

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.

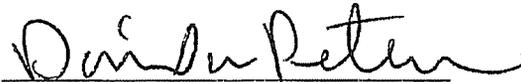
Based upon all the files and records herein,

**IT IS HEREBY ORDERED:**

1. Defendant's Motion to Dismiss for lack of probable cause is in all things DENIED.

Dated: July 16, 2008

BY THE COURT:



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 count of Stop Sign Violation, in violation of Minn. Stat. § 169.20, Subd. 3(a), and one count of

**FILED IN THIS OFFICE**  
7/16/08  
Kafen J. Bierman  
COURT ADMINISTRATOR  
Marshall, Lyon County, Minnesota

No Minnesota Driver's License, in violation of Minn. Stat. § 171.02, Subd. 1. At issue is whether there is probable cause for the charges.

For the purposes of a determination of probable cause, the Court has reviewed the entire record as well as the testimony received at the April 22, 2008 and May 15, 2008 hearings.

### **I. Probable Cause Standard**

In determining whether probable cause for the charge exists, this Court must, exercising independent and concerned judgment, ask "Given the facts disclosed by the record, is it fair and reasonable [...] to require the defendant to stand trial?" State v. Florence, 239 N.W.2d 892, 902 (Minn. 1976). Adversarial procedures must be used in cases when the defendant has produced witnesses who, if believed, would exonerate the defendant. Id. In such a case, this Court's decision must be based upon substantial evidence, admissible at trial, adequate to bring the charge within reasonable probability. Id. "Substantial evidence" is evidence adequate to support a denial of a motion for a directed verdict of acquittal. Id. at n. 21. Inadmissible evidence that comes within the exceptions of Rule 18.06, Subd. 1 may also be used. Id. at n. 22.

Florence outlines a few examples applying this rule. If 1) the record consists of only the complaint and police report, 2) both the prosecution and the defendant offer no further evidence, and 3) the facts on the record would preclude granting a motion for a directed verdict of acquittal if proved at trial, the motion to dismiss for lack of probable cause is properly denied. Id. at 903. If, in such a scenario, the defendant offers evidence directed at the credibility of the facts on the record, the motion to dismiss should be granted if the evidence shows that the facts in the record that are necessary to establish an essential element of the offense are inherently incredible. Id. "Inherently incredible" facts are those that seem impossible under the circumstances. Id. at n.

24. If the defendant produces witnesses, subject to cross-examination whose testimony would exonerate the defendant if believed, the motion to dismiss should be granted unless there would be substantial evidence admissible at trial on the record that would justify denial of a directed verdict of acquittal. Id. Finally, if the defendant has produced such exonerating testimony, and the prosecution then supplements the record with evidence admissible at trial and not inherently incredible that would be adequate to survive a motion for directed verdict of acquittal, the motion to dismiss should be denied. Id. at 903-04.

## **II. Criminal Vehicular Homicide/Injury**

For the charges of Criminal Vehicular Homicide, the State must prove three elements beyond a reasonable doubt:

1. The death of the specific individual named in that Count of the Complaint;
2. That Defendant caused that death by operating a motor vehicle in a grossly negligent manner; and
3. That the Defendant's act took place in Lyon County, on or about February 19, 2008.

See 10 Minnesota Practice, CRIMJIG 11.63. Similarly, for the charges of Criminal Vehicular Injury, the State must prove three elements:

1. That Defendant operated a motor vehicle in a grossly negligent manner;
2. That the operation caused (a) great bodily harm, (b) substantial bodily harm, or (c) bodily harm to the specific individual named in that Count of the Complaint; and
3. That the Defendant's act took place in Lyon County, on or about February 19, 2008.

See 10 Minnesota Practice, CRIMJIGs 11.69, 11.73, and 11.75.

The model instructions contain specific definitions for the terms “great bodily harm,” “substantial bodily harm,” and “bodily harm.” See id. The Court has reports of the injuries, and Defendant has raised no specific issues related to those injuries. Without going into detail about the injuries, the Court finds that the reports provide sufficient evidence for a probable cause determination that the injuries sustained meet the legal definitions of the degrees of harm as alleged. Likewise, there is no factual dispute as to the deaths of the four children as alleged in the Counts of Criminal Vehicular Homicide.

Regarding the final element of each Count, there is likewise no factual dispute that the accident occurred at the intersection of Lyon County Road 24 and Minnesota State Highway 23, which is in Lyon County. There is also no dispute that the accident occurred on February 19, 2008.

Defendant challenges the element that she operated the motor vehicle in a grossly negligent manner. Specifically, 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 Court finds that there is evidence, adequate to survive a motion for directed verdict of acquittal, that Defendant was the driver. 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 taken from a potential witness, which indicates that he picked up a person he knew as “Samuel” on the road around the same time as the accident. However, the reports also indicate that witnesses saw Defendant in the driver’s seat of the vehicle just after the accident and that Defendant’s right leg was trapped under the dashboard (the record indicates that the dashboard had to be lifted off of Defendant’s right leg before she could be removed from the

vehicle). There is also the February 19, 2008 statement, in which, according to the record, Defendant said that she was driving. Given this state of the record, it is up to a jury to sort out these facts.

Similarly, there is sufficient evidence, adequate to survive a motion for directed verdict of acquittal, that the driving conduct was “grossly negligent.” “Grossly negligent” means with very great negligence or without even scant care.” See, e.g. 10 Minnesota Practice, CRIMJIG 11.63. The reports indicate that multiple witnesses saw the vehicle as it approached the intersection. While approximations made by the witnesses of the vehicle’s speed vary, multiple witnesses characterized the vehicle as moving too quickly (up to 60 miles per hour) and not stopping for the stop sign. There is also evidence in the record, including witness statements, indicating that there was no apparent attempt to either stop the vehicle or swerve to avoid the collision. The allegation that the operation of the vehicle was “grossly negligent” is not “inherently incredible,” and there is sufficient evidence to survive a motion for directed verdict of acquittal.

For these reasons, the Court finds that there is probable cause for the charges of Criminal Vehicular Homicide and Criminal Vehicular Injury. It will ultimately be up to a jury at trial to weigh the evidence in this case.

### **III. Remaining Charges**

Regarding each of the remaining charges, the Court finds that there is also probable cause. Minn. Stat. § 609.506, Subd. 2 provides:

“Whoever with intent to obstruct justice gives the name and date of birth of another person to a peace officer, as defined in subdivision 1, when the officer makes inquiries

incident to a lawful investigatory stop or lawful arrest, or inquiries incident to executing any other duty imposed by law,” is guilty of a crime. The record before the Court indicates that at times during the investigation of this matter, Defendant supplied law enforcement personnel with the name Alianiss Nunez Morales with a date of birth of December 22, 1984. The records indicate that this is not only a false name and date of birth, but are actually the name and date of birth of someone else. Compare Minn. Stat. § 609.506, Subd. 1 with § 609.506, Subd. 2. While the statute provides that supplying this false information violates the statute when done “with intent to obstruct justice,” there is sufficient evidence, adequate to survive a directed verdict of acquittal, to allow a jury to decide whether Defendant acted with that intent.

Minn. Stat. § 169.20, Subd. 3(a) provides:

“The driver of a vehicle shall stop as required by this chapter at the entrance to a through highway and shall yield the right-of-way to other vehicles which have entered the intersection from the through highway or which are approaching so closely on the through highway as to constitute an immediate hazard, but the driver having so yielded may proceed, and the drivers of all other vehicles approaching the intersection on the through highway shall yield the right-of-way to the vehicles so proceeding into or across the through highway.”

The Court has already addressed, above, Defendant’s contention that she was not the driver of the vehicle. As noted above, based upon the record at this time, the allegation that Defendant was driving the vehicle is not “inherently incredible.” Also as noted above, there is evidence that the vehicle did not stop for the stop sign at the entrance to Highway 23.

Minn. Stat. § 171.02, Subd. 1 provides, in part:

“Except when expressly exempted, a person shall not drive a motor vehicle upon a street or highway in this state unless the person has a license valid under this chapter for the type or class of vehicle being driven.”

Again, the Court has already addressed the evidence regarding whether Defendant was the driver. Further, there is no factual dispute that Defendant did not have a valid license to drive, and there is no factual dispute that the vehicle was driven upon a street or highway in this state.

For the reasons outlined above, the Court denies the motion to dismiss for lack of probable cause in its entirety. As set out by the criminal rules and case law, a finding of probable cause, in this context, is a determination that, (1) if the facts alleged by the State are proven, the Court would not direct a verdict of acquittal, and (2) those facts are not impossible under the circumstances. Ultimately, it will be up to a jury at trial to weigh the evidence presented and determine whether or not Defendant committed the crimes with which she has been charged.

AWP  
7-16-08