

STATE OF MINNESOTA
COUNTY OF LYON

IN DISTRICT COURT
FIFTH JUDICIAL DISTRICT

STATE OF MINNESOTA,

Plaintiff,

File No. 42-CR-08-220

vs.

OLGA MARINA FRANCO DEL CID,

ORDER

Defendant.

The above-entitled matter came before this Court on September 18, 2008, for a Post-trial Hearing. Defendant was represented by Manuel Guerrero, Attorney at Law, St. Paul, Minnesota; Tamara Caban-Ramirez, Attorney at Law, Minneapolis, Minnesota; and Neal Eisenbraun, Attorney at Law, Fridley, Minnesota. The State appeared through Rick Maes, Lyon County Attorney.

Based upon all the files and records herein,

IT IS HEREBY ORDERED:

1. Defendant's Motion for Judgment of Acquittal is DENIED.
2. Defendant's alternative Motion for a New Trial is DENIED.

Dated: September 23, 2008

BY THE COURT:


David W. Peterson
Judge of District Court

MEMORANDUM

Defendant was charged in the Amended Complaint with four counts of Criminal Vehicular Homicide, in violation of Minn. Stat. § 609.21, Subd. 1(1), seventeen counts of Criminal Vehicular Injury, in violation of Minn. Stat. § 609.21, Subd. 1(1), one count of False Name and Date of Birth to a Peace Officer, in violation of Minn. Stat. § 609.506,

FILED IN THIS OFFICE
9/23/08
Karen J. Bierman
COURT ADMINISTRATOR
Marshall, Lyon County, Minnesota

Subd. 2, one count of Stop Sign Violation, in violation of Minn. Stat. § 169.20, Subd. 3(a), and one count of No Minnesota Driver's License, in violation of Minn. Stat. § 171.02, Subd. 1. On August 6, 2008, after a jury trial before this Court, the jury found Defendant guilty of all 24 charges. Defendant now moves this Court for judgment of acquittal or, in the alternative, a new trial. For the reasons outlined below, the Court denies both motions.

I. Judgment of Acquittal

Minnesota Rule of Criminal Procedure 26.03, Subd. 17 outlines the procedure for motions for judgment of acquittal. Rule 26.03, Subd. 17(1) provides that if the evidence is insufficient to sustain a conviction, the Court must enter a judgment of acquittal. Subdivision 17(3) provides that a motion for judgment of acquittal may be made and granted after a verdict of guilty has been returned by the jury. "A motion for judgment of acquittal is properly denied where the evidence, viewed in the light most favorable to the State, is sufficient to sustain a conviction." State v. Simion, 745 N.W.2d 830, 841 (Minn. 2008) (citing State v. Slaughter, 691 N.W.2d 70, 75 (Minn. 2005)). Circumstantial evidence "is entitled to the same weight as any evidence so long as the circumstances proved are consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis except that of guilt." State v. Bias, 419 N.W.2d 480, 484 (Minn. 1988). However, the State's burden is not to remove all doubt, but rather to remove all reasonable doubt. State v. Hughes, 749 N.W.2d 307, 313 (Minn. 2008). The Court must assume the jury believed the State's witnesses and disbelieved contrary evidence. Id. at 312. The question is whether the facts in the record and the legitimate inferences drawn

from them would allow the jury to reasonably conclude that Defendant was guilty beyond a reasonable doubt. Id.

Defendant specifically contends that the circumstantial evidence is not inconsistent with the rational hypothesis that Mendoza was the driver of the minivan, and, therefore, is not sufficient to sustain the jury's verdict. As Defendant notes, no witness testified that they actually saw Defendant drive on the day of the accident. Defendant testified that she had never driven the minivan and specifically was not driving on the day of the accident.

The arguments raised in Defendant's Memorandum that particularly related to insufficiency of the evidence can be summarized in the following points:

- The evidence showed no injury to Defendant other than to her right ankle;
- The evidence showed that Defendant was only trapped in the minivan because her right ankle was pinned;
- The State's evidence, particularly the testimony of the State's accident reconstructionist, Sgt. Skoglund, showed only what would happen during the initial impact between the minivan and the school bus;
- Defendant's expert, Donn Peterson, testified that after the initial impact, the spinning of the minivan would cause unrestrained objects inside to have relative movement to the left of the minivan;
- The evidence, including the testimony of Defendant and Peterson, indicated that, at the time of the accident, no one in the minivan was wearing a seatbelt;
- The evidence indicated that the driver's side door of the minivan opened on impact;

- The evidence indicated that the steering wheel in the van was bent, which would likely be caused by an occupant slamming into it;
- The evidence, particularly the blood from an unidentified male and the testimony of Keryn Vigil, indicated that Mendoza was injured in the accident;
- There was no evidence that the only way Defendant's foot could have been trapped is if she had been driving the minivan;
- The evidence, particularly the testimony of Peterson, indicated that, if Defendant was the driver, her trapped foot would not have anchored her in the minivan;
- The evidence showed that Mendoza was in the van.

To synthesize this evidence and summarize further, Defendant's argument is that (1) because Defendant was not wearing a seatbelt, would have moved left (relative to the minivan) during the spin, and would not have been restricted by the door or by her trapped foot, she would have been flung out of the driver's side door if she had been the driver; and (2) because Mendoza was in the minivan, would have moved in the same relative manner, and may have had injuries consistent with slamming into the steering wheel (which Defendant did not have), he is more likely the driver.

However, the question for this Court, reviewing the verdict of the jury, is not whether it is possible that Defendant is not guilty. "Possibilities of innocence do not require reversal of a jury verdict so long as the evidence taken as a whole makes such theories seem unreasonable." State v. Ostrem, 535 N.W.2d 916, 923 (Minn. 1995). In determining whether circumstantial evidence has created an inference sufficient to support the jury's verdict, the Court finds Hughes instructive.

The Supreme Court in Hughes was specifically reviewing whether the State had presented sufficient evidence to prove the element of premeditation in a charge of premeditated murder. 749 N.W.2d at 312. The Supreme Court analyzed the circumstantial evidence relating to planning activity, motive, and the nature of the killing. Id. at 313-15. Regarding planning activity, the Court held that evidence that the defendant normally kept the shotgun in his basement closet, coupled with evidence that the defendant knew the victim was coming to his house, was sufficient to allow the jury to infer that the defendant retrieved the shotgun after directing the victim to come over, consistent with planning activity. Id. at 314. Regarding motive, the Court held that evidence that (1) defendant's marriage had deteriorated to the point of divorce, (2) that the defendant said divorce was not an option, (3) that the defendant was worried about loss of custody of the children, and (4) the victim planned to discuss custody with the defendant on the day of the murder combined to make sufficient evidence to infer that the defendant's motive for killing his wife was to prevent her from leaving him and taking the children. Id. Regarding the nature of the killing, the Court held that evidence that the victim was first shot in the back while crouching or kneeling, then shot in the chest at close range after an appreciable period of time, coupled with evidence of the defendant fleeing rather than rendering aid, was sufficient evidence to support an inference of premeditation. Id. at 315.

This case is, of course, not a case of premeditation. However, Hughes is instructive on how this Court should examine a jury's decision based upon inferences, even in a case where the element (premeditation) was proven solely by circumstantial

evidence and results in a more serious offense. The Supreme Court in Hughes never characterized the evidence as requiring or compelling an inference of premeditation.

With these principles in mind, viewing the evidence in the light most favorable to the verdict, the Court finds that the evidence is sufficient to support an inference that Defendant was the driver. Sgt. Skoglund testified, as to the damage of the minivan, that virtually all of it would have been caused by the initial impact, rather than anything after that (including the spin). While Donn Peterson testified as to the movement the minivan would have after the initial impact (the spin) and testified as to the movement of occupants of the minivan relative to the minivan (to the left), the jury may have inferred that at the time of the spin, because the principle damage to the front of the minivan had already occurred, Defendant's leg was already trapped. While Peterson testified, in response to questioning about whether Defendant's trapped foot could have held her in the minivan, that "the pedals down there would bend such that it would tend to free up" and that her foot would have pulled "either free or off," this was his opinion for the jury to evaluate. Based upon the testimony that Defendant's foot was twisted and Dr. Paul Diekmann's testimony as to the type of fracture in Defendant's foot, the jury may have inferred that Defendant's injury to her ankle was, at least partly, the result of stress from her foot holding her in the minivan. Because the principle damage to the minivan happened before the spin, the jury could have inferred that Defendant's foot must have been near the area it was trapped before the spin occurred.

Further, the Court notes that this is not purely a circumstantial evidence case. The Court allowed both parties to extensively voir dire Susy Campos. The Court ruled that she had sufficient training and experience to interpret and ruled that any issue of whether

she did accurately interpret on February 19, 2008 would go to weight. After this ruling, the State recalled Trooper Dana Larsen. Larsen testified that, when he asked Defendant (via the interpreter) what happened, she said “[t]hat she was driving to the cabinet place[...].” Defense Counsel established, on cross examination, that Trooper Larsen himself could not understand Spanish. During the cross examination of Susy Campos, Defense Counsel questioned whether she had in fact accurately interpreted what Defendant said. Viewing the evidence in the light most favorable to the verdict, and assuming the jury believed the State’s witnesses and disbelieved contrary evidence, Defendant did say that she was driving. That is direct, not circumstantial, evidence.

Again, as noted above, the question is not whether the conclusion that Defendant was the driver is compelled by the evidence. The question is whether the evidence, both direct and circumstantial, is sufficient to support that inference. In examining the evidence in the light most favorable to the jury’s verdict, the Court finds that there was sufficient evidence to sustain the conviction.

II. New Trial

Minnesota Rule of Criminal Procedure 26.04, Subd. 1(1) provides the grounds for a motion for a new trial. The decision of whether a new trial should be granted rests almost exclusively in this Court’s discretion. State v. Thompson, 139 N.W.2d 490, 512 (Minn. 1966). Any error, defect, irregularity, or variance that does not affect substantial rights is disregarded. Minn. R. Crim. Pro. 31.01.

Defendant’s Memorandum has asserted many claims as to why she believes a new trial should be granted. At the hearing, Defense Counsel reiterated some of these and

addressed some others. The Court has attempted to address them as they relate to each of the specific grounds in Rule 26.04, Subd. 1(1). While the Court has, in some cases, grouped the specific arguments under different factors than Counsel presented them, the analysis remains the same.

a. Irregularity depriving fair trial

Defendant's Memorandum cites to State v. Azzone, 135 N.W.2d 488 (Minn. 1965) for the proposition that a new trial can be granted on the grounds of pretrial publicity "contaminating" the proceeding, and Defense Counsel argued pretrial publicity in this case was an irregularity depriving Defendant of a fair trial. This Court very carefully considered the effects of publicity (both prior to and during the trial) on this case. The Court, while not repeating its analysis, incorporates its analysis in both of the Orders issued regarding changes of venue in this case. However, now that the trial has concluded, the question of jurors' exposure to pretrial publicity is no longer speculative. Each prospective juror was questioned, in the jury questionnaire and on the record, as to what they knew about the case. None of the jurors that were ultimately selected appeared to the Court to have been prejudiced by any exposure to pretrial publicity, and Counsel never raised any concerns in this regard during the trial. The Court finds that this trial was not prejudiced by pretrial publicity.

Defendant also asserts that there was irregularity in this Court's proceedings by failing to instruct the jury as to an alternative perpetrator defense. While the Court, pursuant to State v. Jones, 678 N.W.2d 1, 16 (Minn. 2004), specifically ordered that Defendant would be allowed to raise, argue, and introduce evidence of an alternative perpetrator, the Court declined to give an instruction. The Court views such an

instruction as a “permissive inference” instruction. Permissive inference instructions are disfavored for several reasons: they tend to interject argument into the instructions; they improperly influence a jury by isolating certain facts and placing an official legal imprimatur on an inferential step of logic; they are unnecessary because an inference that can be made using common sense and experience is appropriately left to the jury with general instructions. State v. Valtierra, 718 N.W.2d 425, 432-33 (Minn. 2006) (citing State v. Litzau, 650 N.W.2d 177, 186-67 (Minn. 2002); State v. Olson, 482 N.W.2d 212, 215-16 (Minn. 1992)). While Valtierra specifically dealt with an instruction regarding a permissive inference from flight, the Court finds that its rationale is just as applicable to a permissive inference that Mendoza was the driver of the vehicle at issue here. This Court has discretion whether to give a requested jury instruction. State v. Hall, 722 N.W.2d 472, 477 (Minn. 2006). The jury was instructed on the general proposition of law that circumstantial evidence is not disfavored when compared to direct evidence. 10 Minnesota Practice, CRIMJIG 3.05. This instruction, combined with the instruction that the jury must find Defendant guilty beyond a reasonable doubt along with all the instructions, accurately described the law that the jury was to apply and included the substance of the Defendant’s request. See, e.g. State v. Swanson, 707 N.W.2d 645, 653 (Minn. 2006) (“If the substance of an instruction is already contained in the jury instructions, a court need not give the requested instruction.”).

b. Prosecutorial misconduct

The acts of a prosecutor may constitute misconduct if they materially undermine the fairness of a trial. State v. Fields, 730 N.W.2d 777, 782 (Minn. 2007). Misconduct also results from the prosecution’s violation of clear or established standards of conduct,

including: rules, laws, orders of a district court, or clear commands in case law. Id. Prosecutorial misconduct may also result from attempting to elicit or eliciting clearly inadmissible evidence. Id.

Defendant asserts that the State committed prosecutorial misconduct by claiming that Defendant was “pinned in the driver’s seat.” The Court finds no misconduct. Even the characterization of the evidence put forth by Defendant (that only her right ankle was pinned) comports with the statement that she was “pinned in the driver’s seat.” The evidence showed that some part of Defendant was pinned, that it took 45 minutes to extricate her, and that she was sitting in the driver’s seat when she was found. The characterization of this as Defendant being “pinned in the driver’s seat” is, while a different characterization than “Defendant’s right ankle was pinned and she was in the driver’s seat,” not misconduct.

Certain witnesses called by the State, specifically Dana Larsen and Steven Knutson, referred to Defendant as the “driver” of the minivan. Defendant’s Memorandum accurately quotes the trial transcript regarding each of these instances. The Court cannot conclude that these occurrences undermined the fairness of the trial. Defense Counsel objected to these answers, and the Court instructed the jury to disregard these answers (excluding the final time, when there was no objection made). The arguments of Counsel and the evidence introduced plainly showed the jury that neither of these two witnesses observed Defendant driving. Further, while Defense Counsel made a motion for a mistrial on the basis of these specific references in the testimony, that motion was withdrawn. If a defendant fails to object to prosecutorial misconduct, a new trial is only granted if the misconduct was plain error affecting substantial rights. State v.

Washington, 725 N.W.2d 125, 133 (Minn. Ct. App. 2006). This Court concludes that this is likewise the proper analysis when, as was the case here, the motion for a mistrial based upon the certain of the alleged misconduct was withdrawn. In the context of this case, the fact that witnesses, who clearly did not witness any driving, inadvertently called Defendant the “driver” did not affect Defendant substantial rights.

Defendant contends that the State implied admissions by Defendant by asking questions without foundation or supporting evidence. Specifically, the State asked Defendant on cross-examination, “Now, Ms. Franco, the following day after the accident you talked with your aunt, Petrona, and you told her that you were driving, correct?” Defendant replied that she did not remember that. While the State offered no evidence or foundation to support the contention that Defendant ever told Petrona that she was driving, Defense Counsel made no objection. During her direct testimony, Defendant explicitly addressed that she did not recall ever saying that she was the driver, though she testified, as a possible explanation, that Mendoza had threatened her life. While the question was not proper, in the context of the entire trial, the Court cannot find that it affected Defendant’s substantial rights or materially undermined the fairness of the trial.

Defendant asserts that the State improperly attempted to impeach her testimony that she was not employed in late 2007. The State sought to introduce an application for employment. Defendant testified that she could not read the document, as it was in English, and that she did not fill it out. She did testify that she signed it with the name Alianiss Morales. While the State offered it as evidence that Defendant was employed, contrary to her testimony, when Defense Counsel asserted that (as merely an application) it was not proof of employment, the State withdrew its offer of the exhibit. It does appear

that the State, mistakenly, construed the application as proof of employment. However, the Court cannot find that this constituted misconduct. Defense Counsel objected to the admission of the application but did not object to the State “improperly” questioning Defendant about it. Defense Counsel had the opportunity, on re-direct, to probe any further regarding the application. The Court cannot find that this affected Defendant’s substantial rights or undermined the fairness of the trial.

Defendant asserts that the State improperly withheld witness information, specifically about Gail Maus and her brother, Lynn Jeremiason, and thereby allowed Jeremiason to leave Minnesota. Gail Maus was listed on the State’s disclosures. Her address was listed, it was listed that she had no known prior convictions, and her statements were listed as “description of scene.” On, or about, July 23, 2008, the State added Jeremiason to the list of disclosed potential witnesses, which was the same day that the State first learned that Jeremiason had any information about the incident. The State chose not to call Jeremiason and he was not served with a subpoena. During her testimony, in response to Defense Counsel’s question about who was in the better position (between Maus and Jeremiason), Maus testified, “My brother saw it more clearly than me, yes.”¹ The Court specifically ruled on Defendant’s objection to allowing Maus to testify. As the Court indicated in chambers, regarding Jeremiason, the question was

¹ The State did indicate during a bench conference near the beginning of Maus’ testimony that Maus was expected to merely testify as to her observations of the scene after the accident. However, after the Court took a recess to allow Defense Counsel to speak with Maus, the Court met again with all Counsel in chambers. Counsel informed the Court that Maus and Jeremiason saw a minivan (similar or the same as the minivan involved in the accident) before the accident. Therefore, the subsequent testimony elicited by the State, while not merely a description of the scene, was not in disregard of the State’s representations to the Court.

not whether his testimony would be excluded, because the State chose not to call him; rather, the question was whether Jeremiason had any exculpatory, so-called Brady, material. See Minn. R. Crim. Pro. 9.01, Subd. 1(6). The State, as an officer of the Court, informed the Court that during his interview with Jeremiason, he learned of no exculpatory material. The Court gave Defense Counsel time to retrieve contact information for Jeremiason so that Defense Counsel could make that assessment themselves. The Court was never further informed about it. To the best of the Court's knowledge, Defense Counsel never attempted to secure Jeremiason's testimony. This issue was not known until the trial, but Defense Counsel never requested a continuance to further explore this matter. Even now, the only record before the Court indicates that the State did not have, and therefore could not have withheld, any exculpatory material.² The Court cannot find that the State committed misconduct in this regard, and, even if it could, the Court cannot find that it affected Defendant's substantial rights or materially undermined the fairness of the trial.

Finally, Defendant asserts that the State improperly withheld the identity and substance of testimony of Ben Stendahl and improperly called him as a rebuttal witness. In her testimony, Defendant testified that she had never driven the minivan that was in the accident. The State called Stendahl as a rebuttal witness to testify that he believed he saw Defendant drive the minivan in question on six different occasions. Rebuttal evidence is evidence that explains, contradicts, or refutes a defendant's evidence. State v.

² The Court also notes that, while Defendant's Memorandum asserts that the State was "undoubtedly told that [Jeremiason] would be leaving town," the State, again as an officer of the Court, specifically told the Court and Counsel that he was not aware of that and was still considering whether to call Jeremiason that very day.

Gore, 451 N.W.2d 313, 316 (Minn. 1990). Defendant claims this was improper because Defense Counsel raised the issue of “Defendant’s ability to drive” at the beginning of the trial. Stendahl was not, however, called to rebut some notion regarding Defendant’s ability to drive.³ He was called to rebut Defendant’s testimony that she had never driven the minivan. This issue was not raised until Defendant actually testified. While the Court understands that Defense Counsel always asserted that Defendant was not the driver on the day of the accident, to the best of the Court’s knowledge, it was not until Defendant’s testimony that there was any evidence that Defendant never drove that van. Therefore, the State was not aware that it would need to rebut such evidence until Defendant testified. Defendant specifically objected before Stendahl’s testimony on the grounds that this information was not supplied in discovery. The Court made its ruling, noting that the case law is clear that rebuttal witnesses do not need to be disclosed. See, e.g. State v. Yang, 627 N.W.2d 666, 677 (Minn. Ct. App. 2001); State v. Anderson, 405 N.W.2d 527, 531 (Minn. Ct. App. 1987), review denied (Minn. July 22, 1987). The Court notes that, while Defendant asserts that the result was that Defense Counsel did not have an opportunity to more thoroughly investigate the facts underlying Stendahl’s testimony, Counsel was granted time to interview Stendahl, and the Court recessed for the evening before proceeding with his testimony the next morning. Further, there was never a request for a continuance to allow more time. There was no misconduct in not disclosing the identity of Stendahl or the substance of his testimony.

³ Further, Defendant’s Memorandum points to Dana Larsen’s testimony as “raising” this issue. Larsen’s testimony was simply that he did not make any attempt to discern whether Defendant could drive. This is not evidence that she could not drive.

As to each of the assertions of prosecutorial misconduct, the Court finds that either there was no misconduct, or, if there was misconduct, it did not affect Defendant's substantial rights or deny her a fair trial. Likewise, the Court concludes that, in the aggregate, the conduct which Defendant asserts was misconduct did not deprive her of a fair trial.

c. Juror misconduct

As with prosecutorial misconduct, misconduct by the jury can provide the grounds for a new trial motion. Minn. R. Crim. Pro. 26.04, Subd. 1(1)3. Defendant asserts that the jury improperly required Defendant to prove how or that Defendant's trapped foot did not show that she was the driver of the van. Defendant cites a newspaper article where a juror was quoted saying, "The biggest factor was where her foot was[...]" and asserts that this means the jury improperly relieved the State of its burden of proof beyond a reasonable doubt.

The Court first notes that, while Rule 26.04, Subd. 1(1)3 provides that "[m]isconduct of the jury" is a grounds for a new trial, Rule 26.03, Subd. 19(6) specifically requires that a "defendant who has reason to believe that the verdict is subject to impeachment shall move the court for a summary hearing." This is a so-called Schwartz hearing, after Schwartz v. Minneapolis Suburban Bus Co., 104 N.W.2d 301 (Minn. 1960). A Schwartz hearing was not requested, however, even if one was, the alleged actions could not form the basis to grant a Schwartz hearing. See, e.g. State v. Domabyl, 272 N.W.2d 745 (Minn. 1978) (Schwartz hearing denied when claim was that jurors misunderstood the instructions); Bauer v. Kummer, 70 N.W.2d 273 (Minn. 1955) (Schwartz hearing denied when claim was that jurors misapprehended evidence, did not

understand the court's charge, or misconceived legal consequences of their findings on the facts); Strauss v. Waseca Village Bowl, 378 N.W.2d 131, 134 (Minn. Ct. App. 1985) ("A jury's failure to understand instructions given it by the court is not misconduct and does not justify a Schwartz hearing.); see also Minn. R. Evid. 606(b) (providing that when impeaching a verdict, jurors may be questioned about extraneous prejudicial information, outside influences, or threats of violence or violent acts, but may not be questioned about any other matter or statement, including emotions or mental processes). Even if the Court accepted Defendant's assertion that this single statement to a newspaper could mean that the jury failed to follow the Court's instruction about reasonable doubt, this cannot form the basis for a claim of jury misconduct.

d. Surprise

A new trial may be granted if there was "[a]ccident or surprise which could not have been prevented by ordinary prudence." Minn. R. Crim. Pro. 26.04, Subd. 1(1)4. The Court believes that this particular ground may apply to Defendant's claims regarding the testimony of Stendahl and the fact that Jeremiason was not available or disclosed. The Court has already examined these two incidents in the context of prosecutorial misconduct, above. The Court notes that, as it concluded above, there was not misconduct in the State not disclosing either of these witnesses. The State was not required to disclose Stendahl as a rebuttal witness, and the State did disclose Jeremiason as soon as it learned that he had any information. In the context of any possible surprise, the Court believes that any surprising effect could have been prevented by ordinary prudence. First, as noted above, in both instances the Court granted time to allow Defense Counsel to speak with the witnesses before hand. Defendant could have

requested a continuance if it was deemed necessary to further prepare for cross-examination of Stendahl's rebuttal testimony. Defense Counsel was given an opportunity to make contact with Jeremiason and could have requested a continuance to call him to testify. Neither of these actions were taken. Instead, the trial proceeded. In the absence of any attempt to mitigate the claimed surprise, the Court cannot find that the surprise could not have been prevented by ordinary prudence.

e. Verdict justified by evidence

For the reasons outlined in Section I above, finding that the evidence is sufficient to sustain a conviction, the Court also finds that the verdicts are justified by the evidence.

f. Interests of justice

The Court may grant a new trial if required in the interests of justice. Minn. R. Crim. Pro. 26.04, Subd. 1(1)1. The Court believes that most of the specific arguments raised by Defendant have been addressed in one of the categories above. However, Defendant made two arguments that have not yet been addressed.

i. Inaccurate transcription

Defendant cites State v. Green, 747 N.W.2d 912 (Minn. 2008) for the proposition that an inaccurate transcription of an audio recording of a defendant's response to police questioning may be grounds for granting a new trial. In Green the Supreme Court noted that, in prior cases dealing with the "interests of justice" ground for a new trial, the Supreme Court has considered (1) the degree to which the party alleging error is at fault for the error; (2) the degree of fault assigned to the party opposing the motion for a new trial; (3) whether there is some fundamental unfairness to the defendant that needs to be

addressed. Id. at 918-19. The Supreme Court also noted that granting a new trial in the interests of justice is reserved for extraordinary circumstances. Id. at 919.

Applying these considerations to the inaccurate transcript in that case, the Supreme Court held that, even though the inaccurate transcript was admitted as evidence, the trial court did not err in denying a new trial. In this case, particularly dealing with the February 19, 2008 interview, the State had its version of the transcript (in which none of the Spanish was transcribed), Defense Counsel had a different version created (which had the Spanish transcribed), and the Court even had its own version drafted by the certified interpreters (which contained both transcriptions and translations of the Spanish) and offered to both the State and Defendant the opportunity to introduce that transcript as evidence. None of these were admitted as jury exhibits. The Court cannot find any reason why an inaccurate transcript in this case, where none was admitted, would be grounds for a new trial when in Green the inaccurate transcript admitted as evidence was not.

ii. False trial testimony

Defendant also contends that she is entitled to a new trial on the basis of false trial testimony. The Court presumes that this claim specifically relates to the testimony of Stendahl (which Defendant's Memorandum characterized as "tend[ing] disturbingly towards fabrication"). The Court notes that an argument that a witness lied in their testimony generally "has no merit because it is within the jury's exclusive province to assess the credibility of a witness." State v. Green, 719 N.W.2d 664, 673-74 (Minn. 2006). Defendant cites Opsahl v. State, 677 N.W.2d 414, 423 (Minn. 2004) for the three so-called Larrison prongs regarding false testimony. The Court notes that Opsahl applied

these prongs “in determining whether to grant a new trial based on witness recantations,” not false testimony generally. Id. at 422.

Even applying the prongs, the Court does not find that the Larrison prongs would be met here. First, the Court cannot find that it is “reasonably well-satisfied that the testimony in question was false.” Id. at 423. Simple contradiction is not sufficient under the first prong. Rather the Court must be “reasonably certain that the recantation is genuine.” State v. Walker, 358 N.W.2d 660, 661 (Minn. 1984). This requirement that the Court find the recantation genuine cannot be met when, as in this case, there was no recantation. The only evidence that the Court has that Stendahl’s testimony was false was that it contradicted Defendant’s testimony. While Defendant contends that the entire scenario of Stendahl’s involvement (particularly his claim to have been at the execution of the search warrant, despite his name not being on the list of persons present) indicates lack of credibility, even a determination that a witness is unreliable is not sufficient. Id.

On the second prong, the Court cannot find that, without Stendahl’s testimony, the jury might have reached a different conclusion. Opsahl, 677 N.W.2d at 423. Stendahl’s testimony was to rebut Defendant’s contention that she had never driven the minivan before. Stendahl did not testify that he saw the minivan on the day of the accident.⁴ The issues in Stendahl’s testimony raised in Defendant’s Memorandum, particularly the credibility issues, were all raised at trial. The jury was in the best position to evaluate Stendahl’s testimony.

⁴ While Defendant’s Memorandum asserts that Stendahl’s testimony “directly implied that she [Defendant] was driving Mendoza’s van at the time it caused the crash,” the Court sees no such implication in Stendahl’s testimony.

While the third prong, regarding surprise by the testimony, might be met in this case, the Supreme Court has instructed that though the first two Larrison prongs are compulsory, the third is only a factor to consider. Id. Even if application of the Larrison prongs was appropriate in the context of testimony that is alleged to be false, rather than specifically to witness recantations, the prongs would not be met here.

9-23-08
DWP