the defendant not receiving jail
8 time.

9 Q Okay. And did you -- you related that to Judge
10 Stephens?

11 A Yes, I did. I believe so.

12 Q Okay.

13 MR. WILSON: Just a moment, Your Honor, please.

14 Nothing further.

15 MR. EPPS: One -- one thing, Judge. Sorry.

16 THE COURT: Yeah.

17

18 REDIRECT EXAMINATION

19

20 BY MR. EPPS:

21 Q When you do a plea agreement in front of Judge
22 Stephens or any other judge, you have to give a factual basis
23 of that plea agreement; is that right?

24 A Yes.

25 Q And in this case Mr. Ballard, the defense attorney,

1 provided that factual basis for this -- for that agreement?

2 A He did.

3 Q And you did not do that?

4 A Not at that time.

5 Q I'm asking this question to you, Mr. Neal. Before
6 that plea was entered, had you reviewed the file?

7 A I had reviewed the Tracker notes for the file.

8 Q Okay. But you had not done a deep dive into the --
9 into the accident report, what happened on field sobriety, what
10 happened in the DUI? You had not had an opportunity to do that
11 yet?

12 A I can't say that it was a deep dive, no.

13 Q And so your -- what you did that day was at the
14 direction of Ms. Gonzalez?

15 A I was asked to deliver colloquies, yes.

16 Q Yes sir.

17 MR. EPPS: That's all the questions I have, Judge
18 Stephens.

19 MR. WILSON: No further questions.

20 THE COURT: All right. May the witness be excused?

21 MR. EPPS: Yes, Your Honor. And at that -- at this
22 point the Movant rests subject to rebuttal.

23 THE COURT: All right. You may proceed, Mr. Wilson.
24 Need a minute?

25 MR. WILSON: Yeah, if you don't mind, Your Honor.

1 THE COURT: All right. Take a five-minute break.

2 [Brief recess is taken.]

3 THE COURT: Mr. Wilson, you ready or you need a few
4 more minutes?

5 MR. WILSON: I'm ready.

6 THE COURT: All right. You may proceed.

7 MR. WILSON: Thank you, Your Honor. I'll call
8 Deborah Gonzalez.

9 THE COURT: You may proceed --

10 MR. WILSON: Thank you, Your Honor.

11 THE COURT: -- Mr. Wilson.

12 MR. WILSON: Thank you.

13

14 DEBORAH GONZALEZ

15

16 Called as a witness by the State, having previously been duly
17 sworn, is examined and testifies as follows:

18

19 DIRECT EXAMINATION

20

21 BY MR. WILSON:

22 Q Ms. Gonzalez, I'm going to show you what's been
23 marked as State's Exhibit Number 1, which I think is -- may be
24 a duplicate of one that's already been entered. Would you
25 please tell the Court what that is?

1 A It's an email from Tab Hunter to me.

2 Q And is that -- is that an email that he sent to you?

3 A Yes, with the trial calendar.

4 Q Is -- is that an accurate copy of that email?

5 A Yes.

6 Q And could you please specify as to the -- the date

7 that that email was sent and time?

8 A September 21st, 2023, 12:25 a.m.

9 MR. WILSON: I'd ask that State's 1 be moved into the
10 evidence.

11 THE COURT: Any objection?

12 MR. EPPS: Can I take a look at -- can I take a look
13 at that, Mr. Wilson, one more time?

14 MR. WILSON: This one?

15 MR. EPPS: This -- this -- can I take a look at that
16 one? Sorry.

17 MR. WILSON: Sure. Sure.

18 MR. EPPS: I'm sorry, Mr. Wilson. I was just --

19 MR. WILSON: No worries.

20 MR. EPPS: So, Your Honor, this exhibit is previous
21 M-13 --

22 MR. WILSON: Yes.

23 MR. EPPS: -- which you -- I understood that you
24 denied that exhibit coming into evidence. That's the one
25 related to Tab Hunter on Thursday, September 21st. So I

1 have no objection to this as long as all of M-13 comes
2 into evidence.

3 THE COURT: I'll -- I'll admit State's 1.

4 THE WITNESS: That's just the -- that's not the
5 attachment.

6 MR. WILSON: Well, Your Honor, I -- that's what I'm
7 offering the Court. Not the attachment.

8 THE COURT: I'm admitting State's 1.

9 MR. WILSON: Yeah.

10 MR. EPPS: So -- but are we -- have we admitted M-13
11 at this point, which is the same email just with the
12 attachment, Your Honor? Because if we did, I'm asking for
13 all of it be admitted.

14 THE COURT: Well, then you'll have an opportunity to
15 tender it again if you want to. But right now I'm just
16 admitting State's 1.

17 MR. WILSON: Thank you, Your Honor.

18 BY MR. WILSON: [Resuming]

19 Q Ms. Gonzalez, I'm going to show you what's been
20 marked as State's 2. Could you please review that? And what
21 is that?

22 A This is an email from Tab Hunter with the subject of
23 end of service.

24 Q And have you seen that -- have you seen that email
25 before?

1 A Yes.

2 Q Is that an accurate copy of the email that was sent?

3 A Yes, it is.

4 MR. WILSON: Your Honor, at this time I'd move to
5 admit State's 2.

6 MR. EPPS: Objection. It's hearsay. Mr. Hunter is
7 not here and they're attempting to introduce an email from
8 Mr. Hunter to her. It's hearsay.

9 THE COURT: Let me see it and I'll rule on it.

10 MR. EPPS: Actually, no. I'll let it in.
11 Absolutely.

12 THE COURT: Oh, you'll let it in?

13 MR. EPPS: I mean -- sorry, Judge.

14 THE COURT: Well, thank you, judge.

15 MR. EPPS: Sorry. I -- I -- sorry, Judge. Need to
16 know my role. Absolutely I want that exhibit in, Your
17 Honor.

18 THE COURT: So you don't object?

19 MR. EPPS: I don't object. I withdraw the objection.

20 THE COURT: Okay. State's 2 is admitted.

21 MR. EPPS: Yeah.

22 THE COURT: All right.

23 MR. WILSON: And on State's -- thank you, Your Honor.

24 BY MR. WILSON: [Resuming]

25 Q And on State's 2 does it -- does it specify a time of

1 -- of Mr. Hunter's effective resignation?

2 A Yes. He says accept with gratitude with this notice
3 of my intention to end my service effective 8:00 a.m.,
4 Thursday, September 21st, 2023.

5 Q And that -- that was actually after the plea offers
6 were communicated; correct?

7 A 12:28 a.m.

8 Q And we heard -- we heard a little bit about the
9 letter that was sent -- or was posted in the *Oconee Enterprise*.
10 Do you -- do you have any knowledge of how that was -- how that
11 was done?

12 A Yes. We received a request from the media about if
13 we had any comments about the Marsy's Law violations. And I
14 worked with my director of external relations and we wrote a
15 statement -- an official statement. And then we not only gave
16 it to the reporter who asked, but we sent it out to the rest of
17 the media as an official statement from the office. We never
18 put it out as a letter to the editor in my personal capacity.

19 Q Okay. But that's the way it appeared in the
20 newspaper?

21 A Yes, it appeared that way even though we were not
22 asked whether we wanted it as a letter of editor. We had sent
23 it specifically as an official statement from the office. Not
24 as a letter from me.

25 Q Okay. And do you consider that there is a difference

1 between the two of them?

2 A Yes.

3 Q And what is that?

4 A One is from the office in the official capacity. And
5 usually letters to the editors are individuals, right, who are
6 voicing their opinions or thoughts about something. But it's
7 in a personal capacity and that was not how this was sent.

8 Q So it was changed to -- from a statement to a letter
9 to the editor by the paper?

10 A By the paper.

11 MR. EPPS: Objection. Objection. Calls for
12 speculation. They don't know -- she doesn't know that.

13 THE WITNESS: He testified to it.

14 THE COURT: Wait a minute. I'll allow it.

15 MR. WILSON: Thank you. Nothing further.

16 MR. EPPS: Yes.

17 THE COURT: All right. Recross.

18

19 RECCROSS-EXAMINATION

20

21 BY MR. EPPS:

22 Q Ms. Gonzalez, do you remember previously testifying
23 under oath to Judge Stephens --

24 A Yes.

25 Q -- before this?

1 A I'm still under oath.

2 Q And do you remember previously testifying to Judge
3 Stephens that you specifically received a request from the
4 *Oconee Enterprise* in which that response and that letter to the
5 editor is what you gave them? Do you remember that testimony?

6 A That I received -- yes, I thought that I had received
7 it from them. I found out that, in fact, it was Wayne Ford who
8 had sent the questions.

9 Q Who'd you find that out from?

10 A From Dawn Brinkley, the person who is -- does the
11 communications for the office.

12 Q When did you just find that out?

13 A Earlier today.

14 Q Well, you could've only done it after the editor of
15 the *Oconee Enterprise* testified. Is that when you did it?

16 A No, actually it was before.

17 Q Oh, so you were prepared to correct your testimony
18 that you'd previously given to Judge Stephens?

19 A No. I had spoken to her about submitting a statement
20 before.

21 Q Ms. Gonzalez, regardless of how the *Oconee Enterprise*
22 treated your statement, you would agree with me that you
23 commented on this case in the media regarding the victims? You
24 would agree with me you did that?

25 A No. I did not comment about the victims. I

1 commented about the contact that my office had with the
2 victims.

3 Q Right. So there you go. Let's see if we can get
4 through the nomenclature. You put out to the public
5 confidential information regarding contact with victims --
6 pursuant to Marsy's Law that you're not allowed to do, you put
7 out in a public statement that your office had confidential
8 communications with victims and you told the world about it,
9 didn't you?

10 A The case was closed. It wasn't confidential. Once a
11 case is closed, anybody can submit a public -- an open records
12 request to get information. The case was closed.

13 Q No ma'am. You just stood when your attorneys -- in
14 the hallway across where you stated -- and I want to be clear
15 about what you're stating to Judge Stephens -- you and your
16 attorneys have advanced in the open records case that your
17 office is not subject to open records and you have immunity to
18 it and that you do not have to respond to any open records.

19 MR. WILSON: Your Honor --

20 MR. EPPS: Let me finish my question.

21 MR. WILSON: Okay.

22 BY MR. EPPS: [Resuming]

23 Q You have asserted in a judicial pleading that you are
24 not subject to open records requests, regardless if the case is
25 closed or not closed, that you are -- have immunity as it

1 relates to this. Have you not done that, Ms. Gonzalez?

2 A It's a totally separate --

3 MR. WILSON: Your Honor, I do -- I do object to that
4 as -- as beyond the scope of this hearing and not
5 relevant.

6 THE COURT: Reference -- you're making reference to
7 another proceeding -- a separate proceeding?

8 MR. EPPS: Absolutely, Judge. And you can take
9 judicial notice of this. They have absolutely -- she just
10 told us that in her defense of putting confidential
11 communications out with victims in that letter to the
12 editor. Her dispute -- her answer was I can send open --
13 anyone can send me open records requests and you can get
14 it. Well, she is now talking out of two sides --

15 THE COURT: All right.

16 MR. EPPS: -- because she has sat over there with
17 Judge Emerson -- and I just had a hearing last week on a
18 motion to dismiss that she claimed immunity and she
19 doesn't have to respond to it, Judge. You can't have it
20 both ways.

21 THE COURT: All right. I'll allow the question.

22 THE WITNESS: You asked about --

23 THE COURT: I'll allow it. I'll allow her to answer.

24 THE WITNESS: Then let me answer.

25 MR. EPPS: Let me ask the question again.

1 THE COURT: No. Let her answer.

2 MR. EPPS: Okay.

3 THE WITNESS: Let me answer. You asked about if I
4 had given confidential information about clients. I did
5 not. There is nothing in that statement that is
6 confidential information about a client. I talked about
7 contact and my office doing its due diligence and having
8 that contact with the victim. And, again, our assertion
9 is that the victim that we needed to contact in this case
10 was the sister.

11 BY MR. EPPS: [Resuming]

12 Q Sure. You agree with me that Marsy's Law says that
13 communications with victims are confidential; you agree with
14 me?

15 A The actual subject matter of communications, yes.

16 Q Where does it say that? Where does it say that in
17 Marsy's Law? Tell me.

18 A There is nothing in Marsy's Law that says we cannot
19 ever say that we have spoken to somebody or that we have spoken
20 to the victim or not spoken to the victim. What we do not
21 disclose when we talk about confidentiality is we do not
22 disclose the subject matter of these items. And when I said
23 that anybody can do an open records request, anybody could've
24 gone to the clerk of courts to get anything related to this
25 case once it's closed.

1 Q No ma'am.

2 A They don't necessarily have to come to me. They can
3 get any of those public documents from the clerk of courts.

4 Q No ma'am. Let me go -- you've done a lot there. So
5 let me break this down. Showing you M-11, which is letter to
6 the editor. When you state in this letter, in the case of one
7 victim, our office did its due diligence in contacting the
8 victim's family multiple times and keeping them informed as to
9 case details were -- as case details were available, did I read
10 that correctly?

11 A Yes.

12 Q And in that -- in that letter to the editor to your
13 statement to the *Oconee Enterprise* you told the newspaper, you
14 told the public what you were informing the victims about,
15 didn't you?

16 A These were generalizations --

17 Q About -- hold on.

18 A -- about saying case details or things like that.
19 There's nothing here that specifies actual facts or specifics
20 of the case.

21 Q Right. So let's -- let's get to this point. You
22 have now tendered State's Exhibit 1, which is Tab Hunter's
23 email to you on September 21st, 2023, at 12:25 a.m.; is that
24 right? Your office just did that?

25 A Yes, the email.

1 Q Right. And you objected to M-13 that came into
2 evidence as work --

3 A We objected to the attachment because the attachment
4 to us is work product that had all pleas of all different
5 cases. But this that we're admitting is only the top email to
6 say what it was, that it was sent to us.

7 MR. EPPS: Your Honor, I'd take this time to re-
8 tender M-13.

9 THE COURT: So I've already let in the first page of
10 M-13 which is the same thing as State's 1 --

11 MR. EPPS: Correct.

12 THE COURT: -- because I didn't think the rest of it
13 was -- was --

14 MR. EPPS: Well, now I've established what happened;
15 right? So the second page says Tab, I need a list of each
16 case with the offer made and defense attorney. Ms.
17 Gonzalez has established that's from her.

18 THE COURT: Okay. That's in --

19 MR. EPPS: So I established that's from her to Tab.

20 THE COURT: Right.

21 MR. EPPS: Is that in evidence, Your Honor?

22 THE COURT: That is admitted.

23 MR. EPPS: Okay. And then the plea offer which
24 they're putting --

25 THE COURT: That's admitted.

1 MR. EPPS: Yeah. Okay.

2 THE COURT: It's just the balance of all the others
3 is what I wanted to keep out because it's not -- it's not
4 relevant.

5 MR. EPPS: Understood. That's all I needed
6 clarification on.

7 THE COURT: All right.

8 BY MR. EPPS: [Resuming]

9 Q Okay. Now your only other exhibit that you tendered
10 is the resignation from Tab Hunter on Thursday, September 21st,
11 2023, at 12:28 a.m. So let's be clear about something.
12 Thursday, September 21st, 2023, at 12:28 a.m. is in the wee
13 hours of the morning.

14 A Yes.

15 Q So what he did -- what you're showing is within a
16 three-minute span he sent a plea offer to you at your request
17 and then three minutes later he sent a resignation; right?

18 A Yes.

19 Q And -- but when you stood up in front of Judge
20 Stephens, and when you made that Facebook post, you said he
21 walked out of court and resigned?

22 A Yes. He was very upset and he walked out of court
23 and he says I'm out of here, I quit.

24 Q Right.

25 A And so to me I'm just not going to accept that

1 somebody on my staff just quit. I want to know what happened.
2 I want to know what he's feeling. I want to know if there's a
3 way that he can stay with the office, if there's something that
4 we can rectify.

5 Q I'm going to ask a real simple question, and I know
6 it's probably -- I'm just going to ask for a yes or no. When
7 you told Judge Stephens and when you posted that Facebook page
8 that Tab Hunter walked out of court and resigned on Wednesday,
9 the previous day, that was not the truth, was it, Ms. Gonzalez?

10 A It was the truth. He walked out and he wanted to
11 leave. And we were trying to convince him not to.

12 MR. EPPS: Your Honor, I'll leave that to you. No
13 further questions.

14 THE COURT: Anything -- any further questions?

15 MR. WILSON: No redirect, Your Honor.

16 THE COURT: All right. You may step down. Thank
17 you.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: Any further evidence, Mr. Wilson?

20 MR. WILSON: No. No, Your Honor.

21 THE COURT: All right. Any evidence in rebuttal?

22 MR. EPPS: I'd just like to tender M-16, Your Honor,
23 as the notice of filing of subpoenas. I know it's part of
24 the record, but ultimately in a motion for contempt for
25 non-compliance, I need to have that tendered to your

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office.

THE COURT: Any objection for M-16?

MR. WILSON: I mean, as far as the form of it, no.

THE COURT: All right. It's admitted.

MR. EPPS: Your Honor, with that, the Movant rests.

THE COURT: All right. Closing argument?

MR. EPPS: We reserve the right to open and close.

Mr. Fitzpatrick will open and I will close.

THE COURT: Okay.

MR. FITZPATRICK: Thank you, Your Honor.

Your Honor, if you would, I would ask the Court to pull out Movant's Exhibits 4 and 5.

THE COURT: All right. Let me --

MR. EPPS: I've got them, Judge.

THE COURT: If you'll hand those to Ms. Colley and then let -- Ms. Colley, if you'll hand me the evidence if it's in -- is it in order of --

MR. EPPS: No, Judge. Let me fix that real fast.

Judge, I'm showing M-12 was not admitted. I just want to make sure M-12 was not admitted.

THE COURT: Okay.

MR. EPPS: All right. Judge, I think I've got them.

THE COURT: All right. So what -- you just took one back.

MR. EPPS: This is an extra duplicate copy, Judge.

1 THE COURT: Oh, all right. What were the exhibits
2 you wanted me to look at, Mr. Fitzpatrick?

3 MR. FITZPATRICK: If you would, Your Honor, pull out
4 4 and 5. It's the transcript of guilty plea and the
5 police officer's report.

6 THE COURT: Okay.

7 MR. FITZPATRICK: But before I get to that, I would
8 like to talk with you about common law marriage since that
9 is the defense here.

10 THE COURT: Okay. Have you given Mr. Wilson a copy
11 of the brief you just handed up?

12 MR. FITZPATRICK: Yes sir, I just handed it to him.

13 THE COURT: Okay. All right.

14 MR. FITZPATRICK: So, Judge, if I may -- if I'm out
15 of line, you'll certainly tell me. If you've already made
16 a decision on saying that there is a common law marriage,
17 I will not go through this. If you would like me to argue
18 this, then I certainly will if that's -- if that's an
19 appropriate inquiry of the Court.

20 THE COURT: Well, I think what I'll -- I'm going to
21 let you argue it and then I'll let Mr. Wilson argue the
22 other side.

23 MR. FITZPATRICK: All right, sir.

24 Your Honor, since 1860 common law marriage was
25 recognized in Georgia up until January 1 of 1997. And the

1 cases say that -- you know, there are three, not four as
2 the District Attorney said -- three elements of common law
3 marriage. And they're found on page three of this brief
4 under Argument and Citation of Authority. And they were
5 codified in the Code and were in effect, of course, until
6 January 1 of 1997.

7 First of all, the parties must be able to contract.
8 The evidence before you today is that both -- and I'm
9 going to call them Susan and Jim, if I may.

10 THE COURT: That's fine.

11 MR. FITZPATRICK: Susan and Jim were able to
12 contract. They were of sound mind. She specifically said
13 that.

14 There must be an actual contract. She said they
15 entered into an oral marriage contract. And there was no
16 evidence to the contrary, and they were -- then there must
17 be consummation according to law. And consummation is
18 defined as cohabitation as man and wife.

19 So the other elements that we needed to prove is that
20 for there to be a marriage neither can have a living
21 spouse of a previous undissolved marriage, which Susan
22 said that that is accurate. They were not related to each
23 other by blood or marriage within the prohibited degree,
24 and she said they were not. So for 37 years beginning in
25 1985 when Susan was 23, Jim was 21, they cohabited as man

1 and wife and considered themselves as husband and wife.
2 And she went through the things that they did together and
3 there was a number of those.

4 Now, the cases say that long cohabitation is one of
5 the strongest habits known to man and is only to be
6 repelled by clear evidence and that is on page four of the
7 brief. And so 37 years, I would suggest to you, of
8 connubial habit is certainly long for anyone. So I would
9 suggest to you that when they have been living in apparent
10 matrimony, they are presumed, in absence of counter
11 presumptions of proof, not to be violating the due order
12 of society and breaking the law, but to be in fact
13 married. And that is in the case that I have cited in the
14 brief.

15 So I would suggest to you that the uncontradicted
16 evidence before the Court today is that Jim and Susan were
17 married by common law. That is a question of fact for the
18 trier of fact and the burden of proof is simply a
19 preponderance of the evidence. And so we suggest to you
20 that there -- we have proven by a preponderance of the
21 evidence -- in fact, uncontradicted preponderance of the
22 evidence -- that Jim and Susan were married by common law.

23 The only other issue -- point I'd like to make about
24 this common law is that there is no requirement in the
25 Georgia Crime Victims Bill of Rights that Susan have held

1 herself out to be Jim's wife at any time to the State.
2 And throughout this case, as shown by the emails that
3 we've presented and been offered into evidence, the
4 District Attorney's Office treated Susan as Jim's spouse.
5 It was only after this Marsy's Law violation motion was
6 filed that all of a sudden the District Attorney makes the
7 allegation that Susan was not Jim's spouse.

8 So for the reasons that we have presented to you and
9 the law as I have set out in the hearing brief on common
10 law marriage, we suggest to you that we have proved by a
11 preponderance of the evidence, again, without
12 contradiction, that Susan and Jim were common law married
13 and that in fact she meets the definition of victim of the
14 Georgia Crime Victims Act.

15 So if I may, if the Court would allow me to and is
16 ready for me to, I will now shift to other argument before
17 the Court.

18 THE COURT: All right. Go ahead.

19 MR. FITZPATRICK: Judge, in the transcript of the
20 guilty plea, I would refer you to page 15 -- excuse me --
21 start with page 13. And this is Mr. Ballard, as has been
22 pointed out, making the proffer to the Court about the
23 plea.

24 THE COURT: Yes sir.

25 MR. FITZPATRICK: And beginning on line 18, he says

1 my review of the evidence disclosed that the clothing worn
2 by the decedent was not reflective in nature and that
3 there might have been a taillight on the bike that might
4 have been dimly working, but from my review of the videos,
5 I couldn't tell.

6 Well, first of all, that's why the police report is
7 important. If we go to the second page under the
8 narrative, it says Driver 2 -- that would be Jim -- was
9 also wearing bright yellow clothing. And before that it
10 said the bicycle had a working headlight and a flashing
11 red LED light facing the rear. If we go on further into a
12 narrative, and this would be on the, I believe, sixth --
13 sixth page of this exhibit where the narrative is
14 continued, Officer Joey Lewis wrote the bicyclist was
15 wearing a typical road bicycle suit that consisted of a
16 bright yellow top and had a red LED light attached to the
17 rear of the bicycle, still blinking as we investigated.
18 The bicycle also had a front headlight on the bicycle and
19 was still illuminating.

20 So I suggest to you that you did not get accurate
21 information on the proffer that was made, or whatever
22 y'all choose to call it, when that was told to you at the
23 plea and sentence that the clothing was not reflective in
24 nature, there might have been a taillight that might have
25 been dimly working. We all know about LED lights. They

1 are more bright than a normal light. Furthermore, you had
2 the testimony unrebutted by Susan from the witness stand
3 that at the place on Tallassee Road where Westchester
4 comes in, there is a light.

5 So I suggest to you you did not have all the
6 information -- in fact, you had incorrect information from
7 the -- what was given to you by Mr. Ballard. And if we
8 turn to page 14 of the transcript where it says it appears
9 from a -- beginning at line 7 -- it appears from a review
10 of the evidence and the videos from the case that decedent
11 was wearing sunglasses. You heard again uncontradicted
12 from Susan that if Jim was wearing sunglasses -- wearing
13 glasses that night, they were the kind that transitioned
14 and he would have been wearing them just for eye
15 protection.

16 If we then turn to page 15 of the transcript,
17 starting at line 3 where you ask, so he wasn't drinking
18 alcohol? And Mr. Ballard said he had consumed alcohol
19 earlier in the evening, Your Honor, but the evidence
20 doesn't indicate that alcohol was a contributing factor
21 and certainly doesn't, isn't -- there isn't enough
22 evidence to establish that his consumption of alcohol is
23 the approximate cause of the accident.

24 Now, for what it's worth to the Court, and I suggest
25 to you it is worth something, the third page of the police

1 report under narrative says Driver 1 was determined to be
2 under the influence at the time of the crash. And if we
3 go on over to the fifth page again under narrative, and
4 this is Officer Joey Lewis speaking again: I was informed
5 by Sergeant Wood that patrol officers met with Luke
6 Waldrop who was driving a white Honda Accord and was still
7 on the scene who displayed physical manifestations of
8 alcohol impairment such as bloodshot watery eyes, thick
9 slurred speech, and swaying back and forth as he was
10 talking with officers. And we turn to the next page and
11 now this is Officer Lewis speaking: Sergeant Wood told me
12 to assist SPO Denmark with investigation with a driver of
13 the Honda. SPO Denmark and I met with Waldrop and I
14 observed he was displaying physical manifestations of
15 alcohol impairment such as bloodshot watery eyes, thick
16 slurred speech, and he was swaying back and forth and side
17 by side as he stood. Waldrop stated he was coming from
18 downtown Athens and was heading home which is off Vaughn
19 Road. Waldrop stated he had consumed three beers not too
20 long ago. SPO Denmark furthered an impairment
21 investigation by asking Waldrop would he be willing to
22 participate in SFST, to which Waldrop said yes. This was
23 based on the collision and Waldrop's physical
24 manifestation of alcohol impairment he was exhibiting.

25 I will not go through, but I would like the Court to

1 look at the three tests that were administered to Mr.
2 Waldrop. And in each one of those tests, I would suggest
3 to you that it is apparent that Mr. Waldrop had some sort
4 of incapacity and apparently a -- which I would suggest to
5 you was the result of alcohol that he had consumed not too
6 long ago. All of this is in direct contradiction to what
7 was presented to you at the plea hearing. And those three
8 tests are there for you to review and determine in your
9 decision whether or not you had all the information that
10 you should have had when the plea was entered.

11 Now, if we turn to the next page of the police report
12 and you will see that SPO Denmark read Mr. Waldrop the
13 Georgia Implied Consent Notice for Suspects Over the Age
14 of 21 and requested a blood test and Waldrop said no. So
15 then as the narrative goes on, a warrant was obtained, a
16 blood search warrant was obtained and Waldrop was taken to
17 Piedmont Athens Regional Medical Center for the blood
18 draw. But before that, while they were at the West
19 Precinct, Officer Lewis, who was sitting in the driver's
20 seat of SPO Denmark's car, said the inside of the entire
21 car smelled of an alcoholic beverage and he watched
22 Waldrop while he was in the back of the patrol car passed
23 out. None of this was told to you, not a single word of
24 this was told to you at the plea hearing.

25 Waldrop refused to sign the documents to have his

1 blood drawn. It was made very clear by SPO Denmark that
2 he had a signed search warrant from a judge, and Waldrop
3 again refused the blood draw and signed a refusal letter
4 presented by the phlebotomist at the hospital. None of
5 this, again, was presented to you at the plea hearing.

6 Now, in addition to what we believe this -- this is
7 what you would have heard from Susan Wilson if she had
8 been here as she should have been on September the 21st
9 when the plea hearing was held. But she -- as you heard
10 from her, uncontradicted again, she had obtained a copy of
11 this motor vehicle crash report and she had studied it.
12 She knew what was in it. The State apparently had not
13 even looked at it. I don't know any other way to
14 characterize that than they hadn't even looked at it.
15 Because no one from the State objected to what Mr. Ballard
16 was telling you. And, again, I suggest to you Mr. Ballard
17 simply was not giving you the facts of this case.

18 Somewhat to add -- well, not somewhat, but to add
19 insult to injury, Mr. Neal made the representation to you
20 -- and I'm not faulting Mr. Neal because he was only
21 repeating what he had just been told, apparently, from his
22 testimony -- we have spoken with the family of the victim
23 and they have been notified of any -- of the offer in this
24 case, Your Honor. Well, Susan Wilson hadn't been
25 notified. Susan Wilson got a phone call on the morning of

1 this plea agreement. And it will be up to you -- we
2 understand the law -- for you to decide whether that phone
3 call to her on the morning of the plea was reasonable
4 notice to her, but we suggest to you that it was not.
5 Even though they talked to Jim's sister in Virginia, as
6 Susan said, she was nine hours away and that was not
7 reasonable notice even to her. There was no way on this
8 earth she could have gotten here from Virginia by the time
9 this plea agreement was held when she was called, I
10 believe if I heard correctly, eight o'clock in the
11 morning.

12 So the claim that you were -- and the pleadings that
13 the District Attorney says, well, the Court was notified
14 of the objection; that's not what Marsy's Law says.
15 Marsy's Law says the victim -- that is, Susan -- had the
16 right to be here to speak to you. And if she had spoken
17 to you and she had told you what this motor vehicle crash
18 report said, we do not know what you would have done. But
19 we suggest to you she had the right to tell you, and you
20 had -- you should have had this information before you
21 accepted a plea of probation to someone who just simply
22 ran over Jim Jones and took his life.

23 And so, Your Honor, that is our portion of the
24 opening argument. I'll answer any questions you may have;
25 otherwise, I'll turn it over to Mr. Wilson.

1 THE COURT: Mr. Wilson, you may close for the State.

2 MR. WILSON: Thank you. Your Honor, we -- we submit
3 that the pleadings that we submitted to the Court are
4 accurate and relevant, Your Honor. It's a difficult --
5 obviously it's a difficult situation for everyone. But,
6 Your Honor, I don't think that they've ever -- I think one
7 of the main things for common law marriage is that they
8 hold each other out as husband and wife. They never did
9 that.

10 THE COURT: She testified -- Susan Wilson testified
11 that they held themselves out as a married couple.

12 MR. WILSON: Well, I don't think -- I don't think --
13 I don't think, Your Honor, there is evidence that she did
14 -- that at least brought to our attention at the D.A.'s
15 Office that she was not a spouse. She was a partner.

16 THE COURT: So why -- why does partner necessarily
17 make you think it's not a spouse?

18 MR. WILSON: Well, it's -- when I asked Ms. Hayes, I
19 said does that mean the same thing to you as being
20 married? And she said no, it does not. Your Honor, I do
21 think that that's important, Your Honor, because we took
22 --

23 THE COURT: Well, but she was listed on your Tracker
24 notes as a victim, was she not?

25 MR. WILSON: She was.

1 THE COURT: Right. So the assumption was that she
2 was a victim because she was a spouse; correct?

3 MR. WILSON: Well, I don't think that's a fair
4 assumption, Your Honor.

5 THE COURT: Okay.

6 MR. WILSON: I do -- I do think that we treated her
7 -- and that would -- but that -- we're dealing with a
8 Marsy's Law violation, Your Honor.

9 THE COURT: Okay. All right.

10 MR. WILSON: We're dealing with a legal Marsy's Law
11 violation.

12 THE COURT: Fair enough.

13 MR. WILSON: And, you know, I -- she doesn't meet the
14 criteria under the law. The law is extremely specific,
15 Your Honor. And to try to -- to try to make it so during
16 this hearing when there's been evidence that she didn't
17 get to -- did not get to -- they didn't have a house.
18 They weren't really holding each other out. But I really
19 don't want to dwell too much on that, Your Honor, because
20 I think -- I think that's our point. Our point is that
21 legally we did not consider her the spouse. So we would
22 not have had a duty to notify her. Even though there was
23 notification --

24 THE COURT: Okay.

25 MR. WILSON: -- because there was -- we knew how

1 close they -- you know, how close she was to the victim in
2 the case. So we did -- we did do that.

3 THE COURT: All right. So what notice was provided
4 to the person that you did consider a victim?

5 MR. WILSON: Excuse me?

6 THE COURT: What notice was provided to the sister
7 that you did consider a victim?

8 MR. WILSON: Well, we did -- I could -- I could spell
9 it out, Your Honor. They -- well, I mean, there's several
10 -- there's several phone calls.

11 THE COURT: The phone call on the morning of
12 September 21st?

13 MR. WILSON: Well, there was that, along with there
14 also was several other contacts. There were several
15 conversations with Ms. Hayes and the sister, along with
16 Ms. Wilson, but they were previous contacts. It's my
17 understanding that when Ms. Arroyo testified, Ms. Arroyo
18 testified that she first reached out to the sister and the
19 sister was notified. Your Honor, there's -- there's --

20 THE COURT: Was notified on the morning of the plea.

21 MR. WILSON: Yes.

22 THE COURT: Okay.

23 MR. WILSON: Yes sir.

24 THE COURT: All right.

25 MR. WILSON: And that's -- that's factual, Your

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Honor.

THE COURT: Okay.

MR. WILSON: Is the Court -- well, we notify -- we notify people -- and I would say the majority of people that are notified in criminal cases, and you know this, aren't -- as far as victims, even though they have a right to be here, they do not avail themselves of that right. So there's a lot of times when the Court takes pleas that the victims aren't going to be here and they don't avail themselves, although they do make it known to our office what they feel about the recommendations, whether it was -- whether it was what they agreed with or what they don't agree with. And obviously this law was made so that the victims of cases would get notice and that things would not happen without them knowing about it, Your Honor.

THE COURT: So that they would have a meaningful opportunity to address the Court and give a victim impact statement if they felt like they wanted to.

MR. WILSON: Yes. Yes, Your Honor.

THE COURT: Okay.

MR. WILSON: And I think -- I think we did -- we did notify -- we notified her and we immediately relayed it to the Court as to her --

THE COURT: Her being the sister.

MR. WILSON: Yes, yes, yes.

1 THE COURT: So what meaningful opportunity did she
2 have to come and tell what she felt when she was in
3 Virginia and the plea was going to be that morning? So
4 how is that prompt notification?

5 MR. WILSON: Well, Your Honor, I don't -- Your Honor,
6 I can't -- I can't say that; however --

7 THE COURT: Okay.

8 MR. WILSON: -- we didn't get -- she let us know she
9 was unhappy with it.

10 THE COURT: All right.

11 MR. WILSON: And we did have subsequent
12 communications with her when she -- matter of fact, she
13 offered -- she offered to bring in the Movant into the
14 conversation but we -- it was not able to do that. We
15 were trying to -- we were trying to notify her. We
16 weren't able to, Your Honor. And I do think -- I do think
17 it's --

18 THE COURT: But how does that much -- how does -- how
19 does notice the morning of the plea, how does that provide
20 -- how is that prompt notice to provide the victim with an
21 opportunity -- a meaningful opportunity to be heard?

22 MR. WILSON: Well, Your Honor --

23 THE COURT: You say, you know, we're getting ready to
24 take this plea, here it is, I mean, what do you think? I
25 mean, is that -- do you consider that that complies with

1 the obligations of the prosecution to provide prompt
2 notice -- reasonable, accurate, timely notice of a court
3 proceeding?

4 MR. WILSON: I would -- I would submit to the Court
5 that if there were an issue where they wanted to present
6 or do a victim impact statement, we would come in as
7 prosecutors and say you know what, Judge, we're ready to
8 go on this thing but --

9 THE COURT: Right.

10 MR. WILSON: -- we need to have a meaningful reasoned
11 delay.

12 THE COURT: Right. And y'all have -- and that has --
13 that happens.

14 MR. WILSON: It does. It does, Your Honor.

15 THE COURT: It happens. It says give it -- I need to
16 contact -- you know, Your Honor, we want to make sure that
17 the victims have been notified, have a chance to be heard
18 before we take up this plea.

19 MR. WILSON: Well, and we did --

20 THE COURT: And y'all have done that on occasion.

21 MR. WILSON: Absolutely.

22 THE COURT: Yeah.

23 MR. WILSON: And we did -- we did notify her. We
24 notified the sister. She did not express to us that, hey,
25 don't do this today. I can't do this today. I need to

1 think about this. It was nothing like that. She just
2 said I'm not happy with it. And, you know, as the Court
3 well knows that these cases -- in these cases it's not --
4 it's certainly not possible to, you know -- it's not meant
5 to -- Marsy's Law is not meant to make people necessarily
6 happy, given unhappy situations that follow these cases,
7 Your Honor. It -- it is our contention, Your Honor, that
8 we did properly notify the victim in this case. Now, had
9 she asked for a delay to meaningfully -- and like -- the
10 Court is well aware we've done that in many cases. We've
11 got -- we've got something we think --

12 THE COURT: Well, but you have to -- I mean, some
13 cases are much more serious than others; wouldn't you
14 agree?

15 MR. WILSON: I agree. I agree.

16 THE COURT: And a case involving the death of a human
17 being would be a case in which maybe that's to be given
18 special consideration; wouldn't you agree?

19 MR. WILSON: I do agree that it needs special
20 consideration, Your Honor.

21 THE COURT: Okay. All right, then.

22 MR. WILSON: I'm not -- and I don't want to suggest
23 that at all to the Court --

24 THE COURT: Okay. All right.

25 MR. WILSON: -- that this is like some of the other

1 cases we have. This is -- was a very serious tragic case.
2 I mean, the Court knew enough about the case obviously to
3 -- to state that in the -- during the colloquy that this
4 was --

5 THE COURT: Yeah.

6 MR. WILSON: -- when the Court considered the
7 negotiations that this was a tragic case. They are tragic
8 cases, and they are incredibly sad cases. I do -- I do
9 understand and I'm certainly sympathetic to that. But
10 what -- but what -- it's our position, Your Honor, we have
11 complied with -- we did comply in this case with Marsy's
12 Law. We notified the sister. We -- and she did not ask
13 to delay it. She -- she made -- she -- she expressed her
14 opinions on the sentence. The sentence -- we expressed
15 those to the Court so the Court didn't think that --
16 wasn't misled at all, Your Honor. I don't see how the
17 Court was misled. I mean, the -- the Movant is talking
18 about all these factors and everything, but that's still
19 within the Court case and everybody -- everybody has their
20 sides of things, Your Honor. I mean, there's -- and
21 rather -- I don't think it's appropriate for us to -- and
22 I don't think it's appropriate for either side to go
23 through the evidence because that's not the main reason
24 why we're here, Judge. We are here on a Marsy's Law
25 hearing.

1 Your Honor, and as I said earlier, Ms. Wilson has
2 expressed her opinions to the Court as to what she would
3 do, what she would have wanted, Your Honor, but we just --
4 we don't feel like she was a legal victim as far as
5 Marsy's Law. And I don't think that there's been any --
6 and there was -- there was a lot of reasonable reasons why
7 we did not consider -- why Ms. Arroyo did not consider her
8 to be the victim in the case on that day. Certainly she
9 told --

10 THE COURT: I don't think -- well --

11 MR. WILSON: I mean -- I think if she had been -- if
12 we had considered her as such and we had not been able to
13 get in contact with her, like the questioning happened
14 earlier, we would not have proceeded, you know. So, Your
15 Honor, I don't think we're in violation of Marsy's Law. I
16 understand -- I completely understand that this is -- this
17 is a sad case. I don't think anything was misrepresented
18 to the Court. Ms. Wilson has had her chance to -- to
19 address the Court and -- may I just have a moment, Your
20 Honor?

21 THE COURT: Sure.

22 MR. WILSON: Thank you.

23 Your Honor, I just would -- I just would like to
24 point out to the Court that -- and this is so important
25 because it is such a narrowly tailored law -- that we

1 notified the Court -- or Mr. Neal let the Court know about
2 the victim's opposition to the plea. And, Your Honor, I
3 just -- I just don't think legally we've committed a
4 Marsy's Law violation. Thank you.

5 MR. EPPS: My mentor in law as you know, Judge
6 Stephens, is Ed Allen. And he told me one time as a young
7 lawyer that when you stand up, if the law is not on your
8 side, you argue the facts. And if the facts are not on
9 your side, you just argue. A lot of lawyers do that. We
10 just heard that. And I'm going to put a caveat to that.
11 You don't do that in Marsy's Law. You don't do that in a
12 Marsy's Law hearing.

13 I want to state the record something. I know the
14 Court wrote this down. It was important when Ms. Hayes
15 took the stand because she testified that Ms. Wilson told
16 her that they were husband and wife. That's in the
17 record. That knowledge is imputed upon Mr. Wilson, and
18 that knowledge is imputed upon Ms. Gonzalez. She
19 unequivocally said that. And I asked her did you ever
20 doubt that they were husband and wife? She said no.

21 He just stood up and told you because his boss said
22 stand up and argue that a Marsy's Law violation has not
23 occurred. And they said that one of the reasons why they
24 didn't violate Marsy's Law is because the sister never
25 asked to be here. Ms. Arroyo's testimony was very clear

1 to you. I asked her did you tell her that she had the
2 right to be here? No. Why? Because I knew she was in
3 Virginia. She couldn't have gotten here. He said
4 something -- Mr. Wilson just said Marsy's Law is not to
5 make people happy. You're right. You're right, Ms.
6 Gonzalez, on his behalf. It's not to make people happy.
7 There is no happiness. There's no happiness. This was
8 her husband. This was her spouse. She wanted to tell
9 you, Judge Stephens -- I'm sorry, let me collect myself
10 for a second. But she wanted to tell you how important
11 this man was to this world and to her. And Mr.
12 Fitzpatrick stood up and told you if she -- look at her
13 statement. Look how detailed it was. Look at what she
14 was involved in this case on an individual basis. I don't
15 know what you would have done if you would have heard that
16 statement that day. I don't know, Judge Stephens.

17 But do you know why Marsy's Law is so important to
18 you, Judge Stephens? Do you know why? And I'll answer
19 that question. Because it gives you the opportunity, not
20 to be happy, not to be -- I don't know, just say you
21 checked a box to Marsy's Law. It's to give the Court the
22 opportunity because it specifically says in the statute
23 that she gets to state her opinion as to the disposition
24 of the case. You get that opportunity and they stripped
25 you of that. They stripped you of that. They stripped

1 her. They stripped you because you didn't get to hear
2 that that day. They let the defense counsel give you the
3 basis of the facts. Now you know. That wasn't given to
4 you.

5 I want to say something to you, Judge Stephens, that
6 they didn't say. They never suggested that they informed
7 the sister that the plea could be continued so she could
8 provide a statement. They never did that. None of the
9 Tracker notes say that. None of that phone call. Do you
10 want to know why? You want to know why that happened?
11 Because they put the evidence in themselves. They have
12 someone that has died in a criminal case and they're
13 relying on the sentence and plea offer. She sat up here
14 and danced around whether or not they made a plea offer
15 and they did. To a guy, Mr. Hunter, that sent her the
16 update and three minutes later resigned. Three minutes
17 later resigned, who had no business commenting on any
18 criminal case in this court. Zero. Zero. And she relied
19 on it. That's why I brought that to your attention. I'm
20 going to break that down in Marsy's Law for a second.

21 I bring this up to you. Thank God we had the
22 transcript of what she said to you at the end of that
23 hearing. Thank God we had her Facebook post that she put
24 on her personal message. She either lied to you, she lied
25 to the public, or she lied to herself. I was taught a

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long time ago that every lie is two lies, the lie we tell others and the lies we tell ourselves.

Judge Stephens, if you look in that packet of emails that they gave to me in the subpoena, you see what happened when it comes to this. The Marsy's Law violation is filed. She reaches out to Lynn and says Lynn, can you get me the statute as to who is defined as the victim in this case because they allege that she's the victim, she's the spouse. Can you look at that? That only occurred after Marsy's Law. And when she answered those nine questions, look at the email she sent. You want to know what your prosecuting attorney knew at the time that she stood up and recommended to an apprentice the plea? Nothing. Nothing. She asked this gentleman sitting right here, Robert Wilson, hey, can you give me your opinion about this plea, after the plea was done. And in the answers to the question -- Ms. Gonzalez wouldn't even take the time to answer this woman's questions. She asked Lynn to draft it, Mr. Wilson to draft it, and not herself. And that, if you look into the Marsy's Law violation, she gave inaccurate information about the plea, but I would say to you, Judge Stephens, she acknowledged in an email after the plea that she was the victim. They only changed course after the Marsy's Law violation.

I want to read something to you, and I want to read

1 something to everybody in this courtroom. She didn't get
2 to talk that day. The sister didn't get to talk that day.
3 But Mr. Waldrop did. And what did he say with Ms.
4 Gonzalez sitting right there. Yes. You actually asked
5 anything you want to say? Yes. While I'm here and I have
6 this mic, I just want to formally say to Ms. [sic] Jones'
7 family, friends and co-workers and anybody else that he
8 left behind just how truly sorry I am for this accident.

9 They weren't here. They didn't get to hear that.
10 Because they're scrambling. They're scrambling at 8:30 in
11 the morning involving the death of a man. And, Judge, I
12 read that transcript of that plea and I read what
13 happened. They nolle prossed the first degrees. They
14 nolle prossed them. They stripped you of it. And then
15 they filed an accusation that you as the Court had to
16 correct. They still had the original first degree charge
17 in there. It was on the back. You asked them to cross it
18 off and initial it. You asked them what are we pleading
19 to here, do you even have the statutes correct?

20 And then he said something, and I -- I heard a quote
21 the other day that's been ringing true with me. You need
22 to remember people out loud because if you don't, they die
23 twice. So I just want it to be known that for the rest of
24 my life, no matter what happens, no matter what's decided,
25 until I die I am going to be remembering Mr. Jones out

1 loud and I'm truly and deeply sorry to anybody who -- here
2 who was a part of his life. Thank you, Your Honor.

3 What they filed questioning this woman as the spouse
4 is not remembering this man. It's not speaking out loud.
5 Mr. Waldrop took this case more serious than this office
6 did with his statement before the Court. And you said
7 it's a tragedy.

8 And it's a tragedy what they have done to this woman.
9 They failed to prosecute correctly her husband, and then
10 they have the audacity to put her through the pain and the
11 suffering and the tragedy of having to stand up before you
12 to prove that she was his spouse.

13 All right. §17-17-1 -- O.C.G.A. §17-17-1, Marsy's
14 Law. What did they -- what did they -- what did they
15 violate? What'd they do? §17-17-1 says the right to
16 reasonable, accurate, and timely notice of any scheduled
17 court proceeding or any changes to the proceeding. I am
18 going to just make the assumption, Judge Stephens, that
19 you will find this woman as the spouse of this man. And
20 there is no way that a voicemail on the morning of a plea
21 when the actual guy that was giving the plea to you was
22 not even knowing where his victim advocate was and had to
23 come in and tell you, yeah, the sister is disappointed
24 with it. That is not reasonable, it is not accurate, and
25 it is not timely.

1 The right not to be excluded from any scheduled
2 proceedings except as provided in this chapter is
3 otherwise required by law, subsection 3. They never gave
4 them the opportunity to be here, Judge, ever. And, again,
5 I go back to their victim advocate at the time. Did you
6 tell her that she could be here? And she said no.

7 The right to confer with a prosecuting attorney in
8 the criminal prosecution related to the victim. Judge
9 Stephens, I want to say something about this. Up until
10 after midnight, Ms. Gonzalez, even though she had told you
11 and the public that Mr. Hunter was the prosecuting -- was
12 no longer with her office, he was making prosecutorial
13 decisions with this case and made a plea offer -- told Ms.
14 Gonzalez what his plea offer was and they presented that
15 in front of you. He resigns three minutes later based on
16 the evidence that they presented. She never had the
17 opportunity to speak to the prosecuting attorney in this
18 case. If you take what Ms. Gonzalez said, one of her
19 stories, one of her multiple stories as it relates to
20 them, he was either with that office right up until
21 midnight or he wasn't. So who was the prosecuting
22 attorney? They never gave that opportunity.

23 Number 9, the right to be treated fairly and with
24 dignity by all criminal justice agencies involved in the
25 case. The definition of criminal justice agencies

1 includes the D.A.'s Office, Judge. That just didn't
2 happen. That just didn't happen. As Mr. Waldrop so
3 vividly put, you need to remember people out loud because
4 if they don't, they died twice. Their office killed him
5 twice because they didn't let the people speak out loud.

6 I want to cite this to you because under the wisdom
7 of our legislature, sometimes that's a misnomer, but the
8 wisdom of the legislature said under §17-17-11, the right
9 of the victim to express opinion on dispositions of
10 accused's case -- they labeled this right out -- the
11 prosecuting attorney shall offer the victim the
12 opportunity to express the victim's opinions on the
13 disposition of the accused's case including the views of
14 the victim.

15 Now, I want you to hear what Mr. Wilson said. We did
16 that, Judge, because we stood up and told you what the
17 sister said. No sir. That's not what Marsy's Law says.
18 It specifically says that the prosecuting attorney shall
19 offer the victim the opportunity to express the victim's
20 opinions. There is no evidence that any of that occurred.
21 Zero.

22 Judge, I went back and looked at something, and
23 you've got this and the Court can take judicial notice of
24 this, the trial notice. When was it issued? When was it
25 sent out as part of the file? August 29th, 2023. What

1 did that trial notice tell you and everybody else that was
2 happening? Homicide by vehicle in the first degree, DUI
3 alcohol, homicide by vehicle in the first degree, reckless
4 driving. Okay, so the clerk tells them; right? They tell
5 them on August 29th of 2023. What contact did they make
6 with any of the victims pursuant to Tracker at that point?
7 Zero. Zero. They did not inform them. They did not tell
8 them it was coming. They didn't give them time to travel.
9 They didn't give them time to prepare. Their office was
10 put on notice pursuant to this notice that is in your
11 file. They had no contact. It is undisputed for a year,
12 a year with her, and then the morning they tell them.
13 It's unacceptable. It is completely unacceptable.

14 And I think you said to Mr. Wilson something very
15 pertinent. Not all the cases are the same. Jim died.
16 Jim. I'll say his name out loud because they haven't done
17 it once in this hearing, not once. Jim. Ms. Wilson, he
18 loved you. He was your husband. He's looking down
19 upstairs at you and proud of you in this moment. As long
20 as we keep saying it and as long as this Court finds a
21 Marsy's Law violation, he will not die twice. Stop this,
22 Judge Stephens, please, and find them in violation of
23 Marsy's Law. Thank you.

24 THE COURT: All right. First to the issue of the
25 marriage under O.C.G.A. §19-3-1.1: No common law marriage

1 shall be entered into in this state on or after January
2 the 1st of 1997. Otherwise valid common law marriages
3 entered into prior to January the 1st, 1997, shall not be
4 affected by this code section and shall continue to be
5 recognized in this state. So there's a case as recent as
6 January the 4th of 2002, 253 Ga. App. 147, *Franklin versus*
7 *Franklin*, which among many other cases, articulates the
8 three aspects, the elements that have to be established.
9 When the alleged marriage is unlicensed and non-
10 ceremonial, the burden is on the proponent to prove that a
11 common law marriage existed. In order for a common law
12 marriage to come into existence, the parties must be able
13 to contract, which they were; must agree to live together
14 as man and wife, which they did; and must consummate the
15 agreement, which they also did.

16 So I find by a preponderance of the evidence that
17 Susan Wilson was the spouse of the deceased, James V.
18 Jones. And as the spouse then under §17-17-3, the Crime
19 Victims Bill of Rights, she was a victim. And the Tracker
20 notes, along with Ms. Hayes' testimony, establish, I
21 believe, that the State always considered Ms. Wilson as
22 the primary victim in the case. So as such, under §17-17-
23 1, Susan Wilson was entitled to reasonable, accurate, and
24 timely notice of scheduled court proceedings. She would
25 have been entitled to the right to be heard at a scheduled

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plea and sentencing hearing. But she was not promptly notified in this case because the morning-of is not prompt notification and she had no meaningful opportunity to exercise her rights.

So she was a victim. She did not receive a meaningful opportunity to exercise her rights to be heard, and she should have been given the opportunity to make the victim impact statement that she made today at the appropriate time.

So I find that the State did violate the Crime Victims Bill of Rights and that -- and that's my finding and that will be the order that I enter. Any questions?

MR. EPPS: No, Your Honor.

THE COURT: All right. I'll get the order out.

MR. EPPS: Do you want to draft that or would you want me to draft an order and submit --

THE COURT: I'll draft it.

MR. EPPS: Yes, Your Honor.

THE COURT: All right. Thank you.

MR. EPPS: Thank you.

[Proceeding is concluded.]

CERTIFICATE

STATE OF GEORGIA

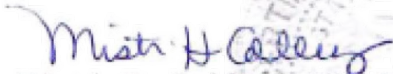
COUNTY OF JACKSON

I, Misti H. Colley, Certified Court Reporter, -2516, hereby certify that the foregoing pages numbered 2 through 192 constitute a true, complete and accurate transcript of hearing on Marsy's Law violation in the case of State v. Luke Harrison Waldrop, heard before the Honorable Lawton E. Stephens, Judge of the Superior Courts of the Western Judicial Circuit, Athens-Clarke County Case No. SU-22-CR-0321-S, SU-23-CR-0477-S, taken down by me and transcribed under my supervision to the best of my ability.

I further certify that I am a disinterested party to this action and that I am neither of kin nor counsel to any of the parties hereto.

This certification is expressly withdrawn and denied upon disassembly, photocopying, or duplication in any manner or upon certification of the foregoing transcript or any part thereof by any person or entity other than by me. This certification is further expressly withdrawn and denied absent my original signature and original seal appearing hereon below.

In witness whereof, I hereby affix my hand on this the 20th day of February, 2024.


Misti H. Colley, CCR-2516

