

#39

STATE OF MINNESOTA

IN DISTRICT COURT

COUNTY OF LYON

FIFTH JUDICIAL DISTRICT

State of Minnesota,
Plaintiff,

PLAINTIFF'S RESPONSIVE
MEMORANDUM TO
DEFENDANT'S
MOTION FOR CHANGE OF
VENUE

Vs.

Olga Marina Franco del Cid,
Defendant.

Court File # 42-CR-08-220

The following memorandum is submitted in response to the defendant's Motion for Change of Venue in this matter. It is, and following careful consideration of the defendant's argument and review of defendant's exhibits, remains the State's position that Olga Marina Franco del Cid can have a fair impartial trial in Lyon County.

ARGUMENT

Minnesota Rule 24.03 of Criminal Procedure provides:

- Subd. 1. Grounds. The case may be transferred to another county:
 - a. If the court is satisfied that a fair and impartial trial cannot be had in the county in which the case is pending;
 - b. For the convenience of the parties and witnesses;
 - c. In the interests of justice;
 - d. As provided by Rule 25.02 governing prejudicial publicity.

In relevant part, Minnesota Rule 25.02 of Criminal Procedure provides:

Subd. 3. Standards for Granting the Motion. A motion for a continuance or change of venue shall be granted whenever it is determined the dissemination of potentially prejudicial material creates a reasonable likelihood that in the absence

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of such relief, a fair trial cannot be had. A showing of actual prejudice shall not be required.

Generally, factual newspaper accounts are insufficient to establish a finding of prejudicial publicity and a motion for a change of venue should be denied. State v. Walen, 563 N.W.2d 742 (Minn. 1997). In addition, while significant hostile public response may warrant a change of venue, a motion for change of venue is properly denied where public comment is divided or ambiguous. State v. Nelson, 257 N.W.2d 356 (Minn. 1977). In addition, the passage of long period of time between the prejudicial publicity and the trial can alleviate any prejudicial effect created by publicity. State v. 1979(motion for change of venue properly denied when newspaper articles complained of were fair and accurate); State v. Ward, 349 N.W.2d 294 (Minn.App.1984) (newspaper's report of guilt not prejudicial for trial held 3 ½ months later).

In the present case, the defendant asserts that a fair trial cannot take place in Lyon County and in support of the claim attaches multiple newspaper articles and public comments obtained from various internet websites. In deciding the merits of defendant's motion one must consider when the articles/comments were published, where the articles were published, and the article's content and any prejudicial effect it may have on the defendant. When considering these factors it becomes readily apparent that the articles and comments complained of by the defense do not constitute a sufficient showing of prejudice publicity warranting a change of venue.

WHEN WERE THE ARTICLE'S PUBLISHED

Many of the articles submitted as exhibits in this matter are merely factual accounts of the events surrounding the February 19, 2008, bus crash that occurred outside of

Cottonwood, Minnesota. They come from various areas of the State and were printed the same week of the crash. With an incident such as a bus crash where four children lost their lives and many more seriously injured, there will be significant news coverage. It will not only generate significant local interest, but will be covered State and even Nationwide. That's simply the way it works. When reviewing the articles, it is clear that a majority of the coverage pertained to factual accounts of the events surrounding the crash. First of the crash itself and then of the person criminally charged with causing the crash. Given the fact that most of the articles that the defendant claims were prejudicial were printed over three months ago, it is highly unlikely that any potential juror in Lyon County would now be influenced by their contents. In fact, it would be surprising if a potential juror were able to recall anything specific about any article they read and it would be more likely that they would only be able to recite a general summary about the event. Therefore, the fact that the several news medias reported the crash does not support a change of venue in this matter.

WHERE WERE THE ARTICLES/PUBLIC COMMENTS BEING PUBLISHED

In considering the defendant's argument for a change of venue it is also important to look at where the public comments and articles are being published. Numerous of the defendant's attachments are from communities outside of Lyon County. The exhibits include articles from newspapers out of Minneapolis/St. Paul, Willmar, and even Sioux Falls, South Dakota. The exhibits include posting to websites from people across the State and Nation. They are not Lyon County specific and there is nothing in the record to

indicate that the citizens of Lyon County were aware of all of these articles and comments.

The fact that this incident created such a high level of media interest is by no means surprising as stated above. But, the amount of coverage it generated does not mean that the defendant could not receive a fair and impartial trial in Lyon County. Many, if not a majority, of these articles and comments were never seen by potential jurors in Lyon County and would not influence a juror if the matter remains venued here. Therefore, the fact that this matter was covered at a local, State and National level does not support a change of venue. In fact, if one were to accept the argument that venue needs to be changed in this matter because of all the media coverage you wouldn't be able to have a trial anywhere in the State given its wide-spread attention and the far reaching net of the computer.

CONTENT AND TIMING OF THE ARTICLES

Probably the most determining factor for denying defendant's motion for a change of venue is the content and timing of the various newspaper articles that have been published relating to this matter. As stated above, the initial coverage of this case surrounded the events of the crash and of the defendant's first appearance. They were primarily fact based articles and came from the information presented at a news release or from the Complaint filed in this matter. As also previously stated, most of this coverage came right after the incident which is over three months ago.

The more recent articles, however, focus on the fact that the defendant claims she was not driving the van on February 19, 2008, and that her boyfriend was behind wheel when

it crashed into the school bus. The defense has not been shy in presenting their theory. It has been argued in the courtroom at the omnibus hearing, it was stated to reporters, and the defendant herself made the claim during a newspaper interview in the jail following her arrest. These articles are submitted as exhibits in this matter date back to the end of March 2008. It is the State's position that these articles are the ones that the potential jurors will remember the most of the media coverage in this matter. These articles certainly aren't prejudicial and cannot even be argued as such.

The defense also included articles pertaining to federal immigration reform and even an article about a nationally syndicated program where the bus crash was mentioned during one of its evening shows. These, likewise, aren't prejudicial to the defendant.

CONCLUSION

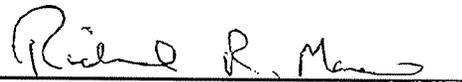
Defendant's motion for a change of venue should be denied. There is simply no indication that the defendant could not have a fair and impartial trial in Lyon County. While there certainly was significant news coverage and public comment about this matter it doesn't rise to level where it can or should be considered prejudicial publicity. For the past two months the media coverage has focused on the defendant's claim that she was not driving the van when it crashed into the bus. This coverage is not prejudicial to the defendant.

The public comment available through internet websites also fail to support a finding that the defendant cannot have a fair and impartial trial in Lyon County. Many of the print offs from the various internet sites submitted as exhibits are from communities outside of Lyon County. In addition, the content of the "blogs" range for being hostile to

being neutral and nonjudgmental to being supportive of the defendant. There is no indication that the people in Lyon County know of the various comments being made on websites in Willmar or in the Twin Cities, let alone that they are reading them.

Dated this 29th day of May, 2008.

Respectfully submitted,



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