

**IN THE CIRCUIT COURT OF THE 17th JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

STATE OF FLORIDA,
Plaintiff,

v.

NIKOLAS JACOB CRUZ,
Defendant.

CASE: 18-001958CF10A

JUDGE: ELIZABETH SCHERER

MOTION FOR RECONSIDERATION AND CLARIFICATION
OF THE COURT'S ORDER FINDING THAT
VICTIM ANTHONY BORGES LACKS STANDING

COMES NOW, ANTHONY BORGES, one of the surviving victims in this matter, by and through his undersigned counsel, and files this Motion for Reconsideration and Clarification of the Court's Order Finding that Victim Anthony Borges Lacks Standing and as grounds therefore states as follows:

RECONSIDERATION

1. On February 14, 2018, the Defendant, Nikolas Jacob Cruz, walked into the high school from which he was expelled, Marjory Stoneman Douglas High School, in Parkland, Broward County, Florida, and, armed with a semi-automatic AR-15 assault-style rifle, began shooting at students and teachers alike, killing 17 and injuring more than 20.
2. Anthony Borges, a 15 year-old student, is one of the students shot by the Defendant. He suffered a total of 5 gunshot wounds while holding a door closed to prevent the defendant from entering and killing his classmates. Mr. Borges is currently in intensive care at Broward General Hospital in Fort Lauderdale, Broward County, Florida.

3. It is undisputed that Mr. Borges falls under the definition of “Victim” as it is defined by Florida law in § 960.03(14)(a), (b), (c) and (d), Florida Statutes, as referred to in Article I, Section 16(b), of the Florida Constitution, and as defined in Black’s Law Dictionary, 2nd Edition: “[a victim is] a person harmed by criminal acts”.
4. Florida Statute § 960.001 provides the guidelines for the fair treatment of victims and witnesses in the criminal justice and juvenile justice systems.
5. More specifically, § 960.001(1)(a)(5), Florida Statutes, states,

“The right of a victim, who is not incarcerated, including the victim’s parent or guardian if the victim is a minor, the lawful representative of the victim or of the victim’s parent or guardian if the victim is a minor, and the next of kin of a homicide victim, to be informed, to be present, and to be heard when relevant, at all crucial stages of a criminal or juvenile proceeding, to the extent that this right does not interfere with constitutional rights of the accused, as provided by s. 16(b), Art. I of the State Constitution;”
6. Mr. Borges, a victim in this matter, was severely injured by the defendant’s actions, and invoked his constitutional right to be heard at a crucial stage of the criminal proceedings, that being the arraignment on March 14, 2018, by the filing of two separate motions to disqualify the Law Office of the Public Defender and the Office of the State Attorney for the 17th Judicial Circuit due to their conflict of interest and status as potential witnesses for the defense in the morning of March 14, 2018, the day of arraignment.
7. Mr. Borges, alleged in his motions, and provided written proof, of an inherent conflict of interest for both the Public Defender and the State Attorney of the 17th Judicial Circuit, making them possible witnesses for the defense.
8. Arraignment is a “crucial stage” in a criminal proceeding. See *Sardinia v. State*, 168 So.2d 674 (FLA 1964). In its ruling, the Florida Supreme Court was referring to the right to counsel at arraignment, but stated further, “It is, therefore, important to surround the arraignment with adequate procedural safeguards, such as we have suggested, in order to forestall a fatal defect in the ultimate prosecution”.

9. In *Sardinia v State*, *supra*, the Florida Supreme Court went so far as to state, “*Unless the right to counsel is intelligently waived at the arraignment or by subsequent action of the accused, a conviction grounded upon a guilty plea without the aid of counsel would be constitutionally defective.*”
10. In *United States v. Wade*, 388 U.S. 218 (1967), the Supreme Court set forth the standard for identifying critical stages in the judicial process. The Court stated that the existence of a critical stage depended upon an analysis of “*whether potential substantial prejudice to [the] defendant’s rights inheres in the particular confrontation and the ability of counsel to help avoid that prejudice.*” Thus, the Court held that a defendant’s right to counsel may extend to proceedings outside the actual trial, including every stage at which the accused’s rights may be impeded by the absence of counsel. In addition to its decision in *Wade*, the Court has held that critical stages of the prosecution include arraignment, preliminary hearings, post-indictment interrogation, and other pretrial confrontations.
11. Finally, in *J.R., a Juvenile, v. State*, 953 So.2d 690 (1 DCA 2007), the First District Court of Appeal ruled, “*We hold that an arraignment is a critical stage in a delinquency proceeding*”. While the instant case may not be a delinquency proceeding, the same holds true in all criminal proceedings in the State of Florida.
12. The court received the motions the night before the Defendant was arraigned. At the arraignment undersigned counsel for the victim inquired if the Court had ruled. The Court stated that she would consider the motions and advised both the state attorney and the public defender to continue with the case.
13. On March 21, 2018, this Court ruled and issued its order, finding “*that Mr. Arreaza, on behalf of his client, as a non-party, lacks standing to motion this court for the specific relief set forth.*”
14. In its Order denying victim Anthony Borges’s constitutional right to be heard, the Court cited *Johnson v. State*, 78 So.3rd 1305, 1315 (Fla. 2012). In *Johnson*, the case involves a judicial interpretation of the application of sections 27.511(8) and 27.5303(1)(a) and whether RCC (Regional Conflict Counsel) has standing to challenge a public defender's motion to withdraw.

15. Undersigned counsel is unable to find any rule, statute, law, code, or precedent permitting RCC – or any other party - to intervene in any matter where the public defender has found it necessary to withdraw from a case due to a conflict of interest. *Johnson* is not applicable to the instant motions and does not address a victim’s right to be heard at a crucial stage in the proceedings. Instead, it addresses Regional Conflict Counsel’s right to be heard when they are not a party to the action and have no involvement in the case. *Johnson* does not address any rights on behalf of a victim.
16. The Court also cited *S.K. v. State*, 881 So.2d 1209 (5DCA 2004). In *S.K.*, the parents of the minor victim sought to set aside a pretrial intervention agreement between the State and a juvenile defendant, S.K. The Fifth District Court of Appeal affirmed the trial court’s finding that since they were not a party to the action, they lacked standing to assert a legal claim or to seek enforcement of a legal right through a motion. However, this case is distinguishable from the instant filing by Mr. Borges in that in *S.K.* the parents of the juvenile victim sought to have the pretrial intervention agreement set aside, a prerogative of the prosecuting attorney and their office and not subject to judicial review. A Court cannot tell the prosecuting attorney how to prosecute a case and has no control if the State decides to place the defendant in a pretrial intervention program. Hence, *S.K.* is inapplicable not only because the relief sought was not subject to judicial review. What *S.K.* does state is that the decision to prosecute lies solely within the discretion of the State and not with a victim of crime.
17. Lastly, the court cited *Kowalski v. Tesmer*, 543 U.S. 125 (2004), 333 F.3d 683, (2004), *reversed and remanded*. This case involves a constitutional challenge to Michigan’s procedure for appointing appellate counsel for indigent defendants who plead guilty. The only challengers before the court were two attorneys who sought to invoke the rights of hypothetical indigents to challenge the procedure. [The Court held] that the attorneys lack[ed] standing and therefore do not reach the question of the procedure’s constitutionality. This was a Michigan case. The victim, Mr. Borges, is a Florida resident exerting his Constitutional right to be heard under the Florida Constitution and Florida Statute 960.001(1)(a)(5). *Kowalski* does not stand for the proposition that the victim in this case does not have a right to heard as requested

through his attorney. Undersigned counsel has never asked for standing on his own behalf and at no point asked for standing on behalf of “future uncertain rights.”

18. The motions to disqualify both the Law Office of the Public Defender and the Office of the State Attorney for the 17th Judicial Circuit was filed by undersigned counsel on behalf of Mr. Borges, and as the victim Mr. Borges has an unarguable right to be heard, at crucial stages in this matter, under both, the Florida Constitution and Florida Statutes.

CLARIFICATION

19. The Court’s order of March 21, 2018, states “*that Mr. Arreaza, on behalf of his client, as a non-party, lacks standing to motion this court for the specific relief set forth.*” The order goes on to mention undersigned counsel, Mr. Arreaza, by name in its decision seven times, yet only mentions the victim, Anthony Borges, on whose behalf the motions were filed, once.
20. To be clear, both motions to disqualify were filed on behalf of a victim in this case.
21. Undersigned counsel is not, and never has been, a party to this action nor is undersigned counsel seeking to be heard on his own behalf.
22. Undersigned counsel respectfully requests that the Court correct its Order of March 21, 2018, to read that “Victim Anthony Borges” lacks standing, if that is what the Court’s Order intended. This correction is needed to correct the record and properly appeal the order, if necessary.

WHEREFORE, Anthony Borges, a victim in this matter, prays this Honorable Court grant this Motion for Clarification and Reconsideration of the Court’s Order Finding that Victim Anthony Borges Lacks Standing grant such other relief as it deems proper and just.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Reconsideration and Clarification of the Court's Order Finding that Victim Anthony Borges Lacks Standing has been furnished via eservice through Florida's efilng portal to: Law Office of the Public Defender, 17th Judicial Circuit, Broward County, and to the Office of the State Attorney, 17th Judicial Circuit, Broward County, on this 28 day of March, 2018.

Respectfully submitted,

/s/ Alex Arreaza

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