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INDIO, CALIFORNIA; JULY 1, 2010

BEFORE THE HONORABLE DALE R. WELLS, DEPARTMENT 3M

THE COURT: This is the People of the State of California versus James Hughes, Case Number INF066719.

Let's get appearances, please.

MR. MURPHY: Good afternoon, Your Honor.

Mike Murphy, Deputy Attorney General on behalf of the People.

MR. SOTORRIO: Good afternoon, Your Honor.

Renee Sotorrio on behalf of Mr. James Hughes.

MR. BENJAMINI: Good afternoon, Your Honor.

Dean Benjamini also on behalf of Mr. Hughes.

MS. SAX: Good afternoon, Your Honor.

Robin Sax on behalf of Victim Begley.

THE COURT: Okay. Thank you very much. This is the date and time set for felony settlement conference.

Mr. Murphy, are you ready to proceed?

MR. MURPHY: Yes, Your Honor. And I've indicated to the court earlier that the People would be bringing a motion today to dismiss this case under Penal Code section 1385.

Before I proceed with that motion at this point, I'd like to note that I've been handed before the noon recess a motion filed by counsel for Rachel Begley. Rachel Begley is a victim in this case under the statutes of California. She's a surviving relative of one of the victims who was killed in this case. The motion purports to be a motion to reserve victim's rights under Marsy's Law and demand that the case proceed to preliminary hearing.

1           The People object frankly to the filing of this motion  
2 on a couple of grounds.

3           Firstly, Marsy's Law refers to an enactment referendum  
4 in California in the past couple years which conferred various  
5 rights to victims of crimes. Those rights are self executing  
6 and don't require motions in court to preserve them.

7           Secondly, the attorney general is unaware of and  
8 counsel doesn't cite for any authority which would allow a  
9 victim to file a pleading in a case regarding a substantive  
10 issue in how the case is going to be handled or decision by the  
11 prosecutorial agency in exercising their discretion to present  
12 argument on such an issue or file a pleading on such an issue.

13           What Marsy's law does is it grants victims, among other  
14 things, the right to notice of certain hearings, the right to be  
15 present at certain hearings, and the right to be heard at  
16 certain hearings. It does not grant them party status. It does  
17 not grant them further rights beyond which I have listed that  
18 would be relevant to a court proceeding in any event.

19           So I object to the filing of this. I think it's an  
20 inappropriate filing. I don't think there's authority that  
21 would permit such a filing. They in essence appear to be  
22 wanting to intervene as a party -- an interested party -- and be  
23 able to argue on substantive issues in this case. And I think  
24 that's simply inappropriate.

25           As an alternative argument, if the court is not  
26 inclined to strike this pleading, it appears to have already  
27 been filed although I don't know if the court ordered that  
28 filed. My copy has a file stamp on it.

1 THE COURT: I'll address that momentarily.

2 MR. MURPHY: Thank you.

3 I have had a chance to review it over the past hour.  
4 The motion contains numerous factual assertions about  
5 evidence -- purported evidence in the case, about purported  
6 conversations between myself and the victim and possibly even  
7 other members of my office. The motion is not supported by any  
8 declarations or affidavits.

9 We would object. I would object to the court  
10 considering any factual assertions contained in this motion  
11 based on the ground that they're hearsay and not supported by  
12 the personal knowledge of the author of this pleading. And,  
13 therefore, does not constitute competent evidence for the  
14 factual assertions that remain.

15 And I don't know if the court wants to address that  
16 part at this point before we proceed.

17 I guess I should add though one last thing on that  
18 point. The People fully understand that the victim has a right  
19 to speak at this hearing. We fully intend to not do anything to  
20 prevent that. And I have every confidence that the court  
21 likewise is going to allow that to happen. I don't mean to  
22 suggest by objecting to this motion that I object to the victim  
23 exercising the full extent of her rights granted under Marsy's  
24 Law, and I expect that to happen.

25 I just think this motion as it's styled intends to  
26 inject itself into an argument about whether or not this case  
27 should proceed or not. And I think that's only the appropriate  
28 thing.

1           THE COURT: Thank you. And since you have raised that  
2 issue, I will address it. First -- you can go ahead and have a  
3 seat, counsel. You're not going to talk yet.

4           MS. SAX: I just wanted to make sure I have an  
5 opportunity to be heard.

6           THE COURT: You will have an opportunity to be heard.  
7 But let me address what Mr. Murphy just stated. I was unaware  
8 of this motion until late in the morning. I saw that there had  
9 been a motion that had been apparently handed to counsel on both  
10 sides of the table, but I had not seen it, had not heard  
11 anything about it.

12           During the course of my morning calendar, I looked into  
13 the register of actions and was surprised to see a reference  
14 that the filing of this motion was approved by Department 3S  
15 especially since I'm Department 3S and I had never seen it.  
16 What apparently happened -- and I will allow Ms. Sax to address  
17 this at a later point in the proceedings. I kind of charted out  
18 how I think this should flow today.

19           In inquiring about this, it appears that Ms. Sax came  
20 into the courtroom this morning, approached the clerk, sought to  
21 file the motion in the department, was informed that motions are  
22 filed downstairs. She went downstairs to file it. The clerk  
23 downstairs seeing that she had the date written on here called  
24 upstairs to see if in fact she had been sent downstairs to file  
25 the motion.

26           The clerk downstairs was informed yes, she was told  
27 motions are filed downstairs. The clerk interpreted that as  
28 approval for the filing of the motion. So it was a clerical

1 miscommunication, not judicial approval for the filing of the  
2 motion. And when it comes time for Ms. Sax to address that, I  
3 will let her address it when we get to the point of the victim's  
4 input.

5           The things I'm most interested in Ms. Sax addressing --  
6 and I'm only going to give you a brief time -- is, one, what  
7 standing you or the victim have to file such a motion. And,  
8 two, what is the legal authority for the request. Because quite  
9 frankly, when I looked through the motion, I see citations to  
10 the attorney general's website, to an interview that took place  
11 that was not a law enforcement interview the Government Code  
12 26501 which addresses prosecutorial discretion and Marsy's Law.

13           None of which addresses the right of a victim or  
14 victim's attorney to file in essence an interpleader into a  
15 criminal proceeding. So I will want you to address that very  
16 briefly. And depending upon how successfully you address that,  
17 we'll see what we do with regard to your motion.

18           At this point my tentative would be to strike the  
19 motion as being improperly filed, but I do want to hear you  
20 address the issue of standing and legal authority for the  
21 request before I go any further on that issue. But certainly we  
22 will allow the victim to address the court.

23           So having at least touched on that subject, do the  
24 defense counsel need to address that issue?

25           MR. SOTORRIO: No, Your Honor.

26           THE COURT: Okay. Thank you.

27           Mr. Murphy, are you ready to proceed now?

28           MR. MURPHY: Yes, Your Honor.

1           And with the court's pleasure, I will proceed with the  
2 motion to dismiss under Penal Code Section 1385. I would like  
3 to give the court a bit of context for this case and for this  
4 motion.

5           As the court is aware, this case was discovered 29  
6 years ago by law enforcement. It was investigated in the  
7 ensuing months by the local sheriff's department for some period  
8 of time. No arrests were made. And essentially the case was  
9 not solved initially after the crimes had occurred, and the case  
10 went cold for a while, if you will.

11           In 1984, the defendant in this case, Jimmy Hughes,  
12 presented himself to law enforcement and provided new  
13 information. That act by Mr. Hughes reinvigorated the  
14 investigation, if you will, and further investigation was done  
15 both by the sheriff's department and by the state attorney  
16 general's department or office.

17           Those investigative efforts led to eventually the  
18 impaneling of a grand jury. Evidence was presented to the grand  
19 jury, but the result of all of those efforts -- the  
20 investigation and the grand jury -- did not result in any  
21 arrests or any prosecutions at that time. And that was in the  
22 mid-1980's.

23           At that time the case again went cold and appears to  
24 have remained dormant, based on my review of records, for about  
25 20 years. After that 20-year period, new investigators from the  
26 sheriff's department focused their attention on the case once  
27 again. The original primary investigators on the case had had  
28 since passed away. The new investigators in about 2007 began to

1 find what documentation and evidence still existed about this  
2 case and conducted a thorough review at that point.

3 The sheriff's department developed further information  
4 in their efforts in the late 2000's here and generated some more  
5 information that in conjunction with the information that had  
6 already been developed with law enforcement lead the sheriff's  
7 department to believe that there was sufficient evidence at this  
8 point to bring charges against Mr. Hughes.

9 The sheriff's department brought their case and that  
10 information to the attorney general's office. They presented  
11 their case to us, and we agreed with them that there was  
12 sufficient evidence to file charges in this case as we did.

13 That -- our latest filing was in December of 2009, our  
14 Amended Complaint in this case. Since that time, the Attorney  
15 General's Office has undertaken to prepare this case for trial  
16 or preliminary examination to present it in court. In that  
17 vein, my office has reviewed thoroughly all of the information  
18 provided to us by the sheriff's department. We have with our  
19 own agents interviewed or attempted to reinterview various key  
20 witnesses in this case.

21 We have done our best to search out old files and  
22 evidence that might have existed that was developed in the  
23 1980's by prior law enforcement officers and in fact were able  
24 to find some more evidence that had been developed back then but  
25 that had not been in the possession of sheriff's department and  
26 what they had provided to us recently. And finally through our  
27 efforts, we also developed new information that was not  
28 previously known to law enforcement prior to the time that this

1 Complaint was filed.

2           Based on all of those efforts and the culmination of  
3 the review of all of the evidence provided by the sheriff's  
4 department and new evidence that was developed by the Attorney  
5 General's Office, our office reassessed the quality and the  
6 nature of the evidence that we had in this case. And frankly  
7 our assessment of the quality and nature of that evidence  
8 changed.

9           Based on what the Attorney General now knows regarding  
10 the evidence in this case, we have lost confidence in our  
11 ability to proceed with the prosecution in this case to the  
12 point where we believe we could convince 12 members of a jury  
13 beyond a reasonable doubt of the truth of the charges and the  
14 allegations. Based on that state of our assessment and the  
15 circumstances of the evidence as we understand them and in  
16 addition to the facts and the evidence in this case, based upon  
17 the legal issues that are implicated both by the facts in this  
18 case and by the procedural history in this case, it is the  
19 Attorney General's judgment at this point, consistent with our  
20 ethical obligations, that we must bring this motion to dismiss  
21 this case in the interest of justice based on the fact that  
22 there's insufficient evidence to proceed with the prosecution.

23           THE COURT: Thank you.

24           Does the defense need to be heard at this point?

25           MR. SOTORRIO: No, Your Honor. We have no objection to  
26 the granting of this motion.

27           THE COURT: Now, then at this point before I rule on  
28 the motion to dismiss under 1385, I think it's important for me



1 to afford Ms. Sax the opportunity to address those two issues  
2 that I raised.

3 So, Ms. Sax, I'll give you a few moments to address the  
4 two issues that I raised, one, what is the victim's standing to  
5 file such a motion in this case. And, two, what is the legal  
6 authority for the request either for the court to continue this  
7 or force the Attorney General to a preliminary hearing.

8 MS. SAX: Thank you, Your Honor.

9 Your Honor, the victim in this matter brings this case  
10 pursuant to under Marsy's Law, which is California Constitution,  
11 Article 1, Section 28, Section (b). As counsel pointed out,  
12 there are a number of rights afforded to the victim that  
13 California made not just as suggestions but as requirements in  
14 the enactment of Marsy's Law.

15 One -- many of those include the timely giving of  
16 information, timely providing of reports upon requests,  
17 disclosure of certain information, communication that's supposed  
18 to occur between the prosecutor's office and the victim. The  
19 victim who was -- contacted me at 20 minutes after 4:00  
20 yesterday -- so I apologize for a very short and therefore  
21 somewhat thrown together motion that you did receive --  
22 indicated to me that not only had she found out about the  
23 potential dismissal of this case through websites that were on  
24 the defense -- defendant's family websites, but after even  
25 double-checking with various members of the Attorney General's  
26 Office had received e-mails indicating that those -- that the  
27 desire to have the case dismissed was untrue and the case was  
28 going forward. That was pursuant to one of Mr. Murphy's

1 assistants and/or paralegals.

2 As she found out about this information, Ms. Begley  
3 made numerous attempts to call Mr. Murphy to get information  
4 about the status of the case and would not need to have me here  
5 to represent her if the Attorney General's Office took a role as  
6 ensuring the rights of the victim in this case.

7 THE COURT: Let me stop you here. So far you haven't  
8 addressed her standing to bring this motion. Marsy's Law does  
9 not address the victim bringing motions in existing criminal  
10 cases. You also have not addressed the legal authority. If the  
11 victim has issues with the attorney general and the way the  
12 attorney general has handled the case, those do not necessarily  
13 translate into a court proceeding.

14 So, again, I'm left with the two questions which you  
15 have not yet addressed. And it doesn't appear that you were  
16 starting to address them. That's why I'm trying to refocus you.

17 MS. SAX: I understand, Your Honor. Just recently in  
18 the court in San Diego under Marsy's Law, there was a decision  
19 in which I actually was one of the counsel members in the  
20 Chelsey King and Amber Devore case in which under Marsy's Law  
21 the victims were entitled to have their own decisions and own  
22 attorney present with regard to the release of documents. In  
23 that case both the prosecutor and the defense were present as  
24 well as interest of the lawyers.

25 In this case under Marsy's Law, the victim is  
26 defined -- is specifically defined and has a certain role. And  
27 if the victim's right were being met by the prosecutorial people  
28 involved, then they wouldn't need to have this motion brought by

1 somebody else. These would be motions brought on behalf of the  
2 prosecutor and this communication would occur in that way.

3 So in effort to preserve the rights of this victim  
4 since we have lost confidence that this attorney general will  
5 actually preserve her rights, we wanted to ensure that the  
6 record was clear so her rights could be preserved for further  
7 action. And that's what we are seeking to do under Marsy's Law.

8 And because Marsy's Law is so new, there is no case law  
9 that actually addresses the standing and authority other than  
10 the constitutional section itself. So the question you asked, I  
11 would agree with you; you would be looking for standing, but it  
12 does go to that length. I would be asking the court in  
13 stretching in terms to argue -- to recognize because the victim  
14 has a say, the victim should be able to raise an objection to  
15 the motion that was brought today especially when it hasn't been  
16 communicated to her. And I have two witnesses present in court  
17 who are going to verify and substantiate all the statements made  
18 in the motion.

19 THE COURT: Now, assuming hypothetically that I accept  
20 your representation as to standing, what legal authority do I  
21 have to deny the People's 1385 motion to dismiss under -- for --  
22 in the interest of justice at this point? What authority do I  
23 have for that?

24 MS. SAX: What I would like to suggest actually is that  
25 there's an assertion there's been prosecutorial misconduct here  
26 and this is an abuse of prosecutorial discretion and this is not  
27 within the regular realms of prosecutorial discretion. That's  
28 the evidence the People would want to show.

1 THE COURT: Okay. Thank you.

2 MS. SAX: Thank you.

3 THE COURT: I am not persuaded that there is authority  
4 that grants standing to the victim to file this motion. I am  
5 not persuaded based upon what Ms. Sax has just said that there  
6 is legal authority for the relief requested in this motion.  
7 And, therefore, I am going to remain with my tentative ruling,  
8 and that is I'm going to strike this motion.

9 We will give Ms. Begley the opportunity to address the  
10 court momentarily pursuant to Marsy's Law. But the motion is  
11 stricken.

12 MS. SAX: Thank you.

13 THE COURT: So the motion is -- the motion of the  
14 People is before the court. The defense has nothing to add.

15 MR. SOTORRIO: No.

16 THE COURT: The 1385 request is granted in the interest  
17 of justice for the reasons set forth on the record -- I'm  
18 sorry -- getting ahead of myself. At this point in time I need  
19 to hear from Ms. Begley.

20 MS. SAX: Is there a place the court would feel most  
21 comfortable for her to address the court?

22 THE COURT: At the bar where she is. Thank you.

23 Your name is Rachel, R-a-c-h-e-l, B-e-g-l-e-y?

24 MS. BEGLEY: R-a-c-h-a-e-l.

25 THE COURT: All right.

26 MS. SAX: Could I have one quick moment if I may?

27 THE COURT: Yes.

28 Go ahead, ma'am.

1 MS. BEGLEY: Okay. Your Honor, I request that my  
2 statement per Marsy's Law be made a permanent record of this  
3 court.

4 My name is Rachael Begley. My father Ralph Boger was  
5 murdered in an execution style triple homicide in Rancho Mirage  
6 29 years ago. Today is the anniversary of that murder.

7 The defendant James Hughes, who is sitting in this  
8 court today, admitted his involvement in my father's murder  
9 years ago and has published at one website various Latin  
10 American newspapers that he was a professional hitman before he  
11 found God. I'll gladly provide you those articles at your  
12 request.

13 I'm not here today to present the abundance of evidence  
14 against Mr. James Hughes. I'm here to plead with you not to  
15 release him because I and numerous other victims and witnesses  
16 will live in fear for the rest of our lives if Mr. Hughes is set  
17 free to return home to Honduras where he is politically  
18 connected to both government and military.

19 If future harm comes to me or other witnesses by Hughes  
20 or his followers, I believe there would be no cooperative effort  
21 between the United States and Honduras to bring Mr. Hughes to  
22 justice.

23 Indeed, he is being released today in the U.S. despite  
24 the fact he is a self-confessed hitman who has cold bloodedly  
25 murdered numerous innocent people during his career as a hitman.  
26 This case is paralleling the Joran Van Der Sloot case in which  
27 he was released in Aruba and subsequently killed a girl in Latin  
28 America. This has been in the news recently.

1 I ask this court, how many people must die or suffer at  
2 the hands of James Hughes before he is brought to justice? He  
3 has literally gotten away with murder if he is released today.  
4 This is a demoralizing lesson to the general public who regained  
5 their faith in justice and in the system when Mr. Hughes was  
6 arrested in September of 2009. It is also demoralizing to the  
7 law enforcement people in Riverside who have risked everything  
8 to reopen this case and saw that when nobody else cared, despite  
9 the fact that there is no statute of limitations on the people  
10 that were murdered in 1981.

11 I don't know the law, Your Honor, but I pray that you  
12 will do the right thing, the right and honorable thing in this  
13 court today regardless of whether Mr. Mike Murphy of the  
14 Department of Justice chooses not to prosecute this case for  
15 personal reasons or because of a technicality relating to due  
16 process that occurred 29 years ago or because this case is  
17 complicated and could be an embarrassment to the Department of  
18 Justice at this late date.

19 I request, Your Honor, that the records state that I  
20 believe that there should be a preliminary hearing so that the  
21 court itself can determine the evidence in this case. Nothing  
22 has changed since the filing of this case. So either it was an  
23 unethical filing or an unethical dismissal.

24 Even according to Mr. Murphy's own words, this case  
25 should have been tried 25 years ago. Due to the diligence of  
26 Detective John Power and my own independent investigation and  
27 due to recent investigation and lack of statute of limitations,  
28 there's has been no due process violation; instead, only an

1 abuse of prosecutorial discretion. This case is not just a  
2 personal setback, but a setback for the system as a whole.

3 While I expect the defense attorneys to fight on behalf  
4 of their client, I am astounded with the lack of victim advocacy  
5 and society protection by the prosecution in this case.

6 Frankly, it amounts to prosecutorial misconduct and a  
7 mischaracterization of justice. I do not understand how  
8 Attorney General Jerry Brown could support the release of Mr.  
9 Hughes. How could he be elected governor of California if he  
10 can't manage his staff competently in San Diego.

11 Please be advised the only request I am making for  
12 myself and on behalf of the family members of the other murder  
13 victims is that the evidence against Mr. Hughes be presented at  
14 a court of law and that Mr. Hughes faces accusers here in the  
15 United States rather than hiding out in Honduras where he is  
16 untouchable.

17 He preaches publicly in Latin America that God has  
18 forgiven him for his murders, yet I question whether he has  
19 truly repented. He has never shown any remorse. He has never  
20 apologized to me or the other victims, so how could he have  
21 repented?

22 I ask James Hughes remain in custody at least until  
23 another DOJ prosecutor who is less timid could be assigned to  
24 prosecute this case or perhaps the case could be handed over to  
25 another jurisdiction or even a special prosecutor. My own  
26 attorney has offered to do that.

27 There must be a way, Your Honor, with the power and  
28 wisdom of this court you can find a way to protect the lives and

1 rights of Hughes's victims.

2 To Jimmy Hughes, I say I hope that your short time in  
3 jail has given you time to truly repent. Be advised that even  
4 if the court and the Attorney General fail me and society today  
5 that I will not give up seeking the truth and justice for my dad  
6 Fred and Patty.

7 And thank you, Your Honor, for allowing me to be heard.  
8 I also ask that Detective John Powers be allowed to address the  
9 court. He has been my support through this entire ordeal, and  
10 he has information only he can provide the court.

11 I also ask that should you agree to the dismissal of  
12 this case, that you do so without prejudice so that a proper  
13 review can be ensured.

14 And I thank you for your time, and I thank you for  
15 allowing me to say my statement even though I did not have the  
16 assurance due to his prosecutorial misconduct and contacting of  
17 me and the lack of contact. I thank you for allowing me to at  
18 least give my opinion of this and plead with you to please not  
19 release him and please do justice.

20 THE COURT: Thank you, ma'am.

21 MS. BEGLEY: Thank you.

22 THE COURT: There was a request for a Detective John  
23 Powers to address the court. Under Marsy's Law, I don't believe  
24 that request is a legitimate request.

25 Mr. Murphy, do you need to be heard on that?

26 MR. MURPHY: No. I would agree with, Your Honor.

27 THE COURT: Defense need to be heard?

28 MR. SOTORRIO: No, Your Honor. We would agree with the



1 court.

2 THE COURT: I'll deny the request for Detective Powers  
3 to address the court at this point.

4 Does any of counsel need to be heard further?

5 MR. SOTORRIO: No, Your Honor.

6 MR. MURPHY: No, Your Honor.

7 THE COURT: The court is going to grant the 1385  
8 dismissal in the interest of justice. This is without prejudice  
9 of course. And, therefore, the defendant will be released  
10 today.

11 Anything further?

12 MR. SOTORRIO: No, Your Honor. Thank you very much.

13 Will the defendant be released from the jail across the  
14 street or from --

15 THE COURT: Has he been kept in Blythe or here in  
16 Indio?

17 MR. SOTORRIO: He's been kept in Blythe, Your Honor,  
18 but he has no personal possessions.

19 THE COURT: Typically he's released from the facility  
20 in which he's been housed, but I do not know that. I will make  
21 a request of the sheriff's department they release him from  
22 Indio.

23 MR. SOTORRIO: I would request that because it will  
24 delay the matter a couple of days.

25 THE COURT: I'll make that request.

26 MR. SOTORRIO: Thank you, Your Honor.

27 (Proceedings concluded.)

28