

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF LYON

FIFTH JUDICIAL DISTRICT

Case Type: Criminal

Case File No. 42-CR-08-220

HON. DAVID W. PETERSON

STATE OF MINNESOTA,

Plaintiff,

v.

OLGA MARINA FRANCO del CID,

Defendant.

**DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF
HER MOTION FOR RECONSIDERATION OF ORDER**

TO: Honorable David W. Peterson, Judge of District Court and Rick Maes,
Esq., Lyon County Attorney, 607 W. Main St., Marshall, MN 56285.

**I.
INTRODUCTION**

Defendant Olga Franco is asking this Court to take a second look at the entire circumstances surrounding an interrogation of her conducted by law enforcement officers while she was laying in a hospital bed unable to leave and while heavily sedated with morphine and under the influence of other cognitive impairing medication. Through no fault of the Court, the full circumstances could not be presented at the time the Court first heard Defendant Franco's plea that

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10-10-08
Karen J. Bierman

COURT ADMINISTRATOR
Marshall, Lyon County, Minnesota

the interrogation was conducted under circumstances rendering it inherently unreliable.

Nor was the Court made aware by either the State or the Defendant of the law prohibiting the use of that statement, supplemental information obtained for law enforcement's accident investigation report, in *any* criminal proceeding. Nonetheless, in an exercise of the Court's discretion, the Court deemed it fair that Defendant Olga be allowed to present additional information to allow the Court to reconsider its decision not to suppress the statement obtained in the interrogation.

Defendant Franco now respectfully requests that the Court reconsider that decision and Order the suppression of the statement. Here's why.

II. PROCEDURAL HISTORY

A. Pharmacologist's Analysis

By Order of April 8, 2008, filed April 9, 2008, Defendant Franco's application for authorization to obtain the services of an expert in pharmacology and to be reimbursed therefor was granted. Exhibit A. Ms. Franco was unable to obtain those services prior to the April 22, 2008 hearing on the issue of the admissibility of the February 19, 2008 statement at issue herein. See Affidavit of Neal A. Eisenbraun.

Faruk Said Abuzzahab, Sr., M.D., PhD., was subsequently located and performed a summary review of the available records prior to leaving for a week on a prior commitment. *Id.* Dr. Abuzzahab provided a brief letter opinion regarding the effects of the medication Ms. Franco was being administered while

at the hospital. Exhibit B. However, it was discovered that the ambulance records were not provided with the hospital records, so his opinion excluded any medications that might have been administered during the ambulance transport of Ms. Franco to Marshall Avera Hospital. *Id.* The ambulance records have since been obtained. Exhibit C.

Dr. Abuzzahab is scheduled to return on June 9, 2008. However, as this Memorandum is due June 10, 2008 (14 days after the April 22, 2008 Omnibus hearing transcript was provided to defense counsel), it will not be possible to obtain a detailed review of the hospital and ambulance records to obtain a supplemental report from Dr. Abuzzahab before filing and serving this Memorandum. Defendant therefore requests leave of Court, if necessary, to submit Dr. Abuzzahab's supplemental report subsequent to the filing and service of this Memorandum.

B. Pending Motion for Reconsideration

Defendant Franco, through her counsel, moved at the Omnibus hearing on April 22, 2008 to suppress the statement taken on February 19, 2008 from Defendant at Avera Marshall Hospital by law enforcement officers. Exhibit D, February 19, 2008 "Accident Supplement". The sole issue addressed was whether or not the police officer was required to advise Ms. Franco of her *Miranda* rights. Counsel and the Court agreed that the available evidence was submitted as to this issue. The Omnibus hearing was continued so that additional evidence could be obtained regarding a second statement taken from Ms. Franco by law enforcement officers on February 21, 2008.

On May 6, 2008, the Court denied Ms. Franco's motion to suppress the February 19, 2008 Accident Supplement. Exhibit E. The Court found that "Trooper Larsen testified that the purpose of the interview [with Ms. Franco] was 'just investigative information so we can gather information for our crash investigation'; the questions posed were generally investigative in nature" Furthermore, as noted above, the transcription of the interrogation of Ms. Franco is titled "Accident Supplement," indicating the investigational nature of the document. *Id.*

The Court found that a *Miranda* warning was unnecessary as "Defendant was not subject to custodial interrogation" when the February 19, 2008 statement was taken. Additionally, the Court found that the State had proven by a preponderance of the evidence that the statement was given by Defendant Franco voluntarily.

More specifically, the Court found the following facts supported denial of Defendant Franco's motion to suppress the statement at issue herein:

- Ms. Franco was being "interrogated" within the meaning of the law;
- The interrogation was not custodial;
- Ms. Franco was not told she was free to leave, but telling her so would make little sense;
- Neither the questioning by the Troopers nor the environment in which it was conducted were coercive;
- Filtering the questioning of Ms. Franco through an interpreter lessens any inherent coercion that might attach to direct face-to-face questioning by law enforcement;
- Asking Ms. Franco whether she wanted to answer a phone that began to ring during the interrogation was alone suggestive of the informal and non-coercive nature of the interrogation;
- Trooper Larsen was unaware at the time of his interrogation of Ms. Franco was under the influence of any drugs and did not ask anyone whether she was;

- There is no evidence Ms. Franco was under the influence of any drugs at the time of Trooper Larsen's interrogation of her;
- Ms. Franco is an employed adult;
- With the aid of an interpreter, Ms. Franco was able to understand and make appropriate responses to inquiry;
- The interrogation was relatively brief;
- Ms. Franco was not deprived of any physical needs;
- There is no evidence of any threat, intimidation, or tricks; and
- There is no evidence Ms. Franco lacks maturity or intelligence and the answers to the questions asked indicates that, even with a language barrier, she was able to formulate answers that were responsive to the questions.

Defendant Franco brings her motion requesting that the Court reconsider its decision to allow the Accident Supplement as evidence for several reasons. First, the statement taken from Ms. Franco was supplementary information for Trooper Larsen's preparation of the accident report required by Minn. Stat. § 169.09, subd. 13(b) (2008). As such, the statute prohibits under consequence of criminal penalty the release of the supplementary information to any person except those specifically listed in the statute and further specifically prohibits the use of this supplementary information in any criminal proceeding, including trial.¹ *Id.*

Second and third, Defendant respectfully requests that the Court re-visit the issue of whether Defendant could have reasonably believed she was at the time "in custody," subjecting her to custodial interrogation, and the conclusion that Defendant's statement was given voluntarily. Fourth, regardless whether the statement was the subject of a custodial interrogation or whether it was given

¹ See Minn. Stat. § 169.09, Subd. 13(d) (2008). Because it is a crime to release the "Accident Supplement," and unless the release of it, commencing with the KSFY receipt of the report (See Defendant's Reply Memorandum of Law in Support of Her Motion for a Change of Venue, at p. 5) within four days of the statement in the "Accident Supplement" being obtained was occasioned by the Lyon County Attorney's office, it is incumbent upon the County Attorney to investigate who released the "Accident Report" to the media and anyone else not allowed to receive it by statute.

voluntarily, the statement is subject to fatal evidentiary defects, rendering it unreliable and inadmissible. Additional evidence has been obtained which, in addition to the defects in the Accident Supplement itself, cast substantial doubt on the reliability of the statement.

III. RELEVANT FACTS

Olga Marina Franco del Cid is charged by amended criminal complaint dated April 22, 2008 with four counts of "criminal vehicular homicide," "seventeen counts of criminal vehicular injury," one count of "false name and date of birth to a Peace Officer," one count of "stop sign violation," and one count of "no Minnesota driver's license." These twenty-four criminal charges arise out of a three-vehicle motor vehicle accident occurring on February 19, 2008, resulting in the tragic and untimely deaths of four children and injuries to seventeen others involved in the accident, including children and adults.

At 7:15 pm, less than four hours after the accident, Minnesota State Trooper Dana Larsen, accompanied by Minnesota State Trooper Sgt. Dean Koenen, went to Avera Marshall Hospital to interrogate Ms. Franco, who Trooper Larsen "knew" to be the driver of the van that caused the accident. Exhibit D February 19, 2008 "Accident Supplement." The recording does not contain information as to where or how each Trooper positioned himself in conducting the interrogation. Because the conditions (particularly the physical and mental conditions of Ms. Franco) under which and the setting in which the statement

was taken are material to, if not dispositive of the legality and reliability of the statement, a discussion of the conditions and setting are crucial.

As the record already reflects, Ms. Franco was also seriously injured, sustaining a severely displaced open compound distal leg fracture and pylon fracture with interarticular extension of her right lower extremity (ankle) requiring conscious sedation reduction which was only partially successful and then surgery involving extensive debridement of the wound including skin, adipose tissue, and loose bone, and internal fixation of comminuted interarticular tibia pylon fracture with a fibular fracture. Exhibit F. As more fully described herein, the severe pain this injury caused Ms. Franco is evident from the quantity, duration, and type of narcotic pain and other medication she was administered, including, in particular, continuous intravenous morphine.

During ambulance transport from the scene of the accident, Ms. Franco was administered 4 mg morphine to diminish and control her severe pain. Exhibit C. Ms. Franco was admitted to Avera Marshall Hospital at 4:45 pm. Exhibit C. A notation dictated at 5:40 pm by Jill Vroman, D.O. states that Dr. Vroman performed "a conscious sedation² with reduction of the ankle."³ Exhibit

² **Conscious sedation:** "A technique in which use of a drug or drugs produces a state of depression of the central nervous system enabling treatment to be carried out, but during which **verbal contact with the patient is maintained throughout the sedation**. The drugs and techniques used to provide conscious sedation . . . should carry a margin of safety wide enough to render loss of consciousness unlikely." See attached Exhibit H, *Minimum requirements for safe conscious sedation of adult patients in the A & E department*, fn 1 (emphasis original), <http://www.leadsteachinghospitals.com/sites/emibank/clinicians/mom/documents/sedation.pdf> (Last viewed May 29, 2008); See also attached Exhibit I *Fractures, Ankle* <http://www.emedicine.com/emerg/topic188.htm> (Last viewed May 29, 2008) ("A variety of medications can be used, ranging from oral acetaminophen to parenteral narcotics. For conscious sedation, agents include short-acting **sedative-hypnotics and opiate analgesics, usually in combination**. In addition, administer tetanus prophylaxis for open fractures.") (Emphasis added).

G. Conscious sedation is generally achieved through administration of sedative-hypnotics and opiate analgesics, usually in combination. See FN2. Additionally, a tetanus shot is warranted in such situations (see *id.*) and was given Ms. Franco in this case, as were antibiotics. Exhibit G.

Following is a chronological summary of the treatment and medications provided to Ms. Franco on February 19, 2008 from her arrival at Avera Marshall hospital through the taking of her statement by Troopers Larsen and Koenen, and thereafter through the surgery for her comminuted, severely displaced ankle fracture. Exhibit J, Chronological Table of Relevant Treatment/Medications.

A. Chronological Summary of Treatment and Medications

4:07 pm. Ambulance arrived at the scene of the accident; emergency personnel noted Ms. Franco had a right compound fracture with obvious deformity and accompanied by bleeding. The record also notes that the patient speaks only Spanish. Exhibit C.

4:30 pm. Ambulance left the scene with Ms. Franco back-boarded and secured. Exhibit C.

4:40 pm. Enroute to Avera Marshall Hospital Ms. Franco is administered 4 mg morphine for her pain. Exhibit C.

4:45 pm. Ambulance arrived at Avera Marshall Hospital. Exhibit C.

5:10 pm. Ms. Franco underwent chest and right ankle X-rays. Exhibit K.

³ **Reduction:** “[R]eduction is best achieved by manipulating the limb to reverse the direction of the original deforming forces. For example, a fracture-dislocation resulting from abductive stress requires pushing the affected site in an adduct direction to restore. Applying a concurrent distracting force often assists reduction attempts.” See attached Exhibit I, *Fractures, Ankle* <http://www.emedicine.com/emerg/topic188.htm> (Last viewed May 29, 2008).

5:15 pm. Ms. Franco received morphine,⁴ Ancef, a tetanus, diphtheria, and acellular pertussis (“DTaP”) shot and underwent an EKG. Exhibit K.

5:24 pm. Ms. Franco had blood drawn in ER for an HCG screen, which was negative, and for liver function tests (hematology), with several results not within the upper or lower limits of normal. Exhibit L.

5:26 pm. Ms. Franco was administered Ancef⁵ and morphine. Exhibit K.

5:40 pm. Ms. Franco was again administered morphine. Exhibit K.

5:42 pm. Dr. Jill Vroman performed a conscious sedation ankle reduction which was only partially successful. Dr. Vroman does not indicate the medications used for sedation, but the records otherwise indicate it continued to include morphine. Exhibit K.

5:54 pm. Dr. Vroman notes she gave Ms. Franco antibiotics, the DTAP booster, and that she started Ms. Franco on I.V. Exhibit G.

6:00 pm. Ms. Franco was intravenously receiving morphine, Zofran,⁶ and Ancef. Exhibit M.

⁴ **Morphine**, a pure opiate agonist, is relatively selective for the μ -receptor, although it can interact with other opiate receptors at higher doses. In addition to analgesia, the widely diverse effects of morphine include respiratory depression, drowsiness, changes in mood, decreased gastrointestinal motility, nausea, vomiting, and alterations of the endocrine and autonomic nervous system.” Thomson Healthcare, Physicians' Desk Reference®, Prescription Drugs, at 2620-0210 (Database updated May 2007). “Pharmacological effects of [morphine sulfate] occur as soon as 15 minutes after intramuscular injection and persist for 6 hours or longer. Peak pharmacologic effects usually are observed at 1 hour. When used intravenously, the times to onset and peak effect are shortened.” *Id.* at 6632-0100.

⁵ **Ancef** (cefazolin) is in a group of drugs called cephalosporin (SEF a low spor in) antibiotics. It works by fighting bacteria one’s body.

⁶ **Zofran** Injection Premixed is ondansetron hydrochloride (HCl), the racemic form of ondansetron and a selective blocking agent of the serotonin 5-HT₃ receptor type. Chemically it is (\pm) 1, 2, 3, 9-tetrahydro-9-methyl-3-[(2-methyl-1H-imidazol-1-yl) methyl]-4H-carbazol-4-one, monohydrochloride, dihydrate. Zofran is used for prevention of nausea and vomiting associated with initial and repeat courses of emetogenic cancer chemotherapy, including high-dose cisplatin and for revention of postoperative nausea and/or vomiting. Thomson Healthcare, Physicians' Desk Reference®, Prescription Drugs, at 3270-5400 (Database updated May 2007).

6:05 pm. Ms. Franco was to be moved to the second floor; her condition was “stable.” Exhibit K.

6:20 pm. Ms. Franco was admitted to the second floor from ER. Exhibit N.

6:37 pm. Ms. Franco’s medications were identified as intravenous morphine, 2 mg every hour and Zofran, 4 mg every six hours. Exhibit O.

6:48 pm. Triage OSF observation records notes Ms. Franco was administered 4 mg morphine, and was to receive 2 mg morphine hourly. Exhibit P.

7:00 pm. Consent to surgery was signed.⁷ Exhibit Q.

7:15 pm. Troopers Larsen and Koenen commenced interrogating Ms. Franco. Exhibit D, February 19, 2008 “Accident Supplement.”

7:28 pm. Dr. Nwakama notes that Ms. Franco’s current medications were morphine, with intravenous sedation initially. His notes further indicate that Ms. Franco was “**in severe distress** secondary to the event, **quite afraid.**” (Emphases added). He also notes she was given a DTAP injection, antibiotics, and pain medications. Exhibit

7:54 pm. Ms. Franco to be sent down to surgery at this time. Exhibit N.

8:07 pm. Ms. Franco was transported to the operating room via bed. Exhibit N.

8:15 pm. Ms. Franco was on the [operating] table. Exhibit R.

⁷ Note: Ms. Franco's purported signature – “Alianness Nunez M.” – differs on this form from her purported signature – “Alianness Nunez Morales” – on the later consent for release of information. Additionally, although a consent to treatment is required for the conscious sedation reduction procedure (Exhibit H attached to FN3 above) none was included in the medical records received.

8:58 pm. Dr. Nwakama commenced the operation with an incision.

11:40 pm. Dr. Nwakama closed the incision. Exhibit R.

12:05 am. (Now February 20, 2008) Ms. Franco was off the [operating] table, ending the operation. Exhibit R.

12:06 am. Dr. Nwakama's post-operative notes indicate the severity of Ms. Franco's injury, from which her level of pain and mental distraction can reasonably be deduced. Exhibit S. Dr. Nwakama notes she had sustained a "right open tibial plafond fracture with a fibular fracture."⁸ He further notes that the surgery included extensive debridement⁹ of the wound including skin, adipose tissue, and any loose bone, and internal fixation of comminuted interarticular tibia pylon fracture with a fibular fracture.¹⁰

The side effects from the medications administered to Ms. Franco from the time she was transported by ambulance to Avera Marshall Hospital to the time of her interrogation by Trooper Larsen include the following:

- Morphine: confusion; feelings of light-headedness, fainting; dizziness; headache; anxiety; memory problems. See Exhibit V.
- Zofran: blurred vision; dizziness; fatigue; headache; anxiety. Exhibit W.

⁸ See attached Exhibit T (Fibular fixation) and Exhibit U (Tibial fixation), Lee R. Russ, BPS,JD; Bruce F. Freeman, BMus, MA, JD; J. Stanley McQuade, LLB, MD, PhD., 4 Attorneys Medical Advisor § 35:197 (Database updated March 2008).

⁹ **Debridement:** surgical removal of lacerated, devitalized, or contaminated tissue; See Merriam Webster's Medline Plus Medical Dictionary; <http://www2.merriam-webster.com/cgi-bin/mwmednlm?book=Medical&va=debridement> (Last viewed May 29, 2008); See also Lee R. Russ, BPS,JD; Bruce F. Freeman, BMus, MA, JD; J. Stanley McQuade, LLB, MD, PhD., 9 Attorneys Medical Advisor § 114:15 (Database updated March 2008) ("debridement" is the removal of foreign, dead or contaminated matter from and surrounding the sore, so as to expose healthy tissue and promote healing; goal of debridement is removal of all dead tissue and other materials that enhance infection and impede healing).

¹⁰ Nowhere do the medical records mention any complaints of pain in or bruising or abrasions to either of Ms. Franco's knees.

Additionally, according to Faruk Said Abuzzahab, Sr., M.D., PhD.,¹¹ an expert in psychopharmacology retained by Ms. Franco, both morphine and Zofran can impair a patient's alertness and judgment. Exhibit B.

B. Additional Background

Minnesota State Trooper Dana Larsen (SP307) operates out of Marshall, Minnesota. Exhibit Y, *State v. Franco*, Ct. File No. 42-CR-08-220, Lyon County District Court, (Hon. David W. Peterson), "Transcript of Proceeding," at 4:8-10 (April 22, 2008). His duties are "public safety, investigate accidents, things that occur on the state highways." *Id.* See also *Id.* at 26:5-9 (Testimony of Sgt. Dean Koenen of the Minnesota State Patrol: Marshall area Troopers patrol a little over three counties, taking care of the highways, assisting the motoring public, enforcing traffic regulations, and investigating accidents). Trooper Larsen does not understand Spanish. *Id.* at 8:24-25.

Trooper Larsen is the lead investigator for this accident case. *Id.* at 15:8:9. He has prepared multiple reports relating to this bus crash. *Id.* at 7:11-13. Trooper Larsen went to Avera Marshall Hospital about three to four hours after the time of the accident "to identify the driver" and "basically just to find out whatever information that we could on – on the cause of the crash." *Id.* at 5:22-25; see also *Id.* at 9:3-5; (purpose in going to hospital to gather information for our crash investigation); 14:6-9 (interview happened about three or four hours

¹¹ Dr. Abuzzahab, Sr. has been a clinical professor in the Department of Psychiatry at the University of Minnesota since 1962, where he also holds positions in pharmacology, family practice, and community health. Dr. Abuzzahab, Sr. is also president and founder of the Clinical Psychopharmacology Consultants, P.A. and the International Anti-aging Medical Institute, P.A. Exhibit Z.

after the accident); 27:3-4 (Sgt. Koenen present at hospital and at interrogation of Ms. Franco to collect information for the investigating trooper).

Before starting his interrogation of Ms. Franco, Trooper Larsen believed Ms. Franco was the driver of the van because when he arrived at the scene he had seen her “pinned behind the wheel.” Exhibit Y, at 9:23-25; 10:1; 14:21-25; 15:1-2 (Ms. Franco didn’t need to tell him she was the driver because he found her “pinned behind the wheel”). Trooper Larsen subsequently corrected his testimony stating that what he meant when he said Ms. Franco was pinned behind the wheel was not the result of personal observation, but that he had later been *told* by “[t]he fire department” that Ms. Franco’s leg was pinned under the dash. *Id.* at 23:17-25; 24:1-3; see also *Id.* at 22:14-16 (did not know whether one of Ms. Franco’s legs was pinned by the dashboard because he “didn’t get in there to look”); 22:11-13 (does not know position of Ms. Franco’s feet for same reason). Nor did Trooper Larsen or any of his staff take any photographs of Ms. Franco behind the wheel. *Id.* 15:3-7.

At the time of the interrogation (and as of the April 22, 2008 Omnibus) Trooper Larsen did not consider anyone else could have been driving the van because he had seen Ms. Franco “pinned behind the wheel” and thus both he and the Minnesota State Patrol “haven’t done anything” to determine if another person could have been driving the van. *Id.* at 19:17-19; 22:20-25. Trooper Larsen also indicated that though they had since received information that Ms. Franco’s boyfriend was in the van at the time of the accident and that Ms. Franco insists that the boyfriend was driving, he (and apparently the Minnesota State

Patrol entire) are not investigating that lead for the perplexing reason that [the boyfriend] "*has never come forward* saying he was a passenger in that van."¹² (Emphasis added).

The fallacy in Trooper Larsen's stated reason for doing nothing whatsoever to locate the boyfriend, and thus his credibility, is belied by the fact that he did not wait for Ms. Franco to "come forward." He went to her and he went to her because, as he testified, he knew and "she didn't need to" tell him that she was the driver because he had seen her sitting behind the wheel. *Id.* at 14:21-25; 15:1. When Trooper Larsen went to the hospital to interrogate Ms. Franco, he "asked the hospital director if she knew *where the driver of the van* was taken to" *Id.* at 6:21-25 (emphasis added). Furthermore, Trooper Larsen inquired of Ms. Franco whether she was "running late" for work (seeking facts to support claims the van driver was speeding and/or blew the stop sign). Exhibit D, February 19, 2008 "Accident Supplement." As the foregoing citations demonstrate, Trooper Larsen went to the hospital to interview Ms. Franco because he "knew" she was the driver and to obtain from her evidence necessary to charging her criminally.

Notwithstanding whether *waiting for a suspect to come forward before investigating his possible involvement in a crime* is proper or even competent investigative procedure, by the date of this Omnibus hearing the following facts were well known:

¹² Though it would seem incongruous to an investigation of an accident resulting in the deaths of four children and severe injuries to many others and that generated "multiple reports," it may be that, for this case at least, Trooper Larsen and the State Patrol subscribes to the late great stage actress Tallulah Bankhead's observation that ""There is less to this than meets the eye." See http://en.wikipedia.org/wiki/Tallulah_Bankhead (last viewed June 8, 2008).

- that the van was registered to and insured by the boyfriend;
- that Ms. Franco and her boyfriend worked the identical shift at the same employer;
- that Ms. Franco and her boyfriend always drove to work together, with the boyfriend driving the van;
- that Ms. Franco stated she and her boyfriend were on their way to work when the accident happened;
- that the boyfriend never showed up for work that day;
- that the boyfriend has never returned to work since;
- that the boyfriend has not been seen since the accident;
- that a witness saw a man who apparently appeared out of nowhere looking in the driver's window of the van;
- that other witnesses saw a man running away from the scene of the accident;
- that a witness had picked this person up, identified him as the person who is Ms. Franco's boyfriend and to whom the van is registered, and that this person acted in ways that caused this witness to believe he had been injured; and
- that ICE agents had obtained information from the boyfriend's relatives who said the boyfriend had told them he was in the accident with Ms. Franco.

At noon on the day following the accident, when there was a slight possibility Ms. Franco could "leave" of her own volition, a Minnesota State Trooper was placed outside Ms. Franco's door. At noon of the second day following the accident, Ms. Franco was discharged from the hospital in the company of state police and taken to the Lyon County jail for booking and incarceration. Exhibit AA, at OMF000093 (Discharged 12:07 February 21, 2008, accompanied by state police).

Finally, Ms. Franco is one of three daughters from a small farm in remote Guatemala. Exhibit AB. She is, as all of Lyon County is now aware, a recent (albeit undocumented) immigrant to the United States. She has little, if any, knowledge of or experience in the criminal justice system. The only evidence of any prior experience by Ms. Franco with the United States' and Minnesota

criminal justice system was a prior traffic citation. Exhibit AC. In that case, Ms. Franco was not arrested, nor was she read her *Miranda* rights¹³ as there is no requirement for such when issuing a traffic citation.

C. Substantial Statement Defects Exist

Not only is the interrogation of Ms. Franco by Troopers Larsen and Koenen subject to serious reliability concerns based on the conditions under which it was taken and the setting in which it was taken, the statement itself is so deficient as to lack reasonable guarantees of trustworthiness or indicators of voluntariness, particularly considering the answers for questions for which neither the question nor the answer were interpreted for Ms. Franco.¹⁴

¹³ *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

¹⁴ It is important to note that the interpreter cannot be blamed for any of the issues relating to the defects throughout the statement. She was not notified in advance that she would be required to interpret a statement of this nature for law enforcement. She was co-opted into interpreting. In fact, the Troopers did not even know who she was or what her interpretational skills and qualifications consisted of. Exhibit D February 19, 2008 "Accident Supplement" at p. 1S (Troopers inquire of interpreter "Who are you?"). See also 3A Minn. Prac., Gen. Rules Of Prac. Ann. R 8 (2007 ed.) (Advisory Committee Comments—2007 Amendment – The Minnesota Supreme Court has adopted rules on certification of court reporters. The certification process is directed by the Court Interpreter Program Coordinator, part of the State Court Administrator's office. See Order Promulgating Rules on Certification of Court Interpreters, No. C9-94-1898 (Minn. Sup. Ct., Sept. 18, 1996). The rules took effect on the day after the order was entered.

The rule does not establish absolute criteria for interpreters. The rule establishes some *minimal guidelines*, but leaves it to the parties to insure that a suitable interpreter is used.

Court or counsel should ask the following questions of a proposed interpreter:

1. Do you have any particular training or credentials as an interpreter?
2. What is your native language?
3. How did you learn English?
4. How did you learn [the foreign language]?
5. What was the highest grade you completed in school?
6. Have you spent any time in the foreign country?
7. Did you formally study either language in school? Extent?
8. How many times have you interpreted in court?
9. Have you interpreted for this type of hearing or trial before? Extent?
10. Are you familiar with the code of professional responsibility for court interpreters? Please tell me some of the main points (e.g., interpret everything that it said).
11. Are you a potential witness in this case?
12. Do you know or work for any of the parties?

First, the recording contains distorting and distracting sounds and low or fading voices that render much of it unintelligible. In fact, throughout the short transcript provided by the State the transcriptionist notes **36 incidents** where the recording was “inaudible,” including at the very beginning where appears the first of such notations, “inaudible conversation.” See Exhibit D.

Second, many of the questions were answered directly by the interpreter, in full or in part, without interpreting for Ms. Franco either the question the Troopers asked Ms. Franco or the answer the interpreter gave the Troopers. *Id.* See also Exhibit Y at 29:15-24 (Interpreter answered question for Ms. Franco without first interpreting and posing the Trooper’s question to Ms. Franco; interpreter volunteered the answer out of nowhere after question was asked). Such portions of the statement constitute *the interpreter’s* statement, rather than Ms. Franco’s.

Third, Ms. Franco was not informed that the interpreter who filtered some of the Troopers’ questions, but not others, was the interpreter for the local police department. Exhibit D, February 19, 2008 “Accident Supplement.” Nor that the interpreter knew everybody in the police department. *Id.*

Because the transcription provided by the State contains persistent notations of “inaudible,” and there was no indication whether the transcriptionist is or is not fluent or even conversant in Spanish, Defendant had her own

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13. Do you have any other potential conflicts of interests?
 14. Have you had an opportunity to speak with the non-English speaking person informally? Were there any particular communication problems?
 15. Are you familiar with the dialectal or idiomatic peculiarities of the witnesses?
 16. Are you able to interpret simultaneously without leaving out or changing anything that is said?
 17. Are you able to interpret consecutively? (Emphasis added).

translation/transcription of the statement performed. Exhibit AD (Affidavit of Maria Alexandra Caram Ibarra and Statement from Olga Franco [a.k.a. Alianess Nunez Morales]). Concomitantly, other than the statement that the interpreter has interpreted for the hospital and the local police department, albeit without any explanation of the frequency or nature of prior interpretations she has performed, her qualifications as an interpreter under any circumstance have never been established, rendering the testimony of Troopers Larsen and Koenen that Ms. Franco “understood” the questioning unreliable, as this “understanding” assumed both the accuracy of the interpretation of the questions and of the purported answers (in-so-far-as those answers were actually given by Ms. Franco).

D. Specific Defects in February 19, 2008 “Accident Supplement”

The translation/transcription attached hereto as Exhibit AD was performed by Maria Alexandra Caram Ibarra, legal assistant to co-counsel herein, Neal A. Eisenbraun. Exhibit AD (Affidavit of Maria Alexandra Caram Ibarra). Ms. Caram Ibarra is a native of the Dominican Republic, now a United States citizen, and has lived in the United States for some twenty years. *Id.* Her first language is Spanish. *Id.* Her second language is English. *Id.* She has three children ages 14, 11, and 8, and has taught and continues to teach them Spanish. *Id.* She is fluent in both Spanish and English. *Id.* She has also studied, but is not fluent in French. *Id.*

Ms. Caram Ibarra has past experience translating documents from English to Spanish and from Spanish to English. *Id.* She has acted as a Spanish

language interpreter and document translator in legal matters for attorney Eisenbraun since 2005. *Id.*

Prior to reviewing and translating the Statement taken by the Troopers from Ms. Franco (then known as Alianess Nunez Morales) on February 19, 2008, Ms. Caram Ibarra acted as interpreter for attorney Eisenbraun in an approximately four hour attorney/client consultation between Mr. Eisenbraun and Ms. Franco on May 10, 2008 at the Lyon County Jail, through which she familiarized herself with Ms. Franco's linguistic mannerisms and sophistication. *Id.* Ms. Caram Ibarra has since also spoken with Ms. Franco by telephone on several occasions and again in person. *Id.*

Ms. Caram Ibarra spent approximately seven hours listening and re-listening to the compact disk provided in discovery by the State and containing the recorded statement referred to herein. *Id.* In doing so, she utilized Bose Model QC-2 Acoustic Noise Canceling® headphones to eliminate as much as possible external noise and likewise to enhance the intelligibility of the recording. *Id.* After listening to the entire recording once, she listened to it again and while doing so, prepared a draft transcript of the recorded statement. *Id.*

Ms. Caram Ibarra then listened to the recording several additional times while following the transcript she had prepared, verifying the accuracy of the translation/transcription as best she could considering the difficulty in comprehending much of what was said due to the low quality of the recording, and making corrections where appropriate. *Id.*

Ms. Caram Ibarra notes that, at the beginning of the interview, the interpreter appears to be reading from a document, but the document is neither identified nor authenticated. *Id.* See also Exhibit D (State's transcription, first line, notes "inaudible conversation.")

In listening to the recording, Ms. Caram Ibarra notes that she detected that Ms. Franco spoke with a soft, quiet, often unintelligible voice, and at times can be heard to be moaning or crying. *Id.* She noted that the conversation between the Troopers, the interpreter, and Ms. Franco was often obscured by background talking and some laughing, though she could not discern a particular identifiable source of that noise. *Id.*

Ms. Caram Ibarra also notes that for several questions, the interpreter did not interpret the question in Spanish for Ms. Franco, but simply answered the question posed by the Trooper for Ms. Franco, also without interpreting to Spanish for Ms. Franco the answer the interpreter gave the Trooper in English. *Id.* See also Exhibit Y at 29:15-24 (Interpreter answered question for Ms. Franco without first interpreting the question to Ms. Franco and without Ms. Franco herself answering; interpreter volunteered the answer out of nowhere after question was asked). Ms. Caram Ibarra also notes that the interpreter interrupted Ms. Franco as she began to answer in Spanish and the interpreter finished Ms. Franco as she began to answer in Spanish, again without interpreting to Spanish the answer the interpreter then gave to the Trooper. *Id.* At another point in the statement, Ms. Franco states something, but the interpreter does not interpret it to English. *Id.*

Ms. Caram Ibarra further notes that the recording is difficult in many places to accurately comprehend due to distracting noise/static incident to the recording device or the placement of it, which noise she opined sounded as though the recorder was concealed in a pocket, with the fabric constantly rubbing against the recorder's microphone. *Id.*

Ms. Caram Ibarra was requested by counsel to ascertain whether either Trooper at any point in the recording informed Ms. Franco that the conversation was being recorded. *Id.* She did so, but found nothing in the recording indicating either Trooper, or anyone else, so informed Ms. Franco. *Id.*

Ms. Caram Ibarra was also requested by counsel to ascertain whether there was anywhere in the recording any acknowledgment by Ms. Franco that she was aware the questioning of her was being recorded by the Troopers. *Id.* She did so, but found nothing in the recording indicating Ms. Franco acknowledged such. *Id.* The recording was surreptitious, unknown even to the interpreter.

Ms. Caram Ibarra was also requested by counsel to ascertain whether there was any indication in the recording that either Trooper obtained or even sought Ms. Franco's consent to the recording of her. *Id.* Ms. Caram did so, but found nothing in the recording indicating either Trooper did so. *Id.*

Ms. Caram Ibarra was also requested by counsel to ascertain whether there was any conversation in the recording indicating that Ms. Franco agreed to speak with the Troopers voluntarily. *Id.* Ms. Caram did so, but found nothing in

the recording indicating Ms. Franco did agree voluntarily to speak with the Troopers.

Ms. Caram Ibarra was also requested by counsel to ascertain whether there was any indication on the recording whether the Troopers inquired of Ms. Franco or anyone else as to the level or severity of Ms. Franco's pain or its affect on her ability to comprehend the questions posed or the answers she gave. *Id.* Ms. Caram Ibarra did so, but found nothing to indicate the Troopers so inquired of anyone. *Id.*

Ms. Caram Ibarra was also requested by counsel to ascertain whether there was any indication in the recording whether the Troopers inquired of anyone as to any effects of the medication Ms. Franco was under the influence of on her ability to comprehend the questions posed or those answers she actually was offered the opportunity to give. *Id.* Ms. Caram Ibarra did so, but found nothing in the recording to indicate the Troopers made any such inquiry. *Id.* See also Exhibit Y, at 14:10-17 (Trooper states he was unaware whether Ms. Franco was under the influence of certain drugs and that he did not ask Ms. Franco and he did not ask medical personnel whether or not she had been drugged).

Ms. Caram Ibarra was also requested by counsel to ascertain whether there was any conversation in the recording indicating whether the Trooper inquired of Ms. Franco or anyone else as to the nature of Ms. Franco's injury or the mental or physical effects of the injury. *Id.* Ms. Caram Ibarra did so, but found nothing in the recording indicating either Trooper made such an inquiry, with the sole exception of a vague implication of such in the Trooper's asking the

interpreter to ask Ms. Franco to tell the interpreter so the interpreter could tell the Trooper whether Ms. Franco remembered what happened in the accident. *Id.*

Ms. Caram Ibarra also notes that the statement indicates that there were two male State Troopers present during the questioning of Ms. Franco in her hospital bed, but that nothing in the recording identifies where either Trooper positioned himself. *Id.*

Finally, Ms. Caram Ibarra notes that the two Troopers present conversed among themselves on occasion and with the interpreter, but those conversations were difficult to accurately comprehend. *Id.*

IV. LAW AND ARGUMENT

A. February 19, 2008 “Accident Supplement” is Privileged and Statutorily Prohibited Under Criminal Penalty from Unauthorized Disclosure

Minnesota statute section 169.09, Subd. 13(a)(b)(c) and (d) (2008)

provide as follows:

Subd. 13. Reports confidential; evidence, fee, penalty, appropriation. (a) **All reports and supplemental information required under this section** must be for the use of the commissioner of public safety and other appropriate state, federal, county, and municipal governmental agencies for accident analysis purposes, except:

(b) **Accident reports and data contained in the reports are not discoverable under any provision of law or rule of court. No report shall be used as evidence in any trial, civil or criminal, or any action for damages or criminal proceedings arising out of an accident.** However, the commissioner of public safety shall furnish, upon the demand of **any person who has or claims to have made a report or upon demand of any court**, a certificate showing that a specified accident report has or

has not been made to the commissioner **solely** to prove compliance or failure to comply with the requirements that the report be made to the commissioner.

(c) Nothing in this subdivision prevents any individual who has made a report under this section from providing information to any individuals involved in an accident or their representatives or from testifying in any trial, civil or criminal, arising out of an accident, as to **facts within the individual's knowledge. It is intended by this subdivision to render privileged the reports required**, but it is not intended to prohibit proof of the facts to which the reports relate.

(d) Disclosing any information contained in any accident report, except as provided in this subdivision, section 13.82, subdivision 3 or 6, or other statutes, is a misdemeanor.

Thus, accident reports and the supplemental information incident thereto may not be “used as evidence in any trial, civil or criminal, or *any* action for damages or *criminal proceedings* arising out of an accident.” Minn. Stat. § 169.09, Subd. 13(b) (2008) (Emphases added). Furthermore, it is a misdemeanor to release such information except as specifically authorized by the statute. Minn. Stat. § 169.09, Subd. 13(d) (2008). See also *State v. Schultz*, 392 N.W.2d 305, 307 (Minn.App.1986) (Although appellant's attorney had objected to admission of the accident report based on hearsay and lack of foundation, the *Schultz* Court observed that, as in this case, “no one recognized the statutory prohibition [in Minn. Stat. § 169.09, Subd. 13] against admitting such evidence.”); Op.Atty.Gen., 989-A-1, Sept. 14, 1945 (“Information given by motorist to police officer for use in making accident report may not be used as basis for officer's testimony, but information resulting from officer's own observation or statements made by motorist to others and overheard by officer may be so used.”);

Rockwood v. Pierce, 235 Minn. 519, 51 N.W.2d 670 (1952) (same); *Garey v. Michelsen*, 227 Minn. 468, 35 N.W.2d 750 (1949) (same). The only persons authorized to receive such privileged information are “any person who has or claims to have made a report or upon demand of any court,” and then limited to “a certificate showing that a specified accident report has or has not been made to the commissioner solely to prove compliance or failure to comply with the requirements that the report be made to the commissioner.” Minn. Stat. § 169.09, Subd. 13(b) (2008).

The statement taken from Ms. Franco, as its title – “Accident Supplement” – and Trooper Larsen’s testimony demonstrate, was a supplement to the accident report. As such, it may not be released to any unauthorized person or used as evidence in any criminal proceedings arising out of the accident. Admission in evidence in any criminal proceeding of the accident report or any supplemental information would be a “clear violation of the statutory prohibition.” *Schultz*, at 307.

The February 19, 2008 “Accident Supplement” is privileged and should be stricken from the record. Additionally, as noted at FN1 above, the circumstances surrounding the unauthorized release of this privileged supplemental accident information merits investigation as doing so constituted a crime.

B. Review of Appellate Authority

In its May 6, 2008 Order, the Court cited several cases in support of its finding that the State has proven by a preponderance of the evidence that the February 19, 2008 “Accident Supplement” was a statement voluntarily given by

Defendant Franco. Defendant Franco respectfully asks that the Court reconsider the factors present in those cases, in addition to additional referenced authority, in contrast to the factors present in this case.

As this Court noted, “[w]hether an accused has knowingly, intelligently, and voluntarily waived his right to remain silent and whether he has voluntarily confessed are two separate issues.” *State v. Williams*, 535 N.W.2d 277, 287 (Minn. 1995). The relevant factors to be considered are the same. *Id.* To determine whether a confession was voluntary, the Court must look at the totality of the circumstances. *Id.*

The totality of the circumstances test requires that the court undertake a “subjective, factual inquiry” into events and conditions surrounding the purported confession. *State v. Moorman*, 505 N.W.2d 593, 600 (Minn.1993). Citing *State v. Linder*, 268 N.W.2d 734 (Minn.1978), the *Moorman* Court stated that the factors to be considered when making this inquiry include the age, maturity, intelligence, education and experience of the defendant as well as his or her ability to comprehend, the lack of or adequacy of the warnings, the length and legality of the detention, the nature of the interrogation, and physical deprivations and limits on counsel and friends. *Id.* Regarding *Moorman*’s experience, the Court referenced *Moorman*’s prior experience in the criminal justice system. See also *State v. Slowinski*, 450 N.W.2d 107, 111 (Minn.1990) (“The defendant in [*Slowinski*] was not a neophyte in the criminal justice system. He was 27 years old, he had been arrested on at least three occasions, twice for criminal sexual offenses, and had invoked his rights in at least one of those prior arrests.”).

In the case at bar, the only evidence of any prior experience with the criminal justice system was a prior traffic citation. Ms. Franco was not arrested and certainly not read her *Miranda* rights in that situation. It was not required. She is, as all of Lyon County is now aware, a recent (undocumented) immigrant to the United States. Ms. Franco is from a small farming family in remote Guatemala. She has little, if any, knowledge of or experience in the criminal justice system.

In *State v. Smith*, Not Reported in N.W.2d, 2006 WL 1605244 (Minn. App. 2006), the Appellate Court notes that “EMS personnel took appellant to Wyoming Fairview Hospital [and w]hile appellant was in an examination room, but not being treated or monitored by hospital staff, Deputy Wick sought her out.” In the case before this Court, Ms. Franco was being treated, she was under sedation by intravenous narcotic pain medication and other drugs, and had an I.V. in her arm. She was being monitored by hospital staff, who can be heard, though unintelligibly, talking and laughing in the background, as immediately after the Troopers’ interrogation of Ms. Franco, she. The records cited above indicate she was taken immediately following the interrogation. Furthermore, the interrogation of Ms. Franco commenced at 7:15 and, at 7:28, her surgeon, Dr. Nwakama, notes that Ms. Franco’s current medications were morphine, with intravenous sedation initially, and that Ms. Franco was “in severe distress secondary to the event, quite afraid.”

The *Smith* Court further notes that “Hospital staff had closed the door of the room.” In the case at bar, the door to Ms. Franco’s hospital room was not

closed. Hospital staff can be heard talking and laughing just outside Ms. Franco's room.

And, the *Smith* Court observed that “[a]ppellant declined to answer one question about what she had been drinking.” In our case, Ms. Franco did not choose to decline to answer any of the questions she was actually given the opportunity to hear and answer. Though the Court of Appeals provides no explanation in its opinion, the Court’s logical basis for including this factor in a decision finding a person acted voluntarily is that the Court of Appeals believed this factor demonstrated Smith’s ability to *choose*, by demonstrating the ability to both choose to, and choose not to, answer questions. Ms. Franco was not even offered the choice whether or not to answer some of the questions the Troopers’ posed. One cannot voluntarily answer a question she is not asked, nor can she be said to have voluntarily given an answer she neither in fact gave, nor heard.

In *State v. Miller*, 573 N.W.2d 661 (1998), the Appellate Court observed that “[a]t the beginning of the May 12 interview, Miller asked Sgt. Weston whether he was under arrest. Weston told him he was not, adding, ‘[i]f you were, I’d have given you your rights.’” *Id.* at 666. Further, that “[Miller] telephoned [his wife], and during their conversation said ‘they are trying to brainwash me that I did something.’ He added, ‘if I stay here much longer I may not be going home period.’” *Id.* at 667.

The *Miller* Court agreed with the District Court that “[i]n this case, the district court concluded that a reasonable person in Miller’s situation would not have believed he was in custody on May 12. . . . We find significant that as soon

as Miller arrived at the police station, *he took steps to assure himself that he was not in custody*: he asked Sgt. Weston whether he was under arrest. Weston told him that he was not under arrest and that if he were, he would have received a Miranda warning.” *Id.* at 670 (emphases added). The Court further observed that “Miller plainly believed at that moment he would be able to leave so long as he left in the near future.” *Id.* at 671.

As yet additional indication that Miller voluntarily chose to subject himself to interrogation, the *Miller* Court observed that “Miller nevertheless prolonged the encounter by asking Sgt. Nelson and Sgt. Weston questions seemingly calculated to induce them into revealing how much they knew about the crime and what their subsequent investigation strategy would be. Clearly, he did not fear that the officers would prevent him from leaving.” *Id.*

As in *Smith*, above, Miller overtly expressed knowledge that he was aware he was free to leave and deliberately *chose not to*. But, in addition, he indicated he suspected the officers were trying to trick him into believing he had done something, *and* if he did not get out of there soon, he would not be going home. The *Miller* Court’s finding of voluntariness was based on facts that do not exist in the case at bar.

Ms. Franco could not in fact leave. She was heavily sedated with narcotic pain and other medication with an I.V. in her arm and, notwithstanding that her severely fractured ankle made it impossible for her to walk, competent healthcare professionals would not have allowed her to leave in her condition. But, that merely enhances the importance and necessity of letting her know *the Troopers*

would leave if she wanted. Though one might speculate that Ms. Franco's failure to ask the Troopers to leave implies both that she knew she could and chose not to, Defendant Franco respectfully submits that speculation is an inappropriate basis on which to decide that her fundamental Constitutional rights were not violated.

Next, as this Court notes, "[i]ntoxication can implicate whether a statement is voluntarily given, as intoxication can increase a suspect's susceptibility to coercive interrogation." *State v. Franco*, File No. 42-CR-08-220, Lyon County District Court, Order, at p. 7 (Hon. David W. Peterson, May 6, 2008) citing *State v. Williams*, 535 N.W.2d 277, 288 (Minn. 1995) ("*Significantly*, the accused in *Garner* was intoxicated during his interrogation, which increased his susceptibility to such techniques.") (Emphasis added).

Of similar significance in the case at bar, Ms. Franco was continuously sedated with morphine and under the influence of other judgment and alertness impairing medication. However, this Court was not made aware of this evidence at the time of its May 6, 2008 Order, for the reasons noted above, including the fact that some of it was at the time of the April 22, 2008 Omnibus hearing on the issue unavailable.

C. Custodial Interrogation

Restraint on one's freedom of movement is indicative of custody. *Oregon v. Mathiason*, 429 U.S. 492, 495, 97 S.Ct. 711, 714, 50 L.Ed.2d 714 (1977) (Absence of any formal arrest or restraint on freedom of movement indicative of a noncustodial interrogation). In *Mathiason*, the Court found "no indication that the

questioning took place in a context where respondent's freedom to depart was [not] restricted in any way." *Id.* Mathiason came voluntarily to the police station, where he was immediately informed that he was not under arrest. At the close of a 1/2-hour interview Mathiason in fact freely left the police station.

The *Mathiason* Court observed that "[a]ny interview of one suspected of a crime by a police officer will have coercive aspects to it, simply by virtue of the fact that the police officer is part of a law enforcement system which may ultimately cause the suspect to be charged with a crime. *Id.* "Miranda warnings are required only where there has been such a restriction on a person's freedom as to render him 'in custody.'" As the Court's quotations indicate, it is the restriction on a person's freedom of movement that is to be considered when determining whether a reasonable person would believe they were "in custody," not whether she actually was.

There certainly was a restraint on Ms. Franco's freedom and one she and the Troopers were acutely aware of. That she may not in fact have been "in custody" does not alter the fact that she was not free to leave or that she was obviously aware of her predicament. A person's physical inability to leave the place where law enforcement has come to interrogate her is as likely, if not more, to cause the person to believe she is trapped in a custodial situation as would one whose exit was prevented by the officers. In such a situation, the only way in which a person would know they could actually ask the officers to leave and refuse to answer their questions is if they informed her of that fact. Ms. Franco was not free to leave and the Troopers admittedly omitted any mention to her

that they would leave if she so desired, or that she had not obligation to answer their questions.

Ms. Franco's interrogation was conducted largely by the lead investigator of the crime who knew or should have known that a crime had been committed and that probable cause existed to believe that the defendant committed it and accordingly. Ms. Franco's freedom of movement was restricted no less than had she been in handcuffs or locked behind bars. Trooper Larsen should have first read Ms. Franco the *Miranda* warnings prior to interrogating her. Any experienced law enforcement officer would know, upon visiting the scene of the accident and talking with witnesses that a crime had been committed resulting in death and serious bodily injuries. Ms. Franco was the only person found in the van immediately following the accident and Trooper Larsen testified that he in essence "knew" Ms. Franco was the driver of that van. When the lead investigator entered that hospital, three to four hours following the accident, Ms. Franco was the accused, not a bystander with no involvement as to what happened to cause the accident. Defendant Franco therefore respectfully requests that the Court reconsider and reverse its finding that no *Miranda* warnings were required, and in so doing, suppress the February 19, 2008 statement.

D. The February 19, 2008 Statement Was Not Given Voluntarily

In denying Ms. Franco's motion to suppress the February 19, 2008 statement at issue herein, the Court concluded that "[t]he State has proven by a preponderance of the evidence that the statement . . . was given by Defendant

voluntarily.” Defendant does not contest the Court’s statement of the State’s burden, but does ask the Court to revisit the factors on which that burden rests.

1. Ms. Franco was not free to leave

Ms. Franco agrees that she was not told by the Troopers that she was free to leave and that doing so would have made little sense. She was not, in fact free to leave. She was under sedation awaiting a three-hour operation for a compound, comminuted fracture of her ankle. Whether telling her she was free to leave made sense or not, she was unable to leave. Consequently, the officers did not have to tell her she was free to leave. They knew she could not.

2. Filtering questions through an interpreter may lessen the inherently coercive nature of law enforcement interrogation, but it does not necessarily render that interrogation non-coercive

When the Troopers interrogated her, Ms. Franco was laying immobile in a hospital bed awaiting surgery for a severe compound, comminuted fracture of her ankle while under the influence of strong narcotic and other medication that can cause confusion; feelings of light-headedness; fainting; dizziness; headache; anxiety; memory problems; blurred vision; fatigue; anxiety, and which can impair a patient’s alertness and judgment. Her voice was barely audible and what she said when she was given the opportunity to hear and answer the Trooper’s questions, often unintelligible. She can be heard moaning and crying during the interrogation.

Under these circumstances, with two uniformed police officials standing at her bed, it is difficult to imagine Ms. Franco had any thoughts other than that she was obligated to answer the Troopers’ questions. She could not physically leave

the hospital bed or the room and it is reasonable to conclude she had no idea at all that she could either refuse to answer the questions or ask the Troopers to leave. In fact, this is made clearer in that in a later statement, even though she was in jail, she had subsequently become aware that she could refuse to answer police questions, though even that minimal knowledge was easily overridden by the police themselves.

And, the other side of the interpreter issue is the equally plausible explanation that Ms. Franco's trust in the interpreter suggested to her that she did, in fact, have to answer the Troopers' questions.

3. The Troopers *had* to know anyone in Ms. Franco's condition would be heavily medicated for not only the severe pain she was obviously suffering, but antibiotics for the open wound

Troopers Larsen and Koenen are trained to investigate motor vehicle accidents. They undoubtedly encounter severely injured people often. In fact, it would be surprising to learn that they are not trained to some extent to administer first aid and to observe signs of injury and shock. They simply had to know Ms. Franco was being medicated. *She had an I.V. in her arm.* It would have taken no more than a few steps to take a peek at what was being pumped into Ms. Franco's body and mind. It took a deliberate choice not to. The more plausible but disturbing explanation for their having not inquired is that they did not want such evidence in their record to avoid tainting their interrogation with such indicia of unreliability.¹⁵

¹⁵ The Troopers' expressed state of mind as to Ms. Franco's medication status is not the sole determining factor in the propriety of their ensuing conduct. *Cf. State v. Speak*, 339 N.W.2d 741, 745 (Minn.1983) ("Whether the arresting officer's actions were reasonable is an objective inquiry; it does not depend on the officer's subjective frame of mind at the time of the arrest."); *State v.*

It bears noting that nearly every deposition begins with a preliminary inquiry as to whether the witness is on any medication that *might* affect his or her ability to understand questions, remember facts, or understand the nature of the proceeding for the simple reason that such conditions degrade the reliability of the answers. Few if any Courts would allow a witness to testify if that witness were heavily sedated with morphine and so likely to be suffering from shock. Allowing law enforcement officials to ignore the obvious and escape accountability by simply failing to inquire and thus create an incomplete record is more likely to encourage those officials to adopt the procedure as a routine policy in interrogating suspects.¹⁶

4. Ms. Franco was not provided the opportunity to understand or make appropriate responses to material portions of the inquiry

While some of the apparent answers to the Troopers' questions may be characterized as an indication that Ms. Franco understood the question asked, Ms. Franco respectfully submits that the Court should also consider that several of the questions, and the ensuing answer provided by the interpreter, were never interpreted for Ms. Franco, nor have those answers ever been adopted by Ms. Franco as her own. At the very least, the answers to those questions should not be deemed voluntary as she did not even know they were being given and attributed to her. She was given no opportunity to verify or object that what the

Williams, 535 N.W.2d 277, 284, FN2 (Minn. 1995) ("We do not want to overemphasize the significance of the interrogator's subjective state of mind in determining whether a suspect has invoked his right to remain silent; but we note that the facts support Detective Christensen's subjective impression that Williams had not expressed a desire to stop answering all questions.")

¹⁶ See *Spano v. New York*, 360 U.S. 315, 320-321, 79 S.Ct. 1202, 1205-1206, 3 L.Ed.2d 1265 (_____) (Emphasizing "the deep-rooted feeling that the police must obey the law while enforcing the law; that in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves.")

interpreter answered was in fact accurate and as such, both the question and the answer should be, and Ms. Franco hereby moves that they be, stricken.

The first five statements on page 1S by the interpreter indicate that Ms. Franco was given no opportunity to confirm, object to, or correct the information provided by the interpreter. This information should be stricken.

On page two, in the transcript provided by the State, the following transpired:

SP307: Can you ask her where she was going?

Interpreter: She was on her way to work though, I mean, sir. She already told me. She already told me she was on her way to cab, cabinetry.

SP307: Okay.

Interpreter: In Norcraft. She was about two blocks from her work. That's what she said. She was. She said was on her way to work.

Not only was this information not given voluntarily by Ms. Franco in response to the Trooper's question, it was not given by Ms. Franco at all.¹⁷ It should be stricken.

On pages 2S and 3S of the State's transcript, including Ms. Caram Ibarra's transcription of the Spanish (except what was unintelligible to Ms. Caram Ibarra) omitted from the State's transcript, the following transpired:

SP307: Can you ask her what happened? Does she remember what happened?

Interpreter: [By Ms. Caram Ibarra] Se acuerda lo que paso?

AM: [Ms. Franco's response is unintelligible]

Interpreter: Yes, she said she remembers.

¹⁷ See also Exhibit Y at 29:9-24.

SP307: OK. Can she tell us?

Interpreter: [By Ms. Caram Ibarra] Le puedes decir como paso?
[Ms. Franco's response is unintelligible]

Interpreter: [By Ms. Caram Ibarra] Digale.

AM: [By Ms. Caram Ibarra] Bueno pues, yo iba, iba manejando pues y entonces se atraveso en el camino el autobus y*(interpreter interrupts Ms. Franco as she's answering and completes the answer for Ms. Franco, but does not interpret the answer given for Ms. Franco)*

Interpreter: I was driving to cabinet. At the beginning, she told me I was driving. She did her stop and then when she started moving and she starting driving, seen a bus came in and con(inaudible) her and that's when the crash (inaudible).

Ms. Franco's interrupted answer does not mention the word "cabinet." Nor was Ms. Franco allowed to complete her answer. Nor did the interpreter interpret the answer the interpreter gave on her behalf to allow Ms. Franco to adopt, object to, or correct what the interpreter answered. The dialogue should be stricken.

The State's transcript then sets forth another sequence not interpreted for Ms. Franco:

SP307: All right. We're just about done. So. If I understand right, she said she was driving.

Interpreter: Mmm. Mmm.

SP307: And then what after that?

Interpreter: And she, she'd made her stop.

SP307: Okay.

Interpreter: She said her stop and then when she took off, the bus, when she was driving already,

SP307: Mmm. Mmm.

Interpreter: after she did the stop, the bus came on to her

SP307: Okay.

Interpreter: and hit her. That's what she said. That's how I know. I told you.

SP307: Okay.

Interpreter: That's what she's *been telling me*. That's how I know. (emphasis added)

"That's what she's been telling me." In the initial exchange of this dialogue, the Trooper seeks confirmation of a prior answer, but the interpreter does not interpret the Trooper's statement to Ms. Franco to offer *her* the opportunity to confirm, deny, or correct the Trooper's understanding. Nor does the interpreter give an unambiguous answer and it is doubtful "Mmm Mmm" has a Spanish equivalent, considering these are not actual words.

The subsequent dialogue between the Trooper and the interpreter, without any of it being interpreted for Ms. Franco, in addition to all of it coming solely from the interpreter, indicates by her statement "That's what she's been telling me," that the interpreter is providing information allegedly told to the interpreter by Ms. Franco prior to the Troopers' interrogation. However, Ms. Franco was given no opportunity to adopt, deny, or correct the answer the interpreter gave on her behalf. This sequence should be stricken.

Also on page 3S of the State's transcript, the following sequence occurs:

SP307: Phone rings. Does she want to get that?

Interpreter: Inaudible. No, she already say (inaudible) at the hospital. She had her seatbelt and that's probably why her chest hurts, yeah know, because the seatbelt but (inaudible).

SP307: Inaudible.

Interpreter: She said she was crash today, into the van.

SP307: Mmm. Mmm. Okay. Anything else?

In addition to again failing to interpret any of this dialogue for Ms. Franco, the answer by the interpreter is confusing and most of it bears no relation to the Trooper's question, "Does she want to get that?" This dialogue should be stricken.

Next, at page 4S, the State's transcript reveals the following:

SP307: And then did you write your names on there for me please?

Interpreter: Sure.

SP307: Is her boyfriend here?

Interpreter: Inaudible. We've been trying to call him on the phone.

SP307: Is her (*sic*) working?

Interpreter: Um. She said he stay home today because he was sick and I've been trying to, he gave, she gave me two numbers and I put 'em in my cell and I've been trying to contact him and there's no answer.

SP307: Okay.

Interpreter: On either one of them.

Once again, Ms. Franco is left completely out of the questioning and answering. She cannot be said to have voluntarily stated what she did not state at all. As with the foregoing sequences, this too should be stricken. It is not Ms. Franco's words and, having never even received an interpretation of the questions or answers or dialogue, she cannot be said by the State to have provided the information.

The balance of the State's transcript is primarily dialogue between the interpreter and the Troopers. However, part of that dialogue is material to the voluntariness question. Even accepting the premise that utilizing an interpreter to filter questions by law enforcement officers, it is a different matter when that interpreter translates for the local police department and knows everybody in the police department, everybody there. For, to have known that is as likely to soil the filter as sure as the filter may have reduced the coercive element of face-to-face interrogation with a police officer as the interpreter's close relationship with the police essentially places the interpreter on the side of law enforcement. However, we cannot know the effect it might have had because Ms. Franco was not given the information in allegedly consenting to the interrogation and voluntarily answering the questions she was allowed to answer for herself.

5. Because Ms. Franco was deprived of the opportunity to answer many of the material questions asked, or to hear the answer given on her behalf, much of the Statement cannot fairly be used to judge her comprehension nor the voluntariness of her answers

There is evidence Ms. Franco exhibited sufficient maturity and intelligence to answer some of the questions she was asked, but many questions and the ensuing answers were not interpreted for her. It is likely the interpreter's

sympathy for Ms. Franco's physical condition prompted the interpreter to simply answer for Ms. Franco. But, then, it is not Ms. Franco's statement. Not when she was given no opportunity to hear the answers in Spanish and challenge the accuracy, were she even in a mental condition to do so.

The most complicated questions, from which intellect, comprehension, and present mental ability could best be ascertained, were neither translated for nor answered by Ms. Franco. The record of her condition and the drugs she was under the influence of are far more accurate predictors of whether she even had the capacity to judge whether or not she could or could not answer, if she was even capable of putting her situation in any kind of perspective.

E. Evidentiary Defects

As the present motion relates primarily to the Constitutional defects in the February 19, 2008 statement, and the statutory privilege afforded that document, it is presently unnecessary to address the significant evidentiary objections to that same document. If and to the extent it becomes necessary, those issues will be properly addressed in a motion pursuant to Minn. R. Evid. 104(a) for an Order ruling that the February 19, 2008 Accident Supplement Statement is inadmissible or, in the alternative, pursuant to Minn. R. Evid. 105, an Order to restrict and limit evidence in this case.

V. CONCLUSION

In one of comedian Ron White's dialogues he recalls once when he was arrested for drunken driving. On being arrested, he relates that he was read his rights. He says "I learned that I had the right to remain silent. But not the ability."

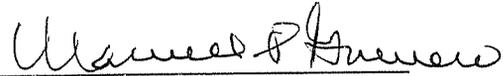
It is regrettably easy, particularly for those in the legal profession, to assume that a recently arrived soft-spoken 24-year-old young woman from a small farm in remote Guatemala who speaks and understands no English and with no experience in our justice system other than a single traffic citation might possibly have a minimal understanding of her rights under that system. We might be forgiven for assuming she might know she had the right to ask uniformed police officials to leave her hospital bed from which she cannot herself escape. Maybe even that, though suffering a fractured ankle and heavily sedated with narcotic pain medication and impaired by other medications that she maintained the judgment and alertness to enforce such rights. Probably less so for us to assume she had any awareness of a right, or any real ability to refuse to answer questions those uniformed police officers posed at the side of her bed. For, as the Ron White anecdote suggests, it is no stretch to say that few citizens born in this country have that awareness.

Nor does it seem reasonable to suggest that answers given by another person for a suspect in a language the suspect cannot understand, where neither the question nor the answer were interpreted for the suspect were "voluntarily" given by that same suspect. It defies simple logic to suggest that Ms. Franco was even aware of the answers she did not give or hear to questions in a language she could not understand, and which were not interpreted for her. To allow such a statement to be used against her would be to violate the decencies guaranteed by our Constitution. Therefore, Defendant Franco respectfully requests that the Court

reconsider its May 6, 2008 decision and in doing so, to suppress the February 19, 2008 statement.

Respectfully submitted this 9th day of June, 2008

LAW OFFICE OF MANUEL P. GUERRERO

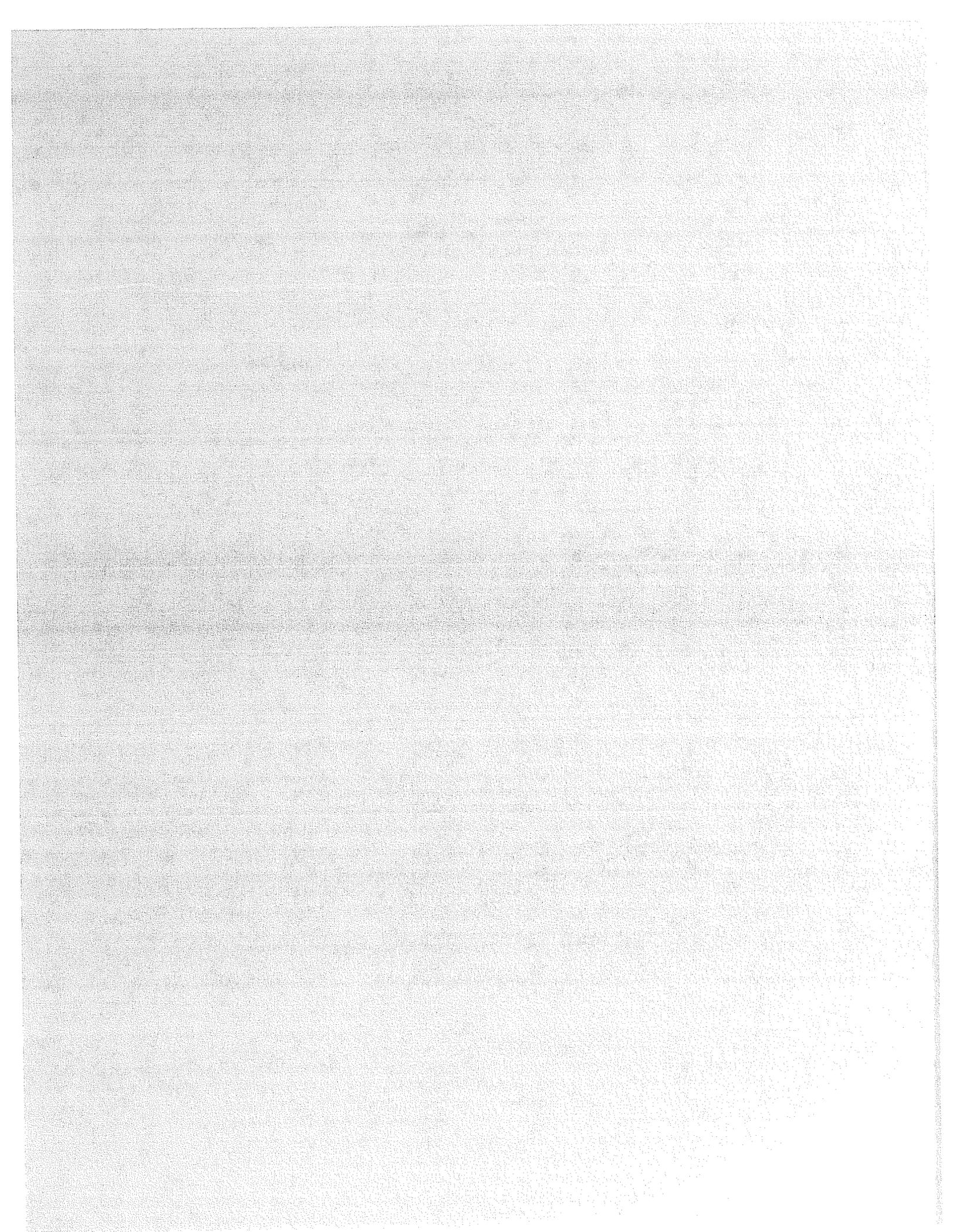


Manuel P. Guerrero (38520)
Tamara Caban Ramirez (353346)
148 Farrington Street
St. Paul, MN 55102
Telephone: 651 587 2158
Facsimile: 651 224 4855

NEAL A. EISENBRAUN, CHARTERED

Neal A. Eisenbraun (14860X)
2599 Mississippi Street
New Brighton, MN 55112
Telephone: 651 633 5685
Facsimile: 651 305 1101
Email: nae@eisenbraunlaw.com

ATTORNEYS FOR DEFENDANT



Alexandra Caram Ibarra, internet articles, and case file documents on file in this matter.

Further your affiant says not.

Manuel P. Guerrero

Manuel P. Guerrero

Subscribed and sworn to before me this 10th day of June, 2008.

[Signature]

Notary Public

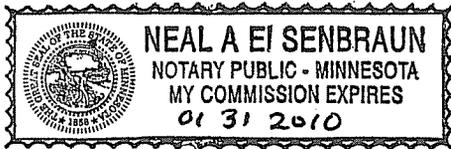


EXHIBIT A

STATE OF MINNESOTA
COUNTY OF LYON

IN DISTRICT COURT
FIFTH JUDICIAL DISTRICT

STATE OF MINNESOTA,

Plaintiff,

File No. 42-CR-08-220

vs.

OLGA MARNIA FRANCO DEL CID
aka ALIANISS NUNEZ MORALES,

Defendant.

FINDINGS OF FACT,
CONCLUSION OF LAW,
AND ORDER

The above-entitled matter came before this Court on Defendant's *ex parte* Application for an Order Granting Payment for Services Other Than Counsel Pursuant to Minnesota Statute § 611.21.

Based upon all the files and records herein, the Court makes the following:

FINDINGS OF FACT

1. Defendant requires an expert Accident Reconstruction Engineer, for the purpose of analyzing the accident in this matter, and, if warranted, to testify as to the circumstances underlying the accident, to a reasonable degree of scientific certainty.
2. Defendant requires an expert in Pharmacology, for the purpose of analyzing any possible intoxicating effect of medications that had been administered to Defendant at the time of the first interrogation at the hospital, and, if warranted, to testify as to any affect such medication may have had on Defendant's ability to accurately recall events, answer police questions, and/or understand the situation.
3. Defendant requires services of a Private Investigator, for the purpose of obtaining recorded statements from witnesses and locating any witness that may not be located by the State in this matter.
4. The services enumerated above are necessary and Defendant is financially unable to obtain those services.

Based upon the above Findings of Fact, the Court makes the following:

CONCLUSION OF LAW

FILED IN THIS OFFICE
4-9-08

Karen J. Elerman
COURT ADMINISTRATOR
Marshall, Lyon County, Minnesota

- I. Defendant has made the requisite showing to obtain services other than counsel under Minn. Stat. § 611.21.

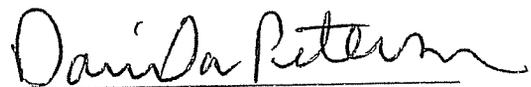
Based upon the above Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED:

1. Defendant's Application is GRANTED.
2. Counsel for Defendant is authorized to obtain the services of:
 - a. An Accident Reconstruction Engineer;
 - b. An Expert in Pharmacology; and
 - c. A Private Investigatorfor Defendant.
3. Upon filing claims for compensation supported by an affidavit (specifying the time expended, services rendered, and expenses occurred on behalf of Defendant, as well as any compensation received in the same case or for the same services from any other source), Lyon County is directed to pay the providers of these three services directly.
4. Absent further authorization of this Court and the Chief Judge of the District,
 - a. The Accident Reconstruction Engineer shall be compensated for \$1,000.00, plus reimbursement for expenses reasonably incurred;
 - b. The Expert in Pharmacology shall be compensated for \$1,000.00, plus reimbursement for expenses reasonably incurred;
 - c. The Private Investigator shall be compensated for \$1,000.00, plus reimbursement for expenses reasonably incurred.

Dated: April 8th, 2008

BY THE COURT:



David W. Peterson
Judge of District Court

MEMORANDUM

Defendant has been charged with four counts of Criminal Vehicular Operation, in violation of Minn. Stat. § 609.21, Subd. 1(1), one count of Failure to Stop at Entrance of Through Highway, in violation of Minn. Stat. § 169.20, Subd. 3(a), and one count of Driving Without a Valid License, in violation of Minn. Stat. § 171.02, Subd. 1.

Defendant has applied for the provision of services other than counsel. Minn. Stat. §

611.21(a) provides, in part:

“[...]Upon finding, after appropriate inquiry in an ex parte proceeding, that the services are necessary and that the defendant is financially unable to obtain them, the court shall authorize counsel to obtain the services on behalf of the defendant. [...] The court shall determine reasonable compensation for the services and direct payment by the county in which the prosecution originated, to the organization or person who rendered them, upon the filing of a claim for compensation supported by an affidavit specifying the time expended, services rendered, and expenses incurred on behalf of the defendant, and the compensation received in the same case or for the same services from any other source.”

Defendant’s application requests provisions for three services: 1) an Accident Reconstruction Engineer; 2) an expert in Pharmacology; and 3) a Private Investigator. Defendant asserts that the Accident Reconstruction Engineer would be able to analyze the accident and testify, to a reasonable degree of scientific certainty, as to whether it is possible that Defendant could have possibly been driving the vehicle at the time of the accident, based upon Defendant’s position in the car following the accident. Defendant asserts the Pharmacology expert would be able to testify as to any intoxicating effects of medications administered to Defendant prior to her being questioned at the hospital and how such may have implicated Defendant’s ability to recall the events, answer questions, and understand the gravity of the situation. Finally, Defendant asserts that the Private Investigator would be able to obtain recorded statements from witnesses and locate any witnesses that the State does not locate for its case.

The statute requires that the Court order the provision of these services if they are necessary and Defendant cannot afford them. The Court has made the appropriate

Findings and orders the provision of services, to be paid by Lyon County, as the county in which the prosecution originated.

Minn. Stat. § 611.21(b) provides:

“The compensation to be paid to a person for such service rendered to a defendant under this section, or to be paid to an organization for such services rendered by an employee, may not exceed \$1,000, exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the court as necessary to provide fair compensation for services of an unusual character or duration and the amount of the excess payment is approved by the chief judge of the district. The chief judge of the judicial district may delegate approval authority to an active district judge.”

Therefore, the Court has ordered that no more than \$1,000, excluding reasonable expenses, shall be paid to each of these experts. Pursuant to the statute, if Defendant requires services from any of these experts in excess of \$1,000, Defendant must demonstrate to the Court that additional funds are necessary to provide services of “unusual character or duration,” and such must be approved by both this Court and the Chief Judge.

MWP
4-8-07

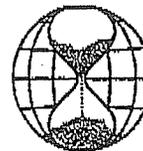


INC. 1973

CLINICAL PSYCHOPHARMACOLOGY CONSULTANTS, P. A.

INTERNATIONAL ANTI-AGING MEDICAL INSTITUTE, P. A.

PARK CENTER OFFICE BLDG 3601 PARK CENTER BLVD STE 207 ST. LOUIS PARK, MN 55416-2531
TELEPHONE 952.926.3364 ANSWERED 24 HOURS FAX 952.926.3369



INC. 1998

FAXED

MAY 29 2008 7:14

May 29, 2008

Neal A. Eisenbraun, Esq.
2599 Mississippi St.
New Brighton, MN 55112
FAX: 651-305-1101

EXHIBIT B (1)

RE: Nunes Morales, Alians

DOB: 12/22/1984

MR #: 103964

Dear Mr. Eisenbraun,

In answer to your May 27, 2008 request, enclosed please find my Abbreviated Resume. My charge is \$300 per hour.

All four medications that I have marked on the Medication Administration Record-5Day can impair patients' alertness and judgments.

The record of medications given during the ambulance ride is still missing.

Please let me know if you need any further information.

Cordially Yours,

F.S. Abuzzahab, Sr., MD PhD
FSA/jb

Enclosures: 2

EXHIBIT B (2) FAXED



300 S. Bruce St.
Marshall, MN 56258
507-532-9681

1. 05/21/08 ALIANS MOR...
A. 05/21/08
ATC V5546.1/10msc
12/22/1994 223
2/23/08
57 00000 - 10000
AVERA MARSHALL

COPY

MEDICATION ADMINISTRATION RECORD - 5 DAY

ALLERGIES: N/A

PRN MEDS

Order Date	Medication	2/19	2/20	2/21	2/22	2/23
2-19 AMS	Morphine 2mg IV every 1hr PRN-pain	1837 KW				
2-19 AMS	Zofran 4mg IV every 6hrs PRN-N/V ondansetron HCl hydrocodone bitartrate + acetaminophen					
2-20 WS	(Vicodin) 5/325mg $\dot{+}$ or $\ddot{+}$ every 4 hrs $\dot{+}$ tab if pain ≤ 3 $\ddot{+}$ tabs if pain > 3 promethazine					
2/20 H W	Phenergan 6.25mg IV every 4hrs PRN for nausea PROMETHAZINE 25MG/ML SYRI (PHENERGAN EQUIVALENT) 25 MG Q4H PRN ORDE#25 DOSE=6.25MG=0.25ML INJECTION START 02/20/08; LAST:05/20/08@2359 NUNES MORALES, ALIANS N/S/21B/1 317742	X	10103K			
2/20 BY W	Motrin 600mg po every 6hrs PRN for pain + headache IBUPROFEN 600MG TABLET U-(MOTRIN EQUIVALENT) 600 MG Q6H PRN ORDE#27 FOR PAIN AND HEADACHE W/ FOOD ORAL START 02/20/08; LAST:05/20/08@2359 NUNES MORALES, ALIANS N/S/21B/1 317742		02303K			

Signature/Initials	Signature/Initials	Signature/Initials	Signature/Initials	Signature/Initials
1) [Signature]	1) [Signature]	1) Karen Maher [Signature]	1) [Signature]	1) [Signature]
2)	2)	2)	2)	2)
3)	3)	3)	3)	3)

Exhibit - 1

North Memorial Ambulance Service Patient Care Report

Page 1 of 1 Date: 02/19/2008 Run # 8163

PLU Loc: **Trinity 23 + Co 8024** Type: **S** Pt. Destination: **Amelia A. MSHL** Type: **H** Class # **870** VEH # **1**

File # **00000000** Reason For Call: **MVA** Reason For Transfer: **None**

Last Name: **Nunes - Mynerva** First Name: **ALIANS** DOB: **7/24/81** Age: **33** SSN: **0396074399**

Address: **405 Ben's brother Ave** City: **COFFMAN** State: **MA** Zip: **02209** Phone: **508-322-0911**

Primary Problem: **CRANKLE RT Pain**

History: **PT had scuba tank air hose deployed long distance due to being pinned. PT extricated to LBB. E call on place by commercial crew. PT speaks only Spanish.**

Physical Assessment: **Female. 5'11" 150 lbs. Neck 34 cm. Chest 94 cm. Abdomen soft. Extremities 4 by palp. No deformities. Lungs clear. No wheezing. No crackles. No rales. No rhonchi. No stridor. No hoarseness. No cough. No sputum. No hemoptysis. No hematemesis. No melena. No hematochezia. No rectal bleeding. No fecal occult blood. No fecal parasites. No fecal leukocytes. No fecal fat. No fecal mucus. No fecal pus. No fecal blood. No fecal bile. No fecal bile salts. No fecal bile pigments. No fecal bile acids. No fecal bile esters. No fecal bile salts. No fecal bile pigments. No fecal bile acids. No fecal bile esters.**

ECG Interpretation: **Normal sinus rhythm. Rate 75. PR 160. QRS 90. QT 380. QTc 380. ST-T normal.**

Values With: **None**

Signature: **[Signature]**

Group #	
Policy #	12088590-0
Policy #	
PCS	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Medical Contact	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Dead on arrival	225
Scene on arrival	210
En route	1596
Arrive scene	1607
Leave scene	1630
Arrive hospital	1645
Leave hospital	1645

CLASSIFICATION SCALE	
Score	Response
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	9
10	10
11	11
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13	13
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49	49
50	50

CONSENT FOR TREATMENT/RELEASE OF INFORMATION

EXHIBIT C-2

ALIAN, Nuris-Morales
(Print Patient Name)

(Run #)

- I hereby consent and authorize North Memorial Ambulance Service to perform medical treatment and administer medications, which are deemed advisable by the medical attendants and consistent with medical practice standards. I agree that information from my transportation records may be used or given to physicians and/or staff as necessary for treatment at a receiving facility.
- I request that payment of the authorized benefits be made to North Memorial Ambulance Service on my behalf for any services/transportation furnished to me by North Memorial Ambulance Service.
- I authorize the release to the Social Security Administration and Centers for Medicare and Medicaid Services, or their agents, fiscal intermediaries, carriers or other private insurance companies any medical or billing information needed for this or a related claim. I understand I will be responsible for any services that are not paid/covered by my insurance.
- I acknowledge that I have received a copy of the North Memorial Health Care Notice of Privacy Practices.

X _____
Signature of Patient

X Don Morales
Signature of Other Representative or EMS Staff

If signed by a representative, under what authority are you signing? Check appropriate box:
 Parent Guardian Health Care Agent
 Family Member Other (specify): _____
 EMS Staff only: My signature indicates that the patient was physically or mentally incapable of signing, and that no other authorized representative was available or willing to sign (either at the time of transport in an emergency situation, or after reasonable efforts in a non-emergency situation).

Date Time

Language Barrier / Multiple
Reason patient unable to sign 1/24/05

Privacy Notice left with Patient at Receiving Facility

Are you a Medicare beneficiary? Yes No If Yes, please answer the following 12 questions.

Y N
Y N
Y N

- Was the illness/injury related to a work related accident/condition?
- Was your injury a result of an automobile accident?
- Was your treatment a result of an accident other than automobile? If yes, please explain where and how you were injured.

If you suffered a fall/accident outside of your home, we will need to submit a claim to the liability insurance. Medicare will not pay for treatment that is a result of a fall/accident outside of your home unless they receive from you or us a copy of the denial or a copy of the payment from the liability insurance.

Where did the accident happen? _____
How did the accident happen? _____

Y N
Y N
Y N
Y N
Y N
Y N
Y N
Y N
Y N
Y N
Y N

- Are you still employed and do you have insurance through you employer?
- Is your spouse still employed and do you have insurance through her/his employer?
- Is Medicare eligibility based on the diagnosis of End Stage Renal Disease?
- Have you received a Kidney transplant? Date of Transplant _____
- Are you receiving Black Lung Benefits?
- Are you disabled and under the age of sixty-five?
- Do you have authorized insurance benefits through the Veterans Administration?
- Are the services to be paid by a government program such as a research grant?
- Do you have insurance coverage with an HMO?
- Do you have supplemental insurance coverage after Medicare?

INV

EXHIBIT C-3

NORTH MEMORIAL AMBULANCE SER
 PO BOX 1450 NW 8090
 MINNEAPOLIS, MN 554858090
 TEL: 763 520 1438
 1 800 535 6720

REDWOOD FALLS
 Invoice number: RRF0163
 Billing Date: 05/29/08
 Federal Tax ID: 410729979

BILL TO:

DLGA M FRANCO
 405 BENS TRAILER PARK
 MINNETO, MN 56264

Payment Due Upon Receipt

Amount Due \$ 1643.45

Enter Amount Paid \$ _____

*** See the reverse side of this form for payment options. ***

(Please detach and return upper portion with your payment. Thank you.)

Patient Name : FRANCO, DLGA M Inv. Date: 05/29/08
 Patient Birthdate : 12/22/84 Invoice #: RRF0163
 Referred by : 911 POLICE FIRE
 Service Provided On : 02/19/08 at 16:07
 Service Provided From : HWY23 AND CO 24
 Service Provided To : AVERA MARSH

QTY	CODE	HPCPS	DESCRIPTION	CHARGE	AMOUNT	BALANCE
1	077	AC427	ALS EMERGENCY	1299.95	1299.95	
15	101	AC426	ALS MILEAGE	22.90	343.50	
** Charge Total **						1643.45
** Payment Total **						.00

SEND INC INFO, COMPLETE,
 SIGN AND RETURN BACK SIDE.

Total Charges This Call ==> 1643.45
 Total Payments This Call ==> .00
 Invoice Balance =====> 1643.45

Accident Supplement

EXHIBIT D

08300228

Supplement type: STATEMENT

ICR #08300228 Statement Taken From Alianiss Nunez Morales
By Trooper Dana Larsen, SP307 and Sgt. Dean Koenen,
SP431, Minnesota State Patrol

Statement Date: February 19, 2008 at 1915 Hours
Location: Avera Marshall Hospital

Inaudible conversation.

SP307: He with you or just a friend or?

Interpreter: Inaudible. This is her birthday right here. Ah. Boyfriend, (inaudible).
Melindez.

SP307: Okay.

Interpreter: Right there. Alianiss Nunez Morales. Inaudible.

SP307: Okay.

Interpreter: And this her birth date right there.

SP307: Okay.

Interpreter: D O B, I put over here.

SP307: Okay.

Interpreter: And um, ah. Inaudible.

SP431: She have a Minnesota driver license?

SP307: Can you ask her if she has a Minnesota driver's license please?

Interpreter: Inaudible. No.

SP431: Any driver's license?

Interpreter: Inaudible.

AM: Inaudible.

Interpreter: No. Not a (inaudible).

SP307: Ah. Who are you?

Interpreter: I am the interpreter for the hospital.

SP307: Oh. Okay.

Interpreter: And I am the interpreter also for the police department here in town.

SP307: Okay.

Sign here TRP1 DANA D. LARSEN (307)
Officer's Rank and Name

DISTRICT 2300
Department

2/21/08
Date of report

Accident Supplement

08300228

Supplement type: S/L/A/M/E/N

Interpreter:For the hospital, (Inaudible) community, town and the police department.

SP307:Okay. Huh? Can you ask her whose vehicle it is?

Interpreter:Inaudible.

AM:Inaudible.

Interpreter:It belongs to her boyfriend.

SP307:Okay. Can you ask her where she was going?

Interpreter:Ah. She was on her way to work though, I mean, sir. She already told me. She already told me she was on her way to work to cab, cabinetry.

SP307:Okay.

Interpreter:In Norcraft. She was about two blocks from her work. That's what she said. She was. She said was on her way to work.

SP307:Okay. Ask. Can you ask her what time she was suppose to be there?

Interpreter:Inaudible.

AM:Inaudible.

Interpreter:At 4:00.

SP307:Okay. Can you ask her if she was running late?

Interpreter:Inaudible.

AM:Inaudible.

Interpreter:No. She was not.

SP307:Okay. Can you ask her what happened? Does she remember what happened?

Interpreter:Inaudible.

AM:Inaudible.

Interpreter:Yes. She said she remembers.

SP307:Okay. Can she tell us?

Interpreter:Inaudible.

AM:Inaudible.

Interpreter:I was driving to cabinet. At the beginning, she told me I was driving. She did her stop and then when she started moving and she starting driving, seen a bus

Sign here TRP1 DANA D. LARSEN (307)
Officer's Rank and Name

DISTRICT 2300
Department

2/21/08
Date of report

Accident Supplement

08300228



came in and con(inaudible) her and that`s when the crash (inaudible).

SP307:Okay. All right. We`re just about done. So. If I understand this right, she said she was driving.

Interpreter:Mmm. Mmm.

SP307:And then what after that?

Interpreter:And she, she`d made her stop.

SP307:Okay.

Interpreter:She said her stop and then when she took off, the bus, when she was driving already,

SP307:Mmm. Mmm.

Interpreter:after she did the stop, the bus came on to her

SP307:Okay.

Interpreter:and hit her. That`s what she said. That`s how I know. I told you.

SP307:Okay.

Interpreter:That`s what she`s been telling me. That`s how I know.

SP307:How long has she worked at Norcraft?

Interpreter:Inaudible.

AM:She just started, been there for a month.

SP307:Okay. Phone rings. Does she want to get that?

Interpreter:Inaudible. No, she already say (inaudible) at the hospital. She had her seatbelt and that`s probably why her chest hurts, yeah know, because the seatbelt but (inaudible).

SP307:Inaudible.

Interpreter:She said she was crash today, into the van.

SP307:Mmm. Mmm. Okay. Anything else?

SP431:You always drive to work?

Interpreter:Inaudible.

AM:Inaudible.

Interpreter:No.

Sign here TRP1 DANA D. LARSEN (307)
Officer's Rank and Name

DISTRICT 2300
Department

2/21/08
Date of report

Accident Supplement

08300228



SP431:How many times has she been on that road?

Interpreter:Inaudible.

AM:Inaudible.

Interpreter:It was the first time.

SP307:Okay.

SP431:And then did you write your names on there for me please?

Interpreter:Sure.

SP431:Is her boyfriend here?

Interpreter:Inaudible. We've been trying to call him on the phone.

SP431:Is her working?

Interpreter:Um. She said he stay home today because he was sick and I've been trying to, he gave, she gave me two numbers and I put 'em in my cell and I've been trying to contact him and there's no answer.

5:45

SP431:Okay.

Interpreter:On either one of them.

SP307:And you are from Marshall?

Interpreter:I live in Marshall.

SP307:Okay.

Interpreter:320 South Sixth Street.

SP307:South what? Sixth?

Interpreter:South Sixth Street. Just a couple of blocks on (inaudible) apartment.

SP431:You've translated for the police department before?

Interpreter:I do that.

SP431:Okay.

Interpreter:I do that since 1994 sir.

SP431:And you know Joe Jensen?

Interpreter:I know everybody in the police department. I know Joe Jensen and the dispatchers and Kathy and everybody there, yeah know.

Sign here TRP1 DANA D. LARSEN (307)
Officer's Rank and Name

DISTRICT 2300
Department

2/21/08
Date of report

Accident Supplement

08300228

Supplement type: STATEMENT

SP431:Okay.

Interpreter:Yes sir.

SP431:If you, ah. If you do come in contact with his. Does her boyfriend speak English?

Interpreter:Inaudible.

AM:Inaudible.

Interpreter:A little bit she said.

SP431:Okay. Um. I would assume that you need the insurance or was that.

SP307:Well, um, I think they got some of that information from out of there.

SP431:Okay. Okay. Do you want to talk to him at all?

SP307:Yeah. I'll look see what I got.

SP431:Okay.

SP307: Inaudible.

SP431:Thank you.

Interpreter:Thank you.

SP307:Thanks.

Interpreter:Thank you.

Trooper Dana Larsen, SP307Sgt. Dean Koenen, SP431
Minnesota State PatrolMinnesota State Patrol

ab

Sign here TRP1 DANA D. LARSEN (307)
Officer's Rank and Name

DISTRICT 2300
Department

2/21/08
Date of report

EXHIBIT E

STATE OF MINNESOTA
COUNTY OF LYON

IN DISTRICT COURT
FIFTH JUDICIAL DISTRICT

STATE OF MINNESOTA,

Plaintiff,

File No. 42-CR-08-220

vs.

OLGA MARNIA FRANCO DEL CID
aka ALIANISS NUNEZ MORALES,

Defendant.

FINDINGS OF FACT,
CONCLUSION OF LAW,
AND ORDER

The above-entitled matter came before this Court on April 22, 2008, for an Omnibus Hearing. Defendant was represented by Manuel Guerrero, Attorney at Law, St. Paul, Minnesota and Tamara Caban-Ramirez, Attorney at Law, Minneapolis, Minnesota. The State appeared through Rick Maes, Lyon County Attorney.

At the close of the hearing, the Court granted a continuance of the Omnibus Hearing to obtain more evidence regarding the statement obtained on February 21, 2008. Counsel agreed and the Court concluded that the evidence was submitted as related to the February 19, 2008 statement.

Based upon all the files and records herein, the Court makes the following:

FINDINGS OF FACT

1. On February 19, 2008, at approximately 3:45 p.m., Minnesota State Trooper Dana Larsen was notified of a vehicle crash at the intersection of Highway 23 and County Road 24, in Lyon County, Minnesota, resulting in deaths and injuries.
2. When Trooper Larsen arrived on the scene, the school bus was laying on its left side on the east side of the road.
3. A gray pickup truck was underneath the tipped school bus, and a maroon minivan was in the southbound lane of Highway 23.
4. The minivan had severe damage to its front end.
5. Defendant was found in the driver's seat of the minivan.
6. Later that evening, at approximately 7:15 p.m., Trooper Larsen, accompanied by Sergeant Dean Koenen, interviewed Defendant at the Avera Marshall Hospital.
7. Present during that interview was Trooper Larsen, Defendant, Sergeant Koenen, and Suzy Campos.
8. Trooper Larsen does not understand Spanish, however, Suzy Campos served as an interpreter; Campos is an interpreter for both the hospital and the Marshall Police Department.

9. Trooper Larsen and Sergeant Koenen were both in uniform.
10. Defendant was never told on February 19, 2008 that she was under arrest, either before or after Trooper Larsen interviewed her, and she was not placed under arrest on that date.
11. Defendant was also never explicitly told on February 19, 2008 that she was not under arrest or that she was free to leave.
12. The interview on that date was relatively brief; Defendant was asked 11 questions, and the transcript is less than five pages long.
13. Trooper Larsen testified that the purpose of the interview was "just investigative information so we can gather information for our crash investigation"; the questions posed were generally investigative in nature and non-confrontational; at no point were any threats, express or implied, made to Defendant.
14. During the interview on that date, Defendant appeared to understand the questioning that was posed to her (via the interpreter) and she gave appropriate responses (again, via the interpreter).
15. Defendant was never read a Miranda warning, or a functional equivalent, on that date.
16. The attached Memorandum is hereby incorporated into these Findings of Fact.

Based upon the above Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

- I. A Miranda warning was not necessary, as Defendant was not subject to custodial interrogation on February 19, 2008.
- II. The State has proven by a preponderance of the evidence that the statement given on February 19, 2008 was given by Defendant voluntarily.

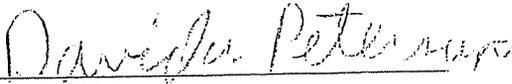
Based upon the above Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED:

1. Defendant's Motion to Suppress the statement given to law enforcement on February 19, 2008 is DENIED.

Dated: MAY 6, 2008

BY THE COURT:


 David W. Peterson
 Judge of District Court

FILED IN THIS OFFICE

5-6-08

Karen J. Bierman
 COURT ADMINISTRATOR
 Marshall, Lyon County, Minnesota

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 No Minnesota Driver's License, in violation of Minn. Stat. § 171.02, Subd. 1. On February 19, 2008, the date of the vehicle crash, Trooper Larsen interviewed Defendant at the Avera Marshall Hospital. Defendant has made a Motion to Suppress the statement obtained on that date. Defendant asserts that the February 19, 2008 statement was a custodial interrogation and that Defendant was not advised of her Miranda rights.

The content of the statement on February 19, 2008 is accurately summarized as follows. Trooper Larsen asks whether Defendant has a driver's license. He asks her whose vehicle she was in. He asks when Defendant was supposed to be at work. He asks whether she was running late. He asks whether she remembers what happened, and then asks her to relate what happened. Trooper Larsen asks how long Defendant has worked at Norcraft. The phone rings, and Trooper Larsen asks whether Defendant wants to answer it. Sergeant Koenen asks whether Defendant always drives to work. He then asks how many times she has been on that road. After some conversation with the interpreter, Sergeant Koenen asks whether Defendant's boyfriend speaks English. Also in the transcript are conversations between Trooper Larsen, Sergeant Koenen, and the interpreter, but these do not contain questions that were translated to Defendant.

Miranda v. Arizona, 384 U.S. 436 (1966) dictates that a person in police custody and subject to interrogation must be advised of certain constitutional rights, and that a failure to so advise that person will render any statements made inadmissible. The issue then is whether Defendant was in custody and was being interrogated. A person is in “custody” when her freedom is curtailed to a degree associated with or the functional equivalent of arrest. See, Berkemer v. McCarty, 468 U.S. 420, 440 (1984); State v. Rosse, 478 N.W.2d 482, 485 (Minn. 1991). Preliminary on-the-scene questioning is not the functional equivalent of arrest. State v. VanWagner, 504 N.W.2d 746, 749 (Minn. 1993); State v. Walsh, 495 N.W.2d 602, 604-05 (Minn. 1993). A person is being “interrogated” when being expressly questioned as well as when police use any words or actions that they should know are likely to elicit an incriminating response from that person. Rhode Island v. Innis, 446 U.S. 291 (1980).

While Defendant was being “interrogated” within the meaning of the law, based upon the record, the Court concludes that the interrogation was not custodial.

“The determination of whether a suspect is in custody is an objective inquiry.” State v. Mellett, 642 N.W.2d 779, 787 (Minn. Ct. App. 2002), review denied (Minn. Jul. 16, 2002). A district court may determine that a person is in custody if “a reasonable person in the detainee's situation would have understood that [s]he was in custody.” State v. Hince, 540 N.W.2d 820, 823 (Minn. 1995) (citation omitted). If a suspect is not formally under arrest, this Court must consider all of the surrounding circumstances to assess whether a reasonable person in the suspect's position would have believed that she was in custody to the degree associated with arrest. State v. Champion, 533 N.W.2d 40, 43 (Minn. 1995); see State v. Staats, 658 N.W.2d 207, 212 (Minn. 2003) (non-custody

indications include questioning in suspect's home, suspect not under arrest, suspect free to leave, brevity of questioning, "nonthreatening environment," and suspect's ability to make phone calls). A "coercive environment" that falls short of being custodial does not mandate a Miranda warning. Hince, 540 N.W.2d at 824.

The law is clear that questioning taking place in a hospital does not automatically transform into custodial interrogation. See State v. Hoskins, 193 N.W.2d 802, 813-14 (Minn. 1972) (defendant not in custody and no Miranda warning required when defendant in a hospital room and a deputy sheriff was posted outside the entire time); State v. Mitchell, 163 N.W.2d 310, 315-16 (Minn. 1969) (while hospitalized, defendant was not under arrest, freedom was not restrained by officers, and questioning was routine inquiry). More recently, other states have also held hospital interviews are not custodial interrogation. See, e.g. State v. Melton, 476 N.W.2d 842 (Neb. 1991) (per curiam) (defendant admitted to hospital for treatment, was not under formal arrest, and questioning was routine course of accident investigation); State v. Cain, 400 N.W.2d 582 (Iowa 1987) (officer spent nearly two hours with defendant, but actual conversation was short; defendant's hospitalization was volitional); State v. Clappes, 344 N.W.2d 141 (Wis. 1984) (officer's questions were about parties involved, circumstances of accident, and other information needed to complete law enforcement reports).

This Court finds persuasive the Court of Appeals decision in State v. Smith, No. A05-1651, 2006 WL 1605244 (Minn. Ct. App. June 13, 2006) (unpublished), review denied (Minn. Aug. 23, 2006). In that case, the Court of Appeals concluded that a Miranda warning was not necessary when a deputy sheriff questioned Smith in a hospital examination room even after the deputy had read Smith an implied consent advisory

(which indicated that Smith was either under arrest or had been involved in a motor vehicle accident). The Court of Appeals noted:

“Appellant was questioned in a hospital examination room, not a police station, and she had arrived there by ambulance, not by police car. The record shows that she had no contact with Deputy Wick prior to his appearance in the examination room. Hospital staff had closed the door of the room. Appellant was not placed under arrest when Wick approached her, she did not ask him to leave, and the questioning was brief and not coercive. Appellant declined to answer one question about what she had been drinking. She was not physically restrained.”

Id. at *2.

In the instant case, Defendant was not formally under arrest. The questioning occurred in Defendant’s hospital room, not the police station. This was the first time Defendant had been questioned by Trooper Larsen. While she was not told that she was free to leave, given that Defendant was in the hospital, telling her she would be free to leave would make little sense. Defendant never asked to leave, she never asked Trooper Larsen or Sergeant Koenen to leave, and Defendant was never told that she could not leave. The questioning here was relatively brief. There does not appear to have been anything coercive about the questioning or the environment generally. At no point did Trooper Larsen or Sergeant Koenen ever accuse Defendant of lying or misleading them. Nor is there anything in the transcript suggesting the troopers lied to or misled Defendant. While Trooper Larsen and Sergeant Koenen were in uniform, the fact that their questioning was filtered through the hospital interpreter lessens any inherent coercion that might attach to direct face-to-face questioning of law enforcement. The transcript indicates that the phone in the room rang at some point, and Trooper Larsen asked if Defendant wanted to answer the phone. This action alone is suggestive of the informal, non-coercive nature of the interview. Aside from being three to four hours after the

incident, and occurring at the hospital rather than the scene, the interview seems much more like preliminary on-the-scene questioning rather than custodial interrogation. A reasonable person in Defendant's position would not have thought they were in custody. Since the interrogation was not custodial, a Miranda warning was not required.

Even though a Miranda warning was not required, due process requires that statements be obtained voluntarily. A statement is voluntary so long as there is no showing of coercive police activity. State v. Miller, 573 N.W.2d 661, 673 (Minn. 1998). The Court must examine the totality of the circumstances in determining whether a statement was voluntarily given. Id. "The requisite factors include the defendant's age, maturity, intelligence, education, experience, and the ability to comprehend; the adequacy or lack of a warning; the length and legality of the detention; the nature of the interrogation; and whether the defendant was denied access to family and friends or deprived of physical needs." Id. The State must show by a preponderance of the evidence that a statement was voluntary. State v. Blom, 682 N.W.2d 578, 614 (Minn. 2004). Intoxication can implicate whether a statement is voluntarily given, as intoxication can increase a suspect's susceptibility to coercive interrogation. State v. Williams, 535 N.W.2d 277, 288 (Minn. 1995); State v. Garner, 294 N.W.2d 725, 727 (Minn. 1980).

While Trooper Larsen, on cross examination, testified that he did not know whether Defendant was under the influence of any drugs at the time of the interview, there is also no evidence that Defendant was under the influence of any drugs. Defendant is an employed adult. As already noted above, there was nothing coercive about the questioning. The testimony indicates that, with the aid of the interpreter, Defendant was

able to understand and make appropriate responses to inquiry. The questioning was relatively brief. Defendant was not deprived of any physical needs. There was no evidence of any threat, intimidation, or tricks. Given the evidence, under the totality of the circumstances, the State has shown by a preponderance of the evidence that the statement was voluntarily given. There is no evidence that Defendant lacks maturity or intelligence, and the answers to questions asked indicates that, even with a language barrier, Defendant was able to formulate answers that were responsive to the questions.

DMP
5-6-08

EXHIBIT F

AVERA MARSHALL REGIONAL MEDICAL CENTER
300 S. Bruce
Marshall, MN 56258

COPY

DISCHARGE SUMMARY

PATIENT NAME: NUNEZ MORALES, ALIANISS
DOB: 12/22/1984
MEDICAL RECORD #: 103964
DOCTOR: ANTHONY C NWAKAMA, M.D.
ROOM:

ADMISSION DATE: 02/19/2008
DISCHARGE DATE: 02/21/2008

ADMISSION DIAGNOSIS:

1. Motor vehicle accident.
2. Open right distal tib/fib fracture, pylon fracture.

DISCHARGE DIAGNOSIS:

1. Motor vehicle accident.
2. Open right distal tib/fib fracture, pylon fracture.

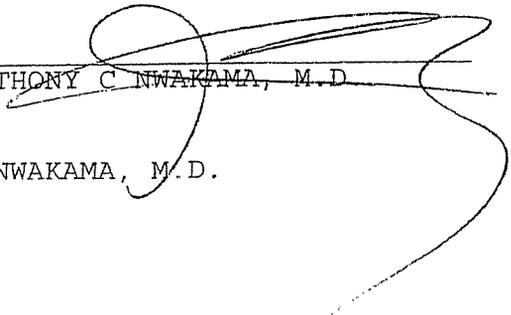
PROCEDURE:

1. Extensive irrigation and debridement.
2. Open reduction and internal fixation of distal tib/fib fracture.
3. Long leg splint with Robert Jones immobilization.

=====

HOSPITAL COURSE: Uneventful. The patient did well postoperatively. At the time of dismissal, the patient is tolerating oral pain medications well. She has been instructed in therapy and how to not put weight on it. She is to be non weight bearing. Would like the patient to return to see us in three weeks at the office in Marshall. The patient will continue taking antibiotics for the next two weeks. She will contact the office with questions or concerns. Phone numbers were give.

Other dismissal medications are well outlined on the dismissal forms.



 ANTHONY C NWAKAMA, M.D.

02/21/2008 10:15 D: ANTHONY C NWAKAMA, M.D.
02/22/2008 T: jmt

EXHIBIT G

COPY

AVERA MARSHALL REGIONAL MEDICAL CENTER
300 South Bruce Street
Marshall, MN 56258

HISTORY/PHYSICAL--PAGE 2

NAME: NUNES MORALES, ALIANS
MR #: 103964
DOB: 12/22/1984
DOCTOR: JILL M VROMAN, DO
ADMIT DATE: 02/20/2008
ROOM: 218 1

EXTREMITIES: +2/4 radial pulse. Ankle finds a distal open
comminuted fracture.
PELVIS: No pelvic pain.
ABDOMEN: Soft. There is no distention. No
tenderness.
NEUROLOGICAL: Oriented x3.

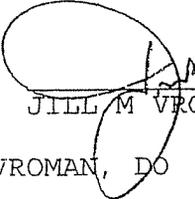
DIAGNOSTICS: Chest x-ray shows no acute pathology. X-ray of the
foot shows displaced open comminuted tib-fib fracture.

CBC within normal limits. QUANT is negative.

ASSESSMENT AND PLAN:

1. Right distal tib-fib fracture; status post MVA.
2. Need for surgery. At this point, the patient will be
cleared for this.
3. I did do a conscious sedation with reduction of the ankle.
Unfortunately, I was not completely able to get it back to
place but it was improved. She did have pulses. I have
consulted Dr. Nwakama who has agreed to take her to surgery.
I have given her antibiotics. I have also given her DTAP
and started IV fluids.

Over 45 minutes in critical care time was spent with this
patient. Dr. Nwakama to resume care for surgery.



JILL M VROMAN, DO

02/19/2008 17:54 D: JILL M VROMAN, DO
02/20/2008 T: mjo
REVISED: Addition of ROS - 02/20/2008 T:mjo

EXHIBIT H

Minimum requirements for safe conscious sedation of adult patients in the A&E department

Conscious sedation should be used to alleviate patient anxiety, distress and pain associated with procedures in the A&E department. It should only be used once other methods of managing the patient have been excluded. It should **NEVER** be used for operator convenience.

Conscious sedation is defined as:

"A technique in which the use of a drug or drugs produces a state of depression of the central nervous system enabling treatment to be carried out, but during which **verbal contact with the patient is maintained throughout the period of sedation**. The drugs and techniques used to provide conscious sedation ...should carry a margin of safety wide enough to render loss of consciousness unlikely."¹

The benefits of conscious sedation must always be weighed against the risks of the procedure including hypoxia, aspiration of gastric contents and death.

Indications for conscious sedation in the A&E department

Reduction of dislocated shoulder, elbow, patella, ankle, TMJ
Reduction of displaced distal radial fractures
Cardioversion

If conscious sedation in the A&E department is contemplated for indications other than those on this list, permission must be gained from the duty A&E consultant.

1. Consent

Informed consent must be gained from all patients in whom conscious sedation is contemplated. Dedicated consent forms must be used.

2. Environment

Conscious sedation must be performed in a suitable environment. Resuscitation equipment must include suction, basic airway adjuncts and a self inflating bag and mask. Intubation equipment must also be immediately available. Oxygen must be administered throughout the procedure if Entonox is not used.

There must be adequate space for the administration of sedation, performance of the procedure and the management of any complications.

There must also be easy access to additional staff, ideally without the need for any caregiver to leave the patient.

Conscious sedation must only be performed in the **RESUSCITATION ROOM**.

3. Personnel

There must be a minimum of **two medically qualified staff** with the patient once sedation is initiated. The doctor responsible for sedation should not have any involvement with the performance of the procedure. The presence of a third member of staff is recommended.

The doctor responsible for sedation must have sufficient training and experience to be competent in its use. This competence includes but is not limited to the indications, contraindications and the administration of the sedative drug(s) and the **recognition and management of any complications** of the drug(s) used². The doctor **must** be able to manage airway obstruction and respiratory depression.

The presence of a middle grade or consultant is strongly recommended. When conscious sedation is planned, the doctor in charge of the department must always be informed. The doctor in charge should also be notified at the start of the procedure.

4. Drugs

A comprehensive assessment of the suitability of conscious sedation for the patient should be made. This should include co-morbidity, current medication and drug sensitivity. If doubt exists as to the appropriateness of conscious sedation, advice should be sought from the consultant in A&E or an anaesthetist.

The use of multiple drugs increases the risk of complications hence the utilisation of a single sedative agent is recommended. If patients have already received analgesia prior to the sedation the increased effect of the sedative should be accounted for in the rate of titrated administration.

The choice of sedative agent is the responsibility of the doctor in charge of the sedation. The doctor must have adequate experience and training in the use of that drug and it should also be appropriate for that particular patient. Drugs such as propofol and etomidate should only be used by doctors who have undergone additional training in anaesthesia.

Sedative agents must be **TITRATED SLOWLY**. They must **NEVER** be given in large boluses.

It must be recognised that the titrated amounts do not exert their effects instantaneously but take some time for their effect. Time must be allowed for this to occur prior to the use of further boluses. Familiarity with all aspects of the drug chosen is an essential part of the safe administration of conscious sedation.

ENTONOX must only be delivered by the patient's own inspiratory effort activating the flow. Staff must not override the demand valve to allow continuous delivery of the gas. If Entonox is not used, continuous **high flow oxygen** must be provided.

5. Access

Secure intravenous access must be gained **prior** to the administration of any sedation.

6. Monitoring

All patients undergoing conscious sedation must have 3 lead ECG, oxygen saturation and non-invasive blood pressure monitoring.

The heart rate, oxygen saturation and blood pressure should be recorded at five minute intervals until full wakefulness is attained.

7. Post procedure observation

The completion of the procedure is usually accompanied in a dramatic reduction in the patient's pain. This reduction of stimulation may lead to a diminution in the conscious level once the procedure ends.

Patients must not leave the resuscitation room until they have regained full wakefulness. The use of the post procedural sedation protocol on Ward 1 / CDU is strongly recommended.

Antagonists (eg Flumazenil, Naloxone) should rarely be necessary. Their use mandates a more prolonged period of observation in the Resuscitation room and a longer overall stay in the A&E department.

8. Discharge

The patient must only be discharged from the A&E department when the procedure has been successfully completed, follow up arranged and full recovery from the sedation has occurred.

The patient must be given appropriate post sedation instructions including advice regarding driving and be discharged to the care of a competent person in the community. If the procedure is performed in the evening or night, an overnight admission on Ward 1 / CDU should be considered.

Especially care should be taken when managing elderly patients both during the procedure and when contemplating discharge arrangements.

Comprehensive notes should be made of the entire procedure including the names of all personnel involved.

References

1. Implementation and ensuring Safe Sedation Practice. Report of an Intercollegiate Working Party chaired by the Royal College of Anaesthetists.
2. American College of Emergency Physicians: Clinical Policy for Procedural Sedation and Analgesia in the Emergency Department. *Ann Emerg Med* 1998;31:663-667.
3. Chudnofsky C, Lozon M. Sedation and Analgesia for Procedures. Rosen's Emergency Medicine 5th ed. Mosby. St Louis. 2002.

EXHIBIT I

Fractures, Ankle

Last Updated: November 15, 2006

Synonyms and related keywords: ankle fracture, broken ankle, ankle joint, Maisonneuve fracture, medial malleolus fractures, open ankle fractures, pilon fracture, pediatric ankle fractures, posterior malleolar fractures, ankle pronation-external (eversion) rotation injuries, ankle supination, adduction injuries, ankle supination external (eversion) rotation injury, ankle syndesmotic injury, ankle trimalleolar fracture, vertical loading of the ankle, pronation dorsiflexion injury, ankle trauma

* * *

- Closed reduction is accomplished as follows (refer to Dislocations, Ankle for specific techniques):
 - The orthopedic consultant typically reduces ankle fractures. Ankle dislocations are reduced easily, and emergency physicians should be skilled in their initial management; however, immediate reduction of a dislocation is not required unless blood flow to the foot is compromised.
 - Provide either local anesthesia with a hematoma block or conscious sedation. Because hematoma blocks prevent respiratory depression, they are useful in high-risk patients such as intoxicated patients, older persons, and children.
 - Closed reduction is best achieved by manipulating the limb to reverse the direction of the original deforming forces. For example, a fracture-dislocation resulting from abductive stress requires pushing the affected site in an adduct direction to restore. Applying a concurrent distracting force often assists reduction attempts.
- Provide analgesics liberally, giving parenteral agents when patients may require emergent or urgent surgery.

* * *

For conscious sedation, agents include short-acting sedative-hypnotics and opiate analgesics, usually in combination. In addition, administer tetanus prophylaxis for open fractures.

EXHIBIT J

TIME (24 Hr)	TIME (12 Hr.)	TIME NOTE	ACTIVITY	PERSON
17:10	5:10:00 PM	Time occurred	chest and right ankle X-rays	Nurse's Notes
17:15	5:15:00 PM	Time occurred	Tetnus; EKG	Nurse's Notes
17:24	5:24:00 PM	Time occurred	blood drawn in ER for HCG screen, negative, and Hematology, with several results not within upper or lower limits of normal	Nurse's Notes
17:26	5:26:00 PM	Time occurred	Anaf given 1 gm NOW; morphine 2 mg	Nurse's Notes
17:40	5:40:00 PM	Time occurred	Morphine 2 mg	Nurse's Notes
17:40	5:41:00 PM	Time occurred	Dr. did the ankle (conscious sedation reduction)	Nurse's Notes
17:54	5:54:00 PM	Time dictated	Conscious sedation reduction of ankle	Jill Vroman, D.O.
17:54	5:54:00 PM	Time dictated	gave antibiotics	Jill Vroman, D.O.
17:54	5:54:00 PM	Time dictated	Gave DTAP (diphtheria tetnus and pertussis booster shot)	Jill Vroman, D.O.
17:54	5:54:00 PM	Time dictated	Started IV fluids	Jill Vroman, D.O.
18:00	6:00:00 PM	Time occurred	Medications: IV morphine, IV Zofran, IV Anaf	Nurse's Notes
18:05	6:05:00 PM	Time occurred	to 2nd floor, stable	Nurse's Notes
18:20	6:20:00 PM	Time occurred	Admitted from ER	Nurse's Notes
18:37	6:37:00 PM	Time occurred	Medications: IV morphine, IV Zofran, IV Medication Administration Record. Morphine 2mg every hour; Zofran 4 mg every six hours	Nurse's Notes
18:48	6:48:00 PM	Time occurred	Triage OSF observations notes: Morphine 4 mg NOW; morphine 2 mg prn pain; chest X-ray done; ankle X-ray done; CBC done; Hep done	Nurse's Notes
19:00	7:00:00 PM	Time occurred	Surgery consent signed (note, OF's signature on Consent differs from signature on Release of Info)	Anthony S. Nwakama, M.D.
19:15	7:15:00 PM	Time occurred	STATEMENT COMMENCED	Trooper Dana Larson
19:28	7:28:00 PM	Time dictated	Current medications: Morphine. IV sedation initially	Anthony S. Nwakama, M.D.
19:28	7:28:00 PM	Time dictated	Notes patient "in severe distress secondary to the event, quite afraid."	Anthony S. Nwakama, M.D.
19:28	7:28:00 PM	Time dictated	Notes medications as DTAP, antibiotics, pain meds	Anthony S. Nwakama, M.D.
19:54	7:54:00 PM	Time occurred	Patient down to surgery at this time	Nurse's Notes
20:07	8:07:00 PM	Time occurred	Patient to OR via bed	Nurse's Notes

20:15	8:15:00 PM	Time occurred	On table	Nurse's Notes
20:58	8:58:00 PM	Time occurred	surgery began	Anthony S. Nwakama, M.D.
20:58	8:58:00 PM	Time occurred	Incision	Anthony S. Nwakama, M.D.
23:40	11:40:00 PM	Time occurred	Closure	Anthony S. Nwakama, M.D.
0:05	12:05:00 AM	Time occurred	Off table	Anthony S. Nwakama, M.D.

Exhibit L

AVERA MARSHALL REGIONAL MEDICAL CENTER
 300 South Bruce Street -- Marshall, MN
 (507) 537-9179

56258
COPY

Patient Name: MORALES, ^{Alicia}ADRIANA
 Med Rec# 103964
 Admitting Doctor:
 Report Date/Time: 02/19/08 17:28

DOB: 12/23/1984
 Acct#ER317742
 Room: E/R Sex: F

Requesting Doctor: QUREISHY, OMER Collect Date/Time/Initials: 02/19/08 17:24 RLE Priority: STAT Collection Location: E/R
 Accession Number: 050-0073 Order Date/Time/Initials: 02/19/08 17:00 AFS HIS Order#:1

Test Name	Critical	Low	Normal	High	Abnormal/ Critical	Reference Range	Units	Init
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HEMATOLOGY

LEUKOCYTE COUNT				17.1 H		3.8-10.1	X10 ³ /uL	
RBC COUNT				5.36 H		3.90-5.20	X10 ⁶ /uL	
HEMOGLOBIN				15.9 H		12.0-15.6	G/DL	
HEMATOCRIT			45.6			35.0-46.0	%	
MCV			85.2			80.0-100.0	fL	
MCH			29.6			27.0-33.0	PG	
MCHC			34.8			32.0-36.0	%	
RDW		10.9 L				11.5-14.5		
PLT COUNT, AUTO			239			144-450	X10 ³ /uL	
SEGMENTED NEUT%				80 H		40-75	%	
LYMPHOCYTE %		14 L				18-47	%	
MONOCYTE %			5			0-10	%	
EOSINOPHIL %			1			0-6	%	
BASOPHIL %			1			0-2	%	

***** Permanent Report *****

Rpt Comment:

Patient Name: MORALES, ADRIANA
 Page: 1

Physician Initials:
 Nurse Initials:

OMF000052

ADMISSION PHYSICIAN'S ORDER SHEET

ORDERS: Another brand of generically equivalent product identical in dosage form and content of active ingredient may be administered unless checked.

DATE/TIME: _____ ADMIT TO: _____ Acute _____ Observation _____ Outpatient _____ Swing _____ Transitional _____

ADM. DR. JMV ATT. DR. JMV CONS. DR. _____

ALLERGIES: NKOA WT: _____

DIAGNOSIS: (D) Dist. Tib Fib Fracture

START: _____

(1) Consult Dr. Nuckem - Tib/Fib Fract

(2) Fios

(3) 9ms C 2000/hr IV

(4) NPO #4

(5) ~~Imids~~ (1) Morphine 2mg IV q 1hr

(2) Zofen 4mg IV q 6hr PRN

(3) Anaf 1gm IV q 8hr

(6) DTAP → Given

(7) Foley cath VO

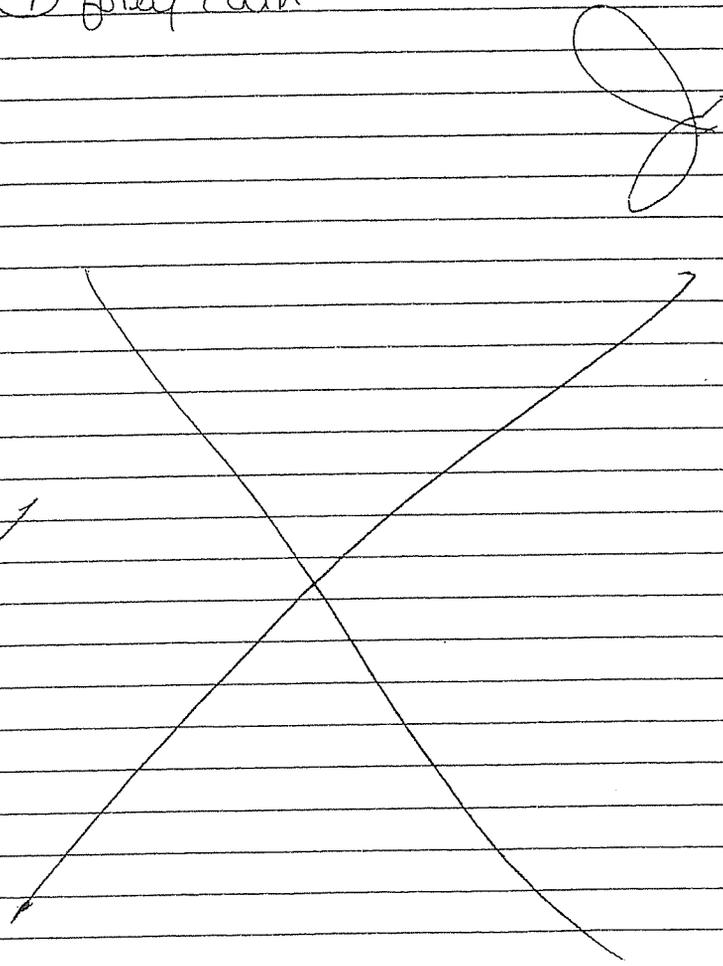
COPY

PHYSICIANS
 ANTHONY J. ANTHONY
 2/17/03
 MED
 MAKE
 01014142
 ALLIANCE
 R/R/S-21R

2-19-03
 1200

[Handwritten signatures and notes]

2-19-03
 1859





300 S. Bruce St.
Marshall, MN 56258
507-532-9661

MUNES MORALES, ALIANS
Nurses, Alians
12/22/1994
2/20/08
F
COPY
AVERA MARSHALL

MEDICATION ADMINISTRATION RECORD - 5 DAY

ALLERGIES: <i>N-11</i>		PRN MEDS				
Order Date	Medication	2/19	2/20	2/21	2/22	2/23
<i>2-19</i> <i>AMS</i>	<i>Morphine 2mg IV every 1hr</i> <i>PRN-pain</i>	<i>1837</i> <i>km</i>				
<i>2-19</i> <i>AMS</i>	<i>Zofran 4mg IV every 6hrs</i> <i>PRN- n/v</i>					
<i>2/20</i> <i>VS</i>	<i>vicodin 5/325 mg i or ii every 4 hrs</i> <i>i tab if pain < 3</i> <i>ii tabs if pain > 3</i>					
<i>2/20</i> <i>W</i>	<i>Phenergan 6.25mg IV every</i> <i>4hrs PRN for nausea</i> <small>PROMETHAZINE 25MG/ML SYRI (PHENERGAN EQUIVALENT) 25 MG Q4H PRN ORD#:25 PRN DOSE=6.25MG=0.25ML INJECTION START 02/20/08; LAST:05/20/08@2359 MUNES MORALES, ALIANS N/S/218/1 317742</small>	<i>X</i>	<i>1010BK</i>			
<i>2/20</i> <i>BC</i> <i>W</i>	<i>Motrin 600mg po every 6hrs</i> <i>PRN for pain + headache</i> <small>IBUPROFEN 600MG TABLET U- (MOTRIN EQUIVALENT) 600 MG Q6H PRN ORD#:27 PRN FOR PAIN AND HEADACHE W/ FOOD ORAL START 02/20/08; LAST:05/20/08@2359 MUNES MORALES, ALIANS N/S/218/1 317742</small>		<i>0930BK</i>			

Signature/Initials	Signature/Initials	Signature/Initials	Signature/Initials	Signature/Initials
1)	1) <i>[Signature]</i>	1) <i>Karen Maher [Signature]</i>	1) <i>[Signature]</i>	1) <i>[Signature]</i>
2)	2)	2)	2)	2)
3)	3)	3)	3)	3)

DATE: 2/19/08
H: 1900
ATC: VEGAL

CONSENT TO MEDICAL/SURGICAL TREATMENT

COPY

I, Aliquis Nunez-Morales consent to the procedure or treatment to be performed by Dr. Nizakama which has been explained to me in terms I could understand including:

1. The diagnosis and the nature of my illness or condition.
2. The proposed procedure or treatment, open tib/Fib Fracture which was described as: ORIF Right ankle
Open reduction fracture ankle fracture
wash out of open fracture
3. Alternative forms of treatment or procedures including the option of no treatment or procedure.
4. The potential benefits and risks of the proposed treatment or procedure and of alternative forms of treatment or procedures.
5. Potential medical or major psychological outcome of the treatment or procedure and its alternatives, including possible complications or problems during recuperation.

I acknowledge that medicine is not an exact science and that no guarantee or assurance has been given by anyone as to the results that may be obtained by my consent to treatment or procedure.

I acknowledge the discussion which took place regarding the information noted above and hereby authorize my physician to perform the proposed procedure or treatment. I further authorize my physician, his/her assistants, consultants, or designees to perform such procedures as are necessary, in the exercise of his/her judgment, to remedy unforeseen acute conditions which may be revealed during the course of the original treatment.

I consent to the use of such anesthetic agents and procedures as are deemed necessary and advisable by the anesthesia provider and such anesthetic agents and procedures in addition to or different from those contemplated which the doctor and/or anesthesia provider consider necessary or advisable in the course of the operation.

I recognize that a technician or representative from a surgical/medical device manufacturer may be present during the procedure for consultation with my physician.

For the purpose of advancing medical education, I consent to having medical observers view the procedure/ treatment.

Tissues or other body parts, surgically removed may be disposed of by the hospital in accordance with hospital regulations.

I consent to the photographing of the operation or procedures to be performed for scientific or educational purposes, provided my identity is not revealed by the picture or by accompanying descriptive texts.

X Aliquis Nunez M. 2/19/08 1900
Patient, Parent or Legal Guardian Signature/ Date Time
Relationship to Patient

Karen Maher 2/19/08 1900
Witness Signature Date Time

Physician's Affirmation of Discussion

I acknowledge that I have explained the risks, benefits, potential complications, and alternatives to the procedure or treatment and/or sedation. I have provided the patient, parent or legal guardian complete and current information regarding the applicable points noted above which concern the course of treatment I am recommending for the patient. I also gave the patient an opportunity to ask questions and I answered those questions in terms the patient could understand to his/her satisfaction.

Physician Signature [Signature] Date _____ Time _____



300 S. Bruce St.
Marshall, MN 56258
507-532-9661

EXHIBIT Q (2)

103964

COPY

NAME Alianiss Nunes Moraes

PATIENT NUMBER 317742

PATIENT'S AUTHORIZATION FOR RELEASE OF INFORMATION

The Avera Marshall Regional Medical Center often receives inquiries from the media for information concerning patients at the center. In order to assist the Avera Marshall Regional Medical Center in responding to such inquiries from the media, I understand that I must make certain decisions regarding whether I want said information released to the media. I also understand that my decision whether or not to authorize the release of such information will not affect my medical treatment at the Avera Marshall Regional Medical Center in any way.

I understand and acknowledge that should I authorize the release of such information, the Avera Marshall Regional Medical Center has no control over and is not responsible for the media's use and distribution of the information.

Avera Marshall Regional Medical Center is a public hospital and pursuant to Minnesota Statutes Chapter 13.42 must give to the media, including, but not limited to, newspapers, television and radio "directory information" about its patients. "Directory information" includes name of patient, date admitted, general condition, and date released. Directory information is public data and available to the media unless you request otherwise.

Having read the above and having been given the opportunity to have any questions or concerns I have regarding the authorization answered:

I hereby DO authorize release of directory information.



X Alianiss Nunes Moraes
Patient's Signature Date

Next of Kin or Legal Guardian Date

I hereby DONOT authorize release of directory information.

Patient's Signature Date

Next of Kin or Legal Guardian Date

AVERA MARSHALL REGIONAL MEDICAL CENTER
OPERATING ROOM NURSE RECORD

EX 11017

COUNTS _____ None

	1st	2nd	Fin	Init	<input checked="" type="checkbox"/> Correct Count	<input type="checkbox"/> Incorrect Count
Lap Sponges (all)	5		5	1		
Raytec - 4x4 s	10		10			<input type="checkbox"/> Surgeon notified
Knitners (Pearl's)						<input type="checkbox"/> X-ray done
Tonsil Sp						<input type="checkbox"/> Report to surgeon
Needles	5		5			<input type="checkbox"/> Supervisor notified
Knife Blades	5		5			Comments _____
Instruments	nypos	2	2			Circulator <u>KRM</u>
						Scrub <u>FB</u>

COPY

ADDRESSOGRAPH STAMP HERE

Date 2/19/08 OR# 3

Pre-op Med Given: YES NO

Consent signed and correct

Lab Work complete

EKG

X-Ray done X-Ray film in OR

Safety Strap

H & P done

Dentures in mouth In patients room

Jewelry on patient on arrival to OR

Patient identified

Witnessed by KRM / interpreter here

Apparent emotional status calm anxious combative

depressed crying cooperative disconcerted

ALLERGIES: _____ None

TIME: _____

On table 2015 Anesthesia _____ Incision 2058

Closure 2340 Off Table 0005

- Scheduled
- Add on
- Emergency
- Cancel
- Delay

ANESTHESIA

General Spinal Block/Regional Local IV

Other (Specify) _____ Endotracheal Tube?

Anesthetist H Peterson CRNA

Relief _____ CRNA

POSITION Supine Prone Lateral

Jackknife _____ Lithotomy _____ Knee-Chest _____

Other _____

DIAGNOSIS & SURGERY

Surgeon's Preoperative Diagnosis fractured R tibia fib

Surgical Procedure: ORIF (R) ankle

Postoperative Diagnosis: same

WOUND CLASSIFICATION:

Clean II Clean-Contaminated III Contaminated IV Dirty & Infected

Comments _____

COMPLICATIONS

CONDITION Good Fair Poor Expired

SURGEON Nwakama

Assistant 1 _____

2 _____

SCRUB NURSE F Bursack LPN

CIRCULATING NURSE B Matzner RN

Observers Crickson None

Other _____ None

PREPS 10 min betadine scrub (KRM) None

Prep Sol. Draped ACN site (R) fact -> thigh

Condition of Skin WASH broken skin @ thigh

ELECTROCAUTERY: _____ None

Machine No. Valleylab Ground Pad Location: thigh

Cond skin after rem will

TOURNIQUET: _____ None

Tourniquet: On 2100 Off 2319 Pressure 300 Loc thigh

Cond skin after rem will

FOLEY CATHETER:

In Place To OR Inserted In OR Size _____

Amount of Fluid In Balloon _____ Inserted By _____

TUBES DRAINS, PACKING _____ None

Type _____

Location _____

SPECIMENS _____ None

Specimen to Lab # of Specimens _____ Specimen to X Ray

Frozen Section Other to lab _____

CULTURES _____ None

Culture # of Cultures _____

Culture Site: _____

PROSTHETIC DEVICES - IMPLANTS _____ None

Came to OR with _____

Implanted in OR plate and screws

Kinds/Sizes _____

Lot/Serial No _____

X-RAYS C-arm None

LAB _____ None

Blood Work while in OR _____

Blood/Blood Components _____

ESTIMATED BLOOD LOSS _____ Not Estimated

Amount _____

MEDICATIONS _____ None

Solutions IV's given by OR Nurse

Medications given by OR Nurse bactroban ointment

Double antibiotic solution

VO Dr ACN per KRM

Solutions Irrigations Double antibiotic sol.

Dressings Adaptic, 4x4s ABDS w/brnl

DISCHARGED TO: Rec Rm ICU Nsg Unit Other Relief

NURSING NOTES _____ None

SD on left leg prior to intubation

following spinal

Interpreters here through intubation

then to waiting room.

Completed By K Matzner R.N.

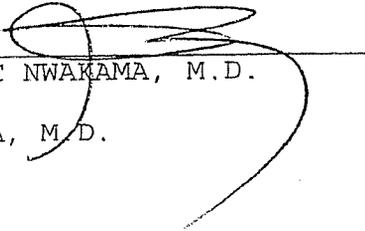
COPY

AVERA MARSHALL REGIONAL MEDICAL CENTER
300 South Bruce
Marshall, MN 56258

OPERATION RECORD-PAGE 2
PATIENT NAME: NUNES MORALES, ALIANISS
DOB: 12/22/1984
MR#: 103964
PHYSICIAN: ANTHONY C NWAKAMA, M.D.
ROOM#: 218 1

over the medial aspect of the distal aspect of the leg. The leg was elevated tourniquet inflated to 300 mm of mercury. We first excised the wound, excising the skin, the adipose tissue. We then irrigated the wound. The bone was obviously protruding this area. We irrigated with three liters of antibiotic impregnated saline with pulsatile lavage system. Any loose bone was removed. Following adequate irrigation, attention was then paid over to the lateral aspect of the ankle where we made an incision over the lateral aspect of the fibula. We reduced the fibula and assembled an 8-hole locking semitubular plate. Through this we placed both locking and unlocking screws.

Attention was then directed to the tibia plafond or pylon fracture. We manipulated this and reduced it. A shank screw or partially threaded Steinmann pin was placed through the medial malleolus to engage the proximal aspect of the fragment. This appeared to maintain the reduction quite well. The joint line was reduced. Two 4.0 cannulated screws were placed. We then noticed that there was some displacement. We made an incision over the joint. We inspected the joint and manipulated the anterior fragment, reduced it, and placed additional partially threaded 4.0 cannulated screws. Two screws were also placed through the fibula in to the tibia for additional support and also to the fix the syndesmosis. Following this, the wound was irrigated. Final pictures were taken. The wound was then closed in layers with interrupted 2-0 Vicryl in the lateral wound, and then 2-0 Nylon on the medial wound. Marcaine and Lidocaine were injected for postoperative pain control. Sterile dressing was applied. Robert Jones dressing with long leg splint was incorporated. The patient was extubated and taken to the recovery area in stable condition. There were no complications. Findings were discussed fully.

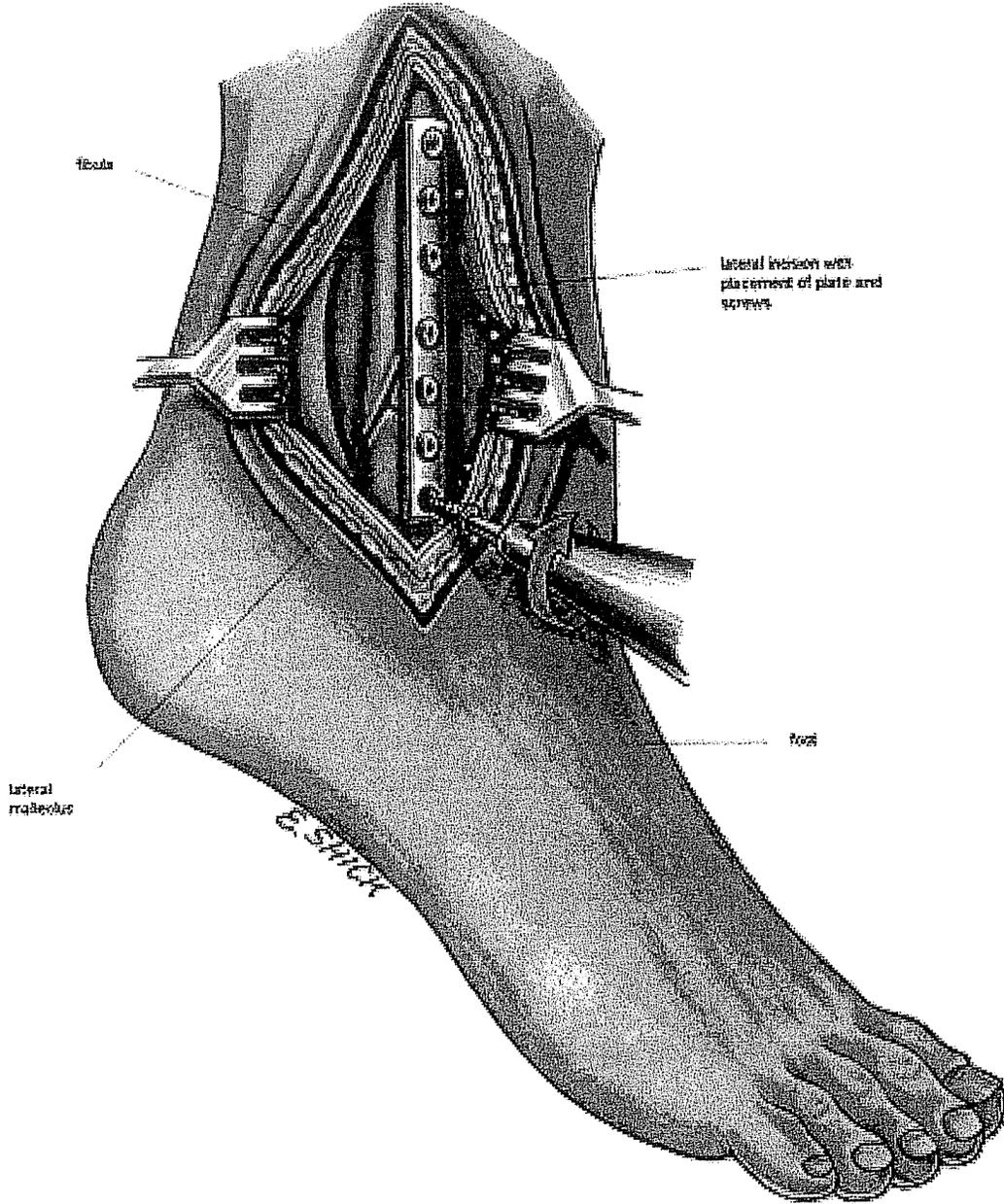

ANTHONY C NWAKAMA, M.D.

02/20/2008 00:06 D: ANTHONY C NWAKAMA, M.D.
02/20/2008 T: jmt

OMF000057

35:12:19 Ankle & foot; fibular fixation; lateral view;
treatment

FRANCO EXHIBIT T



Franco Exhibit U

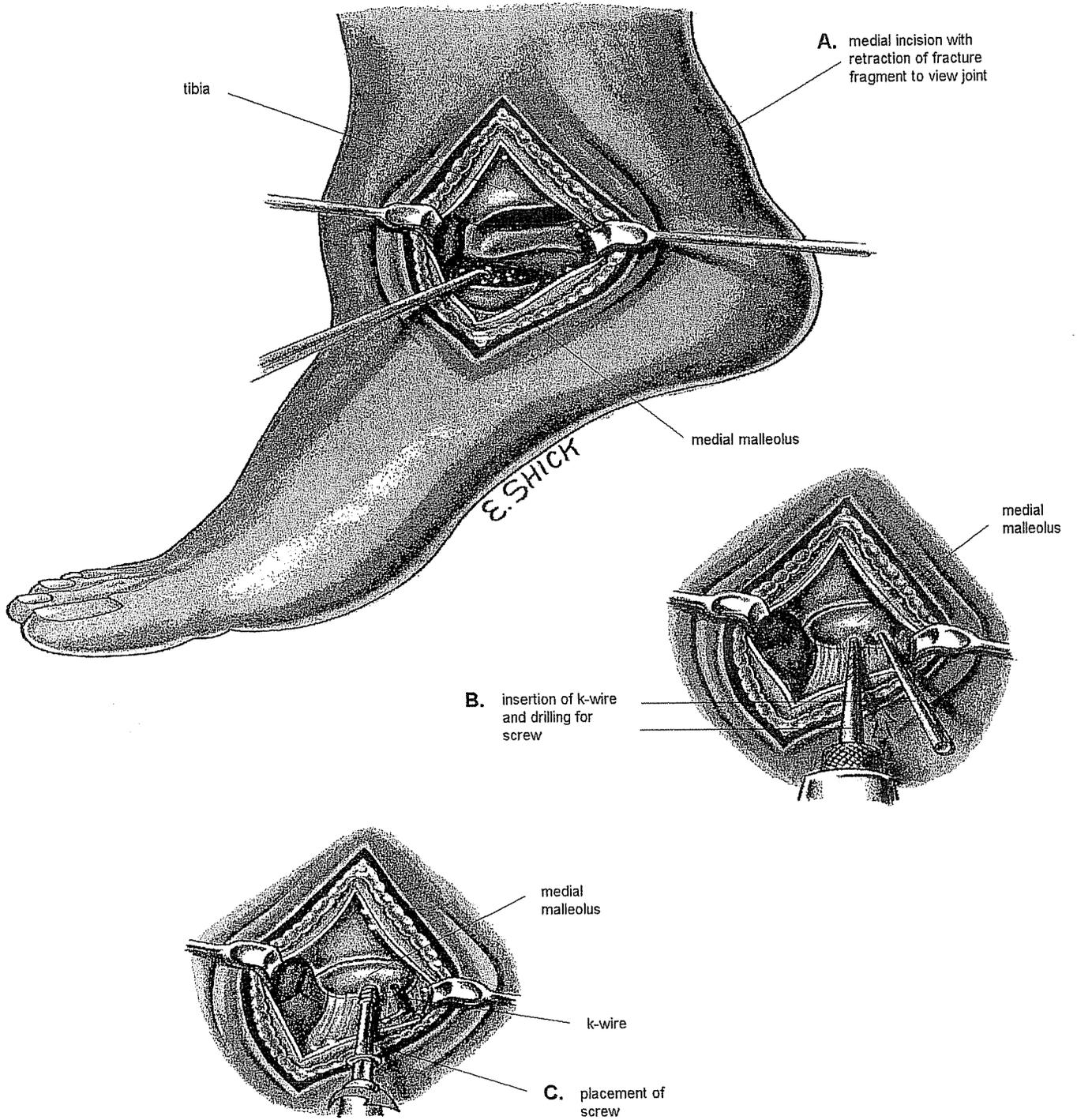


EXHIBIT V

List of drugs prescribed/administered Olga Franco
February 19, 2008.

MORPHINE

List of side effects with source of information for some
of the drugs/medications prescribed/administered Olga Franco
February 19, 2008.

<http://www.drugs.com/morphine.html>

(Last viewed 05 12 2008)

Morphine side effects

Get emergency medical help if you have any of these signs of an allergic reaction: hives; difficulty breathing; swelling of your face, lips, tongue, or throat. Call your doctor at once if you have any of these serious side effects:

- shallow breathing, slow heartbeat;
- seizure (convulsions);
- cold, clammy skin;
- confusion;
- severe weakness or dizziness; or
- feeling light-headed, fainting.

Less serious side effects are more likely to occur, such as:

- constipation;
- warmth, tingling, or redness under your skin;
- nausea, vomiting, stomach pain, diarrhea, loss of appetite;
- dizziness, headache, anxiety;
- memory problems; or
- sleep problems (insomnia).

This list is not complete and other side effects may occur. Tell your doctor about any unusual or bothersome side effect.

Brand name:

Zofran

Generic name: Ondansetron hydrochloride

Why is Zofran prescribed?

[Return to top](#)

Zofran is used for the prevention of nausea and vomiting caused by radiation therapy and chemotherapy for cancer, and, in some cases, to prevent these problems following surgery.

Most important fact about Zofran

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To ensure the maximum effect, it is important to take all doses of Zofran exactly as prescribed by your doctor.

How should you take Zofran?

[Return to top](#)

Your doctor will tell you how much drug to take and how often, depending on the type of therapy you will be having.

Zofran is available in three forms: an oral solution, tablets that you swallow with water, and orally disintegrating tablets that can be swallowed with saliva alone (Zofran ODT). If you're taking the orally disintegrating tablets, don't remove them from the blister pack until it's time for a dose. Then peel off the foil backing with dry hands, gently remove the tablet, and immediately place it on your tongue. Do not attempt to push the tablets through the foil.

- *If you miss a dose...*
Take the forgotten dose as soon as you remember.
 - *Storage instructions...*
Store Zofran at room temperature. Protect from light. Keep the drug in the carton it came in. Store oral solution bottles upright.
-

What side effects may occur?

[Return to top](#)

Side effects cannot be anticipated. If any develop or change in intensity, inform your doctor as soon as possible. Only your doctor can determine if it is safe for you to continue taking Zofran.

- *Side effects may include:*
Blurred vision, constipation, diarrhea, dizziness, fatigue, headache

- *When Zofran is used to prevent nausea and vomiting after surgery, the following side effects may occur:*
Anxiety, difficulty breathing, difficulty urinating, dizziness, drowsiness, female reproductive disorders, fever, headache, itching, low blood pressure, shivers, slow heartbeat

Why should Zofran not be prescribed?

[Return to top](#)

If you are sensitive to or have ever had an allergic reaction to ondansetron hydrochloride, you should not take this medication. Make sure that your doctor is aware of any drug reactions that you have experienced.

Special warnings about Zofran

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If drugs similar to Zofran have given you a reaction, Zofran may cause one too. If you suffer from phenylketonuria (an excess of the amino acid phenylalanine) remember that Zofran contains this substance.

Possible food and drug interactions when taking Zofran

[Return to top](#)

No interactions with Zofran have been reported.

Special information if you are pregnant or breastfeeding

[Return to top](#)

The effects of Zofran during pregnancy have not been adequately studied. If you are pregnant or plan to become pregnant, inform your doctor immediately. Zofran may appear in breast milk and could affect a nursing infant. If this medication is essential to your health, your doctor may advise you to discontinue breastfeeding until your treatment with this medication is finished.

Recommended dosage for Zofran

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Dosage is the same for both regular and orally disintegrating tablets. If you have poor liver function, you should take no more than 8 milligrams of Zofran per day.

PREVENTION OF NAUSEA AND VOMITING DUE TO CHEMOTHERAPY

Adults and Children 12 Years of Age and Older

The recommended dose of Zofran is one 8-milligram tablet or 2 teaspoonfuls of oral solution taken twice a day. The first dose should be taken 30 minutes before the start of treatment. The other dose should be taken 8 hours after the first dose. One 8-milligram tablet or 2 teaspoonfuls should be taken twice a day (every 12 hours) for 1 to 2 days after completing chemotherapy.

If the chemotherapy is especially likely to cause nausea and vomiting, the recommended dosage is one 24-milligram tablet taken 30 minutes before the treatment.

Children 4 through 11 Years of Age

The recommended dose of Zofran is one 4-milligram tablet or 1 teaspoonful of oral solution taken 3 times a day. The first dose should be taken 30 minutes before the start of chemotherapy. The other 2 doses should be taken 4 and 8 hours after the first dose. One 4-milligram tablet or 1 teaspoonful should be taken 3 times a day (every 8 hours) for 1 to 2 days after completing chemotherapy.

PREVENTION OF NAUSEA AND VOMITING DUE TO RADIATION THERAPY

Adults

The usual dosage is one 8-milligram tablet or 2 teaspoonfuls of oral solution taken 3 times a day. You will take the first dose 1 to 2 hours before therapy; the other intervals will depend on the type of radiation therapy you are receiving.

Children

Zofran has not been used for this purpose in children.

PREVENTION OF NAUSEA AND VOMITING AFTER SURGERY

Adults

The usual dose is two 8-milligram tablets or 4 teaspoonfuls of oral solution taken 1 hour before undergoing anesthesia.

Children

Zofran has not been used for this purpose in children.

Overdosage

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Any medication taken in excess can have serious consequences. If you suspect an overdose, seek medical attention immediately.

- *Symptoms of Zofran overdose may include:*
Low blood pressure and fainting, sudden blindness, severe constipation

EXHIBIT Y COPY

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STATE OF MINNESOTA
COUNTY OF LYON

IN DISTRICT COURT
FIFTH JUDICIAL DISTRICT

STATE OF MINNESOTA,
Plaintiff,
vs.
ALIANISS NUNEZ MORALES,
Defendant.

File No. 42-CR-08-220
TRANSCRIPT OF PROCEEDINGS
OMNIBUS HEARING
April 22, 2008

The above-entitled matter came before the Honorable David W.
Peterson, Judge of District Court, in the courtroom of the Lyon
County Courthouse, City of Marshall, State of Minnesota, on the
22nd day of April, 2008.

APPEARANCES

For the Plaintiff:

Richard R. Maes
Lyon County Attorney
Lyon Co. Government Center
607 West Main
Marshall, MN 56258

For the Defendant:

Manuel P. Guerrero
Tamara Caban-Ramirez
Attorneys at Law
148 Farrington Street
St. Paul, MN 55102

Laurie J. Fox
Official Court Reporter

RECEIVED
5-27-08

TROOPER DANA LARSEN - Direct

1 department was that?

2 A. One year with Lake Benton and two years with Windom,
3 Minnesota.

4 Q. Three years with the sheriff's department was with who?

5 A. And that was Cottonwood County in Windom.

6 Q. Trooper, what are your primary duties as it relates to your
7 current position?

8 A. Okay, I'm a patrol trooper in Marshall, and our duties are
9 public safety, investigate accidents, things that occur on the
10 state highways.

11 Q. Were you working on February 19th of this year?

12 A. Yes, I was.

13 Q. During the afternoon were you called out to a matter outside
14 of Cottonwood?

15 A. Yes, I was.

16 Q. And what was that?

17 A. We received a report, the initial report that I received was
18 that there was a school bus crash on a county road, and if we
19 could assist the Lyon County Sheriff's Department with that --
20 with that crash.

21 Q. Did you go out to this area?

22 A. Yes, I did.

23 Q. And can you describe what the scene looked like to the Court?

24 A. When I arrived at the scene the crash was on the state
25 highway. I came from Marshall and as I approached the scene

1 there was -- basically the traffic was completely stopped on
2 the highway. On the east side of the road there was a school
3 bus tipped over onto its left side, and so I -- I parked my
4 police car on the right-hand -- or left-hand side of the road,
5 and pretty much began to size up the scene. There was First
6 Responders there, along with a couple of Sheriff's deputies.
7 In front of me there was a maroon mini-van, and so I went and
8 checked that.

9 Q. All right, was there anyone in the mini-van?

10 A. Yeah, the driver was still pinned behind the wheel.

11 Q. And were you able to identify at some point who that driver
12 was?

13 A. Yes.

14 Q. How did you do that?

15 A. We did not identify her until, you know, at the scene I
16 noticed it was a female driver, that we did not -- able to get
17 any identification on her until later that evening at the
18 hospital.

19 Q. All right, and so you ended up going to the hospital following
20 the crash?

21 A. Yes.

22 Q. And what was the purpose of going to the hospital?

23 A. To identify the driver and -- and basically just to find out
24 whatever information that we could on -- on the cause of the
25 crash.

1 Q. Do you recall what time you went to the hospital?

2 A. I'd have to look in my report here.

3 MR. MAES: Your Honor, may the officer refresh his
4 memory from his report?

5 THE COURT: You may.

6 THE WITNESS: I do not -- in my report I do not have
7 the exact time that I went to the hospital or the information
8 that I have with me here today.

9 BY MR. MAES:

10 Q. All right. From the statement of the -- was it a recorded
11 statement?

12 A. Yes.

13 Q. From the recorded statement if it indicates it was around 7:15
14 in the evening, does that sound accurate?

15 A. That would be correct.

16 Q. Now, did you go there by yourself or were you with someone
17 else?

18 A. Sargent Dean Koenen was already at the hospital before I got
19 there, and he went up to the hospital room with me.

20 Q. All right. How did you find out which room to go to?

21 A. After we got -- we had a briefing at the hospital and I asked
22 the hospital director if she knew where the driver of the van
23 was taken to --

24 Q. And you were directed to her room?

25 A. -- and so then they walked us up to that room.

1 Q. All right. When you went into the room who was there?

2 A. There was a interpreter there for the hospital, and I think,
3 and I'm not for sure, there may have been another person in
4 that room, but I don't know who that was?

5 Q. All right, do you know who the interpreter for the hospital
6 was?

7 A. Yes.

8 Q. Who is that?

9 A. She identified herself as, and I'm going to look on my report,
10 I know her first name was Susie, now I'll look here.

11 Q. Now, Trooper, you've prepared multiple reports relating to
12 this bus crash, is that correct?

13 A. That would be correct. Susy Campos, C-a-m-p-o-s.

14 Q. All right. Now, with the aid of the hospital interpreter did
15 you talk to the person in that room?

16 A. Yes.

17 Q. And did you find out that person's name?

18 A. Yes.

19 Q. What was that?

20 A. And she said her name was Alianiss Nunez Morales, and the
21 spelling I have on that is A-l-i-a-n-i-s-s, is the first name.

22 Q. All right, and did you obtain a date of birth?

23 A. Yes.

24 Q. That is what?

25 A. I'm going to have to find that. 12/22/1984.

1 Q. So, were you relying on what the interpreter told you?

2 A. Yes.

3 Q. What was the reason again for you going to the hospital?

4 A. It's just an investigative information so we can gather
5 information for our crash investigation.

6 Q. All right. Based on your interview with the aid of the
7 interpreter of the person who identified herself as Ms.
8 Morales, what did you learn?

9 MR. GUERRERO: Excuse me, Judge, that was Ms. Campos
10 that was the interpreter.

11 THE COURT: Very well, were you referring to the
12 defendant or the interpreter?

13 MR. MAES: I was referring to the -- the interview
14 with the defendant with the aid of the interpreter.

15 THE COURT: You may proceed.

16 BY MR. MAES:

17 Q. What did you learn about the accident?

18 A. That she was traveling on the county road. She told us at the
19 time that she did stop at the stop sign, and that she had
20 pulled out and the bus had hit her.

21 Q. Based on the -- the interview, did you have a understanding of
22 who was driving?

23 A. Yes.

24 Q. Who was that?

25 A. Well, that would be her, Alianiss Morales, because she was --

1 crime, did you?

2 A. No.

3 Q. Did -- were you present at all times when Officer or Trooper
4 Koenen was at the hospital?

5 A. No.

6 Q. Now, just to get this straight, this happened -- this first
7 interview happened about three or four hours after the
8 accident, is that not correct?

9 A. That would be correct.

10 Q. And Ms. Franco was under the influence of certain drugs at
11 that point, hadn't she?

12 A. That I don't know.

13 Q. Well, did you ask her?

14 A. No.

15 Q. Did you ask the medical personnel whether or not she had been
16 drugged?

17 A. No.

18 Q. The point is you did not *Mirandize* her on that date of
19 February 19, did you?

20 A. No.

21 Q. And do you recall during that interview on February 19 that
22 the def -- that Ms. Franco told you that she was driving?

23 A. She didn't need to.

24 Q. And she didn't need to because as you said on two occasions in
25 your direct examination that she was pinned between the wheel

TROOPER DANA LARSEN - Cross

1 or behind the wheel?

2 A. Yes.

3 Q. Now, did you take any photographs of that?

4 A. No.

5 Q. Did any of your staff take photographs of her behind the
6 wheel?

7 A. No.

8 Q. By the way, are you the lead investigator in this case?

9 A. Yes.

10 Q. And are you the one that told her that she -- she -- that you
11 knew that she was the driver because you had found her
12 fingerprints on the steering wheel?

13 A. No.

14 Q. Do you know who that trooper was?

15 A. No, I don't know.

16 Q. Were there other trooper -- other state troopers that
17 interviewed Ms. Franco besides you?

18 A. No.

19 Q. Do you know whether or not any deputy sheriffs interviewed
20 her?

21 A. That I don't know.

22 Q. Now, you told the Judge that there was some confusion at the
23 booking process on February the 21st about whether or not she
24 had been advised of her *Miranda* rights, is that correct?

25 A. She had been advised --

1 Q. Now, later on you did -- what did you do to look for Mr.
2 Mendoza?

3 A. Didn't do anything except for INS trying to locate him.

4 Q. But on February 21st, two days after the accident, Mr. Franco
5 told you that her boyfriend was driving, right?

6 A. Yes.

7 Q. And the following day, February 21st -- or 22nd, you went to the
8 trailer and you located who it was that the boyfriend was,
9 isn't that correct?

10 A. I was not there, no.

11 Q. But -- but law enforcement, plus ICE officials were there, is
12 that not correct?

13 A. That -- let me verify that date. Yeah, the 22nd, is that was
14 you said?

15 Q. Yes, sir.

16 A. Yes.

17 Q. Sir, again I'll ask you, what has the State Troopers done to
18 locate Mr. Mendoza?

19 A. We haven't done anything.

20 Q. Okay, and you were advised on February 21st that he was driving
21 that van.

22 A. That's what -- that's what she told us.

23 Q. Were you aware of the fact that on March the 4th that I gave
24 certain particulars about the whereabouts of Mr. Mendoza to
25 the County Attorney to turn over to you?

TROOPER DANA LARSEN - Cross

1 Q. So, within five or ten minutes you arrived on scene from
2 Marshall?

3 A. Yes.

4 Q. How many miles is that?

5 A. It's probably twelve miles.

6 Q. So, it would be closer to ten minutes, correct?

7 A. Could be.

8 Q. At any rate, at ten minutes Ms. Franco was still in the van?

9 A. Yes.

10 Q. And can you tell us whether or not -- can you tell us -- well,
11 you can't tell us where the position of her feet were at that
12 point, can you?

13 A. No.

14 Q. Because one of her legs was pinned by the dashboard, is that
15 correct?

16 A. I don't know, I didn't get in there to look.

17 Q. Okay, fair enough. One last question, you can agree with me,
18 can't you, that this investigation has gone in the wrong
19 direction if Mr. Mendoza was indeed driving, correct?

20 A. I haven't received any facts that he was driving.

21 Q. Well, Ms. Franco told you that, didn't he -- didn't she?

22 A. And when I get there she's pinned behind the wheel, and he has
23 never come forward saying he was a passenger in that van. So,
24 we have not been able to confirm whether he was in that van or
25 not.

1 Q. So -- so, Ms. Franco said that she was thrown over into that
2 seat and used her hands to raise -- on the steering wheel to
3 raise up -- raise herself up. Would that be an explanation as
4 to why she was behind the steering wheel?

5 A. I don't know.

6 Q. Would you agree with me that we need a bio-mechanical engineer
7 to figure that out?

8 A. That would maybe help. I don't know.

9 Q. And then would you agree with me that maybe this investigation
10 has gone in the wrong direction?

11 A. No.

12 MR. GUERRERO: That's all I have, Your Honor.

13 THE COURT: Thank you. Mr. Maes, any re-direct?

14 MR. MAES: Just briefly, Your Honor.

15 RE-DIRECT EXAMINATION

16 BY MR. MAES:

17 Q. Trooper, with regards to the -- the last few questions, did
18 you later learn that Ms. Franco's leg was pinned under the
19 dash?

20 A. Yes.

21 Q. Who did you learn that from?

22 A. The fire department.

23 Q. How was she removed from the vehicle?

24 A. They had to -- they had to actually lift the dash off of her
25 like lap to get her out.

1 Q. And is that what you're referring to when you said she was
2 pinned behind the wheel?

3 A. Yes.

4 Q. With regards to your interview on the 19th at the hospital, did
5 you -- or did it appear that Ms. Franco understood the
6 questions that were being asked of her?

7 A. Yes.

8 Q. Were her responses appropriate to the questions being asked?

9 A. Yes.

10 Q. In regards to the interview at the jail on the 21st, you
11 testified at length about the confusion about booking and what
12 her aunt apparently said.

13 A. Yes.

14 Q. All right, and there was some clarification you testified to.

15 A. Yes.

16 Q. After that did Ms. Franco indicate that she was willing to
17 answer all questions?

18 A. Yes.

19 Q. Did she also indicate, "Whatever you ask me I'm going to
20 answer."

21 A. Yes.

22 Q. Did you then interview her?

23 A. Yes.

24 Q. And when was it then that she asked for an attorney?

25 A. Towards the end of the interview.

TROOPER DEAN KOENEN - Direct

1 Q. And you're employed by the Minnesota State Patrol?

2 A. Yes, I am.

3 Q. And what is your position there?

4 A. I'm a Sargent.

5 Q. And what are your primary responsibilities?

6 A. We have mainly in our area a set of three -- a little over
7 three counties that we patrol, take care of the highways,
8 assist the motoring public, enforce traffic regulations,
9 investigate accidents.

10 Q. All right. I -- were you involved in the accident
11 investigation that we're here for today back on February 19th?

12 A. Yes.

13 Q. As part of your role in that were you at the Avera Marshall
14 Hospital?

15 A. Yes, I was.

16 Q. Were you able to identify who the driver was of the van
17 involved in this crash?

18 A. At the hospital I -- I -- my job at the hospital was to
19 collect names. I was collecting names of all the people that
20 were brought into the hospital, that would include the names
21 of the children from the bus, the -- the driver of the pickup.
22 I was given the name of -- of the defendant, also.

23 Q. All right, and what was -- you were given her name, why?

24 A. When?

25 Q. Why?

1 A. Just to -- to collect information.

2 Q. All right.

3 A. I was trying to collect information for the investigating
4 trooper.

5 Q. So, you were given her name as the driver of the van involved?

6 A. As the one that -- yes, that was brought in from the van.

7 Q. All right. Did you ever go up and talk to her before going up
8 with Trooper Larsen?

9 A. No.

10 Q. Were you present during the interview at the hospital?

11 A. Yes.

12 Q. Did it appear to you that Ms. Franco understood the questions
13 that were being asked?

14 A. Through an interpreter, yes.

15 Q. All right, and were the responses being given appropriate
16 responses?

17 A. Yes.

18 Q. Did you then leave the hospital at the same time as Trooper
19 Larsen?

20 A. Yes.

21 Q. Was Ms. Franco then left by herself in her room?

22 A. Yes.

23 Q. All right.

24 MR. MAES: No other questions.

25 THE COURT: Mr. Guerrero.

1 -- I think there was some discussion as to who she was, and I
2 don't have her name, her first name is Susy, and -- and who
3 she interprets for.

4 Q. And -- and actually there were seven other instances in that
5 hospital interview where the interpreter and Trooper Lars --
6 Trooper Larsen communicated among themselves without asking
7 her any questions, is that correct?

8 A. That could be. I'd have to look at the statement.

9 Q. So -- so, there were several times when -- when the
10 interpreter, Susy Campos, gave an answer which she did not
11 even pose to Ms. Franco, isn't that correct?

12 A. Do -- would you refer to the question as far as which one
13 you're referring to? I have a copy of the statement also, may
14 I look at that to --

15 Q. Yes, let me direct your attention to the second page. The
16 second page toward the top where the interpreter says, and I
17 quote, "Ah, she was on her way to work though -- I mean, sir,
18 she already told me -- she already told me she was on her work
19 to cab -- cabinetry." And there is not even any statement
20 before that by Ms. Franco, is there?

21 A. No.

22 Q. So -- so, the interpreter sort of volunteered that out of
23 nowhere.

24 A. After the question was asked, yes.

25 MR. GUERRERO: Thank you, Your Honor, that's all I

EXHIBIT Z**FAXED**

108 MAY 30 PM 7:19

ABBREVIATED RESUME
Faruk Said Abuzzahab, Sr., MD, PhD

Born	Beirut, Republic of Lebanon	1932
SS #	219-40-3205	
M.D.	American University of Beirut, Republic of Lebanon	1959
Residency	Johns Hopkins Hospital, Baltimore, MD	1959 to 1962
Ph.D.	U of MN, Minneapolis, MN	1968
	Major: Pharmacology, Minor: Psychology	

Diplomates

#8976	American Board of Psychiatry & Neurology in Psychiatry	1966
#478	Added Qualification in Addiction Psychiatry	1994
#2370	Added Qualification in Geriatric Psychiatry	1998
#92148	American Board of Clinical Pharmacology	1992
#46636	American Board of Quality Assurance and Utilization Review Physicians, Inc.	1995
#3148	American Board of Anti-Aging Medicine	1998
	International Board of Advanced Longevity Medicine	1998
	American Board of Chelation Therapy	1998

Certificates

#022126	The American Society of Addiction Medicine, Inc	1996
#6827195052	"Good Clinical Practices"	1996
	The Center for Professional Advancement	
	The American Society Clinical Psychopharmacology	1998

Honors

	Five Teaching Awards, University of Minnesota	1968 to 1995
Summa Cum Laude	"The Private Practitioner of the Year"	
	Awarded by the Minnesota Psychiatric Society	1990
	American Psychiatric Association: Distinguished Life Fellow	2003
	Consumers Research Council of America:	
	America's Top Psychiatrists	2004 to 2006

Current Positions

Clinical Professor, Departments of Psychiatry	1962 to date
Pharmacology, Family Practice & Community Health	

President and Founder, Clinical Psychopharmacology Consultants, P.A. and International Anti-Aging Medical Institute P.A.

Previous Address: 1968 – April 2007
 701 25th Ave. So., Suite 303
 Minneapolis, MN 55454

Current Address: April 1, 2007 – present
 Park Center Office Building, Suite 207
 3601 Park Center Boulevard
 St. Louis Park, MN 55416-2531

Publications: 54 Papers, 90 Abstracts, 3 Monographs

A detailed curriculum vitae is available upon request: email: clinpsychopharm@comcast.net

INTERAGENCY TRANSFER

EXHIBIT A

COPY

Name Allaness Nolas Morales
 Attending Physician N. Nwakama
 Attending Physician Phone # (507) 229-7696
 Admit Date: 2/19/08 D/C Date: 2/21/08
 Swing Bed date if applicable: N/A
 Referral to: SNF HHC AL Acute Hospice
 Other Low enrollment - State Drug Rehab
 Transport Company Yes No Name _____ Date _____ Time _____

To Lyon Co Sheriff's Office
 Phone (27) 537-7666 Fax _____
 From Avera Marshall Regional Medical Center
 Family Notified Yes No
 Name _____
 Phone # _____
 Patient family aware of dx Y N
 Date _____ Time _____

Admission Dx: (R) distal Tib/Fib fracture
 Discharge Dx: _____
 Past Medical Hx: UNKNOWN
 Surgical procedures & dates 2/19/08: ORIF of comminuted interarticular tibia proximal fracture & a fibular fracture
 Free of infectious diseases Yes No Allergies Yes No type Extensive debridement of wound including skin, muscle, tissue, bone

Treatment Orders:	Medication Orders:	Indication for use	Date/Time last given
Diet <u>Regular</u>	<u>See D/C Instructions *</u>		
Activity <u>Wp 2 crutches. Wiggle toes frequently</u>			
Restrictions <input checked="" type="checkbox"/> <u>Non-weight bearing BLE</u>			
Precautions <input type="checkbox"/>			
Therapy to eval and tx PT <input type="checkbox"/> OT <input type="checkbox"/> Speech <input type="checkbox"/> Respiratory Therapy <input checked="" type="checkbox"/> <u>IS 10x/hr while awake</u> Lab <input type="checkbox"/> Blood Glucose Monitoring <input type="checkbox"/> Wound Care <input checked="" type="checkbox"/> <u>Keep wet wrap clean, dry. Apply ice PRN comfort</u>			
Other: <input checked="" type="checkbox"/> <u>Notify physician or Avera Marshall for pain, numbness swelling T>101° etc</u>			
Full Code <input checked="" type="checkbox"/> DNR <input type="checkbox"/> DNI <input type="checkbox"/> Rehab potential: good <input type="checkbox"/> fair <input type="checkbox"/> poor <input type="checkbox"/> Return appt <u>Nwakama - 3 weeks 3/14/08</u>			

Admission H & P remains valid and up to date Yes No
 If no, please sign and update the H & P or update H & P on discharge summary.
 Physician Signature _____ Date 2/21/08

LOOK INSIDE TODAY FOR A POSTER OF JOE MAUER



No d
the r

45 high, 30 low > See Page 18C

twinc

Between hope and sorrow, an intersection



PIONEER PRESS: BRÁNDI JADE THOMAS

Olga Franco's parents, in their home in Carrizo Grande, Guatemala, talk about their daughter, accused of killing four children and injuring 15 other people when the minivan she was driving crashed into a school bus near Cottonwood, Minn. Miguel Angel Franco-Ortiz and Adelina del Cid de Franco have spoken with their daughter once since the Feb. 19 crash. "She asked us to forgive her," Franco-Ortiz said.

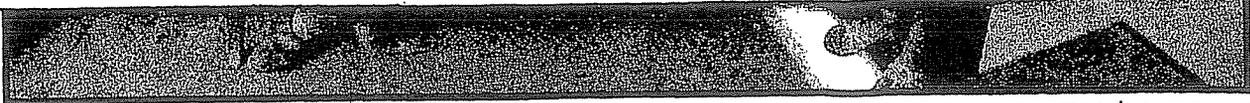


Hunter Javens, 9



Jessé Javens, 13

Olga Franco left her village, left her family and left poverty in Guatemala, entering the U.S. illegally. She found work under an alias and scraped up money to send back home. Then came Feb. 19, 1997.



PIONEER PRESS: BRÁNDI JADE THOMAS

Olga Franco's parents, in their home in Carrizo Grande, Guatemala, talk about their daughter, accused of killing four children and injuring 15 other people when the minivan she was driving crashed into a school bus near Cottonwood, Minn. Miguel Angel Franco-Ortiz and Adelina del Cid de Franco have spoken with their daughter once since the Feb. 19 crash. "She asked us to forgive her," Franco-Ortiz said.



Hunter Javens, 9



Jesse Javens, 13



Emilee Olson, 9



Reed Stevens, 12

In community, a mixture of grief, anger, gratitude

Four kids were killed — and parents of injured call themselves the lucky ones

By Frederick Melo fmelo@pioneerpress.com

When Todd and Sherri Pickthorn think of the Cottonwood crash, they feel all the emotions a parent with kids on the bus might feel. There's grief and worry. And yes, there's anger. They wrestle with that giant all the time.

But mostly, they cry tears of gratitude. "We really feel blessed," said Todd Pickthorn, whose instinct took him to a Marshall hospital on the day of the crash, not knowing whether his children were among the hurt or the dead.

Their 7-year-old daughter walked away from the Feb. 19 school bus accident outside Cottonwood, Minn., with bumps and bruises. Their 11-year-old son, Taylor, spent a

GRIEF AND GRATITUDE, 12A >

Olga Franco left her village, left her family and left poverty in Guatemala, entering the U.S. illegally. She found work under an alias and scraped up money to send back home. Then came Feb. 19. Now, in the village where she grew up, her parents can only pray for her — and wonder how it came to be that the minivan she was driving slammed into a Minnesota school bus, that the daughter they long to see again stands accused of causing the deaths of four children.

By Frederick Melo fmelo@pioneerpress.com

Olga Franco, 24, is in custody on charges including vehicular homicide and has not spoken with the media. The Pioneer Press met with her family to learn about her background. The following is based on interviews conducted in Spanish with her aunt in Marshall, Minn., and her parents in their village in rural Guatemala, as well as court documents and interviews with Franco's attorney.



Olga Franco: Suffered a broken leg in the crash that killed 4

Long before the accident, before the children's bodies were pulled through the roof hatch of the school bus and the reporters descended on the Lyon County Jail, begging for interviews, Olga Franco had made up her mind. It was two years earlier, give or take, when she decided to come to the United States. The day she left her hillside village, resolute, everyone cried.

She promised her parents she would make it out of Guatemala and across the Mexican desert. She would return in three years, no matter the obstacles. She was sick of being poor.

Almost as far back as she could

remember, she had shared a bed with her youngest sister. The adobe walls of their house felt wafer-thin. Every creak was a thunderclap, every footstep too heavy. Their home: two bedrooms and a kitchen.

In the back yard, there was the out-house — a wood box, really — without running water. In the kitchen, a clay stove, fed only by firewood. And living with them, her uncle, an invalid who could neither walk nor talk, nor even clean himself. When her parents were busy, she cared for him, diapers and all.

AN INTERSECTION, 10A >

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Olga Franco shared a bed with one of her younger sisters at their parents' home in Carrizo Grande, Guatemala. The family of five, plus a disabled uncle, lived in the three-room house. PIONEER PRESS PHOTOS: BRANDI JADE THOMAS

> An intersection

Like her father and many of the older people in her village, Franco had barely a year of schooling. Her two younger sisters, Romelia and Herminia, had stuck it out through the early grades, found husbands and left the village of Carrizo Grande for the coast.

That wasn't to be Olga Franco's path. Instead, she found work. At 20, she moved three hours south of her village, to Guatemala City, where she cleaned houses for the rich. But the city of 1.2 million people was notoriously dangerous. Besides feeling unsafe, she told her parents, she was bothered by the street noises. The cars kept her up at night.

She was a country girl. She missed the grouchy call of the roosters, the rows of black beans interspersed with stalks of corn on the steep slope of her parents' small property, the tall groves of papaya and green banana and bitter orange. And she missed her small geranium garden beneath the palm trees.

After three months, work slowed, and Franco moved back home.

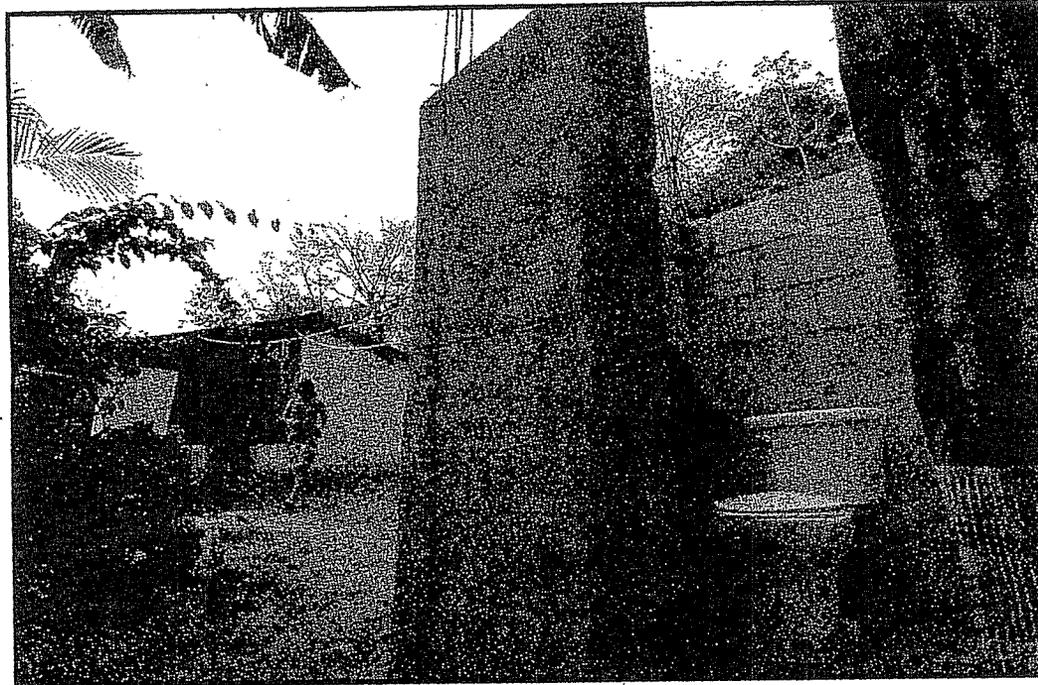
Once there, she came to a new decision. She had no brothers. Her parents were old. If there were a better life out there for her and her family, she would have to go farther than Guatemala City to seek it out. She would go alone and travel light.

First, a smuggler would take her to Mexico. Within two weeks, another would get her through the Mexican desert and into the United States. These men were called "coyotes." Her friends took up a collection to pay her way.

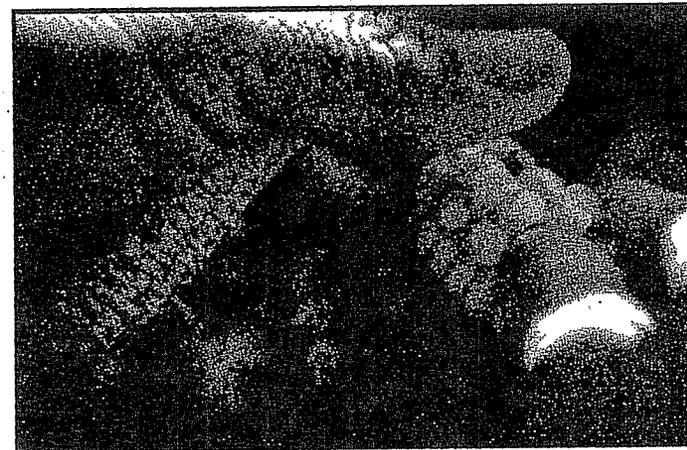
She would take any job she could find and send her parents money, she promised.

For Claudia, her 14-year-old cousin, she would leave a pair of shoes, three blouses and two pairs of pants. On her walls would remain two images of Jesus Christ and four pictures of Tweety Bird. On her bureau, Bibles and hymnals. All waiting for her return.

"I am the good shepherd and I



The Francos were receiving money from Olga Franco to help build an outdoor bathroom and shower, among other things. The money stopped after the Cottonwood crash, and the bathroom lacks a roof.



Miguel Angel Franco-Ortiz takes the kernels off a corn cob. "Those of us who have never gone, we sometimes think life is easier there in the U.S.," he said, recalling his daughter's decisiveness. "But those that go say it's hard."



The Francos have only one photo of their daughter Olga at their home in Carrizo Grande.

sentation of a Social Security number. Her next court appearance April 21. Even if she were released from jail, there would be a federal court process, an almost assured deportation.

"Look how different her face was said Petrona Franco, gazing at church picture taken with her niece on Valentine's Day 2007, during the three months Franco lived with her in Marshall. It's true: Olga Franco's hair is tinted and streaked; her face is thicker. But even in the photo, she isn't smiling.

"I saw her grow up without malice in her heart," Petrona Franco said. "She's a good girl."

In the kitchen of her trailer home, Petrona Franco moves between the pot of chicken cooking on her stove and her small dining table. Grandchildren — a boy and a girl — wrestle and play in the next room. Petrona Franco is 55, but one could be forgiven for thinking she looks older.

Olga Franco is 24, according to authorities. But one could be forgiven for thinking she looks younger.

"My brother tells me, when she left Guatemala, she left with the same illusions we all have when we come," Petrona Franco said. "She promised her parents to fight for them. ... From the beginning, she started working. She immediately started helping them."

"She left out of necessity, poverty. People leave out of necessity," Petrona Franco continued. "They come with a goal. But destiny takes you down another path."

When she first arrived in Minnesota, Olga Franco lived in Montevideo and worked at a Jennie-O turkey factory under her alias. Her family did not know how she came by the fake ID. Later, Franco moved in with her aunt's family and took a job at Mid-Continent Cabinetry, but stayed there only months. She relocated to Willmar, working at another Jennie-O. Petrona Franco heard from Franco's mother that she was living with a man. But no one knew much about him, except that he was somewhat older than Olga.

an Guatemala City to seek it out. He would go alone and travel light. First, a smuggler would take her to Mexico. Within two weeks, another would get her through the Mexican desert and into the United States. These men were called "coyotes." Her friends took up a collection to pay her way. She would take any job she could find and send her parents money, as promised.

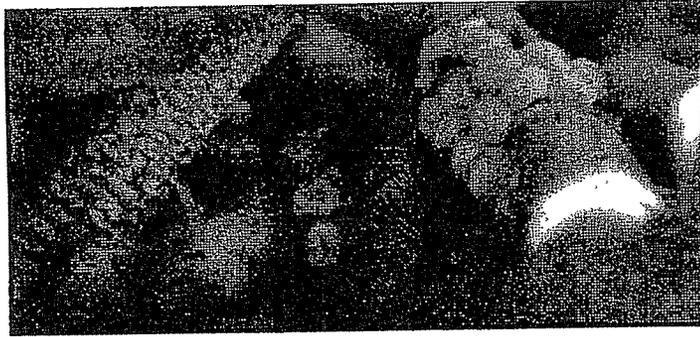
For Claudia, her 14-year-old cousin, she would leave a pair of shoes, three blouses and two pairs of pants. On her walls would remain two images of Jesus Christ and four pictures of Tweety Bird. On her bureau, Bibles and hymnals. All waiting for her return.

"I am the good shepherd, and I know My sheep and they know me," read the poster to the side of her bed, the one of Christ feeding a lamb. Somehow, she would be safe. "Those of us who have never gone, sometimes think life is easier here in the U.S.," said her father, Miguel Angel Franco-Ortiz, recalling his daughter's decisiveness. "But those that go say it's hard."

Petrona believed it wouldn't take longer than three years to raise some money. She promised she'd be back.

She never could have envisioned how the time would pass. How she would meet a man and move in with him. How she would one day find herself at the wheel of his 1998 Plymouth Voyager traveling through rural Lyon County, 140 miles west of the Twin Cities, on her way to a cabinet factory where they both worked the night shift.

And she never could have imagined this: The bus driver would later tell authorities how the minivan missed the stop sign and rose up in the air, weightless for a moment, before sailing across the railroad



Miguel Angel Franco-Ortiz takes the kernels off a corn cob. "Those of us who have never gone, we sometimes think life is easier there in the U.S.," he said, recalling his daughter's decisiveness. "But those that go say it's hard."

tracks at Minnesota 23 and County Road 24.

Witnesses would describe it hurtling toward the back of the large yellow school bus, the one making its usual rounds at the end of the day. The one crowded with children.

Mystery woman

After the injuries, it was her niece's weight that Petrona Franco noticed first. Deputies wheeled Olga Franco, then known to the world as Alianiss Nunez Morales, from the elevator, down the crowded Lyon County courthouse hallway and into an upstairs courtroom, a white blanket draped across her lap, her right foot propped up in a wheelchair footrest. Rows of reporters gawked.

Franco's features, once full, were taut. The morphine left her pale and woozy. This was the mystery woman no one seemed to know anything about. Even Petrona Franco, her aunt from Marshall, Minn., had not seen her in months.

In the courtroom, the county attorney

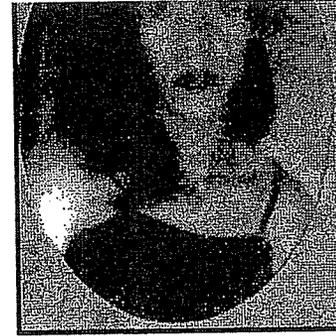
told the judge that the young woman's name was clearly an alias. Immigration authorities found the grandmother of the real Alianiss Morales in Puerto Rico; her granddaughter was living in Connecticut. She said her purse had been stolen.

The judge read the charges: four counts of criminal vehicular homicide, one for each of the children killed in the crash: brothers Hunter Javens, 9, and Jesse Javens, 13, of Cottonwood; Emilee Olson, 9, of Cottonwood; Reed Stevens, 12, of Marshall.

Hunter would have been 10 on the day of his funeral. After paying their respects, more than a thousand mourners sang "Happy Birthday" to his twin sister, Sasha.

The children who survived have returned to school, although some only part time, say Cottonwood residents. They see them at church. Some are in and out of the hospital, dealing with infections and surgeries. The things they saw that day, they may remember always.

The bus had spun clockwise and tipped onto its left side, landing on a Chevrolet pickup traveling north on



The Francos have only one photo of their daughter Olga at their home in Carrizo Grande.

the highway.

When it stopped, bus driver Dennis Devereaux found himself under a child and a musical instrument. He righted himself and ran to punch open the roof hatch and save whom he could.

Then, by the wheel well, he came across Hunter and Emilee.

"It just seemed like nobody was coming to help fast enough," he told investigators.

For Franco, there were other charges — a stop sign violation, driving without a driver's license. She had been charged with lacking a license before, in 2006, but an officer gave her a ride home and the court ordered her to pay a fine of \$182.

A few weeks before the crash, she and her boyfriend had been pulled over in his minivan in a neighboring county. He'd been charged with driving without a license, and again, they were given a ride home in a squad car. Again, a fine, this time for him.

Franco also faces federal charges: two counts of aggravated identity theft and two counts of false repre-

People leave out of necessity," Petrona Franco continued. "They come with a goal. But destiny takes you down another path."

When she first arrived in Minnesota, Olga Franco lived in Montevideo and worked at a Jennie-O turkey factory under her alias. Her family did not know how she came by the fake ID. Later, Franco moved in with her aunt's family and took a job at Mid-Continent Cabinetry, but stayed there only months. She relocated to Willmar, working at another Jennie-O. Petrona Franco heard from Franco's mother that she was living with a man. But no one knew much about him, except that he was somewhat older than her.

Then one day, about a month before the accident, Franco came back. She and her boyfriend moved into a trailer home in Minnesota, not far from Marshall. But Petrona Franco never saw him; until that first day in court, she hadn't heard from her niece, either.

Her own version

Petrona Franco has her own version of how the accident happened: It was Olga Franco's boyfriend at the wheel. After the vehicles collided, he ran from the crash site, forcing her to promise not to tell. Petrona Franco believes the boyfriend wedged her niece into the driver's seat.

"She's been telling me he treated her badly. He hit her," Petrona Franco said. "She told me she never told me about it because he threatened her."

But in the hospital, according to legal transcripts, Olga Franco told an investigator she was in the van alone. Her boyfriend had stayed home sick that day.



Miguel Angel Franco-Ortiz, Olga Franco's father, walks through the field where he grows corn and beans in Carrizo Grande, Guatemala. He figures he earns \$5 a day from the 15 small plots he rents. A corn grinder bought with Olga Franco's help allows the family to make an extra \$2 a day.

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CONTINUED FROM 10A

CONTINUED FROM 10A

> An intersection

Despite the claims of multiple witnesses, Franco said she stopped at the stop sign, and when she accelerated, the bus hit her.

Authorities are looking for her boyfriend, Francisco Sangabriel-Mendoza, 29, a Mexican national who was living under an alias. They said he'd once been married to a U.S. citizen but they divorced and his application for permanent legal status had been rejected. In court, Franco said he fled the trailer park on the day of the crash. There's been no sign of him there since.

Franco's aunt visits her almost every day. Franco's leg hurts. Her head hurts. She has trouble breathing. In early March, authorities took her to the Western Mental Health Center for an evaluation. Another time, Petrona Franco thinks, they brought her to the emergency room.

All Olga Franco can do is read from her Bible and cry.

"She said she asked God for forgiveness; she's asking everyone for forgiveness," Petrona Franco said.

When she thinks of what her niece is going through, she cries, too.

"To all the families of those who died, I'd like to plead forgiveness, in the name of my brother and his family," Petrona Franco said, tears running down her face. "I feel their pain with all my heart. I talk to God a lot. We're Christians, all of us. (Franco) says she's suffering, too.

"I'm a mother, too. As a mother, I think about suffering their pain, and what they must feel. But I think about my niece, too. It's depressing to see her in jail. ... God has pity on all of us. She's a good girl. Sometimes, we're victims of circumstance and destiny. Rich, poor, big or small, we have accidents."

It made a difference

A toilet that flushed. An outdoor shower. A motorized corn grinder, slightly used



Franco-Ortiz prays during a church service this month in Carrizo Grande, Guatemala. He and his wife hope their daughter will be deported soon so she can return to them.



Adelina-del-Cid de Franco cries as she prays at the service, begging God for mercy. "She didn't do it intentionally," she said of her daughter. "I ask the forgiveness of the mothers who lost their children. We feel it."

rarely without his machete. A gen- said. "There wasn't much freedom

she looks at the picture of the school bus, tilted crazily on its side against a pickup truck, and she cries.

She wants to know: Is the van her daughter drove in this picture?

It isn't.

Then, she says: "Forgive me for what's happened. Forgive us. We ask the forgiveness of the authorities there, the judge, the governor. She didn't do it intentionally. It makes me sad. ... I ask the forgiveness of the mothers who lost their children. We feel it. What I'm feeling in my heart, I know they're feeling, too. What we want most is that they deport her. We want to go there, but because of our poverty, we cannot.

"If they could send her here, it would be a blessing. ... We need her. We love her so much. I know what I'm feeling, they're feeling, too. That God put peace in their hearts."

'Have mercy on me'

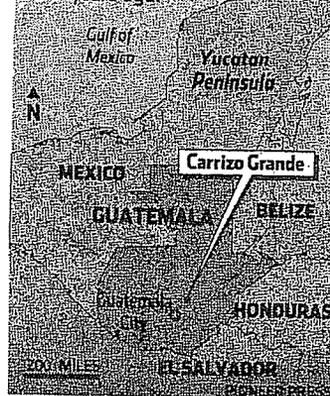
At night, 14 people from the village climb the gravel path in darkness to the hilltop chapel. Most of them are small children. The Francos, evangelical Christians, attend services here five or six nights a week. The chapel is half-full.

About three years ago, Petrona Franco donated the land for the one-room building. A sisterly relationship flourished with her church in the United States, El Buen Samaritano in Clarkfield, Minn., north of Cottonwood. The U.S. congregation, though poor, sent money to the Guatemalan church for supplies. But that's run out, leaving an outdoor stage unfinished.

Olga Franco's mother and the other women sit on one side of the room; her father and the men sit on the other. Yolanda Lopez, the pastor's wife, leads the ceremony. Her husband has traveled to Marshall, to pick up the pastor from El Buen Samaritano, who was to lead Holy Week services.

A boy of 9 or 10 keeps time on a drum set as the churchgoers sing

Olga Franco left the small Guatemalan hillside village of Carrizo Grande, 3 hours north of Guatemala City, about two years ago.



... Franco said. When she thinks of what her niece is going through, she cries, too. All the families of those who I'd like to plead forgiveness, in the name of my brother and his family, Petrona Franco said, tears run down her face. "I feel their pain all my heart. I talk to God a lot. Christians, all of us. (Franco) he's suffering, too. As a mother, I about suffering their pain, and they must feel. But I think my niece, too. It's depressing her in jail. ... God has pity on us. She's a good girl. Some- we're victims of circumstance estiny. Rich, poor, big or small, we accidents."



Adelina del Cid de Franco cries as she prays at the service, begging God for mercy. "She didn't do it intentionally," she said of her daughter. "I ask the forgiveness of the mothers who lost their children. We feel it."

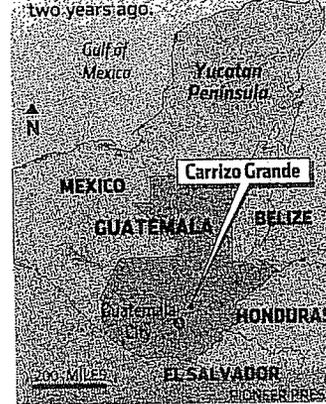
Made a difference

ilet that flushed. An outdoor ar. A motorized corn grinder, ly used. se were the things Franco's y bought. The money she sent parents wasn't much. But for el Angel Franco-Ortiz and na del Cid de Franco, it made a ence. the only way here to make a pennies, to sell corn," said o-Ortiz, on a short tour gh his property. By the out- nud oven, he shows off the 100- l bags that will hold the ker- Each full bag will sell for 80 ales — just under \$11. figures he earns \$5 a day on ge from the 15 small plots he mostly for corn and beans. A nd a half ago, with Franco's ie bought the corn grinder for \$900. It makes a racket, but if ildren stop by with baskets of s to be ground, the Francos ke an extra \$2 a day. ndwritten sign on the outer his house advertises gelatins, eam treats and "choco- s." Today, he happens to be t. o-Ortiz is a short, bronze- l, talkativ# man who smiles when he speaks. He is

rarely without his machete. A generation ago, he spent four years in the Guatemalan military. It is more than a half-mile up a rocky gravel road from the highway to his house, but even in 80- or 90-degree heat, he seems to take the hike in stride, greeting other men cheerily as he goes. With the money his daughter sent, he set out to build an outdoor bathroom and shower, about 20 feet from his house, by the water tank. He got all but the roof done. Then the accident happened, and the money stopped coming. So it will have to be a bathroom with a view of the stars. Franco-Ortiz describes his daughter as religious, a hard worker, loyal to the family. She helped her mother around the house and garden. Like her father and many kids in her small village, she hadn't had much interest in school. There wasn't work, anyway. What she told them of her life in the U.S. was limited. She worked the night shift, which left her exhausted. She had met a man. They knew little about him. "She should tell us it was hard, nothing but work," Franco-Ortiz

said. "There wasn't much freedom. If you're undocumented, you just go from work to home." About 25 years ago, Franco-Ortiz's younger brother, Joselino Franco, suffered some kind of attack. He's been unable to move or speak since, and he still suffers occasional spasms. He's regularly medicated, but there's no money to get him to a doctor. "When Olga was working, she'd send us a few dollars for diapers," said Teresa Franco, Franco-Ortiz's sister, who has cared for her bedridden sibling, now in his 40s, since the Cottonwood crash. "But that's over." "Every day it's worse" Franco, of course, wasn't the only Guatemalan sending money back home. A guerrilla war lasting 36 years ended in 1996, but more than half the country still lives in poverty. The fighting, by some estimates, created 1 million refugees, mostly to Mexico, the United States and Canada. Guatemalan nationals living in the U.S. now send more money home than U.S. immigrants from any other Central American country.

Olga Franco left the small Guatemalan hillside village of Carrizo Grande, 3 hours north of Guatemala City, about two years ago.



Those dollars add up. Last year, "family remittances" amounted to \$4.2 billion — or 12 percent of Guatemala's gross domestic product. The money helped the economy grow, but inflation was at 9 percent, according to a federal government fact book. "Here in Guatemala, every day it's worse," Teresa Franco said. Franco-Ortiz and his wife have spoken with their daughter only once since the accident, just afterward, when she was in the hospital. The conversation was brief, and she was in pain. She kept apologizing. "She thought maybe she was going to die," Franco-Ortiz said. "She asked us to forgive her." They can't read much, or write, but they have assembled an affidavit testifying to Franco's good character. They dropped it off with a secretary at the U.S. Embassy. Franco's mother is quiet, reserved. She spends most of her time in the kitchen, cleaning and preparing meals, or gathering sticks of wood for the stove. When she speaks, it's mostly to ask questions about meals — is anyone hungry? But when a reporter produces a newspaper article about the crash,

small children. The Francos, evangelical Christians, attend services here five or six nights a week. The chapel is half-full. About three years ago, Petrona Franco donated the land for the one-room building. A sisterly relationship flourished with her church in the United States, El Buen Samaritano in Clarkfield, Minn., north of Cottonwood. The U.S. congregation, though poor, sent money to the Guatemalan church for supplies. But that's run out, leaving an outdoor stage unfinished. Olga Franco's mother and the other women sit on one side of the room; her father and the men sit on the other. Yolanda Lopez, the pastor's wife, leads the ceremony. Her husband has traveled to Marshall, to pick up the pastor from El Buen Samaritano, who was to lead Holy Week services. A boy of 9 or 10 keeps time on a drum set as the churchgoers sing. Then they take turns delivering a message from the pulpit. Before long, they all drop to their knees. Most lean on the stage, praying. A few boys in the corner pull out a book of matches and light one at a time, chuckling to each other at their audacity. But everyone else has closed their eyes, clasped their hands. They pray out loud, in beseeching tones, a crescendo of requests. Many pray for Olga Franco. "She's my niece," says one of Franco-Ortiz's brothers, burying his face into the seat of a chair. Franco-Ortiz is the only one who doesn't sink to the ground. He leans against the church wall, slightly apart from the rest, hiding his face in his hands. But his wife is kneeling across the room. She cries as she prays, tears rolling down her face, her hands clasped, then open, begging God's pity and intervention: *Misericordia*. Have mercy on me. It's true, she prays for herself, she says. And she also prays for her daughter. Frederick Melo can be reached at 651-228-2172.

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Van driver's identity remains mysterious*Chao Xiong, Curt Brown. Star Tribune. Minneapolis, Minn.: Feb 23, 2008. pg. A.1***Abstract (Summary)**

The van driver who witnesses say plowed into a school bus, killing four children, appeared in court Friday to face vehicular homicide charges. Witnesses, including bus driver Dennis Devereaux, offered a different account, saying she "went airborne" over the railroad tracks and slammed into the side of the bus, which tipped over and slid into an oncoming pick-up truck.

Full Text (1304 words)*(Copyright 2008 Star Tribune)*

The van driver who witnesses say plowed into a school bus, killing four children, appeared in court Friday to face vehicular homicide charges. But authorities still aren't sure who she is, saying she's in the country illegally and using a phony name.

Sitting in a wheelchair with a broken leg Friday in Lyon County District Court, the woman said her name was Alianiss Nunez Morales. She said she'd been working in a Cottonwood, Minn., cabinet shop and living with her boyfriend in a trailer in nearby Minneota until they broke up Tuesday, the day of the crash.

But federal immigration investigator Claude Arnold said Morales is not the woman's name, and she is not revealing her identity. He said that she is here illegally, probably from Mexico.

About 5:45 p.m. Friday, agents from the federal Immigration and Customs Enforcement agency searched the trailer in Minneota where the woman had reportedly been living with a male friend. Also on hand were Minneota police and investigators from the Minnesota Bureau of Criminal Apprehension and the State Patrol.

"ICE is executing a search warrant in relation to the investigation into the crash and her identity," said State Patrol Cpl. Al Uecker, who declined to provide more information.

The charges are stoking the emotionally charged immigration debate, with the editor of the Marshall Independent newspaper, Dana Yost, saying he's been swamped with angry e-mails from across the country.

More than two dozen immigrants' rights activists met in St. Paul on Friday, urging people to concentrate on the grieving families, not politics.

Gov. Tim Pawlenty's spokesman, Brian McClung, said: "Right now we are focused on the needs and concerns of the families who have experienced loss as a result of this tragedy. The governor continues to strongly believe that we should do more to crack down on illegal immigration."

Checking in Puerto Rico

ICE spokesman Tim Counts said that the woman has been of "minimal helpfulness" to investigators, but "we will get to the bottom of matters."

Lyon County Attorney Richard Maes told the judge that U.S. immigration investigators located an Alianiss Nunez Morales in Puerto Rico. When they showed pictures of the woman in the Lyon County jail to that woman's

grandparents in Puerto Rico, they said the jailed woman was not their granddaughter.

Maes asked a judge to hold the woman without bail because of concerns about her identity. But Judge Leland Bush set bail at \$400,000, or \$200,000 with a number of conditions, noting none of the state charges involved using false identification.

She has been charged with four counts of criminal vehicular homicide in the deaths of Jesse Javens, Hunter Javens, Reed Stevens and Emilee Olson, as well as running a stop sign and having no driver's license. Her next court appearance is set for April 21.

"She's grief-stricken about the accident," said her attorney, Manuel P. Guerrero of St. Paul. "She's hurting about what happened to the kids."

According to the criminal complaint, the woman said she'd never been at the intersection of Hwy. 23 and County Road 24 before. Through an interpreter in the hospital, she told a state trooper that she stopped and the "bus came on to her."

The crash site is about 140 miles west of the Twin Cities.

Witnesses, including bus driver Dennis Devereaux, offered a different account, saying she "went airborne" over the railroad tracks and slammed into the side of the bus, which tipped over and slid into an oncoming pick-up truck.

Larry Moat told police he was driving behind the school bus and saw the van "moving at a fairly good speed" before it ran the stop sign and hit the bus near its rear wheels. James Hancock, the pick-up driver, said he also saw her run the stop sign and hit the bus.

Bus driver's account

Authorities released Devereaux's interview with state troopers, providing the bus driver's first public account of the crash. He said he noticed the maroon van "was going way too fast ... and the next thing I knew I had a trombone and a kid laying on top of me. ... We were just on our side and skidding and I was hanging on."

Devereaux said at first he thought the van had only clipped the bus' bumper, but he realized things were much worse when he noticed a radiator and an engine underneath him.

"The hood was open and there's kids screaming," he told investigators. "There was oil all over the place and I thought the bus was going to start on fire ... and maybe explode."

When an investigator asked Devereaux about the van's speed, he replied: "I'm thinking 45 to 55 miles per hour. It was booking ... I don't think it slammed on its brakes at all."

Devereaux has driven the route for nearly three years and said his own daughter takes the bus in the morning, but went separately to day care Tuesday afternoon.

After the crash, the driver said he started handing kids out through the roof hatch and window to passersby who stopped to help.

According to state records, Morales has a Minnesota identification card but not a valid driver's license. She pleaded guilty in June 2006 to driving without a license and paid a \$182 fine.

Immigration officials said they are unsure whether she is, as was initially thought, the person who was arrested in Montevideo in 2006 for driving without a valid license.

One neighbor in Minneota, Michal Long, said there was often loud partying in the white trailer where the woman lived, but when Long threatened to call police, they obliged and quieted down.

School to be closed Monday

Lakeview School, which the students attended, will be closed Monday for the funerals of brothers Jesse Javens, 13, and Hunter Javens, 9, both of Cottonwood. Classes were called off Wednesday, but have been held the last two days.

Emilee Olson, 9, of Cottonwood, will be buried Sunday afternoon. Services for Reed Stevens, 12, of Marshall, will be held Thursday.

Stevens' brother is among 14 others who were injured, but one student was discharged Friday from Avera McKennan hospital in Sioux Falls, S.D.

Five patients are still there, including Hancock, who is listed in fair condition, said Avera McKennan spokesman Kenyon Gleason. He said one student was in serious condition, two students were in fair condition, and one student was in good condition. Another student at Mayo Clinic in Rochester was also reported in fair condition.

The woman in jail faces up to 10 years on each of the four vehicular homicide charges.

"It really doesn't matter what they're going to give her," said Todd Baune, a Cottonwood resident. "It ain't going to bring those kids back."

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MEMORIAL INFORMATION for the victims

- Visitation for Emilee Olson, 9, is scheduled for 6 to 9 p.m. today and 1 to 2 p.m. Sunday from at Christ Lutheran Church in Cottonwood. A funeral service is set for 2 p.m. Sunday at the church.

- School in Cottonwood will be canceled Monday as funeral services for Hunter Javens, 9, and Jesse Javens, 13, are held there at 11 a.m. Visitation will take place at the school from 5 to 8 p.m. Sunday and 10 to 11 a.m. Monday.

- Visitation for Reed Stevens, 12, will be Wednesday from 5 p.m. to 7 p.m. at Lakeview School. Another visitation is set for 1 to 2 p.m. Thursday at the school, with a funeral service following.

- A memorial fund has been established through United Southwest Bank. Checks can be made out to the Lakeview School Memorial Fund, United Southwest Bank, Box 288, Cottonwood, Minn. 56229.

ONLINE

To read the charging documents and statements of the bus driver and van driver, go to startribune.com.

[Illustration]

Caption: PHOTO

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EXHIBIT AD

STATE OF MINNESOTA
COUNTY OF LYON

DISTRICT COURT
FIFTH JUDICIAL DISTRICT

Case Type: Criminal
Case File No. 42-CR-08-220

HON. DAVID W. PETERSON

STATE OF MINNESOTA,
Plaintiff,
v.

OLGA MARINA FRANCO del CID,
Defendant.

**AFFIDAVIT OF
MARIA ALEXANDRA CARAM IBARRA**

Your affiant, Maria Alexandra Caram Ibarra, being first duly sworn on oath, states as follows:

1. My name is Maria Alexandra Caram Ibarra, I am a native of the Dominican Republic, now a United States citizen living in St. Anthony, Minnesota, and I make this affidavit consisting of ___ pages based on my own personal knowledge gained as indicated, and to which I am willing to testify at a hearing or trial in this matter.

2. My first language is Spanish.

3. My second language is English.

4. I have three children ages 14, 11, and 8, each of whom I have taught Spanish to.

5. I have also studied, but am not fluent in, French.

6. I learned English through my education in the Dominican Republic and the United States (where, at the University of Minnesota, I obtained a Bachelor's degree in Computer Science) and became fluent in English through having lived in the United States since 1986, attending the University of

Minnesota, my employment, owning and operating a sales and marketing business, and owning multiple real estate rental properties where, in addition to my sales and marketing business, I constantly interact with both English and Spanish speaking persons and I therefore have to be, and am fluent in both English and Spanish.

7. I have past experience translating documents from English to Spanish and from Spanish to English, both for my businesses and on retention by others.

8. I have acted as a Spanish language interpreter and document translator in legal matters for Neal A. Eisenbraun, Chartered since 2005.

9. On May 10, 2008, and prior to reviewing and translating the 7:15 pm February 19, 2008 Statement taken by Minnesota State Trooper Dana Larsen, SP307, from Alianiss Nunez Morales (n.k.a. Olga Marina Franco del Cid) at Avera Marshall Hospital, I acted as interpreter for attorney Eisenbraun in an approximately four hour attorney/client consultation between Mr. Eisenbraun and Ms. Franco at the Lyon County Jail, through which I also gained familiarity with Ms. Franco's linguistic mannerisms and sophistication.

10. Since May 10, 2008, I have spoken to Ms. Franco additional times, in person and by telephone.

11. I spent approximately seven hours listening and re-listening to the CD provided as discovery by the State and containing the recorded statement referred to herein, utilizing Bose Model QC-2 Accoustic Noise Canceling® headphones to eliminate external noise and enhance the audibility of the recording.

12. After listening to the entire recording once, I listened to it again and while doing so, prepared a transcript of the recorded statement.

13. As the quality of the recording is poor, I then again listened to the recording several times while following the transcript I had prepared, verifying the accuracy of the translation/transcription as best I could considering the poor quality of the recording.

14. In listening to the recording, I detected that Ms. Franco spoke with a soft, quiet, often unintelligible voice, and at times moaning or crying.

15. During the recording, I detected occasional background talking and laughing.

16. For several questions, the interpreter did not interpret the question in Spanish for Ms. Franco, but simply answered the question posed by the Trooper for Ms. Franco, also without interpreting to Spanish for Ms. Franco the answer the Interpreter gave the Trooper in English.

17. At the beginning of the interview, the Interpreter appears to be reading from a document, but the document is neither identified nor authenticated.

18. At one point, the interpreter interrupts Ms. Franco as Ms. Franco begins to answer in Spanish and the interpreter finishes Ms. Franco's answer, again without interpreting to Spanish the answer the interpreter gave to the Trooper.

19. At another point, Ms. Franco states something, but the interpreter does not interpret it to English.

20. The recording is difficult in many places to accurately comprehend due to distracting noise/static that exists throughout the recording, which noise sounds as though the recorder was concealed in a pocket, with the fabric constantly rubbing against the recorder's microphone.

21. I was asked to specifically listen to whether in the recording the Trooper informed Ms. Franco at any point that he was recording the interview and I did so and found nothing indicating he did.

22. I was also asked to specifically listen to whether there is any indication in the recording of any acknowledgment by Ms. Franco that she was aware the questioning of her was being recorded and I did so and found nothing indicating Ms. Franco did.

23. I was also asked to specifically listen to whether there is any indication in the recording that the Trooper obtained or even sought Ms. Franco's consent to the recording of her and I did so and found nothing indicating he did.

24. I was also asked to specifically listen to whether there is any indication in the recording that Ms. Franco agreed to speak with the Trooper voluntarily and I did so and found nothing indicating she did.

25. I was also asked to specifically listen to whether there is any indication in the recording whether the Trooper inquired of Ms. Franco or anyone else as to the level or severity of Ms. Franco's pain or its affect on her ability to comprehend the questions posed or the answers she gave and I did and found nothing to indicate he did.

26. I was also asked to specifically listen to whether there is any indication in the recording whether the Trooper inquired of Ms. Franco or anyone else as to any effects of the medication she was under the influence of and I did and found nothing to indicate he did so.

27. I was also asked to specifically listen to whether there is any indication in the recording whether the Trooper inquired of Ms. Franco or anyone else as to the nature of Ms. Franco's injury or the mental or physical effects of it and I did so and found nothing indicating he did so.

28. The Statement indicates that there were two male State Troopers present during the questioning of Ms. Franco in her hospital bed, but does not identify where either Trooper positioned himself.

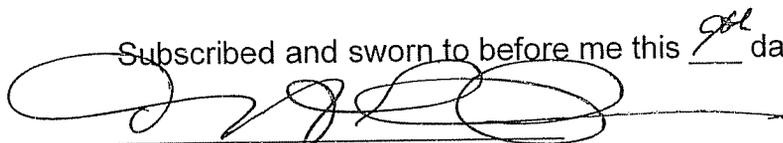
29. At times, the two Troopers present conversed among themselves and the interpreter, but their conversation is unintelligible.

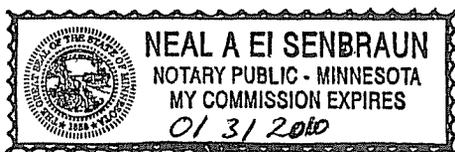
28. I have noted between brackets ("[]") and with *italics* my personal observations relating to places in the recording where I found difficulties with comprehension of the recording or other interference with Ms. Franco's responses.

Further your affiant says not.


Maria Alexandra Caram Ibarra

Subscribed and sworn to before me this 9th day of June, 2008.


Notary Public



“ACCIDENT SUPPLEMENT” STATEMENT

Taken from Alianiss Nunez Morales
(a.k.a. Olga Marina Franco del Cid)

At 7:15 pm February 19, 2008 at Avera Marshall Hospital by trooper Dana Larsen, SP307 and sgt. Dean Koenen, SP431 of the Minnesota State Patrol – Susy Campos, Interpreter

June 04, 2008 Transcription/translation of Statement by Maria Alexandra Caram Ibarra
[translator/transcriptionist comments in brackets and italics]:

["SP307" = Trooper Dana Larsen; "SP431" = Sgt. Dean Koenen; "Interpreter" = Susy Campos; "AM" = Alianess Nunez Morales (a.k.a. Olga Marina Franco del Cid);]

Interpreter: Alianess Nunez Morales. Um, Fecha de nacimiento que me diste reina?

AM: *[Response is unintelligible]*

[Distracting noise on recorder rubbing against something else renders Ms. Franco's response unintelligible]

AM: Cinco noventa y seis -- cero siete....

Interpreter: Cinco noventa y seis – cero siete-....

SP307: *Unintelligible.* He with you or just a friend, or?

[Trooper asks question while AM and Interpreter are talking, making the rest of the conversation between AM and Interpreter unintelligible. Also, can't tell who the trooper's question was directed to as there isn't an intelligible response; no identification of others present in the room.]

Interpreter: This is her birthday, right there. Ah... name...ah...her boyfriend is Samuel Rivera Menendez.

SP307: Okay.

Interpreter: Right there. Alias Nunez Morales, her name.

SP307: Okay.

Interpreter: And this is her birth date, right here.

SP307: Okay.

Interpreter: D-O-B I put over there.

SP307: Okay.

Interpreter (continuing): and um...ah..Social... [*rest is unintelligible*].

[Interpreter apparently referring to some document, but the document is not identified.]

SP431: She have a Minnesota driver license?

SP307: Can you ask her if she has a MN driver's license please?

Interpreter: Una licencia de manejar de aqui de Minnesota?

AM: [*Response is unintelligible*]

Interpreter: No.

SP431: Any driver's license?

Interpreter: Alguna licencia de manejar de algun lugar, mi hija?

AM: No.

Interpreter: No, not another place.

SP307: Okay... Ah... Who are you?

Interpreter: I am the interpreter for the hospital.

SP307: Oh, Okay.

Interpreter: And I am the interpreter also for the police department here in town.

SP307: Okay.

Interpreter: For the hospital, for the community in town, and the police department.

SP307: Okay...

SP431: [*Unintelligible*].

SP307: Huh? ... Can you ask her whose vehicle it is?

Interpreter: De quien era el auto que manejabas tu?

AM: [*unintelligible*] era.... de mi novio.

Interpreter: It belongs to her boyfriend.

SP307: Okay.

[Sound of a soft sigh in the background]

SP307: Can you ask her where she was going?

[The interpreter does not interpret the question to Spanish for Ms. Franco, but proceeds to answer the question herself.]

Interpreter: Ah... She was in her way to work doc...I mean, sir. She alre... she already told me she was in her way to work to Cab, Cabine...Cabinetry....

SP307: Okay.

Interpreter: In Norcraft. She was about 2 blocks from her work. That's what she said. [*pause*]. She was – she said she was in her way to work with her... [*unintelligible*].

SP307: Okay. Ask. Can you ask her what time she was supposed to be there?

Interpreter: A que horas tienes que estar ahi en el trabajo reina?

AM: A las cuatro.

Interpreter: At four.

SP307: Okay. Can you ask her if she was running late?

Interpreter: Estabas ya corriendo tarde ya pa'l trabajo?

AM: No, no [*rest is unintelligible*]

Interpreter: No, she was not.

[Interpreter apparently does not translate the balance of Ms. Franco's answer, though because it is unintelligible, cannot discern what else Ms. Franco said.]

SP307: Okay. Can you ask her what happened? Does she remember what happened?

Interpreter: Se acuerda lo que paso?

AM: *[response is unintelligible]*

Interpreter: Yes. She said she remembers.

SP307: Okay. Can she tell us?

Interpreter: Le puedes decir como paso?

AM: *[response is unintelligible]*

Interpreter: Okay. Digale.

AM: Bueno pues, yo iba, iba manejando pues y entonces se atraveso en el camino el autobus y

[Noise sounding like recorder rubbing against fabric makes rest of Ms. Franco's comment unintelligible. Ms. Franco pauses and the interpreter takes over and gives an answer additional to and somewhat different from what AM began to say.]

Interpreter: I was driving together. At the beginning she told me I was driving. She did her stop and then when she start moving and she start driving, the bus came in and encountered her *[sound of hands clapped together simultaneously with the word 'her']* and that is when they crash.

SP307: Okay.

[Sound of sighing, moaning]

SP307: Okay.

SP431: All right. We're just about done.

SP307: So, if I understand that right, she said she was driving –

Interpreter: Mmm Mmm.

SP307: - and then what, after that?

[The interpreter does not interpret the question for Ms. Franco, but proceeds to answer instead of Ms. Franco.]

Interpreter: And she, she made her stop.

SP307: Okay.

Interpreter: She said her stop and then when she took off, the bus, when she was driving already....

SP307: Mmm. Mmm.

Interpreter(continuing): after she did the stop, the bus came in and encountered her.

SP307: Okay.

Interpreter (continuing): and hit her. That's what she said, that's how I know, I told you.

SP307: Okay.

Interpreter: That is what she's been telling me before now.

[Sounds as if Ms. Franco said something but can't discern content and interpreter does not relay it to the Trooper.]

SP307: Okay.

SP307: How long has she worked for Norcraft?

Interpreter: Cuanto tiempo hace que estaba trabajando alli en Norcraft, mi hija?

AM: Un mes, acabo de llegar.

Interpreter: She says she's only been there for a month.

SP307: Okay.

[Phone starts ringing very loud making the following conversation difficult to understand]

SP307: Does she want to [unintelligible] that?

Interpreter: Tu telefono lo contestaste, verdad?

[No discernable response from AM]

Interpreter: No, she already said yes, she left it here at the hospital.

[Phone stops ringing.]

Interpreter (continuing): She had her seatbelt, and that is probably why her chest hurts, you know because the seatbelt grabbed her.

SP307: Oh, Okay.

Interpreter(continuing): She said she was crushed into the, into the van.

[No indication Ms. Franco said anything and this previous statement by the interpreter.]

SP307: Mmm Mmm.

Interpreter (continuing): *[unintelligible]*.

SP307: Oh, okay.

SP307: Any...thing else?

SP431: Does she always drive to work?

Interpreter: Asi es como vas al trabajo?

AM: No.

Interpreter: No.

SP431: How many times has she been on that road?

Interpreter: Cuantas veces has ido a manejar en ese camino?

AM: Era la primera vez.

Interpreter: It was the first time.

SP307: Okay.

[Sounds like Ms. Franco starts crying]

SP431: And then did you write your name on there for me, please?

Interpreter: Sure.

[Sound of people in the background talking, laughing.]

SP431: Is her boyfriend here?

Interpreter: No ha venido tu novio a verla?

AM: *[Response from Ms. Franco is unintelligible.]*

Interpreter: We've been trying to call him on the phone....

SP431: Is he working?

[The interpreter does not interpret the question for Ms. Franco, but proceeds to answer instead of Ms. Franco.]

Interpreter: Um – she said he stayed home today because he was sick,

SP431: Mmm Mmm.

Interpreter (continuing): And I've been trying to, he ga..., she gave me two numbers and I put 'em in my cell, and I've been trying to contact him and there's no answer.

SP431: Okay.

Interpreter (continuing): On either one of them.

SP307: And you are from Marshall?

Interpreter: I live in Marshall.

SP307: Okay.

Interpreter: 320 S 6th Street.

[Sound of Ms. Franco moaning.]

SP307: South what, 6th?

Interpreter: South 6th street, just a couple of blocks from the police department.

SP307: Okay.

SP431: And you've translated for the police department before?

Interpreter: I do that.

SP431: Okay.

Interpreter (continuing): I do that since 1994, Sir.

SP431: Okay.

SP431: And you know Bill Jensen?

[Although the name is Joe Jensen, sounds like SP431 is asking for Bill Jensen]

Interpreter: I know everybody in the Police department. I know Joe Jensen and the dispatchers and Kathy ...

SP431: Okay.

Interpreter (continuing): and everybody there. Yes sir.

SP307: Okay.

SP431: If you ah, if you do come in contact with – does his, does her boyfriend speak English?

Interpreter: Tu novio solo habla ingles?

AM: Un poquito

Interpreter: A little bit, she said.

SP431: Okay. Um...I would assume that you need the insurance or was that....

SP307: Well, um I think they got some of that information from out of there.

SP431: Okay. Okay. Would you want to talk to him at all or?

SP307: Yeah, I'll look to see what I got.

SP431: Okay.

SP307: and then hmm.... *[rest is unintelligible]*

SP431: Thank you.

Interpreter: Thank you.

SP307: Thanks.

Interpreter: Thank you.

[Balance is unintelligible, and then recorder stops.]