

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 July 8, 2008 for a 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, New Brighton, 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 to raise, argue, and introduce evidence of an alternative perpetrator is GRANTED.
2. Defendant's motion that the jury be instructed regarding an alternative perpetrator defense is, at this time, deferred.

Dated: July 16, 2008

BY THE COURT:

David W. Peterson

David W. Peterson
Judge of District Court

MEMORANDUM

Defendant has been 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, Subd. 2, one

FILED IN THIS OFFICE

7-16-08
Karen J. Bierman

COURT ADMINISTRATOR
Marshall, Lyon County, Minnesota

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. Defendant has filed a motion requesting that she be allowed to raise, argue, and introduce evidence that an alternative perpetrator committed the offenses for which Defendant has been charged. Defendant's Notice of Defenses also requests that the Court instruct the jury regarding an alternative perpetrator defense.

Defendant has already submitted written argument, and at the hearing the parties agreed that the matter was submitted on the record contained in the entire file. Defendant has noted that, if the Court grants the motion to raise, argue, and introduce evidence, that Defendant will propose multiple jury instructions. Based upon the record, Defendant will be allowed to raise, argue, and introduce evidence of an alternative perpetrator. The Court, at this time, defers ruling on proposed jury instructions until the conclusion of the trial testimony.

I. Alternative Perpetrator Evidence

"The fair opportunity to defend against criminal charges is a right guaranteed by constitutional due process." State v. Jones, 678 N.W.2d 1, 15-16 (Minn. 2004) (citing Chambers v. Mississippi, 410 U.S. 284, 294 (1973)). Exclusion of evidence supporting a defendant's theory that an alternative perpetrator committed the crime with which the defendant is charged "will almost invariably be declared unconstitutional when it significantly undermine[s] fundamental elements of the defendant's defense." Id. at 16 (quoting United States v. Scheffer, 523 U.S. 303, 315 (1998)).

With this constitutional backdrop, the Court finds that there is evidence with an inherent tendency to connect the alternative perpetrator to at least some of the crimes with which

Defendant is charged (those involving operation of the vehicle involved). If the record contains evidence with an inherent tendency to connect the alternative perpetrator to at least some of the crimes, the Court is constitutionally required to allow Defendant to present such evidence. Huff v. State, 698 N.W.2d 430, 436 (Minn. 2005) (citing State v. Hawkins, 260 N.W.2d 150, 159 (Minn. 1977); Jones, 678 N.W.2d at 16).

The evidence tending to connect an alternative perpetrator to the crimes involving operation of the vehicle can be summarized as follows: Defendant asserts that her boyfriend at the time (Francisco Sangabriel Mendoza, aka Samuel Rivera Melendez) was driving the vehicle at the time of the accident. The record indicates that, shortly after the accident, law enforcement learned that "Melendez" was Defendant's boyfriend. During the February 19, 2008 statement, Defendant told law enforcement that the vehicle belonged to her boyfriend. The record indicates that identification for Samuel Rivera Melendez was found in the vehicle, that law enforcement learned that his real name is Francisco Sangabriel Mendoza, and that he was the registered owner of the vehicle in which Defendant was found. Defendant has herself stated that Mendoza was the driver of the vehicle. There was testimony at the May 15, 2008 hearing from ICE Special Agent Christenson that he has learned that someone (described as Defendant's boyfriend or husband) was present in the vehicle at the time of the accident. There is also a statement from a potential witness that he picked up a person he knew as "Samuel" on the road near the same time as the accident. A consistent DNA profile of an unidentified male was obtained from testing on both the driver's side and passenger's side airbags, and no DNA evidence was obtained from either air bag matching Defendant's DNA profile. While this evidence indicates that someone else, possibly Mendoza, was in the vehicle, that person was not present, and would have fled before law enforcement arrived.

The Court concludes that this evidence has an inherent tendency to connect Mendoza to the crimes involving the operation of the vehicle. Therefore, as a matter of constitutional due process, Defendant will be allowed to raise, argue, and introduce "alternative perpetrator evidence" (i.e. "evidence that directly implicates the alternative perpetrator in the crime for which the defendant has been charged"). Huff, 698 N.W.2d at 436 n.3. It will then be left to the jury to weigh all of the evidence presented at trial in deciding the facts of this case.

II. Jury Instruction

As noted above, Defendant has indicated that, if this Court allows the issue of an alternative perpetrator to be raised, Defendant will propose multiple jury instructions related to the issue. At this time, before any evidence has actually been introduced at trial, the Court cannot make a ruling upon what, if any, instruction regarding the alternative perpetrator evidence it may give to the jury. The Court, therefore, defers ruling on proposed instructions until the conclusion of the trial testimony.

RWP
7-16-08