

**IN THE COUNTY COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY,
FLORIDA.**

CASE NO. 05-2021-CT-55302-AXXX-XX

**STATE OF FLORIDA,
Plaintiff,**

v.

**SUZANNA PAIGE NORRIS,
Defendant.**

**ORDER DENYING “VICTIMS’ MOTION FOR ORDER REQUIRING
THAT THEY BE INCLUDED AND INFORMED REGARDING
SCHEDULING DECISIONS, NEGOTIATIONS & RESTITUTION”**

THIS CAUSE came before the Court on March 16, 2022 upon the “Victims’ Motion for Order Requiring that they be Included and Informed Regarding Scheduling Decisions, Negotiations & Restitution”, filed by the survivors of Ms. Passion Lucas on February 23, 2022. The State filed a response to the motion on March 14, 2022 and the defense filed notice that they were adopting the State’s position on March 15, 2022. On March 15, 2022, the survivors filed a reply to the opposition of the State and the defense. Based on the arguments of counsel, the motion, and the responses of the parties, the Court makes the following conclusions of law:

a. On December 8, 2021, the Defendant was arrested for Driving Under the Influence Manslaughter (for the death of Ms. Passion Lucas), Leaving the Scene of an Accident Involving Injury or Death, and Driving Under the Influence. On February 14, 2022, the State charged the Defendant by Information with Driving Under the Influence. On February 16, 2022, the State filed an Amended Information charging the Defendant with Driving Under the Influence Alcohol Level of .15 or Higher.

b. The survivors of Ms. Passion Lucas claim that the Defendant struck and killed Ms. Lucas while she was driving under the influence. They claim that they should be treated as and

afforded all of the rights provided to victims under Article I, Section 16 of the Florida Constitution, known as Marsy's Law.

c. Under section 316.193(3), Florida Statutes, a person who operates a vehicle while under the influence commits DUI Manslaughter if the person "by reason of such operation, causes or contributes to causing...[t]he death of any human being or unborn child." In their response to the survivors' motion, the State indicated that they decided not to charge the Defendant with DUI manslaughter after their expert witness issued an accident reconstruction report stating that the crash was unavoidable by the Defendant. Based upon this report, the State came to the conclusion that the Defendant did not cause or contribute to causing the death of Passion Lucas. Therefore, the State made the decision to charge the Defendant with the misdemeanor offence of DUI with an alcohol level above .15.

The Court does not have the authority to alter a charge brought by the State Attorney. "Due to the separation of powers doctrine, courts have long recognized that a prosecutor, as a member of the executive branch, has the sole responsibility to enforce criminal laws of the state. '[T]he discretion of a prosecutor in deciding whether and how to prosecute is absolute in our system of criminal justice.'" Barnett v. Antonacci, 122 So. 3d 400, 405 (Fla. 4th DCA 2013) (quoting State v. Cain, 381 So.2d 1361, 1367 (Fla.1980)).

d. Marsy's Law is a relatively new constitutional amendment which was approved by Florida voters in November, 2018. This case presents an issue of first impression. Article I, Section 16(e) defines a victim 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 or against whom the

crime or delinquent act is committed. The term “victim” includes the victim's lawful representative, the parent or guardian of a minor, or the next of kin of a homicide victim, except upon a showing that the interest of such individual would be in actual or potential conflict with the interests of the victim.

The Court finds that the survivors of Ms. Passion Lucas do not meet this definition of a victim. The State made the decision not to charge the Defendant with a homicide in this case. Therefore, the survivors are not “the next of kin of a homicide victim” under the above definition. The Court recognizes that the survivors have suffered a horrible loss and sympathizes with their situation. However, the survivors do not fit under the definition of a victim under Marsy’s Law and therefore, are not entitled to all the rights afforded victims under the constitutional amendment.

e. Despite the fact that the survivors do not qualify as victims under Marsy’s Law, the Court believes that they should be afforded notice of court proceedings and the opportunity to speak at sentencing. See State v. Covington, 131 So.3d 10 (Fla. 1st DCA 2012) (a trial court has considerable discretion to resolve issues relating to the course and conduct of a criminal trial). The State has agreed that they will provide the survivors with notice of court proceedings and the opportunity to speak at sentencing.

f. The survivors also claim to be entitled to restitution. During the hearing, it was brought to light that the restitution statute’s definition of a victim is broader than that of Marsy’s Law. Section 775.089(1)(c)1., Florida Statutes, defines in relevant part victims who are entitled to restitution as “[e]ach person who suffers property damage or loss, monetary expense, or physical injury or death as a direct or indirect result of the defendant's offense or criminal episode, and also includes the victim's estate if the victim is deceased, and the victim's next of

kin if the victim is deceased as a result of the offense.” Again, the language provides that the victim must have died “as a result of the offense.” The State Attorney’s Office determined that the death was not caused by the offence and the Court has no authority to overrule the State’s decision. However, the issue of restitution is premature at this time. If the Defendant is convicted in this case and the survivors move for restitution, the Court will then make a determination as to whether they are entitled to restitution.

Accordingly, it is **ORDERED AND ADJUDGED:**

1. The “Victims’ Motion for Order Requiring that they be Included and Informed Regarding Scheduling Decisions, Negotiations & Restitution” is **DENIED**.

2. The State and defense are both ordered to provide the attorney for the survivors with notice of all court proceedings. If the Defendant is convicted, the family of Ms. Passion Lucas will have the opportunity to speak at sentencing.

DONE AND ORDERED in Viera, Brevard County, Florida, this 29 day of March, 2022.



JUDITH E. ATKIN
COUNTY JUDGE

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing was furnished to the Office of the State Attorney, 2725 Judge Fran Jamieson Way, Building D, Viera, Florida 32940, Alan Landman, Esq., Attorney for the Defendant, 7195 Murrell Road, Suite 102, Melbourne, Florida 32940, and Jessica J. Travis, Esq., Attorney for the Lucas Family, 1370 Bedford Drive, Suite 104, Melbourne, Florida 32940, by e-filing this 29 day of March, 2022.



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