

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO: 2001CF000588AMB
CRIMINAL DIVISION "W"

STATE OF FLORIDA

vs.

BRIGITTE HARTWIG,
Defendant.

_____ /

NOLLE PROSEQUI

The State of Florida by and through the undersigned Assistant State Attorney, in and for the Fifteenth Judicial Circuit, files this *Nolle Prosequi* in the above captioned case despite the existence of probable cause for the Defendant's arrest. As of this date, the criminal charges of **DUI Manslaughter and Vehicular Homicide** against Brigitte Hartwig are now abandoned as justice so requires. The facts and evidence are insufficient to prove beyond a reasonable doubt that the Defendant committed the crimes charged in relation to the tragic death of Engel Grace Schroeder.

On Monday, May 8, 2000, the Defendant was involved in a two vehicle "t-bone" crash that occurred at the intersection of State Road 809 (Military Trail) and Verde Trail, in the City of Boca Raton, Florida. The crash occurred at approximately 9:07 P.M. The Defendant, Brigitte Hartwig, was operating her 1995, black BMW 540I, southbound on Military Trail. The Defendant had just left a social gathering at a local restaurant in which she had consumed alcohol. The Defendant was alone in her vehicle and traveling at a minimum speed of approximately 47.4 miles per hour. Her speed was in excess of the posted speed limit for Military Trail which was 40 miles per hour. As the Defendant

traveled southbound on Military Trail, she rounded a curve in the road and approached the intersection of Verde Trail. This intersection was controlled by overhead traffic signals and other traffic control devices for all intersecting lanes. The Defendant did not slow down or stop as she approached the intersection. Instead, the Defendant continued through the intersection and crashed into the right side of a green 1998, Chevrolet Venture four-door minivan. Mrs. Gail M. Schroeder was driving this minivan at the time of the crash and was accompanied by her nine year old daughter, Engel G. Schroeder. It was later determined that Mrs. Schroeder was not wearing her seatbelt at the time of the crash; however, Engel Schroeder was utilizing her lap belt and positioned in the middle center row of the van. Dreadfully, Engel Schroeder suffered serious injuries as a result of this crash and was airlifted to the Delray Medical Center. On May 9, 2000, she succumbed to her injuries and was pronounced dead at 9:15 A.M. An autopsy was conducted by the Deputy Chief Medical Examiner, Charles F. Siebert, Jr., M.D., who determined her cause of death was due to multiple blunt trauma and her manner of death was an accident.

An investigation into the death of Engel Schroeder began on the tragic night of this traffic crash. It was spearheaded by Traffic Homicide Investigator Rohalio Krigger of the Boca Raton Police Department. Traffic Homicide Investigator Chris Somers of the Boca Raton Police Department assisted the investigation. Their combined efforts lead to criminal charges that were filed against the Defendant based upon probable cause.

The investigation revealed that at approximately 5:30 P.M. on the afternoon of the crash, the Defendant met several friends at a local restaurant called Carmine's Ocean Grill, in Boca Raton. While at Carmine's, the Defendant socialized, ate a slice of pizza,

and shared between one to two bottles of wine. The bottles were shared by no more than seven people, including the Defendant, of which she drank a minimum of one and one-half glasses of wine. At approximately 7:00 P.M., the Defendant and two of her friends left Carmine's Ocean Grill and headed to another establishment called Zemi's in the same shopping center. The Defendant stayed at Zemi's until around 9:00 P.M. While at Zemi's she consumed another glass of wine. This glass of wine was consumed with dinner which consisted of steak, potatoes, and some type of vegetable. In addition, the Defendant drank a cup of decaf coffee while at Zemi's.

After leaving Zemi's, the Defendant traveled southbound on Military Trail. Military Trail was a six lane asphalt roadway that was divided by a raised concrete curbed median. The roadway traveled northbound and southbound with a posted speed limit of 40 MPH. Streetlights were present and there were no roadway defects that contributed to the causation of this crash. The southbound lanes consisted of three lanes bordered by a four foot shoulder and raised curb to the west. The southbound lanes were controlled by overhead electric traffic control signals.

The northbound lanes of Military Trail consisted of three lanes bordered by a four foot shoulder, raised curb, and sidewalk to the east. On the west side of the northbound lanes was a designated left turn lane. Located immediately in the area of the crash was an overhead electric traffic control signal with a left arrow turn indicator. The Palm Beach County Department of Engineering and Public Works Traffic Engineering Division indicated there was no malfunction for this specific traffic signal on May 8, 2000.

After the crash occurred, the Defendant remained at the scene. Police and emergency response units arrived within minutes. Several witnesses also responded to

assist Mrs. Schroeder and her daughter. An odor of alcohol was detected coming from the Defendant while she was still at the scene of the crash. Blood was then collected by Inv. Somers at approximately 11:09 P.M pursuant to F.S. § 316.1933(1)(a). The Defendant's blood was then tested for the presence of alcohol by Susan Lewis of the Palm Beach County Sheriff's Office Toxicology Department. The analysis determined that the Defendant's blood alcohol concentration was .059 at 11:09 P.M.

As a result of the combined investigation, the case was forwarded to the 15th Judicial Circuit, Office of the State Attorney, Traffic Homicide Unit, for review. Assistant State Attorney, David Lee, reviewed the case. After which, both Inv. Krigger and ASA Lee attempted to secure the Defendant's surrender based upon probable cause through her criminal defense attorney, Carey Haughwout. The parties agreed that the Defendant would surrender herself to the custody of the Boca Raton Police Department sometime between Christmas of 2000 and New Years Day 2001. It was determined that Ms. Haughwout would contact Inv. Krigger to arrange a specific time and date. The arrangement, however, was never made and the Defendant never appeared. On January 8, 2001, ASA Lee then contacted John Tierney, Esq., who attempted to contact the Defendant several times in regards to her surrender without success.

On January 18, 2001, ASA Lee filed criminal charges against Brigitte Hartwig. The Information charged the Defendant with Count (1) DUI Manslaughter and in the alternative Count (2) Vehicular Homicide. On January 18, 2001, a judge determined there was probable cause for the Defendant's arrest and issued an arrest warrant. The warrant was sought by Inv. Krigger and ASA Lee because the Defendant had still failed to voluntarily surrender herself. The arrest warrant was received by the Palm Beach

County Sheriff's Office on January 19, 2001. It specified that the warrant information should be entered into the Federal Bureau of Investigation's National Criminal Information Center (NCIC) and Interpol. The warrant further specified that extradition was authorized and gave identifying information detailing the Defendant's race, sex, height, hair color, eye color, date of birth, Social Security Number, and Florida Driver's License number.

Inv. Krigger and ASA Lee began an exhaustive search to locate and extradite the Defendant. Thereafter, it was learned the Defendant fled to Germany where she currently enjoys protection from extradition. On February 27, 2001, ASA Lee met with the Schroeder family and their attorney Glen Jed, Esq., regarding the status of this case. On April 10, 2001, the former Boca Raton Police Department, Chief of Police, Andrew Scott, agreed to finance the extradition of the Defendant from Germany. The cost of extradition from Germany to Palm Beach County was estimated to be \$10,000.00.

On July 28, 2002, Germany commenced an investigation into the case and requested documents from the US Attorney's Office, Office of International Affairs. The US Attorney's Office was later notified by Germany that the Defendant would not be extradited because she was a German National Citizen. Germany instead expressed interest in exercising jurisdiction over the Defendant and continuing the search for her in Germany.

On March 17, 2005, members from the Boca Raton Police Department and the Office of the State Attorney, Traffic Homicide Unit, met with Mr. and Mrs. Schroeder. The Schroeders requested that the Office of the State Attorney continue its pursuit of the Defendant in Germany. In April of 2005, Assistant State Attorney Pamela Browne was

advised by the US Attorney's Office, Office of International Affairs, that Interpol *Weisbaden* identified the Defendant in Germany. At this time ASA Lee had already left the office to pursue a career in the private sector and ASA Browne had taken on the case to continue the search for the Defendant. ASA Browne requested to speak and coordinate with a German Prosecutor regarding the case being handled in Germany. Dialogue continued between Germany and the US Attorney's Office into September of 2005. Mrs. Schroeder was kept informed and updated concerning any requests from Germany for documentation by ASA Browne.

On October 11, 2005, a copy of the Traffic Homicide Report; witness statements; traffic light signalization report; and blood alcohol results and analysis were forwarded to the US Attorney's office for delivery to Germany. On March 2, 2006, the US Attorney's Office notified ASA Browne that Germany initiated its own investigation of the Defendant for the charges of Negligent Homicide and Negligent Impairment of Road Safety. ASA Browne continued to request information from the US Attorney's Office and Germany. On March 13, 2006, ASA Browne questioned what rights the Schroeder's had as victims in Germany in addition to other logistical questions concerning the prosecution abroad.

On March 17, 2006, the US Attorney's Office answered ASA Browne's inquires. She was informed that Germany did not require the Office of the State Attorney's consent to prosecute the Defendant in Germany. She was advised that if Germany should convict the Defendant, there would be no issue of double jeopardy in Florida. ASA Browne was further advised that Germany would be expected to make a formal request to the US Department of State for evidence and depositions in the manner of a letter of Rogatory

pursuant to U.S.C. §§ 1781 and 1782. ASA Browne was also advised that the German authorities would likely contact the Schroeder family; however, the Schroeder's should contact the German consulate in their area. ASA Browne then contacted Mr. Schroeder and explained what was occurring in this case. Mr. Schroeder was advised that Germany was beginning its own investigation and that the US Attorney's Office recommended he contact the German Consulate in his area. ASA Browne provided Mr. Schroeder with the phone number for the German Consulate in Miami. ASA Browne asked if she should also contact Mrs. Schroeder with the same information and Mr. Schroeder requested ASA Browne not to do so.

On January 25, 2007, ASA Browne was informed by the US Attorney's Office that the Defendant was sentenced in Germany to 2,100 Euros for the death of Engel Schroeder. This sentence was obtained by Germany prior to any Letter of Rogatory being issued and without the State Attorney's Office knowledge. Thereafter, ASA Browne made numerous attempts to obtain further information concerning the Defendant's sentence. She informed Mrs. Schroeder of the Defendant's sentence in Germany and advised she was still awaiting all the facts regarding the final disposition. ASA Browne continued to attempt to obtain further information from Germany concerning the nature of the Defendant's disposition.

On March 27, 2007, Assistant State Attorney Ellen Roberts, received documentation from Germany concerning the final disposition of its case. Germany determined the Defendant was negligent in the operation of her vehicle which caused Engel Schroeder's death. Germany's decision excluded the use of alcohol as a factor and questioned whether Mrs. Schroeder had her lights on at the time of the crash. On April

30, 2007, members of the Office of the State Attorney, Traffic Homicide Unit, Inv. Chris Somers, Glen Jed, Esq., and Mr. and Mrs. Schroeder met regarding the disposition of the case in Germany. At this time, the below signed Assistant State Attorney was assigned the case for review and prosecution.

The facts and evidence in this case are insufficient to prove the crimes charged in the information. There exist two substantial impediments. First, the evidence is insufficient to prove beyond a reasonable doubt that the Defendant was under the influence of alcohol to the extent that her normal faculties were impaired or that she had a blood alcohol level of 0.08 or higher. Second, the evidence is deficient as to the causation of this crash.

Based upon the evidence, it is not possible to accurately extrapolate the Defendant's blood alcohol concentration at the time of the crash. The time period in which the Defendant ingested alcohol was relatively near the time of the crash. One would have to presume exactly when the Defendant ingested the alcohol in relation to when she consumed her meals. The amount of food the Defendant consumed and its relation to the amount of alcohol she drank is important in determining how her body absorbed the alcohol.

A reasonable interpretation can be made either for or against the Defendant depending upon which phase of alcohol absorption is assumed. If it were presumed the Defendant was in a post-absorptive state at the time of the crash, her blood alcohol concentration would likely have been in the range of 0.076 to 0.094. The range is dependent and accurate only if the Defendant consumed her last glass of wine with her meal more than an hour before the incident. Alternatively, if the Defendant continued to

consume her last glass of wine with or after her meal, and within the last hour prior to the crash, then she would not have been in a post-absorptive state. The Defendant's blood alcohol level would then have been around a 0.040 at the time of the crash.

The wide range between 0.04 and 0.094 is fatal to proving the Defendant was above the legal limit at the time of the crash. The only alternative would be to prove the Defendant was under the influence to the extent her normal faculties were impaired. Normal faculties include, but are not limited to, a person's ability to see, hear, walk, talk, judge distances, drive an automobile, make judgments, act in emergencies, and in general perform the mental and physical acts of daily life. F.S. § 316.1934(1) (2007). It is widely accepted in the realm of forensic toxicology that a person can be impaired at a BAC of 0.05. In addition, it can be argued that a person may begin to feel the affects of alcohol at even lower concentrations. Such an argument must, however, be based upon evidence of impairment to coincide with the concentration level. In this case, there is no evidence the Defendant was impaired beyond the smell of alcohol and the fact the Defendant may have caused the crash. Those facts alone cannot prove the Defendant's normal faculties were impaired at the time of the crash.

The second issue regards the causation of this crash. There were several independent eye witnesses who gave sworn statements regarding their observations. These witnesses were John Potts, Kathleen Laird-Potts and Lynn Pont. Mr. Potts and Mrs. Laird-Potts were traveling southbound in the same vehicle behind the Defendant on Military Trail approaching the intersection of Verde Trail. Ms. Pont was operating a separate vehicle southbound on Military Trail. At the time of the crash, Ms. Pont was

stopped at the intersection of Verde Trail in the right hand turn lane. She was the sole occupant and was in front of the Defendant's BMW prior to the collision.

It is clear from the evidence that the Defendant was the sole occupant and driver of the BMW that struck Mrs. Schroeder's van. It is also evident the Defendant was driving her vehicle southbound on Military Trail above the speed limit consistent with the minimum speed of 47.4 miles per hour. Further, the witnesses clearly observed the Defendant's driving pattern prior to the collision. None described the Defendant's operation as being reckless or excessive for the conditions. What is not clear from the evidence or the witness statements is the color of the traffic signal for southbound traffic on Military Trail at the time of the crash. The witnesses conflict as to the sequence of the traffic signal and the color of the light at impact. As such, there is no way to determine the exact traffic signal sequence prior to the collision or the color of the traffic signal at impact.

Mr. Potts stated in his sworn statement that the traffic signal was yellow as the Defendant approached the intersection of Verde Trail. The traffic signal then turned red seconds prior to when the Defendant's BMW entered the intersection and remained red at impact. Mr. Potts never observed the Defendant slow or break prior to the intersection or at impact. He approximated that he was five to ten car lengths behind the collision when it occurred. Mr. Potts stated he did not know where Mrs. Schroeder's van came from and only saw it when the crash occurred. He did not notice whether Mrs. Schroeder had her headlights on prior to the impact. He first estimated the crash occurred approximately two seconds after the traffic signal for southbound Military Trail turned red. He later stated that it took anywhere between three to eight seconds. In a third statement, Mr.

Potts reverted back to his original statement and claimed it was only two or three seconds. Mr. Potts was, however, positive the Defendant's traffic signal was red when her vehicle entered the intersection. He stated that it was a blatant red light run; however, he could not remember exactly where the Defendant's BMW was when her traffic signal turned red.

Mrs. Laird-Potts was seated in the front passenger seat of Mr. Potts' vehicle, which was behind the Defendant's BMW when the crash occurred. She also observed the light turn from yellow to red in front of the Defendant's vehicle. She approximated her distance was five to seven car lengths away from the traffic signal when it was yellow. She then estimated her vehicle was four car lengths away from the intersection when the traffic signal turned red. Finally, when the crash occurred she stated her vehicle was approximately one and a half car lengths away from the intersection. At each interval, the Defendant's BMW would have been moving at a constant speed in front of her. Mrs. Laird-Potts later stated that the Defendant's vehicle was fifty to a hundred yards in front of her and twenty five yards from the intersection when the traffic signal turned red. She then explained she was not good with distances and the Defendant's BMW could have been closer to the intersection or further away when the traffic signal changed.

The observations of the third witness to this crash conflicted with the observations of Mr. Potts and Mrs. Laird-Potts. Ms. Pont stated she was southbound on Military Trail, stopped at the intersection when the Defendant passed her vehicle. On the night of the crash, she stated the Defendant's vehicle was speeding and came through the intersection while the traffic signal was green. She wrote in a sworn witness statement:

The light just changed and the BMW sped through what was now a new green light; this car was going very fast. I had not begun my right turn yet. The Caravan was going north and had just gone through the light as it changed from red to green. It was going very slowly, making a left.

Ms. Pont later changed her statement during a subsequent sworn interview with the police. She stated the Defendant's traffic signal was red instead of green when the crash occurred. Ms. Pont even stated that the traffic signal was red before she arrived at the intersection. Thus, the reason she came to a stop at the intersection before attempting to make a right turn. She stated she even had enough time prior to the crash to get comfortable and look around. All while the traffic signal for southbound traffic remained red. Ms. Pont further stated that immediately following the crash another vehicle proceeded through the intersection traveling from the same direction as the Defendant.

The conflicts concerning the color and duration of the traffic signal for southbound traffic on Military Trail are material and substantial. Two witnesses observed a yellow traffic signal turn red seconds prior to the crash. The third witness is unreliable because she first stated the light was green at the time of the crash, and then claimed the light was red. These inconsistencies cannot be resolved by Mrs. Schroeder's observations or by the Defendant's statement. In fact, the Defendant's statement and version of the facts is more consistent with Mr. Potts and Mrs. Laird-Potts than that of Mrs. Schroeder or Ms. Pont.

Mrs. Schroeder's vehicle was facing northbound on Military Trail, stopped at the intersection, in the left turn lane prior to the collision. She stated that her traffic signal was red and remained red for a couple of minutes prior to receiving a green permissive turn signal. She then proceeded to make a left turn onto Verde Trail and never saw the Defendant's vehicle coming. Mrs. Schroeder advised that she was familiar with the

intersection and the cycle of the traffic signals. She also advised that her daughter and she both utilized their seatbelts.

Mrs. Schroeder's statement was consistent with Ms. Pont's second statement but inconsistent with the other witnesses. If her statement was correct, then the other witnesses must be mistaken in their observations. As such, there would be no possible way the southbound traffic signal could have been yellow as Mr. Potts and Mrs. Laird-Potts described.

Mrs. Schroeder's observations were in direct conflict with the Defendant's statement. Moments after the crash, the Defendant was overheard by Mrs. Laird-Potts stating her traffic signal was yellow and that she could not avoid the crash. During a post-Miranda statement, the Defendant further claimed the traffic signal for southbound Military Trail turned yellow while she was approaching the intersection. She claimed that she observed the yellow traffic signal and did not stop because she feared being struck in the rear by ensuing traffic. The Defendant claimed that she never observed the light turn red prior to entering the intersection.

The Defendant's statement and version of the facts match the observations described by Mr. Potts and Mrs. Laird-Potts. It is reasonable to believe the southbound traffic signal on Military Trail turned yellow just seconds before the Defendant entered the intersection of Verde Trail. Had this occurred, the Defendant's traffic signal could not have been solid red prior to the crash as Mrs. Schroeder described.

In order to prove the crimes charged, the Defendant must either have caused or contributed to the cause of the crash to prove DUI Manslaughter. To prove Vehicular Homicide the Defendant had to have driven her vehicle in a reckless manner likely to

cause harm. In either scenario, the conflicts in evidence make it impossible to prove these crimes beyond a reasonable doubt.

In order to prove the crime of DUI Manslaughter pursuant to F.S. 316.193(3)(a),(b)(c)3, the State must prove each of the following elements: (1) the Defendant drove an automobile; (2) the Defendant consumed alcoholic beverages and was under the influence of those alcoholic beverages at the time of driving to the extent her normal faculties were impaired or she had a blood alcohol level of a 0.08 or higher; and (3) the Defendant caused or contributed to the cause of the victim's death. Sufficient evidence exists in this case to prove the first and third elements of DUI Manslaughter. The evidence, however, is insufficient with respect to the second element because there is a reasonable inference for or against the Defendant as previously discussed. Thus, impairment cannot be sufficiently shown to prove the Defendant was under the influence or that her blood alcohol concentration was above a 0.08.

Vehicular Homicide is the killing of a human being by the operation of a motor vehicle in a reckless manner likely to cause death or great bodily harm. State v. May, 670 So. 2d 1002 (Fla. 2nd DCA 1996), *citing* F.S. § 782.071(1) (2007). The State is required to prove the Defendant drove with a willful or wanton disregard for the safety of others. State v. Esposito, 642 So. 2d 25 (Fla. 4th DCA 1994). "Willful" means intentionally, knowingly, and purposefully. May, 670 So. 2d at 1004. In contrast DUI Manslaughter only requires proof that the Defendant's operation of a motor vehicle caused or contributed to the cause of the death of another. Id., *see* Magaw v. State, 537 So. 2d 564 (Fla. 1989).

The evidence in this case is insufficient to prove the Defendant drove her vehicle with a willful or wanton disregard for the safety of others. It is clear the Defendant was traveling approximately seven miles over the posted speed limit. Traffic was light and there is no evidence that she cut in and out of other vehicles. What is not clear is the color or cycle of the Defendant's traffic signal. If it could be shown that the Defendant was a substantial distance from the traffic signal when the light changed, then she may have acted with the required intent and disregard. The evidence, however, does not adequately show exactly when her traffic signal changed to yellow prior to the intersection of Verde Trail. Instead, there are conflicts which may leave a reasonable mind to question the color and timing of the signal. Even assuming that the Defendant's traffic signal was red, and that she was speeding seven miles over the speed limit, the facts still do not rise to the level of recklessness under these specific factors beyond and to the exclusion of a reasonable doubt. As such, the crime of Vehicular Homicide must also be abandoned.

Since the evidence in this case is insufficient to prove the elements beyond a reasonable doubt, the case must be *Nolle Prossed*. The State cannot in good faith allow the arrest warrant to remain outstanding despite the Defendant's flight from our jurisdiction. In addition, because the Defendant was never arrested in this case and never released pending trial, the Defendant cannot be charged with Felony Failure to Appear, in violation of F. S. § 843.15.

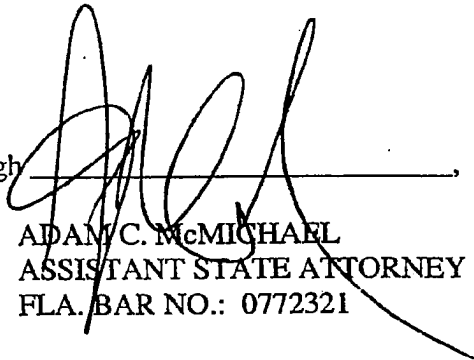
The death of Engel Schroeder was a tragic and unforgiving loss to all that loved and knew her. Due to the events that occurred on May 8, 2000, our community will never have the opportunity to prosper from her contribution. However, in the business of

justice, emotion must not be permitted to obscure evidence or the lack thereof. In this case, the evidence simply does not exist beyond a reasonable doubt that the Defendant is criminally responsible.

BARRY E. KRISCHER, STATE ATTORNEY,

DATE: June 27, 2007

By and through _____



ADAM C. McMICHAEL
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