

NOW WATCHING:

MAN WANTED FOR KILLING HIS WIFE SURRENDERS

RESUME

00:00

00:29 HD CC

4U

4U

HOT

NEW

SPORTS MEDICINE & CONCUSSION CARE

STATE PLANT-1000

THE GWINNETT MEDICAL CENTER SPORTS MEDICINE AND CONCUSSION INSTITUTE HAS A NEW CARE-A-VAN

4U

Children of domestic violence victims

2 minutes left



**DEVELOPING
STORY**

00:00

6:05 78°



00:23 / 02:31



'Scared for my life': Why are crime victims being jailed?

By Joel Gunter
BBC News, Washington DC

Marc Mitchell was at work when the police came to arrest him, last April, at the New Orleans hotel where he was a houseman. They handcuffed him in front of the customers and the other staff and took him to jail.

	Last Name :	MITCHELL
	First Name :	MARC
	Charge Text	WARRANT
	Disposition	HOLD-CT
	Disposition Date	04/07/2016
	Bond Amount	50000.00
	Magistrate Number	
Docket Number	521734	
Details/Comments	CDC/MATERIAL WITNESS/040716	



She Didn't Want Her Boyfriend to Go to Jail. So They Sent Her to Jail Instead.

Sources of Law

- Family Violence Act
 - O.C.G.A. § 19-13-1: defines Family Violence; enumerates offenses;
 - O.C.G.A. § § 19-13-2 to -4: govern Protective Orders;
 - O.C.G.A. § § 19-13-5 & -6: provide for criminal penalties alongside civil procedures for Protective Order violations.
- Law Enforcement Actions
 - O.C.G.A. § 17-4-20.1: governs investigations involving Family Violence, requirements for arrest decisions; and mandatory incident reports.
- Sentencing
 - O.C.G.A. § 42-8-35.6: requires FVIP as a sentence/revocation condition for offenses involving Family Violence, absent special findings.

Law Enforcement: Arrest Decisions

- O.C.G.A. § 17-4-20.1
 - Prohibits arrest decisions based solely on Victim input;
 - Prohibits any threat/suggestion that ALL parties will be arrested to discourage police involvement;
 - Requires determination of primary aggressor if possible;
 - DOES NOT mandate arrest;
 - DOES mandate a report even if no arrest is made.
- “Mandatory Arrest” Policies?

Law Enforcement: Investigation

- Victim & Offender Interviews;
- Physical Evidence;
- Audio/Video Evidence;
- Photographs;
- Witness Statements;
- Documentation;
- Follow Up.

Prosecution: Charging Decisions

- Enough evidence to charge?
 - Further Investigation?
 - Victim Contact?
- Which Charges/Combinations Apply?
 - Specificity of Charges;
 - “Lesser Included Offenses”?
- Prosecutorial Discretion
 - Victim / Victim Advocate Input?

Prosecution: From Accusation to Trial Calendar

- Joelle's Slides: Discovery, Investigation, Audio/Video Evidence
- Crime Victim Bill of Rights
- Victim Contact & Service
- Bond Conditions: To Modify or Not To Modify?

Visual and Audio Evidence

- ✓ 911 Audio
- ✓ Police Body Cam Evidence
- ✓ Jail Calls
- ✓ Photographs
- ✓ Maps

Jail Calls



– Leonardo Knight



Call with Dad

911 Calls



Eddie Wood

Legitimate Evidence Concerns?

- Must comply with Discovery statute.
 - For Misdemeanors: O.C.G.A. § § 17-16-20 to -23.
 - Accusation, List of Witnesses, Defendant's Statements, Scientific Reports.
- Considerations for Disclosure
 - Brady Material?
 - Will victim remain safe?
- How do sift through all the Body Cam evidence?
- What should you do?

Serving the Victim

- Methods of Service
- When to Hand Serve?
- How to Hand Serve?



OFFICE OF THE SOLICITOR – STATE COURT
GWINNETT JUSTICE & ADMINISTRATION CENTER
75 LANGLEY DRIVE
LAWRENCEVILLE, GA. 30046-8900

SUBPOENA

SUBPOENA
GWINNETT COUNTY STATE COURT

WITNESSES

CALL 770-822-8322 AFTER 5:00 PM THE
EVENING BEFORE YOU ARE SCHEDULED
TO REPORT TO RECEIVE UPDATED
REPORTING INSTRUCTIONS.

IN THE CASE OF

STATE v. _____

CASE NO.: _____

L.E. AGENCY NO.: _____

REPORT TO
GWINNETT JUSTICE & ADMINISTRATION
CENTER
75 LANGLEY DRIVE
LAWRENCEVILLE, GEORGIA

COURTROOM: Courtroom 2E

BEGINNING: 11/27/2017

1 WEEK TRIAL

Greetings To: _____

You are hereby commanded, that laying all other business aside, you personally be and appear at the State Court, Criminal Division, before Judge PAMELA SOUTH on Monday, November 27, 2017 at 8:30 AM, Courtroom 2E, and remain in attendance from day to day and term to term until the case is disposed of, there to testify and the truth say on the part of and in behalf of the State.



Here in fail not, under the penalty of law by
the authority of the Judge of said Court on
this _____ day of August, 2017.

RICHARD T. ALEXANDER, JR.
CLERK OF SUPERIOR COURT

IF YOU HAVE ANY QUESTIONS CONCERNING THIS SUBPOENA CALL (770)822-8296.

For reporting instructions please call 770-822-8322 starting on Wednesday, November 22nd, 2017 after 5:00 p.m. and listen to the recording. If you hear your case number that is listed above on the recording follow those instructions stated on the recording. Continue to call 770-822-8322 each day after 5:00 p.m. for the duration of the trial week of 11/27/2017-12/01/2017 and follow all instructions for your case number. If you have not heard your case mentioned on the recording by the conclusion of the trial week please call Juliana Franco at (770)822-8296.

This subpoena is an order directing you to come to court.

**Failure to come to court as ordered may be punished by a
fine of up to \$1,000 and up to 20 days in jail, or both.** O.C.G.A. 15-6-8(5)

If this case is continued to another date, this subpoena continues, and
you are required to attend court until this case is closed. *Brady v. State, 120 Ga. 181*

Keep the Solicitor's Office informed if you change your address so you
can be notified by mail of future court dates. (770) 822-8300

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Civil Action No. _____

Date Filed _____

Magistrate Court ☐
Superior Court ☐
State Court ☐
Georgia, Gwinnett County

Attorney's Address _____

Plaintiff

VS.

Name and Address of party to be served. _____

Defendant

Garnishee

Sheriff's Entry Of Service

Personal ☐

I have this day served the defendant _____ personally with a copy of the within action and summons.

Notorious ☐

I have this day served the defendant _____ by leaving a copy of the action and summons at his most notorious place of abode in this County.

Delivered same into hands of _____ described as follows
age, about _____ years; weight, about _____ pounds; height, about _____ feet and _____ inches; domiciled at the residence of defendant.

Corporation ☐

Served the defendant _____ a corporation
by leaving a copy of the within action and summons with _____
in charge of the office and place of doing business of said Corporation in this County.

Tack & Mail ☐

I have this day served the above styled affidavit and summons on the defendant(s) by posting a copy of the same to the door of the premises designated in said affidavit, and on the same day of such posting by depositing a true copy of same in the United States Mail, First Class in an envelope properly addressed to the defendant(s) at the address shown in said summons, with adequate postage affixed thereon containing notice to the defendant(s) to answer said summons at the place stated in the summons.

Non Est ☐

Diligent search made and defendant _____
not to be found in the jurisdiction of this Court.

This _____ day of _____, 20____.

Deputy

Sheriff Docket _____ Page _____

Gwinnett County, Georgia

WHITE: Clerk

CANARY: Plaintiff / Attorney

PINK: Defendant

STATE COURT
75 Langley Drive
Lawrenceville, GA 30046-6900
(770) 822-8300
Fax (770) 822-8339



OFFICE OF THE SOLICITOR-GENERAL
GWINNETT COUNTY

Rosanna M. Szabo
Solicitor-General

RECORDER'S COURT
115 Stone Mountain Street
Lawrenceville, GA 30046-5661
(770) 619-6140
Fax (770) 619-6006

Date: _____

Re: State of Georgia v. _____ Case No. _____

Greetings:

While you were out, an Investigator came to see you regarding a misdemeanor criminal case in which you have been identified as a witness or victim.

Your input is very important to us.

Please call 770.822.8300 and ask to speak to the victim/witness coordinator assigned to this case.

Respond as soon as possible so we can give timely consideration to your concerns before making further prosecutorial decisions regarding this matter.

Thank you for your cooperation.

Pre-Trial Matters

- Immunity Motions
 - O.C.G.A. § 16-3-24.2; relying on justification provisions in O.C.G.A. §§ 16-3-21,-23, -23.1, and -24.
 - Burden is on **Defendant**
 - Standard: Preponderance of Evidence
 - Should the Victim Testify?
- Victim Absent at Call of Case for Trial
 - The Problem of DWOPS
 - Multiple Options to Consider

IN THE STATE COURT OF GWINNETT COUNTY
STATE OF GEORGIA

STATE OF GEORGIA

Accusation #: _____

v.

Arrest Date: _____

DISMISSAL FOR WANT OF PROSECUTION

The above case having been called for trial in its order on the published Bench/Jury Calendar dated

_____ and no appearance being made by the prosecuting witness(es);

Victim: _____ Subpoena served by: Certified Mail ☐ Hand Serve ☐ US Mail ☐

Return of service/receipt ☐ US Mail returned undelivered ☐

Witness: _____ Subpoena served by: Certified Mail ☐ Hand Serve ☐ US Mail ☐

Return of service/receipt ☐ US Mail returned undelivered ☐

IT IS THEREUPON CONSIDERED, ORDERED and ADJUDGED this _____ day of _____,
2016 that the above case be and is hereby dismissed for want of prosecution and is hereby eligible for records
restriction pursuant to O.C. GA § 35-3-37(h)(2)(a).

JUDGE JOHN DORAN
State Court of Gwinnett County

Recess/Continuance

- Ask for a Recess to locate witness.
 - Alternative to Continuance – keeps the case on the same trial calendar.
 - *Before* trial begins, or *during* trial?
 - Robertson v. State, 278 Ga. App. 376 (2006): overnight recess during trial not an abuse of discretion.
- Ask for a Continuance
 - O.C.G.A. § 17-8-25: State is *statutorily entitled* to a continuance to find an absent witness.
 - Requires a specific showing of facts.

IN THE STATE COURT OF GWINNETT COUNTY
STATE OF GEORGIA

STATE OF GEORGIA

v.

Defendant.

ACCUSATION No.: 201__D - ____ - ____

JUDGE _____

STATE'S MOTION FOR CONTINUANCE DUE TO THE ABSENCE OF A
MATERIAL WITNESS PURSUANT TO O.C.G.A. § 17-8-25

COMES NOW the State of Georgia, by and through the undersigned Assistant Solicitor-General, and respectfully requests that this Court **GRANT** a continuance in the pending matter pursuant to the direct statutory authorization of O.C.G.A. § 17-8-25. This Motion is made upon the failure of a material witness for the State to appear when the Court called the above case for trial.

O.C.G.A. § 17-8-25 sets forth eight elements required for the State to make a reasonable showing in support of a continuance when a witness is absent. Pursuant to that statute, the State shows this Court the following:

1. The State's material witness, _____, is not present in court today upon the call of the above case.
2. The witness has previously been served **BY HAND** with a valid subpoena for the trial of this case. The witness was hand-served on ____ / ____ / 20__.
3. The witness' last known address of record is located fewer than one hundred (100) miles from the place of trial.
4. The witness' testimony (summarized below) is material to the issues in this case.
5. The State has **NOT** given either express or implied permission for the witness to be absent from court.

6. The State expects to be able to procure the witness' presence and testimony at the next term of this Court;
7. Because of the materiality of this witness' testimony, the State is requesting this continuance in order to avoid abridgement of its right to prosecute the accused (*see State v. Brooks*, 301 Ga. App. 355 (2009)) and **NOT** for the purpose of delay.
8. The State expects the witness to testify, in summary, to the following facts:

Based on the above, the State has satisfied the requirements of O.C.G.A. § 17-8-25. Thus, despite the higher burden placed on the State relative to a Defendant in requesting a continuance (O.C.G.A. § 17-8-21), the State has shown the necessary facts to support our appellate courts' determination that "the absence of a material witness is a reasonable showing in support of a continuance..." *Minicucci v. State*, 214 Ga. App. 468 (1994). The State is therefore statutorily entitled to a continuance in this case under Georgia law.

WHEREFORE, for the foregoing reasons as well as those stated in the accompanying Brief in Support filed with this Motion, the State respectfully requests that this Court continue this case to the next calendar.

Respectfully submitted this ____ day of _____, 20__.

Assistant Solicitor-General,
Gwinnett County, GA

IN THE STATE COURT OF GWINNETT COUNTY
STATE OF GEORGIA

STATE OF GEORGIA

v.

Defendant.

ACCUSATION No.: 201__D - _____ - __

JUDGE _____

**BRIEF IN OPPOSITION TO DISMISSAL FOR WANT OF PROSECUTION
AND IN SUPPORT OF THE STATE'S MOTION FOR CONTINUANCE IN
ACCORDANCE WITH O.C.G.A. § 17-8-25 AND THE PRINCIPLES OF JUSTICE**

COMES NOW the State of Georgia, by and through the undersigned Assistant Solicitor-General, and respectfully requests that this Court both **DENY** the above-named Defendant's Motion to Dismiss for Want of Prosecution and **GRANT** the State's Motion for Continuance. Defendant's motion was made upon the failure of a material witness for the State to appear when the Court called the above case for trial.

Although the Court has the authority and discretion to dismiss a case in this circumstance, the State argues that upon a showing of the required grounds, it is entitled to the same continuance that Defendant would be permitted as a matter of law under O.C.G.A. §§ 17-8-21 & 17-8-25. Additionally, Defendant in this case is charged with violations of Georgia's Family Violence Act as codified in Title 19 of the Georgia Code. In the especially concerning circumstances of a Family Violence case, the principles of justice demand that this Court consider the State's motion for continuance in order to ensure the safety of the absent witness and investigate any potential wrongdoing that may have provoked his or her absence.

In support of its Motions, the State shows this Court the following:

Contempt

IN THE STATE COURT OF GWINNETT COUNTY
STATE OF GEORGIA

STATE OF GEORGIA
V.

ACCUSATION NO.

In Re: _____ (Witness)

MOTION FOR CONTEMPT AND RULE NISI

The above referenced witness was properly subpoenaed to appear in the above-referenced case pursuant to OCGA 24-10-23, attached hereto as "Exhibit A". The case was called for trial on _____ and the witness having failed to appear for trial,

NOW THEREFORE IT IS ORDERED that the above referenced witness appear before this Court at 75 Langley Drive, Lawrenceville, Georgia on _____ (date), at _____ (time) in Courtroom _____ to show cause why they should not be held in contempt. Failure to appear at this hearing may result in a warrant being issued for incarceration. IT IS SO ORDERED this _____ day of _____, 20__.

Judge _____,
State Court of Gwinnett

Certificate of Service

I certify that I have this day served a copy of the forgoing on the above referenced witness by depositing a copy of same in the US Mail with adequate postage affixed to assure delivery and addressed as follows:

DONE this _____ day of _____, 20__.

Assistant Solicitor

IN THE STATE COURT OF GWINNETT COUNTY
STATE OF GEORGIA

STATE OF GEORGIA
V.

ACCUSATION NO.

In Re: _____ (Witness)

ORDER

The State's Motion for Contempt having come before the Court for hearing on _____, and the Court having considered the evidence, hereby finds as follows:

[] The above-referenced witness willfully failed to appear on _____, and is in contempt of Court. The motion for contempt is GRANTED and punishment is as follows.

[] The above-referenced witness did not willfully fail to appear on _____, and is not in contempt of Court. The motion for contempt is DENIED.

So ordered, this _____ day of _____, 20__.

Judge _____,
State Court of Gwinnett

IN THE STATE COURT OF GWINNETT COUNTY
STATE OF GEORGIA

THE STATE OF GEORGIA)	ACCUSATION NO.:
)	
)	
v.)	20 _____ - ____
)	
)	
_____)	
Defendant.)	

In Re: _____ (Witness)

INCARCERATION ORDER

The State having filed a Motion for Contempt and the above named witness having failed to comply with Court's Order to appear on said Motion, the Sheriff of Gwinnett County and all Deputy Sheriffs, Constables, and authorized law enforcement, are hereby ordered to apprehend the above named witness _____, and hold in custody at the Gwinnett County Detention Center until:

- ☐ Further order of this court;
 - ☐ Fingerprinted and released;
 - ☐ Serves _____ days, _____;
 - ☐ Other: _____
- _____

SO ORDERED, this _____ day of _____, 201__.

Judge, Gwinnett County State Court

Material Witness Warrants

IN THE STATE COURT OF GWINNETT COUNTY

STATE OF GEORGIA
STATE OF GEORGIA
vs.
STATE OF GEORGIA
:

Accusation #: 201_D-_____-_____
Charges: _____

ORDER FOR THE ARREST OF MATERIAL WITNESS

Whereas, _____, the victim and a material witness in the above-styled case, has been duly served with a subpoena by the State of Georgia on _____, 201_, to appear at trial on _____ 2016 (see Exhibit A, attached hereto); and

Whereas, _____ has willfully and purposefully failed to appear pursuant to said subpoena;

The Court hereby orders any authorized law enforcement officer to immediately take _____ into custody as a material witness and bring her immediately to this Court. If she is taken into custody after court adjourns for the day, she is to be taken to the Gwinnett County Detention Center and held as a material witness until such time as she testifies in this case or until further order of this Court.

MATERIAL WITNESS INFORMATION for _____:

Date of birth: _____

Race/Sex:

Current home address: _____, GA 300_____

Current cell phone number: _____

Current place of employment: _____

SO ORDERED, this _____ day of _____ 2017.

Honorable _____
Judge, Gwinnett State Court

Trial Issues

- Is the victim a adverse, hostile or recanting?
 - O.C.G.A §§ 24-6-607, -611(c), and impeachment provisions.
- Expert witnesses?
- Medical evidence?
- Hearsay evidence?
- Child witness?
- Prior difficulties?
 - O.C.G.A. § 24-4-404(b): admissible without pre-trial notice.

Trial Tactics and Techniques

- Should you hand serve the victim for trial?
 - How many subpoenas do you hand serve?
- What should you do if the victim/witness fails to comply with your hand service?
- Can you proceed without the victim?
- Should you proceed without the victim?

Sentencing/Disposition

- Pre-Accusation Disposition
 - When is “enough” evidence “enough to proceed”?
- Alternatives to Prosecution
 - Pre-Trial Diversion: Pros and Cons
 - What factors go into the decision to pursue PTD?
- Plea Negotiations
 - Negotiable vs. Non-Negotiable Terms
- Sentencing
 - Collateral Consequences

STATE COURT
75 Langley Drive
Lawrenceville, GA 30046-6900
(770) 822-8300
Fax (770) 822-8339



**OFFICE OF THE SOLICITOR-GENERAL
GWINNETT COUNTY**

**Rosanna M. Szabo
Solicitor-General**

RECORDER'S COURT
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(770) 619-6140
Fax (770) 619-6006

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