

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE
JUL 01 2019
N. LARES

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF RIVERSIDE

12 THE PEOPLE OF THE STATE OF
13 CALIFORNIA,

14 Plaintiff,

15 v.

16 JAMES HUGHES,

17 Defendant.

Case No.: INF066719

**MOTION TO PRESERVE VICTIMS'
RIGHTS UNDER MARSY'S LAW AND
DEMAND THAT CASE PROCEED TO
PRELIMINARY HEARING**

18 **TO: TO THE HONORABLE JUDGE PRESIDING, ATTORNEY GENERAL EDMUND**
19 **BROWN OF THE STATE OF CALIFORNIA AND HIS AUTHORIZED**
20 **REPRESENTATIVES AND AGENTS INCLUDING BUT NOT LIMITED TO DEPUTY**
21 **ATTORNEY GENERAL MICHAEL MURPHY ALL LAW ENFORCEMENT AGENCIES**
22 **INVOLVED IN THE INVESTIGATION OF THE CASE, AND COUNSEL RENE**
23 **SOTTORIO, STEVE HARMON, AND DEAN BENJAMINI**

24 **PLEASE TAKE NOTICE**, pursuant to California Constitution article I, §28, section (b) also known as
25 Marsy's Law, RACHEL BEGLEY will move this court to insure the victim's rights are met in this case.

26 This motion will be based on this notice of motion and motion, the files and pleadings in the
above entitled matter, the attached points and authorities, and argument made in court.

1
2 **STATEMENT OF THE FACTS**

3 On June 24, 2010 Rachel Begley received notice from the Attorney General’s Office after
4 numerous of her own calls that the case above entitled case would be dismissed on July 1, 2010 the
5 proposed date for felony settlement conference. Despite the insanely short notice and living thousands of
6 miles away, Begley got on a plane to come to Riverside County California in order to have her voice
7 heard in this courtroom.

8
9 Whether its coincidental, ironic, or corrupt Deputy Attorney General Mike Murphy from San
10 Diego, the assigned prosecutor, notified Rachel Begley on June 24th that he planned to drop charges
11 against Hughes on the twenty-ninth (29th) anniversary of the triple homicide in which Begley’s father,
12 Ralph Boger, was murdered. While citing two reasons to Begley and the press, there is no legitimate
13 legal reason for the dismissal.

14
15 Boger, Fred Alvarez and Patty Castro were found dead on July 1, 1981 in Rancho Mirage; each
16 had been shot execution style in the back of the head. Rachel Begley was only 13 at the time. In 1984
17 James “Jimmy” Hughes claimed to authorities and reporters that he was the bag-man in the murders, that
18 he delivered the money for the hit and the Cabazon Indian tribe’s administrator, John Philip Nichols, had
19 contracted the hit.

20
21 Hughes left the United States before he could testify and built a new life in Latin America where
22 he has lived for 28 years. The triple homicide case had never been solved until Detective John Powers of
23 the Riverside County Sheriff’s Department took control of the cold case file on November 27, 2007.

24
25 From 2007 until 2009, Detective Powers, interviewed all available witnesses which included
26 witnesses from the past plus new witnesses. From the new evidence from witness statements including a

1 still existing fresh confession witness, new impeachment evidence, the defendants own written accounts
2 of the crime, prosecutors believed there was beyond ample evidence to file charges in 2009 and seek
3 extradition of the defendant from Florida.

4 From filing of the case until July 1, 2010 there has been not one single substantive hearing in the
5 case with the only motions filed being that from the media requesting entry to the proceedings. There has
6 been no preliminary hearing to determine if there is sufficient evidence to hold the defendant to answer to
7 trial, no filing of due process or the like from the defense, and therefore no reason for this case to be
8 dismissed.

10 ARGUMENT

11 WHILE PROSECUTORS ENJOY WIDE LATITUDE IN FILING DECISION, PROSECUTORS DO 12 NOT HAVE THE SOLE AUTHORITY TO DIMSISS A CASE

13 The mission statement of the California Attorney General's Office states, "It is our duty to serve our state and
14 work honorably every day to fulfill California's promise. The Attorney General and our Department's employees
15 provide leadership, information and education in partnership with state and local governments and the people of
16 California to:

- 15 • Enforce and apply all our laws fairly and impartially.
- 16 • Ensure justice, safety, and liberty for everyone.
- 17 • Encourage economic prosperity, equal opportunity and tolerance.
- 18 • Safeguard California's human, natural, and financial resources for this and future generations."

17 ([www.http://ag.ca.gov/ag/mission.php](http://ag.ca.gov/ag/mission.php))

18 Consistent with the public mission statement, the Attorney General's Office has internal
19 requirements for filing cases. And while, the internal requirements for the filing of criminal case are not
20 publicly accessible other prosecutor offices (including the Los Angeles and Riverside County District
21 Attorneys offices) both cite in their policy manuals that a decision to file rests on the initial decision that
22 the case is prosecutable beyond a reasonable doubt (Source: Riverside and Los Angeles County Policy
23 Manuals). In the instant case, not only was the case filed presumably consistent with policy and mission
24 standards but Deputy Attorney General Murphy indicated to Detective Powers (at the time notice was
25 being delivered to the Sheriff's Department that the case was going to be dismissed) that there was more
26

1 than ample evidence to file and prove this case not just now but twenty five years ago and said that
2 because the case was not filed earlier the lack of due process requires a dismissal in the case.

3 Recognizing that the defendant has due process rights, it must be pointed out that the filing of the
4 case in 2009 was based on additional and new information probative evidence provided by law
5 enforcement to the prosecutor in this case. Probably most damaging of all, was the new statements by
6 defendant Hughes himself made to “El Diario de Hoy” published on July 6, 2003 where the defendant, in
7 his words, described his life, mission, and crimes as Mafia hitman specifically the crime in the instant
8 case. Excerpts from the 2003 interview include the following:

9 **Collecting tributes**

10 *While serving in the military, I had an Italian friend who often spoke to me about a ‘Padrino’*
11 *(Godfather), and I never paid much attention; I thought those were just things you see in the movies.*
My first job in the mob was collecting money from those who did not pay their bills, and that included
broken legs, arms and heads with baseball bats.

12 *Although the Army I had already gotten a taste of what it was like to kill, with the mob, I offered my*
13 *talent for gifts or money. I would murder someone for five, ten, twenty, thirty, forty thousand dollars.*
The most I got paid for killing somebody was fifty thousand dollars, because it was professionally
14 *done. This was how at age 27, I sold myself to evil.*

15 *I became the confidant of the Godfather, who was in the business of casinos. I was the bodyguard for*
16 *his children. I became a famous hitman for the mafia; everybody in the United States asked for*
17 *Jimmy Hughes.*

18 *By that time I was addicted to cocaine. I loved cocaine. I had a terrible addiction; I would always*
19 *carry the drug in my pockets. I drank hard liquor all day. I always had terrible nightmares because I*
20 *had shed enough blood to fill a pool.*

21 **Free Death**

22 *One day, the Godfather called me and gave me an order to kill a suspect for thirty thousand dollars.*
23 *To my surprise, I knew this guy; we used to be friends. But in the mafia, ‘business is business.’ When*
24 *I arrived at the guy’s home, I was no longer a normal person; I had been exposed to so much*
25 *violence that I had become a demon. I said hi to the guy and went into his house.*

26 *He never imagined that he had just opened the door to death. But inside the mansion, there were five*
other people who were drinking and snorting cocaine. I thought, ‘I must get this done for the \$30,000
that I was being paid;’ however, I did not know who the other five were. Then I thought to myself that
I would do a service to society by doing them all. The other five would be added to the contract...for
free.

The night began to fall and when I took my gun out, no one noticed it because they were too drugged
and drunk. They were all talking nonsense, so I began: “Bang, bang, bang...”

1 *Everyone around me was dead within seconds; no one moved. They were totally unprepared; no one*
2 *was expecting to die. I had shot all of them in the head. But right after it all happened, and as I was*
3 *still holding the gun in my hand, between a pool of blood, I would see shattered face of the man that I*
4 *was paid to kill, and it would feel as though I would see my reflection in a mirror.*

5 *The hairs in the back of my neck stood up as I saw my own bloody image. At the same time, I began*
6 *to hear a voice say, "Jimmy: You know that I love you and I forgive you." I said to myself: "Oh God,*
7 *I'm either going crazy or I did too many drugs and I had killed so many people in my life."*
8 *In that horrific scene, I somewhat laughed, but then big chills came down my spine.*
9 *My heart almost stopped. Then I heard the same voice again: "Jimmy: You know that I love you and*
10 *I forgive you." Then, I ran out of the place, leaving half a dozen dead for thirty thousand dollars.*

(Article from the Honduran newspaper La Prensa, written by Jessica Figueroa
Translation by Mario Andrade, July 6, 2003)

11 It is well settled law that crime-charging power is vested in the public prosecutor by
12 [Government Code section 26501](#). "Prosecutors have a great deal of discretion in this crime-
13 charging function. Charging discretion takes three basic forms: (1) evidentiary sufficiency-a
14 determination of whether the evidence warrants prosecution; (2) charge selection-a determination
15 of the appropriate charge or charges; and (3) discretion not to prosecute-a determination of
16 whether there is an alternative to formal criminal prosecution." (Prosecutorial Discretion
17 (Cont.Ed.Bar 1979) § 11, p. 5.) This prosecutorial discretion, though recognized by statute in
18 California, is founded upon constitutional principles of separation of powers and due process of
19 law. ([People v. Sidener \(1962\) 58 Cal.2d 645, 650, 651, 25 Cal.Rptr. 697, 375 P.2d 641](#),
20 overruled on other grounds in [People v. Tenorio \(1970\) 3 Cal.3d 89, 89 Cal.Rptr. 249, 473 P.2d](#)
21 [993](#).) The district attorney's unlimited discretion in the crime-charging function has been
22 uniformly recognized. (See, e.g., [Boyne v. Ryan \(1893\) 100 Cal. 265, 34 P. 707](#); [People v. Adams](#)
23 [\(1974\) 43 Cal.App.3d 697, 117 Cal.Rptr. 905](#); [People v. Municipal Court \(Bishop \) \(1972\) 27](#)
24 [Cal.App.3d 193, 103 Cal.Rptr. 645](#); [Ascherman v. Bales \(1969\) 273 Cal.App.2d 707, 78](#)
25 [Cal.Rptr. 445](#); [Taliaferro v. City of San Pablo \(1960\) 187 Cal.App.2d 153, 9 Cal.Rptr. 445](#);
26 [Taliaferro v. Locke \(1960\) 182 Cal.App.2d 752, 6 Cal.Rptr. 813](#).)

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2 In the instant case, the decision to file this case was made by the Attorney General's Office (the
3 Riverside County District Attorney's Office declared a conflict after determining that the defendant was
4 second cousins with the elected District Attorney Rod Pacheco whose terms ends this year). Presumably
5 and consistently with the new evidence in the case, the new witness statements, the re-interview of all
6 integral witnesses, including the statements of key and material witnesses, a review of the defendant's
7 statements made from 2003 and on, the Attorney General's Office exercised their prosecutorial function
8 and filed the case.

9 While trial court has broad statutory discretion to dismiss, power is not absolute but is limited
10 amorphous concept that dismissal be "in furtherance of justice," which requires consideration of both
11 constitutional rights of defendant and interests of society represented by People; dismissal not in
12 furtherance of justice is abuse of discretion requiring reversal. [West's Ann.Cal.Penal Code § 1385](#).

13 As of today there has been no written reasons why this case is being dismissed, the only clues
14 have been offered to Detective Powers, Rachel Begley and the press. In each of these arenas there has
15 been inconsistent reasoning. To Begley and the press, the attorney general cites due process (despite the
16 new evidence and no statute of limitations for murder) and to the Detective we get a slew of different
17 reasons. The only conclusion, though speculative, is that something or someone has scared the Attorney
18 Generals office in preceding with the case as a review of the evidence not only substantiates the Attorney
19 General's original decision to file but there has not even been a preliminary hearing in the case where the
20 court can determine if there is enough evidence to proceed. Since the case has been filed, the court has
21 the opportunity to weigh in and determine whether a dismissal is appropriate. The victims, the decedant's
22 heir, and society encourages this court to allow for the case to go to preliminary hearing to determine
23 whether sufficient cause exists in order to hold the defendant to answer to trial.

24 The State of California has adopted Marsy's Law in order to preserve and recognize the rights of
25 victims. The law in relevant portion as listed on the Attroney General's own website states the following:
26 "On November 4, 2008, the voters of the State of California approved Proposition 9, the Victims' Bill of

1 Rights Act of 2008: Marsy's Law, a measure to provide all victims with rights and due process. This
2 webpage is for informational purposes only and is an overview of some of the key sections of Marsy's
3 Law. A full copy of the text of the Victim's Bill of Rights Act of 2008: Marsy's Law (Proposition 9) is
4 available from the California Secretary of State at [http://voterguide.sos.ca.gov/past/2008/general/text-](http://voterguide.sos.ca.gov/past/2008/general/text-proposed-laws/text-of-proposed-laws.pdf#prop9)
5 [proposed-laws/text-of-proposed-laws.pdf#prop9](http://voterguide.sos.ca.gov/past/2008/general/text-proposed-laws/text-of-proposed-laws.pdf#prop9). Relevant portions and summary have been provided
6 by the Attorney General's website and states:

7 Marsy's Law significantly expands the rights of victims in California. Under Marsy's Law, the California
8 Constitution article I, § 28, section (b) now provides victims with the following enumerated rights:

- 9 1. To be treated with fairness and respect for his or her privacy and dignity, and to be free
10 from intimidation, harassment, and abuse, throughout the criminal or juvenile justice
11 process.
- 12 2. To be reasonably protected from the defendant and persons acting on behalf of the
13 defendant.
- 14 3. To have the safety of the victim and the victim's family considered in fixing the amount
15 of bail and release conditions for the defendant.
- 16 4. To prevent the disclosure of confidential information or records to the defendant, the
17 defendant's attorney, or any other person acting on behalf of the defendant, which could
18 be used to locate or harass the victim or the victim's family or which disclose
19 confidential communications made in the course of medical or counseling treatment, or
20 which are otherwise privileged or confidential by law.
- 21 5. To refuse an interview, deposition, or discovery request by the defendant, the defendant's
22 attorney, or any other person acting on behalf of the defendant, and to set reasonable
23 conditions on the conduct of any such interview to which the victim consents.
- 24 6. To reasonable notice of and to reasonably confer with the prosecuting agency, **upon**
25 **request**, regarding, the arrest of the defendant if known by the prosecutor, the charges
26 filed, the determination whether to extradite the defendant, and, **upon request**, to be
notified of and informed before any pretrial disposition of the case.
7. To reasonable notice of all public proceedings, including delinquency proceedings, **upon**
request, at which the defendant and the prosecutor are entitled to be present and of all
parole or other post-conviction release proceedings, and to be present at all such
proceedings.
8. To be heard, **upon request**, at any proceeding, including any delinquency proceeding,
involving a post-arrest release decision, plea, sentencing, post-conviction release
decision, or any proceeding in which a right of the victim is at issue.
9. To a speedy trial and a prompt and final conclusion of the case and any related post-
judgment proceedings.
10. To provide information to a probation department official conducting a pre-sentence
investigation concerning the impact of the offense on the victim and the victim's family
and any sentencing recommendations before the sentencing of the defendant.
11. To receive, **upon request**, the pre-sentence report when available to the defendant,
except for those portions made confidential by law.

- 1 12. To be informed, **upon request**, of the conviction, sentence, place and time of
2 incarceration, or other disposition of the defendant, the scheduled release date of the
3 defendant, and the release of or the escape by the defendant from custody.
- 4 13. To restitution.
- 5 A. It is the unequivocal intention of the People of the State of California that all
6 persons who suffer losses as a result of criminal activity shall have the right to
7 seek and secure restitution from the persons convicted of the crimes causing the
8 losses they suffer.
- 9 B. Restitution shall be ordered from the convicted wrongdoer in every case,
10 regardless of the sentence or disposition imposed, in which a crime victim suffers
11 a loss.
- 12 C. All monetary payments, monies, and property collected from any person who has
13 been ordered to make restitution shall be first applied to pay the amounts ordered
14 as restitution to the victim.
- 15 14. To the prompt return of property when no longer needed as evidence.
- 16 15. To be informed of all parole procedures, to participate in the parole process, to provide
17 information to the parole authority to be considered before the parole of the offender, and
18 to be notified, **upon request**, of the parole or other release of the offender.
- 19 16. To have the safety of the victim, the victim's family, and the general public considered
20 before any parole or other post-judgment release decision is made.
- 21 17. To be informed of the rights enumerated in paragraphs (1) through (16).

22 Throughout the course of the proceedings some of these rights have been violated
23 including the manner in which the Deputy Attorney General informed Rachel Begley as to the
24 status of the case. When pointed out to Mr. Murphy, he responded that Begley was not a victim
25 under Marsy's Law. Marsy's Law defines who a victim is and again according to the Attorney
26 General's own website, "Prior to the passage of Proposition 9, "Victim" was defined under the
Penal Code "as the person against whom a crime had been committed." With the passage of
Proposition 9, "victim" as used in the California Constitution article I, § 28 is defined as "a
person who suffers direct or threatened physical, psychological, or financial harm as a result of
the commission or attempted commission of a crime or delinquent act. The term 'victim' also
includes the person's spouse, parents, children, siblings, or guardian, and includes a lawful
representative of a crime victim who is deceased, a minor, or physically or psychologically
incapacitated.

1
2 The term ‘victim’ does not include a person in custody for an offense, the accused, or a person
3 whom the court finds would not act in the best interests of a minor victim.” (Cal. Const., art. I, §
4 28(e).)

5 Since, Begley under the above definition, qualifies as a victim, and is demanding that her
6 rights under Marsy’s law be protected. As such, the manner by which Begley has been informed
7 of the dismissal, the reasons for the dismissal, the treatment by the Attorney’s General Office
8 since the inception of the case have all violated these protections. Ms. Begley is asking that the
9 court insure that Marsy’s Law is adhered to and at the minimum allow for a continuance so that a
10 meeting with counsel and Begley is possible to understand the basis for the dismissal of the case
11 as well as a determination be made as to whether Marsy’s Law has been vilated.
12

13 14 CONCLUSION

15 Based on the above reasons and reasons given in court, the victim in this case is requesting that
16 the case proceed to preliminary hearing and that a meeting occur between the Attorney General’s
17 Office, counsel, and Ms. Begley to insure that all information under Marsy’s law is provided to
18 the victim
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Respectfully submitted,

By _____
ROBIN SAX KATZENSTEIN

Attorney for RACHEL BEGLEY

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Dated: _____

JUDGE OF THE SUPERIOR COURT

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