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6 Attorney for Karla Finley

7 IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR LANE COUNTY

8
9 STATE OF OREGON,

10 Plaintiff,

11 -VS-

12 KARLA MARIE FINLEY,

13 Defendant

CASE No. 20-07-18814

MOTION *IN LIMINE* REGARDING "DUTIES"
OF DEFENDANT AND MISSTATEMENTS
OF THE LAW (Oral Argument Requested)

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15
16 Defendant, Karla Finley, by and through her undersigned attorney, moves the
17 Court for an Order prohibiting the State, its representatives, and witnesses from
18 making any reference whatsoever through testimony, other evidence, or arguments
19 of counsel, concerning the following:

- 20 (1) That Karla Finley had a duty to contact the police immediately after the
21 accident, or to remain at the scene until police arrived, or knew that she
22 should remain at the scene and call the police, even if she did not have
23 actual knowledge that the accident resulted in injury to any person or that
24 the nature of the accident was such that injury was the probable result;
25 (2) That Karla Finely had a duty to exit her vehicle and search the scene for
any person who possibly may have been injured in the accident;

- 1 (3) That Karla Finley had a duty to remain at the scene and fulfill the related
2 duties required by ORS 811.705, even if she mistakenly but honestly
3 believed that the other driver involved in the accident had fled the scene;
4 (4) That Karla Finley had a duty to contact the police or to “turn herself in”
5 days later after learning from her passenger that she had most likely been
6 the driver involved in an accident resulting in the death of Randy Johnson;
7 (5) That other individuals told Karla Finley that she should contact the police
8 or turn herself in after they learned that she had most likely been the
9 driver involved in an accident resulting in a fatality, but she declined or
10 failed to do so;
11 (6) That a guilty verdict could be returned against Karla Finley even if the
12 State fails to prove that she knew the accident resulted in injury to a
13 person; or
14 (7) That a guilty verdict could be returned against Karla Finley even if the
15 State fails to prove that she knew the driver of the other involved vehicle
16 remained at the scene of the accident.

17 This motion is well-founded in law, and not made for the purpose of delay. It is
18 supported by the points and authorities which follow, by the memorandum of law filed
19 herewith, and by such other points and authorities as may be offered by way of
20 supplemental memoranda or at hearing on this motion.

21 MOVED this 3rd day of January, 2008.

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24 TERRI WOOD, OSB #88332
25 ATTORNEY FOR DEFENDANT

POINTS AND AUTHORITIES

1. Based upon discussions with the prosecutor, it appears the State intends to

1 argue or make comments to the jury about several matters of law on which the
2 parties are in grave dispute. These particular legal issues involve the essential
3 elements of the State's case and misstatement of these issues will strike at the heart
4 of the defense case. Although not evidence, misleading arguments and misstating the
5 law can easily mislead or confuse the jury and result in unfair prejudice to the
6 defense. Cf., OEC 403. When the prosecutor misstates the law, a curative instruction
7 or mistrial is required. See, e.g., *State v. Dyer*, 16 Or.App. 247, 254 (1974).
8 Misleading arguments or misstatements of the law by the prosecutor may violate a
9 defendant's constitutional rights to a fair trial, under the Sixth and Fourteenth
10 Amendments of the United States Constitution and Article I, Section 11 of the
11 Oregon Constitution.

12 In fairness to the prosecution, the legal issues in dispute are complex, and
13 some of the finer points have not been addressed by the appellate courts. These are
14 not issues upon which a court would likely be able to rule without first considering
15 legal memoranda from the parties and reviewing the most pertinent cases first-hand.
16 Preliminary discussions with the prosecutor have found agreement among the parties
17 that it would be preferable for the Court to resolve this dispute pre-trial, rather than
18 have the parties objecting to what they perceive as misstatements of law during voir
19 dire or opening statements.

20 Additionally, the defense anticipates, based on statements in the discovery,
21 that one or more State's witnesses may comment about Ms. Finley's "duty" to have
22 called police immediately after the accident, or to have later gone to the police or
23 turned herself in upon learning, days later, that she probably was the person police
24 were seeking. Witness testimony regarding "duties" that they think are required by
25 law, but which are not, is irrelevant, improper lay opinion testimony, and likely to

1 confuse the jury and unduly prejudice the defense. See OEC Rules 401-403 & 701.
2 Similarly, witness testimony or arguments by the prosecutor concerning “duties” that
3 may be civic or moral duties, but not required by law, are irrelevant, improper lay
4 opinion testimony, likely to confuse the jury and unduly prejudice the defense in this
5 case where the sole charge is “failure to perform the duties of a driver.” See OEC
6 Rules 401-403 & 701.

7 It is the Court's duty to determine what laws apply in any given case, and a
8 pre-trial determination of the issues raised herein will prevent the jury from being
9 confused or misled or unduly prejudiced by the presentation of irrelevant evidence or
10 improper argument.

11 2. The defense further relies on the cases and statutes discussed in the
12 memorandum of law filed herewith and incorporated by reference.

13 RESPECTFULLY SUBMITTED this 3rd day of January, 2008.

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16 TERRI WOOD, OSB #88332
17 ATTORNEY FOR DEFENDANT

18 CERTIFICATE OF SERVICE

19
20 I hereby certify that I have made service of the foregoing Motion In Limine, by
21 hand-delivery of a true, full and exact copy thereof, except for the new case number,
22 on July 3, 2007, to the Lane County District Attorney Office, 125 E. 8th Ave.,
23 Eugene, Oregon, 97401, attorney for plaintiff.

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TERRI WOOD, OSB #88332