

**FILED**

MAY 16 2007

CAROLINE M. WEAVER  
DELAWARE CO. COURT CLERK

IN THE DISTRICT COURT IN AND FOR DELAWARE COUNTY  
STATE OF OKLAHOMA

THE STATE OF OKLAHOMA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 THOMAS BRENT CALDWELL, )  
 )  
 Defendant. )

Case No. CF-2006-427

ORDER

NOW, on this 16<sup>th</sup> day of May, 2007, the above entitled matter comes on in regard to the Defendant's Motion to Quash. The Court, having reviewed the stipulation entered into by the parties at Preliminary Hearing and having reviewed the briefs submitted by the parties, finds and orders as follows:

1) That the Defendant herein has been charged with three (3) counts of Manslaughter in the First Degree, each count alleging the same facts save and except the name of the individual who perished as a result of an airplane operation without either an airman's certificate and/or medical certificate, the allegations regarding under the influence of intoxicants having been abandoned as a result of test performed upon Defendant.

2) The charge of manslaughter requires that the following be shown in order for there to satisfy the preliminary hearing sufficiency of "a crime has been committed", i.e: i.) the death of a human; ii.) occurring as a direct result of an act or

event happening in the commission of a misdemeanor; and *iii.*) caused by the Defendant while in the commission of a misdemeanor.

3) The State must prove or be able to prove that the operation of the airplane without an airman's certificate (license) and/or medical certificate, was the direct or proximate cause that resulted in the deaths of these individuals.

4) The research of Oklahoma law does not present any cases which involved airplane operation in the facts given herein, however, there are cases involving the operation of a motor vehicle which discuss the necessity of the commission of the misdemeanor being the direct and proximate cause of death, see *Logan v. State*, 1929 OK CR, 42 Okl.Cr. 294, 275 P. 647 at pages 297-298, and the discussion of "surely no court would hold that because one was so operating a car and should be so unfortunate as to unintentionally and without fault strike and kill some person, that because he was engaged in the commission of a misdemeanor, the driving without license, an offense in no manner connected with the death, he would be guilty of manslaughter".

5) The Court further finds that "proximate cause" and the usual meaning thereof is found not in criminal cases, but is the main topic of discussion in civil cases. It is commonly referred to as "but for" the actions of someone the incident would not have occurred. This can be taken obviously to the extreme, *ie*: If one is not born, he would not have performed the act which caused the harm, but the law requires a connection to satisfy the requirement.


In the civil case, *Bennett v. Morris Farrar Truck Company*, 520 P.2d 705 (Okla.App. Div. 2 1974), this Court in discussing proximate cause and the failure to

have a license stated, "mere lack of operator's license, although violation of law, is but a condition, not evidence upon which one can ordinarily rely for actional le causation".

6) In reviewing the evidence presented herein by stipulation, the Court finds that the cause of the accident was the engine stalling; there is no evidence of why the engine stalled; and, more importantly, no evidence of the Defendant doing something that was of criminal nature that "caused" the engine to stall that resulted in the crash that resulted in the deaths. Without some evidence, however slight, the Court cannot find probable cause that a crime has been committed.

IT IS THEREFORE ORDERED that Defendant's Motion to Quash be sustained and the case herein is dismissed. Defendant's bond is ordered exonerated.

Signed this 16 day of May, 2007.

  
ROBERT G. HANEY  
DISTRICT JUDGE

CERTIFICATE OF MAILING

I hereby certify that on the 16 day of May, 2007, I mailed a true and correct copy of the above and foregoing Order to:

Mr. Bryce Lair, Assistant District Attorney  
Delaware County Courthouse  
P.O. Box 528  
Jay, Oklahoma 74346-0528

Mr. Winston H. Connor, II  
Stockwell & Connor  
2 North Main, Suite 600  
Miami, Oklahoma 74354

postage fully prepaid thereon.

  
Secretary/Bailiff