

CATHERINE DERUS MARKEY

October 2, 2023

Attorney General Keith Ellison
445 Minnesota Street, Suite 1400
St. Paul, MN 55101-2131

Dear Mr. Ellison:

I am writing to contest the Hennepin County Attorney's treatment of the offender that murdered my beloved son, Steve Markey.

Steve was the joy of my life. He was kind, funny, compassionate and a mama's boy. Steve worked for me as a paralegal and was doing errands for me on the afternoon he was killed during an attempted carjacking. My beautiful son was shot to death by Jared Ohsman and Husayn Braveheart on June 11, 2019. They tried to steal his car then shot him because they thought that he laughed at them. Both of their bullets pierced my beautiful son's body. Steve was brave and tried to drive away, but he ultimately crashed into a building and died in the street.

At the time Steve was shot, Braveheart was eight days short of his 16th birthday. Ohsman had already turned 16.

We were in juvenile court and began attending hearings for Ohsman and Braveheart within two weeks of Steve's murder. Mary Moriarity was the Chief Public Defender at this time. After being certified to be tried as an adult, Ohsman pled guilty and was given an adult sentence of 22 years.

In juvenile court, the HCAO made extensive arguments at numerous hearings that Braveheart was dangerous and should be certified as an adult. We heard many times from probation and others that Braveheart was not amenable to probation. After all, he had absconded from numerous juvenile placements. In fact, we were told that Braveheart promised a judge that he would cooperate with a placement; while on the way to that placement he kicked the window out of the social worker's car and ran away.

The district court concluded that Braveheart was a child [in the fall of 2020].¹ The HCAO appealed to the Minnesota Court of appeals, who found Braveheart was an adult on March 8, 2021². The Public Defender's office appealed to the Minnesota Supreme Court, who affirmed the conclusion that Braveheart should be tried as an adult on November 16, 2022.³ This was eight days after Moriarity was elected Hennepin County Attorney.

¹ Court file No. 27-JV-19-2507

² *In re Welfare of H.B.*, 956 N.W.2d 7 (Minn. Ct. App. 2021).

³ A20-0954 (Minn. 2022)

As this case was pending for over four years, I had numerous interactions with the HCAO. I was assured by the HCAO repeatedly that they would pursue an adult sentence similar to the sentence given to Ohsman. I was told they thought Braveheart was more dangerous than Ohsman and that Braveheart⁴ was the one who planned and initiated the crime spree.

After Braveheart was certified as an adult in November, our family was told Moriarity was reviewing the case and coming up with an offer. Our family repeatedly asserted that we would not accept an offer of probation and we were assured by prosecutor Morgan Kunz that an offer of probation would not happen. We were told to expect a sentence similar to that given to Ohsman.

After months of hearings at which we were told Moriarty was still developing an offer, I was called on the 27th of July and told the HCAO needed to meet me on the morning July 28th. I met the HCAO on the 28th, along with my son and daughter, and Mr. Kunz could not even look me in the eye. We had been friendly over the years and had gotten to know and trust each other. I had to ask him if the offer was for probation; he finally admitted it was, and we strenuously objected. We asked to meet with Ms. Moriarty along with our counsel. We were told she could only meet with us at 3:00 PM that day, so we scrambled to find a lawyer to attend the meeting with us.

I attended the meeting that afternoon with my daughter and an attorney from my daughter's office. Ms. Moriarity was dismissive and illogical about our concerns, and repeatedly told us releasing Braveheart was in the interest of public safety. She also said that he has improved significantly during his term of incarceration, but he would only get more dangerous if he was sent to prison. She said prison is too dangerous for Braveheart. When we would not agree with her, she said that we were seeking vengeance. We said that we were simply asking that a reformed person take responsibility for his actions and serve an adult sentence. I told her that I am afraid of what will happen to someone else when Braveheart is released. She was condescending, insulting, rude, and belittling and did not listen to my family. She said that because she believed Braveheart's shot into my beautiful son did not kill him, Braveheart should not serve a prison sentence.

We asked for a continuance of the hearing scheduled for Monday, July 31st because we wanted more time to consider the plea offer and because many of Steve's family and friends were out of town, and we wanted them to be there when the plea was offered. She would not agree to the continuance during the meeting, even though we begged for one. We had never asked for any special consideration during the previous four years of hearings. We quietly cooperated with the prosecution, trying to be cooperative, to help ensure a good outcome.

After the meeting with Moriarity, our victim advocate told us they were requesting a continuance. Our victim advocate called me on Sunday evening and said there had been no response to the continuance request for Monday morning. My family and I emailed Judge Burns' chambers and requested a continuance. As there was no response to the continuance, we attended the hearing. Judge Burns said from the bench that he had received my family's emails and was confused because no continuance was requested. We feel that the HCAO attempted to prevent our family from exercising our rights under the Victim's Rights Statute. At the hearing, my family requested to object to the plea. We were repeatedly told by Morgan Kunz that we could speak at the sentencing and he asked us not to speak that day, but we kept asking to speak before the plea was offered as provided by the statute. Finally Judge Burns agreed to a continuance because his schedule did not allow for us to speak that day.

⁴ Braveheart and Ohsman carjacked and threatened to kill others in the 48 hours before Steve's murder.

At the next hearing, Mr. Kunz (who was our prosecutor for four years) had a conflict⁵ and was now off the case. The new prosecutor never spoke to us. We were forced to speak as the prosecution and the victims.

We spoke and objected to the plea because it was inconsistent with the other defendant, did not serve public safety, represented a huge change in course, and was manifestly unjust.

As an attorney, I have worked in the criminal justice my entire career. My family and I cooperated fully with the HCAO throughout the process. We attended every hearing and repeatedly cleared our schedules with only a day's notice so we could support them in seeking justice for Steve. We did not speak to the press because of their concerns of how it would impact the case and did everything we could to assist them. We were polite and cooperative. We thought we had built trust and rapport with them and that they would do the right thing for our family. We can no longer trust them or the system that we have always been proud to be a part of. We believe Mary Moriarty disregarded a clear conflict of interest to adopt the same strategy she used in the case as the chief public defender when she transitioned to HCAO.

Ms. Moriarty has previously been removed from cases due to her conflicts related to the defendants Flowers and Burrell. Steve's case is no different. She was the chief public defender who oversaw intake of this case and had a management role in how Braveheart's case would be managed and assigned.

As an attorney, it is clear to me that Ms. Moriarty's conduct was unethical and violates the ABA standards for how prosecutors should handle cases and potential conflicts of interest, including ABA Standards 3-1.2(a) and (c), ABA Standards 3-1.7. Conflict of interest, ABA Standards 3-3.4. Relationship with victims, Mn Rules of Prof Responsibility 1.11 (a) (2) and (c), and Mn Rules of Prof Responsibility 1.9. Ms. Moriarty has disregarded her clear conflict of interest related to my son's murder.

Justice cannot be served in this case by Mary Moriarty due to her conflict related to her prior representation which is clearly influencing her analysis of this case and preventing advocacy for my son and our family.

I am begging you to intervene and do the right thing for my son.

Sincerely,



Catherine Derus Markey

Cc: Governor Walz
Bob Small, MCAA Executive Director
Honorable Toddrick Barnette, Chief Judge Hennepin County
Brian O'Hara, Chief of Minneapolis Police
Lawyers Board of Professional Responsibility

⁵ The purported conflict was that Mr. Kunz met my son's cousin at a block party. This is not a conflict and seems to be an excuse so Mr. Kunz was not responsible for the plea.

Timeline:

6/11/2019 – Steve is killed and court begins immediately

12/23/2019 – Mary Moriarity is suspended

9/30/2020 - MN PD Board voted to not renew Mary Moriarity as PD

6/22/2021 – Mary Moriarity gets a \$300k settlement

9/1/2021 - Freeman announces retirement

9/27/2021 – Mary Moriarity is running for County Attorney

11/16/2022 - Braveheart certified to be tried as an adult

11/8/2022 – Mary Moriarity is elected County Attorney

7/28/2023 - Sudden offer of probation for Braveheart (we request a continuance)

7/31/2023 - Hearing (continued because Judge didn't have time for us to speak)

8/4/2023 - Plea is taken (Judge does not accept plea, PSI ordered)