

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 Defendant's Motion to Raise and Argue that Flight is Admissible as Evidence of Consciousness of Guilt. A hearing was not held on the motion.

Based upon all the files and records herein,

IT IS HEREBY ORDERED:

1. Defendant's motion to introduce evidence and argue that flight is evidence of consciousness of guilt is GRANTED.

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
Karen J. Bierman
COURT ADMINISTRATOR
Marshall Lyon County, Minnesota

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 introduce evidence and to argue that flight is evidence of consciousness of guilt.

The case law makes it clear that it is error for a trial court to instruct the jury regarding an inference from flight. See State v. Valtierra, 718 N.W.2d 425, 432-33 (Minn. 2006); State v. Green, 719 N.W.2d 664, 671-72 (Minn. 2006). However, such instructions do not misstate the substantive law, but rather “place undue emphasis on one among several permissible inferences.” Valtierra, 718 N.W.2d at 433 (emphasis supplied). In argument, counsel have the right to argue reasonable inferences to be drawn from the evidence at trial. State v. Wahlberg, 296 N.W.2d 408, 419-20 (Minn. 1980). “[E]vidence of flight suggests consciousness of guilt.” State v. Bias, 419 N.W.2d 480, 485 (Minn. 1988) (permissible for a jury to find circumstances of abrupt departure the day after an incident to be incriminating); see also State v. Mosby, 450 N.W.2d 629, 633 (Minn. Ct. App. 1990) (trial court did not err in admitting evidence of attempted car theft of the defendant after engaging in criminal sexual conduct, as evidence was circumstantial evidence of consciousness of guilt), review denied (Minn. Mar. 16, 1990); State v. Givens, 356 N.W.2d 58, 63-64 (Minn. Ct. App. 1984) (trial court did not err by admitting evidence of the defendant's attempt to flee police, as it was admissible on issue of “consciousness of guilt”), review denied (Minn. Jan. 02, 1985).

These cases typically apply to presentation of evidence by the prosecution relating to evidence of flight of the defendant. However, the analysis is equally applicable here, where Defendant has asserted that some of the offenses for which she has been charged were committed by an alternative perpetrator who fled the scene. This is akin to the way in which, for example, the State can use “Spreigl” evidence to prove identity of a defendant, and a defendant

can use “reverse-Spreigl” evidence to cast doubt on an identification of that defendant as the person committing a crime. See, e.g. State v. Hawkins, 260 N.W.2d 150 (Minn. 1977). Since the State in an appropriate case may use flight as evidence of consciousness of guilt, the constitutional right to present a defense necessarily includes that same option in the appropriate case being available to Defendant.

Since this Court has granted Defendant’s motion to raise, argue, and introduce evidence of an alternative perpetrator, evidence of that alternative perpetrator’s flight may be introduced as “evidence that directly implicates the alternative perpetrator in the crime for which the defendant has been charged.” State v. Huff, 698 N.W.2d 430, 436 n. 3 (Minn. 2005). Defendant shall, therefore, be allowed to introduce evidence of flight and to argue that flight is evidence of consciousness of guilt.

AMP
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