STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF HENNEPIN	FOURTH JUDICIAL DISTRICT
STATE OF MINNESOTA, Plaintiff, vs. AMY MARGARET SENSER, Defendant.	**STATE'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S POST-VERDICT MOTIONS** MNCIS No. 27-CR-11-28801 C.A. File No. 11-6136

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TO: THE HONORABLE DANIEL MABLEY, JUDGE OF DISTRICT COURT; ERIC NELSON, COUNSEL FOR DEFENDANT; AND DEFENDANT.

INTRODUCTION

On May 3, 2012, following a jury trial, the Defendant was found guilty of two counts of Criminal Vehicular Homicide and one count of Careless Driving. Defendant now moves for a judgment of acquittal, a new trial and a *Schwartz* hearing. The Court previously denied Defendant's motion for judgment of acquittal at the close of the State's case. Accordingly, there is no basis for the Court to grant that motion or any of the new motions as Defendant has not alleged any basis upon which any of these motions should be granted, and the motions should be denied in their entirety.

ARGUMENT

I. DEFENDANT IS NOT ENTITLED TO A NEW TRIAL BECAUSE NONE OF THE GROUNDS SPECIFIED BY THE RULE ARE APPLICABLE TO THIS CASE.

The Minnesota Rules of Criminal Procedure provide that

> [t]he court on written motion of Defendant may grant a new trial on any of the following grounds:

1. The interests of justice;
2. Irregularity in the proceedings, or any order or abuse of discretion that deprived the defendant of a fair trial;
3. Prosecutorial or jury misconduct;
4. Accident or surprise that could not have been prevented by ordinary prudence;
5. Newly discovered material evidence, which with reasonable diligence could not have been found and produced at the trial;
6. Errors of law at trial, and objected to at the time unless no objection is required by these rules;
7. A verdict or finding of guilty that is not justified by the evidence, or is contrary to law.

Minn. R. Crim. P. 26.04, subd. 1(1). It is well established that a new trial should be granted cautiously and only for substantial error. *State v. Barnett*, 258 N.W. 508, 510 (Minn. 1935). The decision to grant a new trial "rests largely in the discretion of the trial court, who has the opportunity to ascertain whether any prejudice has resulted." *Thompson*, 139 N.W.2d at 513. It is not enough for Defendant to simply point out that an error has occurred. *State v. Jackson*, 770 N.W.2d 470, 479 (Minn. 2009) ("not every trial error warrants a new trial."). A new trial is not required unless errors have affected a substantial right of Defendant, and typically only when there has been a showing of actual prejudice." *State v. Jensen*, 448 N.W.2d 74, 76 (Minn. Ct. App. 1989); *State v. Kaiser*, 486 N.W.2d 384, 387 (Minn. 1992).

A. Defendant is Not Entitled to a New Trial Based on Insufficient Evidence.

This Court's task in assessing a motion for judgment of acquittal based on insufficient evidence is to determine "whether the evidence is sufficient to present a fact question for the jury's determination, after viewing the evidence and all resulting inferences in favor of the state." *State v. Slaughter,* 691 N.W.2d 70, 74-75 (Minn.2005). Accordingly, the Court may grant a motion for judgment of acquittal only if it determines

that the State's evidence, when viewed in the light most favorable to the state, is insufficient to sustain a conviction. *Id.* at 75. The Court is required to view the evidence in favor of the jury's verdict.

Defendant's arguments regarding statutory construction are improper at this stage in the proceedings. Defendant essentially made these same arguments in her motion to dismiss for lack of probable cause and those arguments were rejected by this court. Defendant again relies on *State v. Al-Naseer,* 734 N.W.2d 679 (Minn.2007) and presses this Court to find that the facts are essentially the same regarding her knowledge at the time of the crash. However, a major distinction exists between this case and *Al-Naseer.* As argued previously and as was borne out in testimony, there was absolutely NO evidence that the Defendant Senser was asleep at the time of the crash. This is significantly different from the evidence in the *Al-Naseer* case, where experts for the State conceded he could have been sleeping.

Here, three 911 callers testified that they had no difficulty seeing the victim's vehicle and its flashing lights. The jury had the benefit of photographs taken at the scene shortly after the crash. The jury compared and weighed the testimony of experts presented by both the State and the Defendant. The jury was able to evaluate the weight and structure of the construction implements the Defendant claimed she thought she hit. The significant damage to the vehicle was presented by way of photographs and the testimony of a body shop expert. The jury saw and heard evidence of the Defendant's efforts to further conceal evidence of the crime, i.e. deleting text messages, donating the clothing she wore at the time of the crash and changing her hair color perhaps attempting

to avoid being identified as the erratic driver Molly Kelly observed in the area a half hour after the crash.

Finally, this Court had the opportunity to evaluate the credibility of the Defendant, just as the jury did. The jury rejected the Defendant's repeated assertions that she thought she hit a pothole or a construction cone. There is no reason for this Court to substitute its evaluation of credibility for that of the jury's.

1. The Court's Jury Instructions Regarding Defendant's Knowledge were Proper and Agreed to by Defense Counsel.

On March 29, 2012, the Court first provided both parties with a draft of the jury instructions. Defense counsel raised numerous objections, none of which pertained to the language as to the third element, that "the Defendant knew that the accident involved either injury or death to another person or damage to another vehicle." Had the Defense raised an objection, the State would have requested that the language remain as originally drafted. Defendant now wants this Court to adopt language specifically rejected in the *Al-Naseer* line of cases:

> To the other extreme, the court of appeals construed subdivision 1 of section 169.09 as requiring that the state prove that Al-Naseer knew or should have known three facts: that (1) he was involved in an accident; (2) the accident was with a person; and (3) the person sustained bodily injury or death. *State v. Al- Naseer,* 721 N.W.2d at 626-27 (Minn. Ct. App. 2006)

The Minnesota Supreme Court explicitly rejected this standard in the *Al-Naseer IV* decision:

> Ultimately, we reject the requirement of knowledge of bodily injury or death because a driver has an affirmative duty to stop in situations where there has been no bodily injury or death. For example, a driver has a statutory duty to stop if the driver has an accident involving an unattended vehicle. *See* Minn.Stat. § 169.09, subd. 4 (2006). We conclude that the

> mens rea standard must relate to the culpable act (failing to stop when there was a duty to stop), not to the consequences of that act (causing property damage or bodily injury). *State v. Al-Naseer,* 734 N.W. 2d 679, 686-688 (Minn. 2007) (emphasis added).

The *Al-Naseer IV* Court concluded:

> Similarly, a driver who knows that he or she has been involved in an accident with a person or another vehicle is put on notice that there is a duty to stop, and the failure to stop justifies an enhanced crime where the accident results in the death of another person, whether or not the driver knew that the accident caused the death of another person.
>
> This conclusion also serves the public welfare purpose of the statutes, to assure that drivers who are involved in an accident with a person or another vehicle stop, notify authorities, and give aid to any injured persons until the authorities arrive. *Id.* at 688. (emphasis added.)

The Defendant argues that there was no evidence the Defendant knew she hit a vehicle, but that argument misstates the law and jury instructions. As outlined previously, there is more than sufficient evidence that the jury could rely upon in finding that the Defendant knew she had a duty to stop, most significantly, the profound damage to her own vehicle, as well as the noise generated by such a crash. The jury explicitly rejected the Defendant's version of events, wherein she repeatedly asserted that she thought she had only hit a pothole or a construction cone. The issue of credibility is one within the sole purview of the factfinder. *State v. Landa,* 642 N.W.2d 720, 725 (Minn.2002). This Court should not set aside the jury's verdict as to Count 1.

2. The Evidence is Sufficient to Support the Jury's Verdict for Count 2.

Defendant argues that law enforcement "had notice" of the crash based on calls to 911 and her lawyer turning over the vehicle almost 24 hours after the crash.

Unfortunately, this argument flies in the face of the jury instructions which, again, were not objected to by the Defendant. The fourth element for Count 2 was: "the defendant failed to give notice of the accident to law enforcement authorities by the quickest means of communication. (emphasis added). The Court liberally allowed Defense Counsel to argue to the jury that law enforcement "had notice" and the jury clearly rejected that argument. The evidence submitted to the jury was that the Defendant failed to report the crash the night of August 23rd, and the entire next day, August 24th. She continued to deny responsibility for the crash until September 2nd, when she submitted the affidavit admitting to being the driver. Under these facts the jury easily found that she did not provide notice by the quickest means of communication and the evidence supports that finding.

B. Defendant is Not Entitled to a New Trial Based on Abuses of Discretion.

The Defendant has also moved for a new trial pursuant to Rule 26.04, subd. 1(2) based on pretrial and trial rulings of the Court, all of which were fully litigated previously. The State refers the Court to the record made with respect to those arguments. The Defendant now argues that the Court's failure to disclose a note received after verdicts had been reached, but prior to the reading of those verdicts in open court, violated the Defendant's due process right to be present at every stage of trial. The note read as follows: "Can this be read in the courtroom in front of Ms. Sensor? We believe, she believed she hit a car or a vehicle and not a person." The verdicts were read on Thursday, May 3, 2012. The Court did not respond to the note, nor was the note disclosed by the Court to the parties until Monday, May 7, 2012.

The Court, in a letter to both counsel, specified its reasons for (a) not disclosing the note to the parties and (b) not reading the note in open court. Those reasons are contained in the correspondence. The note was by no means a request to clarify the law, as a verdict had already been reached. The only other question came on the first day of deliberations. It dealt only as to Count 1, and was regarding the time frame in which the Defendant had to have had the knowledge that triggered the requirement of stopping at the scene.

While the better course of action might have been for the Court to address the note with both parties and in the Defendant's presence, (*see, State v. Sessions*, 621 N.W.2d 751 (Minn.2001)), the fact that the Court did not do so is not error of the sort contemplated by Minn.R.Crim.P 26.04 and the Court should deny Defendant's motion for a new trial on that ground.

Moreover, the admission of Joseph Senser's statement to Rick Sponaugle was properly admitted as impeachment evidence, pursuant to Minn.R.Evid. 613(b). Joseph Senser was asked about statements he made to Dr. Sponaugle in a phone conversation some time after the crash. Joseph Senser testified that he only told Dr. Sponaugle about information that was already public and specifically denied telling him that he and the Defendant had observed blood on the vehicle and "freaked out." The State had provided notice of its intent to offer the hearsay statements made by Mr. Senser to Dr. Sponaugle. After trial had commenced, the State learned that Dr. Sponaugle had suffered a heart-related medical issue and was banned from flying. The State informed the Court and Counsel of its intent to offer Dr. Sponaugle's statement through Sgt. Beasley. This was a recorded statement. It was not offered to prove the truth of the matter, but was, rather,

offered to impeach Joseph Senser's previous testimony and the Court so found. This was not an abuse of discretion and a new trial should not be granted on that basis.

C. Defendant is Not Entitled to a New Trial Based on Errors of Law.

As previously mentioned, the jury instructions in this case were based on case law, specifically, the *Al-Naseer IV* decision. The State will not repeat the arguments previously presented to the Court, but would respectfully direct the Court and Counsel to that case in its entirety. The Minnesota Supreme Court considered numerous different *mens rea* requirements and concluded that the most appropriate was the one that which imposed the duty to stop. Here, the Court instructed in accordance with that law and no error was committed.

Defendant improperly alludes to comments that have been made by jurors in the media following the trial to support her argument for a new trial (Defense Memorandum at 30). Minn.R.Evid. 606(b) clearly prohibits any inquiry as to "any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent or to dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith." These statements cited in Defendant's Memorandum should be disregarded in their entirety. The Court properly determined that the note, submitted after the parties were informed that the jury had reached verdicts, did not impeach the verdict, as it was rendered in accordance with the law and the evidence presented.

II. DEFENDANT IS NOT ENTITLED TO A *SCHWARTZ* HEARING.

Defendant demands a *Schwartz* hearing without articulating what sort of juror misconduct would support the need for such a hearing. Defendant mischaracterizes the

note that was sent to this Court subsequent to the verdicts being reached, but prior to the verdicts being read aloud in open court. The Defendant argues that this note dealt with a "substantive matter of law." That simply is not accurate. The jury was not asking for any information. Contrary to the Defendant's assertion, there would have been no "reconfiguring" of the jury instruction, nor would there have been any "clarifying of the law" by the parties as the verdicts had already been reached. The note, no matter how it is read, is not seeking any clarification on the law or facts presented.

In order to prevail on a request for a *Schwartz* hearing, the Defendant must establish a "prima facie case of juror misconduct...." *State v. Pederson,* 614 N.W.2d 724, 730 (Minn.2000). In *Pederson,* a juror, in answer to a question on a questionnaire following the trial, wrote the following: "I wanted more from [the defense counsel] in presenting the defense. I know a person is supposed to be innocent until proven guilty, but in reality it didn't work that way." The juror also stated that she did not believe the testimony of Dean or Moses, that she believed appellant and wanted him to be not guilty, and that she did not see him as a threat to society. *Id.* at 730. The Appellant moved for a judgment of acquittal, or in the alternative, a *Schwartz* hearing. The district court denied both motions, citing Minn.R.Evid. 606(2).

Minnesota case law has consistently rejected the notion that jurors be required to disclose the ways and means by which they reached their verdicts. *See State v. Hoskins,* 292 Minn. 111, 125, 193 N.W.2d 802, 812 (1972) ("jurors are not competent to disclose any matters which inhere in the verdict, such as their mental processes in connection with it or any other matter resting alone in their minds or consciences"); *Mattox v. United States,* 146 U.S. 140, 148-49, 13 S.Ct. 50, 36 L.Ed. 917 (1892). "This court, in common

with most others, has consistently followed the rule that a jury's deliberations must remain inviolate and its verdict may not be reviewed or set aside on the basis of affidavits or testimony concerning that which transpired in the course of the jurors' deliberations." *Hoskins,* 292 Minn. at 125, 193 N.W.2d at 812.

The Court in *Pederson* stated:

> The rationale for the exclusion of juror testimony about a verdict or the deliberation process is to protect juror deliberations and thought processes from governmental and public scrutiny and to ensure the finality and certainty of verdicts. *See* 27 Charles Alan Wright & Victor James Gold, *Federal Practice and Procedure* § 6072, at 403 (1990); Minn. R. Evid. 606, Advisory Comm. Cmt-1989. In *Schwartz,* we also expressed a concern that jurors be protected from harassment by counsel after the verdict. 258 Minn. at 328, 104 N.W.2d at 303.

Pederson, supra. at 735.

The Defendant has failed to establish a prima facie showing that juror misconduct occurred. Moreover, the Defendant may not rely on statements of jurors that have been made subsequent to the verdicts being rendered. This Court committed no judicial misconduct when it declined to read the note in front of the Defendant, as requested by the jury. There was no improper contact between the Court and the jury, as the Court did not respond in any way to the request. Defendant's motion for a *Schwartz* hearing should be denied.

CONCLUSION

Based on the foregoing, the State respectfully requests that the Court deny Defendant's post-trial motions in their entirety.

Respectfully submitted,

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