

STATE OF MINNESOTA

IN DISTRICT COURT

COUNTY OF LYON

FIFTH JUDICIAL DISTRICT
CR-08-220

State of Minnesota,
Plaintiff,

PLAINTIFF'S RESPONSIVE
MEMORANDUM TO
DEFENDANT'S MOTION FOR
RECONSIDERATION OF ORDER

vs.

Olga Marina Franco del Cid,
Defendant.

The following brief memorandum is submitted in response to the defendant's Motion for Reconsideration of Order denying the defendant's motion to suppress her statement given to law enforcement on February 19, 2008. It is Plaintiff's position that the court's Order dated May 6, 2008, is fully supported by the evidence and well founded in law. The defense has not provided evidence of any factor(s) that would affect the court's prior ruling and has only made argument urging a different outcome. Therefore, defendant's motion to reconsider must be denied.

INTRODUCTION

The court by Order dated May 6, 2008, denied the defendant's motion to suppress the statement taken from her at the hospital on February 19, 2008. The defense has now filed a motion requesting that the court reconsider its prior decision and issue a new order suppressing the statement. The defense, in its lengthy memorandum and attached exhibits, seems to be advancing four reasons for reconsideration and reversal of the court's prior order. The first reason asserts that the defendant's interview on February 19, 2008, should be considered supplementary information for preparation of an accident report and

FILED IN THIS OFFICE

7/3/08

Karen J. Bierman
COURT ADMINISTRATOR
Marshall, Lyon County, Minnesota

therefore, the transcript and any information contained therein would be inadmissible pursuant to Minn. Stat. 169.09, subd 13(b). The second and third reasons for reconsideration appear to be an attempt to re-analyze the facts cited by the court in making its prior custody and voluntariness findings pertaining to the defendant's statement. The fourth and final reason, at this point, is an attack on the accuracy of the transcript, which the defense equates to substantial doubt on the reliability of the defendant's actual statement.

This brief will focus primarily on the first issue. It's the State's position that it does not have to extensively argue the remaining issues because the defense has not presented any new evidence which would affect the court's prior ruling, nor did the defense cite any error in the application of the law by the court in its prior analysis. The latter arguments essentially constitute another attempt to argue their position since the court disagreed the first time around.

ARGUMENT

APPLICATION OF MINN. STAT. 169.09, SUBD. 13(b).

The defense's repeated assertion in this matter that Minn. Stat. 169.09, subd. 13(b) prohibits the court from considering any and all investigative and supplemental reports because they are considered "accident reports" under the statute is totally misconstrued. Trooper Larsen's testimony, incident reports (no matter how they are labeled), transcripts and even the Crash Reconstruction Report are not prohibited "accident reports" under Minn. Stat. 169.09, Subd. 13. They are admissible in this criminal proceeding, subject, of course, to any evidentiary objection that may apply.

When reading all of Minn. Stat 169.09 it becomes clear that the term “accident reports” as referred to in the statute is very specific. Minn. Stat. 169.09, subd. 9, provides that the commissioner of public safety shall prescribe the format for the “accident reports” required pursuant to Minn. Stat. 169.09. This subdivision states that the “accident report” to be completed under this section must include the information on the cause of the accident, the existing conditions and the individuals and vehicles involved. It is an information specific report required for the use of the commissioner of public safety and other agencies for accident analysis purposes. Minn. Stat. 169.09, subd. 13(a). So everyone knows what the “Accident Report” required by Minn. Stat. 169.09 looks like, I have attached a blank form marked as Exhibit 1. This specific “accident report”, exhibit 1, is the document that cannot be disclosed, with certain exceptions, pursuant to 169.09 subd. 13(b).

Therefore, the defense’s argument that the transcript is privileged and must be stricken from the record because it just happens to be labeled as an Accident Supplement must be rejected. It is not the document prohibited pursuant to 169.09. The same analysis and result applies to all of the other State Patrol reports contained in the file, all transcripts and the Accident Reconstructionist Report. Each of these documents were properly filed in this matter and are relevant to the criminal investigation. The contents may be discussed by witnesses in these criminal proceedings and some of the documents may even be introduced at trial.

CUSTODY AND VOLUNTARINESS FINDINGS

Defendant’s second and third reasons for reconsideration in this matter surround the court’s prior findings that the defendant was not in custody at the time of the interview at

the hospital on February 19, 2008, and that the defendant's statements were voluntary. The defendant asks the court to revisit whether the defendant "could have reasonably believed she was at the time 'in custody,' ...and the conclusion that Defendant's statement was given voluntarily." Defendant's brief, p. 5. The majority of this argument is just a restatement of the applicable law and how the defense would like to see the court apply the evidence in this case. This issue will not be addressed by the State in this memo as it is just additional argument which is not supported by the record. Suffice it to say that it is the State's position that the court properly applied the law in this matter and that its decision is well supported by the record. It is the State's further contention that in order for the court to reconsider its prior ruling, the defense must point to some error in the court's analysis or cite some new or overlooked evidence that would support the motion. It should not be considered purely on argument without any support in the record.

Aside from its re-analysis on these issues the defense also argues that it would be appropriate to revisit these issues because it might be possible that the defendant was on so much medication that she did not understand what was going on during the interview. In an attempt to support his contention the defense apparently relies on the contents of Exhibits B and C. However, a review of these exhibits does not indicate that the defendant was under such influence due at the time of the interview and cannot be construed otherwise absent some proof. At best, these exhibits simply support the fact that the defendant did take various pain medications due to the injuries she suffered in the crash and that some of these medications may impair alertness and judgment. It doesn't show that it did in this case! In fact, the evidence as applied in the court's memorandum

to its order indicates the complete opposite. Therefore, these reasons for reconsideration must be rejected.

TRANSCRIPT

Defense's final reason for consideration of the prior ruling is the argument that the defendant's statement at the hospital must now be suppressed because they dispute the completeness and/or accuracy of the transcript of her interview. This argument should also be rejected. The issue before the court at the omnibus hearing was the defendant's statement at the hospital. The troopers testified about the interview and what they were told through the aid of the interpreter. This exchange is admissible given the fact that it was not custodial requiring Miranda and was voluntary. The fact that the defense could not make out some of the conversation on the recording of the conversation does not change that fact or the statement's admissibility. In fact, a recording of the conversation was not even required given the non-custodial nature of the interview. If the defendant wants to dispute what the trooper testifies to concerning the conversation, that would come at trial. It certainly doesn't rise to a level where the court could find that the defendant's statements were unreliable in a motion to reconsider even if the present transcript is incomplete or contains inaudible.

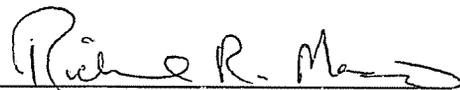
CONCLUSION

It is the State's position that the defendant's motion to reconsider should be denied. The application of 169.09, subd. 13 does not apply to any of the documents submitted in this matter and is not a basis for reconsideration of the matter. As to the remaining issues,

the omnibus hearing in this matter was heard on April 22, 2008. The only two witnesses that testified at that hearing were Trooper Dana Larsen and Trooper Dean Koenen. At the conclusion of their testimony, the court inquired if all the evidence had been submitted on the issue of the admissibility of the defendant's statement on February 19, 2008, and defense counsel answered in the affirmative. On May 6, 2008, the court issued its order denying the defendant's motion to suppress the statement from February 19, 2008. In its order, the court found that the interview was non-custodial and voluntary. This ruling should not be disturbed absent a showing of mistake in application of the law or newly discovered evidence warranting reconsideration by the court of its prior decision. Neither has been presented by the defense in this matter. They have only presented additional arguments based on the evidence that existed at the time of the prior hearing. This does not warrant reconsideration or reversal of the court's prior decision.

Dated this 3rd day of July, 2008.

Respectfully submitted,



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ACCIDENT REPORT (LAW ENFORCEMENT ONLY)

PAGE _____ OF _____

HIT-AND-RUN ?	PUB PROP ?	VEHICLES #	KILLED #	INJURED #	\$ MIN ?	MONTH	DATE	YEAR	DAY	MILITARY TIME
ROUTE SYSTEM		ROUTE NUMBER OR STREET NAME		ROADWAY DIRECTION <input type="checkbox"/> N <input type="checkbox"/> E <input type="checkbox"/> S <input type="checkbox"/> W		<input type="checkbox"/> AT INTERSECTION WITH <input type="checkbox"/> OR _____		<input type="checkbox"/> MI <input type="checkbox"/> FT <input type="checkbox"/> N <input type="checkbox"/> S <input type="checkbox"/> E <input type="checkbox"/> W OF		
COUNTY NO	CITY TWP	INT ELEM	REFERENCE POINT	ROUTE SYS	ROUTE #, STREET, CORP LIMIT, OR FEATURE					

FACTOR 1	POSITION	DRIVER LICENSE NUMBER - 1	STATE	CLASS	DL STATUS	POSITION	DRIVER LICENSE NUMBER - 2	STATE	CLASS	DL STATUS	FACTOR 1						
FACTOR 2	NAME (FIRST, MIDDLE, LAST)			DATE OF BIRTH			NAME (FIRST, MIDDLE, LAST)			DATE OF BIRTH							
MNUVER	ADDRESS			DR VIOLNS RESTRICT			ADDRESS			DR VIOLNS RESTRICT							
PHYSCL	CITY, STATE, ZIP						CITY, STATE, ZIP										
RCOMND	ADDRESS CORRECT ?	SEX	SAFE EQPT TYPE	SAFE EQPT USE	AIRBAG	EJECT	INJ SEV	ADDRESS CORRECT ?	SEX	SAFE EQPT TYPE	SAFE EQPT USE	AIRBAG	EJECT	INJ SEV	RCOMND		
ALCHL TEST ?	TYPE	DRUG TEST ?	TYPE	TO HOSP ?	TRANSPORT <input type="checkbox"/> AMB <input type="checkbox"/> OTHER	AMBULANCE SERVICE		RUN NUMBER	ALCHL TEST ?	TYPE	DRUG TEST ?	TYPE	TO HOSP ?	TRANSPORT <input type="checkbox"/> AMB <input type="checkbox"/> OTHER	AMBULANCE SERVICE		RUN NUMBER

OCCUP #	OWNER NAME	FIRE ?	OCCUP #						
VEH TYP	ADDRESS	TOWED ?	VEH TYP						
VEH USE	CITY, STATE, ZIP	PULLING UNIT ?	VEH USE						
DMG LOC	MAKE	MODEL	YEAR	COLOR	DMG LOC				
DMG SEV	PLATE #	ST REG	YEAR REG	FIRST	SEQUENCE OF EVENTS SECOND	THIRD	FOURTH	MOST HARM EVENT	DMG SEV
INSURANCE				POLICY NUMBER	INSURANCE (UNIT 2)				POLICY NUMBER

CARGO BDY TYPE	HAZ MAT PLAC ?	WAIVED ?	INSPECTION #	INSP BADGE #	IF ACCIDENT INVOLVED A COMMERCIAL MOTOR VEHICLE, SCHOOL BUS, OR HEAD START BUS REMEMBER TO NOTIFY THE STATE PATROL (required under MS 169.783 and 169.4511).				WAIVED ?	HAZ MAT PLAC ?	CARGO BDY TYPE
COMMERCIAL VEHICLE NUMBER 1 - MOTOR CARRIER NAME				DOT NUMBER	COMMERCIAL VEHICLE NUMBER 2 - MOTOR CARRIER NAME				DOT NUMBER		

PASSENGERS / WITNESSES	UNIT	POSTN	DATE OF BIRTH	SEX	TYPE	USE	AIRBAG	EJECT	INJ SEV	TO HOSP	TRANSPORT	AMB SERVICE	RUN NUMBER
										?	<input type="checkbox"/> AMB <input type="checkbox"/> OTHER	AMB SERVICE	RUN NUMBER
										?	<input type="checkbox"/> AMB <input type="checkbox"/> OTHER	AMB SERVICE	RUN NUMBER
										?	<input type="checkbox"/> AMB <input type="checkbox"/> OTHER	AMB SERVICE	RUN NUMBER

OWNER OF OTHER DAMAGED PROPERTY AND DESCRIPTION OF DAMAGED PROPERTY AND/OR YELLOW TAG NUMBER(S)	DAMAGED PROPERTY / YELLOW TAG NUMBER
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ACCTYP		NARRATIVE:	DEVICE
SCHL BUS			
LOCATN			
ON BRIDGE ?			
TYPE OF WZ			
LOC OF CRASH/WZ			
WORKERS PRESENT ?			
RDESGN			
RD SURF			
RD CHAR			
			WORKING
			INT REL
			SPEED LIMIT #
			WEATHER 1
			WEATHER 2
			LIGHT
			PHOTOS TAKEN ?
			DIAGRAM

OFFICER RANK, NAME AND BADGE #	AGENCY	PATROL STATION	<input type="checkbox"/> STATE PATROL <input type="checkbox"/> LOCAL <input type="checkbox"/> SHERIFF <input type="checkbox"/> OTHER
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PLEASE SEND COMPLETED REPORT WITHIN 10 DAYS TO DVS/ACCIDENT RECORDS, 445 MINNESOTA STREET, SUITE 101, ST. PAUL, MN 55101-1501

Exhibit 1