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August 26, 2009

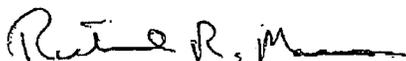
Karen Bierman
Lyon County Court Administrator
607 West Main Street
Marshall, MN 56258

Re: State of Minnesota vs. Olga Marina Franco del Cid
Court File No.: 42-CR-08-220

Dear Karen:

Please find enclosed for filing the Respondent's Answer to Petitioner's Petition for Post Conviction Relief and Affidavit of Service in the above-stated matter.

Sincerely,



Richard R. Maes
Lyon County Attorney

RRM/par

Enclosure

cc: Neal A. Eisenbraun

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF LYON

FIFTH JUDICIAL DISTRICT

State of Minnesota,
Plaintiff,
vs.

AFFIDAVIT OF SERVICE

Court File No.: 42-CR-08-220

Olga Marina Franco del Cid
Defendant

Richard R. Maes of the City of Marshall, County of Lyon in the State of Minnesota, being duly sworn, says that on the 26th day of August 2009, he served the annexed Respondent's Answer to Petitioner's Petition for Post Conviction Relief on Neal A. Eisenbraun, the attorney for Olga Marina Franco del Cid, the defendant in this action, by mailing to Neal A. Eisenbraun, a copy thereof, enclosed in an envelope, postage prepaid, and by depositing same in the post office at Marshall, Minnesota directed to said attorney at 731 58th Avenue NE, Minneapolis, MN 55432, the last known address of said attorney.

Richard R. Maes

Subscribed and sworn to before me,
this 26th day of August, 2009.

Patricia A. Roos
Notary Public



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8/26/09

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

STATE OF MINNESOTA
COUNTY OF LYON

IN DISTRICT COURT
FIFTH JUDICIAL DISTRICT
Court File No.: CR-08-220

Olga Marina Franco del Cid,
Petitioner,

vs.

State of Minnesota,
Respondent.

RESPONDENT'S ANSWER TO
PETITIONER'S PETITION
FOR POST CONVICTION
RELIEF

* * * * *

TO THE DISTRICT COURT ABOVE NAMED:

Now comes the Respondent and answers Petitioner's Petition for Post Conviction Relief brought pursuant to Minnesota Statute, section 590.01 as follows:

1. Respondent generally accepts Petitioner's paragraph A, "Charges and Convictions", as accurate with the exception of the assertion that all counts, but the charge set forth in count XXII, False Information to Peace Officer, require a finding that Petitioner was "grossly negligent." Count XXIII, Stop Sign Violation, and count XXIV, No Minnesota Driver's License, do not have the requisite element of "gross negligence."
2. Respondent objects to Petitioner's repeated attempts to re-argue what the defense feels the facts of the case prove throughout its Petition for Post Conviction Relief.
3. Respondent denies Petitioner's assertion in paragraph B alleging that Respondent's failure to disclose an animated,

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

accident-reconstruction, video created under the direction of the Minnesota State Patrol requires the court to grant Petitioner a new trial in this matter. Respondent denies that said animation video existed prior to trial in this matter, and affirmatively asserts that it was created a few months after the trial. Respondent denies that the State Patrol's classroom animation as shown in a Fox 9 news clip airing months after the completion of the trial, identified as Exhibit C herein, would constitute the best demonstrative evidence in this case. Respondent affirmatively asserts that Petitioner's allegation and the relief requested are mere argumentative assertions based upon speculation with little or no factual support and as such Petitioner is not entitled to relief. Francis v. State, 729 N.W.2d 584 (Minn. 2007).

4. Respondent denies that Petitioner's post-trial, independent, DNA analysis of a toothbrush the defense attorneys reportedly collected at the Petitioner and her boyfriend's trailer house sometime following the crash on February 19, 2008, constitutes "conclusive new exculpatory evidence" warranting a new trial. Respondent specifically asserts that a known sample from Petitioner's boyfriend, Francisco Sangabriel Mendoza, a/k/a Samuel Rivera Melendez, has never been secured to compare to any of the DNA evidence collected in this case. Therefore, the alleged analysis conducted months after the trial was complete, which reportedly indicate that the DNA found on the airbags and on the toothbrush are from the same individual, can still only be

accurately stated as DNA belonging to same "unidentified male." Respondent further asserts that Petitioner's alleged "new evidence" cannot be characterized as the type of new evidence warranting a new trial because it would not have affected the prior trial's outcome. Especially when one considers the testimony from several witnesses, both from the State and the Defense, during the trial indicating that the defendant's boyfriend was in the vehicle. In addition, the ultimate issue at trial came down to whether or not the jury believed the Petitioner was driving, not whether her boyfriend was in the vehicle.

4. Respondent denies that the prosecution withheld a potentially exculpatory document it received from the Bureau of Criminal Apprehension Laboratory (BCA) in this case. Respondent asserts that all documents received by the prosecutor's office from the BCA lab were provided to the defense in this case. Respondent specifically asserts that the prosecutor notified defense attorney Manuel Guerrero by letter dated June 3, 2008, that the lab was doing additional testing on the airbag samples taken in this case and that said testing may preclude further testing; that the letter requested that Mr. Guerrero advise the prosecutor if he wanted to have anyone present for the testing, and; that Mr. Guerrero subsequently notified the prosecutor that he did not intend to have anyone present for further testing. Respondent affirmatively alleges that the BCA's entire case file in this matter was available for review by the defense prior to trial. Respondent asserts that the entire file could have been obtained

by a request of the prosecutor to obtain the same, by personally viewing the entire file at the BCA office, or by directly requesting the entire file from the BCA as it did in this matter, albeit post-trial. Therefore, this assertion also fails to provide a legal basis for the court to grant the relief requested of a new trial.

5. Respondent denies that the prosecutor argued facts contradicted by the evidence in this case as also raised in Petitioner's prosecutorial error assertion in paragraph D. Respondent asserts that the alleged misrepresentation, amounting to a mere "three words" during a lengthy opening statement about the expected testimony during a multiple day trial, cannot be construed as having such a prejudicial effect upon the Petitioner to warrant a new trial. An opening statement is not evidence. Respondent asserts that any alleged misstatement during the opening statement had no effect on the outcome of the trial, especially when considering the testimony of the BCA forensic scientist, Amy Liberty, who, subject to cross-examination, testified at length about the amount and location of blood found on each of the airbags as well as the additional, non-blood, DNA found and identified on the passenger airbag.

6. Respondent denies that an unpublished opinion of the Minnesota Court of Appeals is an appropriate basis for a reconsideration of the court's previous denial of Petitioner's previous motion for judgment of acquittal in this case as requested in Petitioner's Petition for Post-Conviction Relief as paragraph E. Respondent

'specifically asserts that the facts of case as set forth in the unpublished opinion are easily distinguishable from the Petitioner's case. Respondent denies that Petitioner's conviction for count VIII of the complaint must be vacated as a matter of law. Respondent specifically asserts that Minnesota Statute 169.20, subd. 1(d) is only applicable to "right-of-way" situations set forth in Minnesota Statute 169.20 and has no effect upon a violation of any other law.

WHEREFORE, Respondent states that Petitioner has failed to present a claim for which she would be entitled to any of the relief requested in her Petition for Post-Conviction Relief, and it is respectfully requested that Petitioner's Petition for Post-Conviction Relief be denied in its entirety without the scheduling of an evidentiary hearing.

Dated this 26th day of August, 2009.


Richard R. Maes (203221)
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Marshall, MN 56258
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