

STATE OF MINNESOTA
COUNTY OF LYON

IN DISTRICT COURT
FIFTH JUDICIAL DISTRICT

STATE OF MINNESOTA,

Plaintiff,

File No. 42-CR-08-220

vs.

OLGA MARINA FRANCO DEL CID,

ORDER

Defendant.

WHEREAS this Court received, in chambers, a copy of the Crash Reconstruction Report created by the Minnesota State Patrol regarding the above-entitled matter, and

WHEREAS Defendant made an oral motion in chambers on June 27, 2008 regarding the disclosure of that Report,

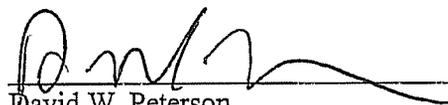
Based upon all the files and records herein,

IT IS HEREBY ORDERED:

1. Defendant's motion to deny public accessibility to the Crash Reconstruction Report of the Minnesota State Patrol in the above-entitled matter is GRANTED.
2. The Crash Reconstruction Report shall not be made part of the Court File, however, Defendant, Defense Counsel, State Counsel, their experts, and the Court shall be granted access to the Crash Reconstruction Report.

Dated: July 8, 2008

BY THE COURT:


David W. Peterson
Judge of District Court

MEMORANDUM

Defendant has been charged in the Amended Complaint with four counts of Criminal Vehicular Homicide, in violation of Minn. Stat. § 609.21, Subd. 1(1), seventeen counts of Criminal Vehicular Injury, in violation of Minn. Stat. § 609.21, Subd. 1(1), one count of False

Name and Date of Birth to a Peace Officer, in violation of Minn. Stat. § 609.506, Subd. 2, one count of Stop Sign Violation, in violation of Minn. Stat. § 169.20, Subd. 3(a), and one count of No Minnesota Driver's License, in violation of Minn. Stat. § 171.02, Subd. 1. The Court, in chambers, received a copy of the Crash Reconstruction Report made by the Minnesota State Patrol. Defendant requests that the Crash Reconstruction Report not be made part of the record.

Minn. Stat. § 169.09, Subd. 13(b) provides, in part:

“Accident reports and data contained in the reports are not discoverable under any provision of law or rule of court. No report shall be used as evidence in any trial, civil or criminal, or any action for damages or criminal proceedings arising out of an accident.”

This Court has addressed this statute as it relates to Defendant's Motion to Suppress the statement obtained on February 19, 2008. In that specific context, this Court determined that the statement is not a “report” within the meaning of the statute. However, in this context, the Crash Reconstruction Report is a “report” within the meaning of the statute. See Minn. Stat. § 169.09, Subd. 9 (reports “must disclose the causes, existing conditions, and the individuals and vehicles involved”). Subdivision 13(b) outlines that reports are “not discoverable” and that reports cannot “be used as evidence in any trial, civil or criminal, [...] or criminal proceedings.” As noted in Subdivision 13(c), the purpose of the statute is “to render privileged the reports.” Subdivision 13(d) makes disclosing information in the reports, except as otherwise provided, a misdemeanor. The Court, therefore, must conclude the Crash Reconstruction Report is privileged and inaccessible to the public. The Crash Reconstruction Report shall not be made part of the Court File.

However, this does not render the Crash Reconstruction Report empty. Minn. Stat. § 169.09, Subd. 13(c) provides, in part:

“Nothing in this subdivision prevents any individual who has made a report under this section [...] from testifying in any trial, civil or criminal, arising out of an accident, as to facts within the individual’s knowledge.”

“What an officer hears is as much a fact within his knowledge as what he observes. In investigating an accident, he is not required to close his ears and use only his powers of observation.” Rockwood v. Pierce, 51 N.W.2d 670, 678-79 (Minn. 1952). “Use of a report by a police officer to refresh his memory while testifying to facts within his knowledge is permitted even though the report itself is inadmissible.” State v. Schultz, 392 N.W.2d 305, 307 (Minn. Ct. App. 1986). Testimony as to the facts in this matter will be admitted as provided by the normal rules of evidence, including the use of the Crash Reconstruction Report, as necessary, to refresh witness recollection.

The Court notes that there may be some doubt about the validity of Minn. Stat. § 169.09, Subd. 13, to the extent that the statute regulates evidence, which is normally in the province of the judicial branch rather than the legislative branch. See Henry W. McCarr; Jack S. Nordby, 8 Minn. Prac., Criminal Law & Procedure § 32.44 (3d ed.) (“In criminal cases, the documents should be evaluated under the hearsay and confrontation rules, and the constitutional right to present a defense.”). While this Court does not rule on the statute broadly as to any separation of powers issue, the Court does find that strict application of the entire statute would be unconstitutional.

The statute, as strictly applied, would make the Crash Reconstruction Report not discoverable. However, the Court must conclude that denying Defendant access to the Report would violate her constitutional rights. The statute and the case law specifically allow testimony as to the facts in the Report and the use of that Report to refresh witness recollection. To allow the State’s witnesses to utilize the Report in such a fashion, without allowing Defendant access

to that information, would violate all notions of fundamental fairness, due process, and the right to prepare and present a defense. To give effect to the statute as much as constitutionally permissible, the Court concludes that Defendant must be allowed access to the Report. Further, to the extent that the statute describes the reports as "privileged," the Court notes that Defendant has specifically requested discovery of "reconstruction accident and brake reports." See, e.g. May 21, 2008 Demand for Speedy Trial; June 14, 2008 Mot. to Compel Disc. The State, upon obtaining the Crash Reconstruction Report tendered it to Counsel. Any privilege held by the parties, therefore, has been waived.

Since denying Defendant access to the Crash Reconstruction Report would violate her constitutional rights, and since any privilege of the parties has been waived, the Court will allow discovery of the Crash Reconstruction Report. However, to comport with the statute as much as constitutionally permissible, the Report shall not be made part of the Court File and will not be disseminated publicly. It shall be available only to the Court, Defense and State Counsel, and any expert witnesses used by them for trial preparation and trial purposes.

DWP
7-8-08