



A LAW FIRM

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May 26, 2008

Rick Maes, Esq.
Lyon County Attorney
407 W. Main St.
Marshall, MN 56285

RE: State v. Franco, Court File No. 42-CR-08-220

Dear Mr. Maes:

As the record reflects, I am one of the attorneys representing Olga Marina Franco del Cid in the above matter. I write on behalf of Ms. Franco and defense counsel in an effort to resolve several issues without the necessity of motions to the Court.

My co-counsel, Manuel Guerrero, mentioned that he has called you numerous times over the past weeks in an effort to resolve these issues, but that, for some inexplicable reason, you have always been occupied or out of the office when he has called, and, more bewildering, you have failed to return *any* of these calls. As Mr. Guerrero put it to me, and I paraphrase, "Rick Maes has stopped taking or returning my calls and I don't know why because he won't return my calls even to tell me that." If you opine there is any valid reason you are no longer willing to speak with defense counsel or Mr. Guerrero in particular by telephone, please send us a letter informing us why.

The issues. First, I understand the State is in possession of the clothing Ms. Franco was wearing at the time of the accident, and other property obtained from her or her residence as the result of a search warrant or otherwise. I have more than once reviewed the entire file, including the discovery the State has provided to date, but I have found no complete description of what the State has, nor any photographs

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enabling us to examine that potential evidence. Please confirm that we may view that evidence and where, including chain-of-custody documentation.

Second, it has been more than three months since the accident occurred. The Omnibus hearing has been necessarily continued after two prior hearings and must be continued until the State verifies that it has disclosed all the evidence it claims supports the myriad serious criminal charges against Ms. Franco. Yet, we have never been provided the final accident reconstruction reports and all data relied on in preparing those reports, including the scientific methodology utilized to interpret that data. I understand that the refusal to disclose this material has been attributed to the fact that the examination of the brakes on the Plymouth Voyager has yet to be completed, but because that makes no sense at all, I am uncertain I understand that correctly. Please either provide the reports and accompanying data and methodology now, or a prompt and reasonable explanation based on the facts and the law as to why you either believe you cannot, or are acting appropriately in refusing to do so, so that we can bring an appropriate motion to compel.

In reviewing the records, I see that the data from the airbag module for the third vehicle involved, the Chevy Silverado, was downloaded, interpreted, and provided to us. I note that data indicates the speed of the Silverado at less than three seconds prior to deployment was 62 MPH, which according to other records produced by the State is in excess of the posted speed limit on the road on which the Silverado and the school bus were traveling at the time of the collision.

My research indicates that there are two sensors in a 1998 Plymouth Voyager mini-van including an air-bag clock-spring located inside the steering column under the driver's air-bag and a crash-sensor module (also known as an "event data recorder," hereafter, "EDR") which is mounted on the floor under the cup-holder assembly. We reasonably suspect that both sensors were removed from the mini-van and the data promptly downloaded and interpreted. However, we have not been able to find this information in the documents the State has disclosed to the defense to date. Undoubtedly, it is contained in the accident reconstruction reports. Please provide that forthwith, or explain why you will not, so that we can promptly bring the appropriate motion.

Likewise, we have been unable to find any data from the 1999 International school bus involved in the accident though, again, my research indicates the bus should have had an event data recorder. As with the mini-van, we reasonably suspect that the

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EDR was removed from the bus and the data downloaded and interpreted. Also as with the mini-van, we have been unable to find this information in the documents the State has disclosed to the defense to date. Please provide that forthwith, or explain why you will not, so that we can promptly bring the appropriate motion.

This information is relevant to the defense because, among other reasons, and as you likely know, were the bus exceeding the speed limit, it would have forfeited the right-of-way. See Minn. Stat. § 169.20, Subd. 1(d) (2008) ("The driver of any vehicle traveling at an unlawful speed shall forfeit any right-of-way which the driver might otherwise have hereunder"); *Bermel v. Auge*, 574 N.W.2d 460 (Minn. App. 1998) (Plain words of the statute itself indicate excessive speed shall cause the forfeiture of any right-of-way which the driver of a vehicle may have); *Anderson v. Mid-Motors, Inc.*, 256 Minn. 157, 161, 98 N.W.2d 188, 191 (1959) (Court interpreted the phrase "any right-of-way * * * hereunder" contained in the forfeiture provision to mean any right-of-way.); *Kolatz v. Kelly*, 244 Minn. 163, 171, 69 N.W.2d 649, 655 (1955) (Where driver upon an arterial highway traveling at an unlawful speed across a street intersection forfeits right of way which he might otherwise have.). Likewise, it reasonably bears on alternative cause issues and whether the State is investigating, or ever thought to investigate all the potential causes for the accident and resulting deaths and injuries, rather than only those possibilities inculcating Ms. Franco.

Finally, please promptly disclose *all* additional evidence in the State's possession, custody, or control and any other evidence of which the State is aware, but which has yet to be disclosed to defense counsel. The failure to either timely disclose or identify any such evidence will prejudice, and in fact may prove to have already prejudiced Ms. Franco's right and practical ability to assess, test, and challenge the validity of that evidence.

It may or may not be easy for the State to overlook the fact that Ms. Franco has been incarcerated for over three months without any conviction, that the Omnibus hearing drags on for want of evidentiary disclosures by the State, and the delays may or may not be of little to no consequence from the State's perspective. But, from Ms. Franco's perspective, the consequences inherent in the unfairness, compromising her ability to defend herself effectively are staggering.

The Constitution of this State and the United States entire mandates that Ms. Franco be apprised of the evidence against her and that she be afforded meaningful opportunity to examine and test and evaluate and challenge the reliability of that evidence. Due process. This is an integral part of the process that is due. I was a

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guard in a maximum security prison between college and law school. A con told me once that he had just come up the hill from the county jail where he spent several months and he was so glad to finally get transferred to the prison and I asked him why in the world he'd rather be in the prison than down there in county jail and he said it was because in prison cons get out for school or recreation or work and the food is alright here but in jail a fellow just sits in a cell or a TV room and he begins to feel his soul shrinking and I reckon there's a point where that can't be reversed.

Never can an accused's fundamental right to due process be more precious, more imperative, than when she is incarcerated. Therefore, we respectfully request that you promptly provide the evidentiary items referenced above and for any you will not produce, an explanation why you will not. Absent this, we will prepare and file appropriate motions including request for sanctions.

Respectfully,

Neal A. Eisenbraun
NAE/nkl
c: Hon. David W. Peterson
Manuel P. Guerrero, Esq.
Tamara Caban Ramirez, Esq.