

GRIEVANCES, RELATED STATUTES & RULES, AND HOW CONSTITUTIONAL VICTIM'S RIGHTS WOULD HAVE PREVENTED OR REMEDIED SUCH

1) Notification of major developments under HRS 801D-4 (1):

(a) Carly Scott's death was leaked to the news media before being revealed to the family. This compromised our search sites and alerted us that we had been disadvantaged in our search efforts during the weeks prior, as we had been searching for Carly, alive, and later, we believed we were searching for intact remains. This is regarding Lynn Kawano's report on Carly's jawbone in early March of 2014. Rules of Professional Conduct prohibit such unwarranted disclosures to media under Rule 3.6 (a) // Trial Publicity / extrajudicial statements likely to prejudice defendant (jury selection took a very long time as result of pretrial exposure fueled by animosity toward defendant).

(b) On February 16, 2016 prosecutors had to reindict defendant due to mistakes they made with the first indictment filed July 14, 2014. As per the clause permitting consultation with the prosecutor and advisement of any potential plea deal, we (Kimberlyn and Brooke Scott) went to great efforts to discuss the charges being filed, and specifically addressed whether or not the sentencing enhancement for murder (HRS 706-657) had been properly alleged in the indictment as demanded by the Apprendi rule. Apparently we were ignored, because the original indictment had to be redone because of an Apprendi violation relating to the grand jury and the murder enhancement.

During our (Kimberlyn and Brooke's) several consultation meetings with the prosecution, we implored them to consider several things relating to the charges against defendant. First, we disputed MPD's valuation of Carly's vehicle, and ultimately we proved and convinced the prosecution to upgrade the arson charge from third to second degree. We also presented compelling cause to charge for both kidnapping and robbery. The prosecution's opposition to kidnapping was rooted in an ignorance of Hawaii's criminal definition of "kidnapping" which, to their great surprise, includes the element of deceit and thus was applicable to the circumstances of Carly's murder. The fact that Carly was "lured" to her own death was a central theme presented by the prosecution and acknowledged by the presiding judge during sentencing. Our suggestion of a robbery charge hinged on the fact that defendant clearly used to force to steal Carly's vehicle, thereby committing the more serious crime of first degree robbery before committing the act of arson. These suggestions were made in hopes of accommodating a potential plea deal but both were angrily refused by the prosecution. The arson charge was amended, to our great delight. The prosecutor actually stole an original

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document of ours to support the upgraded arson charge when we offered it to him for photocopying.

The prosecutor (Rivera) failed to observe Bar standards by proceeding with a case that had been insufficiently investigated (they missed defendant's long hair in jeans covered with Carly's blood, they also falsely identified drugs in defendant's storage locker, they refused to investigate or present evidence relating to how Carly's pregnant status would have actually slowed the onset of death from exsanguination rather than hastening it), and by inexcusably poor conduct aimed at both the victim's family and the defense, particularly Mr Apo.

(c) Prosecutors and/or Victim-Witness counselors failed to inform us of court dates on numerous occasions. Kimberlyn is best able to describe the particulars, including her obedience to HRS 801D's requirement that she first request her victim-witness rights in writing before being able to have them honored. There is no suggestion in HRS 801D as to where one should send this request, so we delivered it to Tracy Jones, one of the Prosecutors.

2) Notification if a proceeding to which a victim-witness has been subpoenaed will not proceed as scheduled under HRS 801D-4 (2):

(a) In late January 2016 the prosecution informed Brooke and Fiona that, as witnesses, they would be required to fly to Maui with less than two day's notice. Prosecution stated that because of issues surrounding the re-indictment, trial could either begin as planned, or it could be stalled. Prosecution also informed us that their mistake with the original indictment could lead to defendant bailing out of jail, thus creating a threat to our family and other witnesses. Brooke asked repeatedly that she be given more than two day's notice for when she would be required to fly from Washington to Maui because she would be traveling with her one year old son, Devlin. That request was denied without a stated reason. Ultimately Brooke and Fiona purchased their own airfare because they were made to believe that they were already under court-ordered subpoena when in fact, they were not. It is our belief that the prosecutors lied to us and tricked us into going to Maui, whereupon they served us with subpoenas that listed our address as local. Meaning, the prosecutors violated HRS 836-3 Uniform Act to Secure the Attendance of Witnesses from without a State in Criminal Proceedings when they conveyed to Brooke and Fiona that their attendance was required, without lawful authority to do so. Prosecution abused the trust and willingness of Brooke and Fiona as witnesses in the trial against their sister's killer to avoid the hassle of obtaining an out-of-state subpoena, and to later avoid proper payment of witness fees and airfare under HRS 621-7 re Fees;

Criminal Cases. See also HRS 624D-3 re Foreign Subpoenas which lays out the procedures the Prosecution ignored for Brooke and Fiona's subpoenas.

(b) Prosecution informed Brooke that she was under compulsion to remain in the state of Hawaii after testifying for the State because she had been named a witness by the defense. Brooke requested the subpoena proving as much no less than a dozen times over the next several weeks. Prosecution ignored these requests. Brooke contacted the defense and was similarly ignored. The net effect was that Brooke and her infant son lived on Maui for about 9 months waiting for the trial to end. Prosecution would not purchase airfare for Brooke and Devlin to go home. It is unclear why the prosecutor decided to verbally "serve" Brooke with a defense subpoena, or why the actual document was withheld for several months even after the trial had concluded. Brooke was never called as a defense witness. Brooke's numerous requests and complaints relating to subpoenas and travel evoked hostility from the prosecutor (Rivera), and potentially even retaliation (discussed later).

(c) The majority of Carly's family members who were called as witnesses for the State were kept on "stand-by" at the courthouse for several days before testifying, because the prosecution could not streamline their witness list and apparently decided that family members were expendable in that manner (that they could be made to sit in a hallway for days and days to accommodate the schedules and preferences of other witnesses).

3) To be informed of assistance and social services, including help in applying under HRS 801D-4 (4):

(a) Brooke had to apply for food assistance and health insurance because of the prolonged stay on Maui. The Department of Human Services was unwilling to approve the application because she did not qualify as a permanent resident; even though her State subpoena listed a local Maui address, the Department determined that Brooke was only a temporary visitor. Brooke asked a victim-witness counselor for help in convincing the Department that I would be stuck on Maui for several months with an infant and she (Ana) said sorry, No, can't help with that. The Department gave Devlin health insurance, but gave Brooke insurance for only one month. Brooke's husband sent money to her but his Washington State dollar was only worth about 70 cents in Hawaii. The time spent on Maui under compulsion of subpoena cost Brooke and her husband thousands of dollars. It also separated a father and son for almost a year, without even the slightest consideration to either of them. The State paid Brooke a per diem of about \$1,050 for her stay dating February 16, 2016 to December 28, 2016, plus \$400 for witness fees. During this time while Brooke was under subpoena but before the trial had begun, she asked the prosecution if she would be able to keep an important previous

engagement on the mainland in late March. They told her yes, but she could only be gone for about 1 week, because the trial could start anytime (trial ultimately started in late June 2016). She had to pay her own airfare to and from a family reunion event that was cut short by the prosecution's stipulation. At no point did the prosecution or victim-witness counselors offer to help with travel, lodging, food, transportation, or applying for social services. They never even offered to bring out Devlin's father, who literally had no choice but to lose nearly a year of memories with his first and only child. The prosecutors never once acknowledged how the trial impacted Devlin, or his father, who had to stay in Washington for work.

(b) Fiona was also told she had to stay indefinitely on Maui while waiting to testify in the trial which kept getting continued. Fiona asked Rivera at one point if she should just get a job, because she had run out of all the money she brought with her from California (her permanent residence). He laughed and said Yes, that's probably a good idea. So she got a job to support herself while being forced to live on Maui as a witness in a criminal trial. Fiona lost significant wages due to her prolonged stay on Maui; she had two jobs in California and a free rent arrangement. 6+ months on Maui damaged her financially. But, Fiona was offered airfare for the sentencing hearing in late March 2016, a true kindness on part of the Prosecutor's office/ victim-witness fund. She received about \$800 for her court- ordered presence on Maui spanning nearly 10 months.

(c) Kimberlyn requested assistance repeatedly with family counseling. The victim-witness counselor essentially told her to call 911 if it was really that bad. Investigators actually requested that Kimberlyn procure Carly's Death Certificate, which was curiously difficult. There was no assistance provided by the victim-witness counselors, except photocopying things a few times, and relaying increasingly unfriendly messages from the prosecution. We were told the Death Certificate was available on six occasions and on all six occasions, even when physically present at Oahu office, the Death Certificate was denied. This issue was finally resolved with the help of a state Representative and a caring citizen.