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Judge: One trial, two juries in Bachan death : Alleged hit-and-run driver sought separate trial from co-conspirator

SCOTT STEEPLTON, NEWS-PRESS CITY EDITOR
November 5, 2009 6:50 AM

Early one morning in March of this year, Claudia Cabrera sat next to her husband, Josue Luna, as she allegedly drove her car through a red light at the campus of USC, striking two freshmen. Adrianna Bachan, 18, of Montecito, was killed and her 19-year-old friend, Marcus Garfinkle, was seriously injured.

On Wednesday, husband and wife assumed essentially the same positions -- albeit handcuffed to chairs and wearing county jail jumpsuits -- in a Los Angeles courtroom, where, over the objections of Ms. Cabrera's attorney, a judge indicated they should stand trial together in connection with the tragic hit-and-run, their guilt or innocence to be determined by separate juries.

Both face one felony count of leaving the scene of an accident. Ms. Cabrera also faces a misdemeanor count of vehicular manslaughter.

Bail for each is \$1 million.

Standing behind his client, Ms. Cabrera, on Wednesday, attorney Arash Hashemi tried to convince Los Angeles County Superior Court Judge Jose I. Sandoval that statements made by a witness at the scene and by Mr. Luna later could prejudice jurors against Ms. Cabrera if the couple were to stand trial together.

Mr. Hashemi also tried to draw a distinction between Ms. Cabrera's alleged crimes and those of her husband, who prosecutors say pulled Mr. Garfinkle from the hood of the car before tossing him to the ground.

"My client had nothing to do with pulling the victim off the hood," he said.

Arguing against separate trials, Los Angeles County Deputy District Attorney Janis Johnson said the witness instead told police that, while Mr. Luna pulled Mr. Garfinkle from the windshield, "the driver pushed from the other side."

That, said the prosecutor, implicates Ms. Cabrera in two instances of inflicting great bodily injury -- when she hit Mr. Garfinkle and when she allegedly helped push his

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body out of the windshield.

Mr. Hashemi told Judge Sandoval that the witness could not identify Mr. Luna as the passenger or the person who pulled Mr. Garfinkle from the hood, and that allowing such testimony at a combined trial would further taint the jury against his client.

The defense attorney also said his client wanted to remain at the scene over Mr. Luna's desire to leave.

But Ms. Johnson attacked that argument, stating that Mr. Luna was saying, "Go! Go! Go!" but that his wife, seeing an ambulance approaching, did just that out of fear of being arrested.

Mr. Luna, who is represented by attorney Jeff Benice, fled the country and was arrested at the Mexican border trying to re-enter the U.S. He later told a Los Angeles TV news station that he and his wife were scared after the hit-and-run, and that he regretted what happened.

After hearing from both sides, Judge Sandoval asked whether dual juries would satisfy the defense request.

"I want a separate trial," said Mr. Hashemi.

"I don't know that anything you've said creates additional prejudice for your client," replied the judge.

Judge Sandoval issued a tentative ruling for a single trial with two juries, one for Ms. Cabrera and the other for Mr. Luna. He also made it clear that, despite needing additional time to research the matter, he was leaning toward a final ruling for dual juries.

He ordered the parties back to court Jan. 11, 2010.

Outside court, Mr. Hashemi told the News-Press that while the ruling doesn't completely address his concern, "It's a ruling I can live with."

After the hearing, Adrianna's mother, Carmen Bachan, told the News-Press that she was pleased with the judge's ruling.

"A single trial is what we've always wanted," she said.

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