

MOODY COUNTY STATE'S ATTORNEY

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TO: The Media and General Public

FROM: Bill Ellingson
Moody County State's Attorney

SUBJECT: State Of South Dakota vs. William J. Janklow

As the Moody County State's Attorney I have filed a criminal complaint charging William J. Janklow with offenses arising out of the motor vehicle collision 10 miles south of Flandreau, South Dakota on August 16, 2003 resulting in the death of Randy Scott of Hardwick, Minnesota.

Reports by law enforcement quickly justified three charges of (1) Failure to Stop at a Stop Sign, (2) Speeding 71 mph in a 55 mph Zone and (3) Reckless Driving. The first two each provide for a maximum jail sentence of 30 days and/or a fine of up to \$200.00 upon conviction. A conviction for Reckless Driving provides for a maximum sentence of one year in the county jail and/or a fine of \$1,000.00. Another possible charge of Second Degree Manslaughter required considerable follow-up investigation, review of the evidence, and study of the law.

Just as quickly, the charge of Vehicular Homicide was ruled out. That charge requires the driver to be under the influence of alcohol or drugs. Where driver intoxication is involved, charges for Homicide are usually and quickly filed.

A separate South Dakota Law provides that the reckless killing of another may constitute Second Degree Manslaughter, which has a maximum punishment of 10 years in the State Penitentiary and a fine of \$10,000.00. The term "reckless" is defined by South Dakota law one way for Reckless Driving and a different way for Second Degree Manslaughter. For purposes of Second Degree Manslaughter, South Dakota Law defines "reckless" as the "conscious and unjustifiable disregard of a substantial risk that the offender's conduct may cause a certain result." The South Dakota Supreme Court has applied that law to facts in a number of recent cases and has distinguished reckless conduct which can give rise to a manslaughter charge and negligent conduct which does not give rise to such a charge. The Court has made the following comments:

"Recklessness [in the context of manslaughter] requires more than ordinary negligent conduct. Evidence of carelessness, inadvertence or other similar behavior is insufficient to sustain a conviction where reckless conduct is required."

"Operation of a motor vehicle in violation of the law without more, is not sufficient to constitute reckless conduct, even if there is a fatality as a result thereof."

Where the only evidence to support an allegation of reckless conduct was a traffic violation, the South Dakota Court has concluded that a charge of manslaughter would not be appropriate. In other cases where additional factors were involved the Court has concluded that there was sufficient evidence whereby the jury could reasonably find that the defendant's conduct gave rise to "a conscious and unjustifiable disregard of a substantial risk that the driver's conduct may cause a certain result," thereby upholding verdicts of second degree manslaughter.

The facts in this case are sufficient to establish probable cause to believe that the offense of Second Degree Manslaughter has been committed and therefore a charge of that offense has been included in the Complaint.

The Defendant's initial court appearance is set for Tuesday, September 2, 2003 at the Moody County Courthouse in Flandreau, South Dakota. At that time I expect that the Defendant will be asked if he wants a preliminary hearing. If so, a preliminary hearing date as well as bond will be set.

William J. Ellingson
Moody County State's Attorney