

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT
Court File No. 62-CR-16-8110

State of Minnesota,

Plaintiff,

**MOTION TO DISMISS COUNT 1, 2, 3
FOR LACK OF PROBABLE CAUSE**

v.

Jeronimo Yanez,

Defendant.

The Defendant, Jeronimo Yanez, through his counsel Earl Gray, Paul Engh and Tom Kelly, moves for an order dismissing Counts 1, 2 and 3. The decision to sign a felony complaint does not address the question required by State v. Florence, namely whether it “is fair and reasonable, applying Rule 11.03, as interpreted here, to require the defendant to stand trial.” 239 N.W.2d 893, 902 (Minn. 1976). It is not, in light of the exonerating evidence left out of the Complaint and what actually happened.

This motion is based upon the defense Florence hearing exhibits, arguments of counsel, and the accompanying memorandum.

Dated: December 14, 2016

s/Earl P. Gray

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STATE OF MINNESOTA

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State of Minnesota,

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v.

**MEMORANDUM IN SUPPORT OF
MOTION FOR FLORENCE HEARING
AND MOTION TO DISMISS**

Jeronimo Yanez,

Defendant.

State v. Florence, 239 N.W.2d 892 (Minn. 1976) drew the “a distinction between a hearing to test the right to detain and a hearing to determine whether a defendant should stand trial.”

It may be a difference of degree only, but it is nevertheless significant. In one case, the court is concerned with the right of the state to detain only; in the other, the court is concerned with the right of the state to detain and, in addition, the justification for trial on the merits.”

Id. at 902 (emphasis added).

Our High Court continued:

Even assuming the correctness of the decision that probable cause existed to warrant arrest, that decision does not of itself determine the proper resolution of a Rule 11.03 probable cause motion. Rather . . . the trial judge must exercise an independent and concerned judgement addressed to this important question: Given the facts disclosed by the record, is it fair and reasonable, applying Rule 11.03 as interpreted here, to require the defendant to stand trial.

Id.

The question we raise is whether it is “fair and reasonable . . . to require” Officer Yanez to stand trial. Florence, 239 N.W.2d at 902. Where, as here, the state cannot present evidence supporting an element of the crime charged, probable cause does not exist. State v. Flicek, 657 N.W.2d 592, 597 (Minn. App. 2003).

The gravamen charge against Officer Yanez is manslaughter in the second degree, Minn. Stat. 609.205 (1). The allegation is that of “culpable negligence whereby the person creates an unreasonable risk, and consciously takes chances of causing death . . .” Id. Given the nature of the charge, “the victim’s negligence is relevant on questions of whether the defendant was negligent, and, if so, whether that negligence was the proximate cause of the victim’s [death].” State v. Croce, 289 N.W.2d 54, 60 (Minn. 1979).

The question, unanswered by the Complaint, is whether Mr. Castile himself was negligent. And did his negligence at least contribute to this tragedy? If these inquires are answered yes, the evidence, in our context, is deemed “exonerating.” Florence, 239 N.W.2d at 904. It is. On June 4, 2015, Philando Castile lied on his application for a permit to carry a firearm. He denied that he was an “unlawful user of any controlled substance as defined in Chapter 152 of Minnesota Statutes.” (Our exhibit 2). This is critical because unlawful

narcotic users are not eligible to own, let alone carry, a firearm on their person. 18 U.S.C. 922(d)(3).

At the time of filling out the application under oath, Mr. Castile was an undoubted, unlawful and chronic user of a controlled substance. Photographs of marijuana and marijuana were discovered on Mr. Castile's Instagram account, under the name Tycoonphe, dated July and September 2012. (Our Exhibit 1).

Mr. Castile was issued three Marijuana in Vehicle tickets 2005, 2006, 2008. (Our Exhibit 2).

Ms. Diamond Reynolds, Mr. Castile's passenger that evening, confirmed to the BCA investigators that 1) "we are smokers" referring to a constancy; 2) that there was marijuana in the car and; 3) that "we smoked marijuana" before the stop. (Our Exhibit 6 page 4) Her statement corroborates Officer Yanez's observation that the smell of marijuana permeated the Castile automobile.

Blood draws from Mr. Castile have since revealed high levels of THC. Evaluation of the defense expert Glenn Hardin, who was formerly employed by the BCA and often testified on behalf of the State of Minnesota, establishes that Mr. Castile was intoxicated. (Our Exhibits 4 and 5). The status of being stoned (in an acute and chronic sense) explains why Mr. Castile: 1) did not follow the repeated directions of Officer Yanez; 2) stared straight ahead and avoided eye-contact; 3)

never mentioned that he had a carry permit, but instead said he had a gun; and (4) he did not show his hands.

This combined conduct was in contravention of the lessons Mr. Castile was taught by his permit to carry instructor, James Diehl. (Our Exhibit 3). Mr. Diehl stressed the importance to his students, in both lecture and power point, that when the police conduct a traffic stop the gun permit owner must: 1) first and foremost tell the officer he has a permit to carry (Mr. Castile never said that); 2) follow the orders of the officer (Mr. Castile ignored the officer's commands not to reach for the gun); and 3) show your hands (Mr. Castile's right hand was in or near his right pocket where the gun was located); and 4) unless ordered otherwise, to keep your hands at the 10 and 2 o'clock position on the steering wheel (which Mr. Castile declined to do).

An objective review of the squad video (Our Exhibit 7) confirms Officer Yanez's description of why he acted in self-defense and the defense of others, but more importantly why Mr. Castile himself was culpably negligent and was the substantial cause of his own demise. He should not even have been driving while under the influence. He should have showed his hands. He should not have reached for the handgun, the same handgun found at the scene, the handgun Officer Yanez described.

The State may attempt to rebut our offer of exonerating evidence with the claim that there still exists “substantial evidence admissible at trial in the record which would justify denial of a motion for a directed verdict of acquittal.”

Florence, 239 N.W.2d at 903. The complaint and investigatory reports are of no help.

The Complaint’s Statement of Probable Cause traces the time line and confirms Officer Yanez’s statement to Castille, referring to his handgun, “Okay, don’t reach for it, then.” “Don’t pull it out,” “Don’t pull it out.” How Mr. Castille would not obey commands, and “was just staring straight ahead.” Mr. Castile “had no regard for what I was saying.” The text confirms the discovery of Mr. Castile’s .40 caliber semi-automatic handgun” removed “from inside the large right front pocket” of his shorts.

The only basis for charging culpable negligence is derived from one Jeffrey J. Noble of California, “an expert on police procedure” hired by the Ramsey County Attorney’s office. Mr. Noble claims that, based upon “the totality of the circumstances” Officer Yanez’s “use of deadly force against Castile during the July 6 stop was not necessary, was objectively unreasonable, and was inconsistent with generally accepted police practices.”

Mr. Noble’s report contains a page by page caveat, in caps:

**THESE NOTES ARE INCOMPLETE AND HAVE
BEEN PREPARED FOR PERSONAL USE ONLY. NO**

ONE MAY RELY ON THEM FOR ANY PURPOSE.
ALL VIEWS ARE SUBJECT TO CHANGE AS
ADDITIONAL INFORMATION BECOMES
AVAILABLE OR IS CLARIFIED.

The Complaint omits this critical hedge. Chief Judge Guthmann, who signed the complaint, was not made aware of it. By Mr. Noble's insistence, his opinion should not be relied upon for "any purpose," let alone a finding of probable cause.

It is also significant that Mr. Noble evaluated culpable negligence on the wrong standard. He opines Officer Yanez's "use of deadly force" was to be evaluated on an "objectively unreasonable" standard. Report at pp. 6, 66. But Minn. Stat. 609.205 (1) requires proof of both "an objective and a subjective element." State v. Frost, 342 N.W.2d 317,320 (Minn. 1983). The objective element is "gross negligence and the subjective element [is] recklessness in the form of an actual conscious disregard of the risk created by the conduct." Id.

"Culpable negligence" is "more than ordinary negligence" and "more than gross negligence." State v. Beilke, 127 N.W.2d 516, 521 (Minn. 1964). Officer Yanez could not be negligent, "culpably or otherwise," unless he breached a duty. And he could not breach a duty, holds our High Court, when facing the irrationality of "the narcotic addict." State v. Back, 775 N.W.2d 866, 870 (Minn. 2009)(quoting Pietila v. Congdon, 362 N.W2d 328, 333 (Minn. 1985)(quoting Goldberg v. Housing Authority of City of Newark, 186 A.2d 291, 297 (New Jersey

1962)). Mr. Noble omits Mr. Castile's dependency and the impact it had on his conduct.

Nor does he address the most important subjective element of the offense, namely "an actual conscious disregard for the risk created by" Officer Yanez's conduct. Back, 775 N.W.2d at 869 n. 5. The breach of duty, if indeed there was one, must be the proximate cause of Mr. Castile's death. Id. (citing State v. Schaub, 44 N.W.2d 61, 64 (Minn. 1950)). The state must prove not just proximate cause. There also must not have been an "intervention of an efficient independent force in which [Officer Yanez] did not participate or which he could not reasonable have foreseen." State v. Smith, 819 N.W.2d 724, 729 (Minn. App. 2012)(citing State v. Jaworsky, 505 N.W.2d 638, 643 (Minn. App. 2011)), rev. denied (Minn. Sept. 30, 1993).

Under these unstated standards, Mr. Noble's report is an empty gesture. He claims that Officer Yanez should have conducted a "high-risk car stop," which begs the question of whether Mr. Castile had the right to even drive a car that night. He did not.

Moreover, Mr. Noble did not, nor could he, address how Officer Yanez could have subjectively known that Mr. Castile was an addict, could not by law carry a gun, would fail to follow established conceal and carry protocols and refuse repeated commands to show his hands. Or how it could it be that Officer Yanez

knew or could have known that when Mr. Castile reached for his gun he would not shoot a police officer dead.

Dated: December 14, 2016

Respectfully submitted,

/s/ Earl Gray

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