

STATE OF MINNESOTA  
COUNTY OF LYON

IN DISTRICT COURT  
FIFTH JUDICIAL DISTRICT

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STATE OF MINNESOTA,

Plaintiff,

File No. 42-CR-08-220

vs.

OLGA MARINA FRANCO DEL CID,

ORDER

Defendant.

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The above-entitled matter came before this Court on Defendant's Notice of Motion and Motion for Reconsideration of Order of May 6, 2008. Defendant was represented by Manuel Guerrero, Attorney at Law, St. Paul, Minnesota and Tamara Caban-Ramirez, Attorney at Law, Minneapolis, Minnesota. The State appeared through Rick Maes, Lyon County Attorney. The Motion has been submitted on the record and the written arguments of Counsel.

Based upon all the files and records herein, and having fully reconsidered the record, including an analysis of Defendant's offer of proof,

**IT IS HEREBY ORDERED:**

1. The Court reaffirms its Order dated May 6, 2008, concluding that:
  - a. a Miranda warning was not necessary on February 19, 2008, as Defendant was not subject to custodial interrogation, and
  - b. the State proved by a preponderance of the evidence that Defendant gave that statement voluntarily.

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. On February 19, 2008, the date of the vehicle crash, Trooper Larsen interviewed Defendant at the Avera Marshall Hospital. Defendant made a Motion to Suppress the statement obtained on that date. Testimony was taken at the Omnibus Hearing on April 22, 2008. This Court, in the Order dated May 6, 2008, concluded that (1) a Miranda warning was not necessary on February 19, 2008, as Defendant was not subject to custodial interrogation, and (2) the State proved by a preponderance of the evidence that Defendant gave that statement voluntarily. Defendant has requested that this Court reconsider that ruling. The Rules of Criminal Procedure contain no provision regarding motions to reconsider, however, the Court has the discretion to grant or deny motions to reconsider. State v. Montjoy, 366 N.W.2d 103, 107-08 (Minn. 1985); State v. Papadakis, 643 N.W.2d 349, 356-57 (Minn. Ct. App. 2002).

**I. Minn. Stat. § 169.09, Subd. 13**

Under Minn. Stat. § 169.09, Subd. 13, accident reports and supplemental information are privileged and such reports cannot be used as evidence in a criminal proceeding. Defendant asserts that the February 19, 2008 statement is such a report and should be suppressed as privileged. The transcript of the statement is titled "Accident Supplement," however, the Court finds that § 169.09 is not applicable.

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.”

First, the Court finds that the statement and the transcription of the statement are not “reports” within the meaning of the statute. Section 169.09 deals with traffic accidents, requirements for drivers involved in accidents to stop at the scene and provide information, and the reports that must be made. Subdivision 8 provides that peace officers investigating an accident must forward a report. While the statute does not specifically outline what constitutes a “report,” when examined as a whole the statute is illustrative. Subdivision 3 provides that drivers must give their name, address, date of birth, registration place number, license or permit to drive, and insurance information. Subdivision 7 provides that, in instances when the driver must forward a written report to the commissioner of public safety, the driver must supply insurance information. Subdivision 9 provides that reports “must disclose the causes, existing conditions, and the individuals and vehicles involved.” In this case, we have an interrogation of Defendant and a transcribed statement of it. This is clearly not a report as contemplated by the statute.

Second, even if an interrogation of a suspect reduced to a transcript, under these circumstances, is a privileged “report” under the statute, Defendant waived any privilege she may have had. Defense Counsel specifically offered the transcript for admission at the hearing on April 22, 2008, and there was no objection. (April 22, 2008 Transcript, Page 30, Lines 18-22.) It would be an extreme denial of due process for the Court to limit a defendant’s defense by requiring them to assert a privilege they choose to waive.

Finally, even if the transcript is a “report,” it is clear that those present in the room at the time the statement was made could testify as to what they heard. See Minn. Stat. § 169.09, Subd.

13(c) (“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.”); Rockwood v. Pierce, 51 N.W.2d 670, 678-79 (Minn. 1952) (“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.”); State v. Schultz, 392 N.W.2d 305, 307 (Minn. Ct. App. 1986) (“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.”). Defendant sought to introduce the transcript. If at trial there was testimony about what Defendant said during the interrogation on February 19, 2008, Defendant’s right to present a defense would necessarily include the right to introduce the transcript of the statement. Moreover, if the recording of the interrogation was played at trial, under Rule 26.03, Subd. 15, a transcript could be provided. In short, because the State may offer evidence of the statement, Defendant’s right to present a defense requires that she be allowed to offer the transcript. This is particularly true when, as the case is here, Defense Counsel offered the transcript. In these circumstances, any policy underlying § 169.09 would not be furthered and application of the statute would violate Defendant’s constitutional rights to due process and to present a defense.

The transcription of the statement is not a “report” within the meaning of the statute. Even if it was such a report, any privilege Defendant had has been waived, and strict enforcement of the statute would violate Defendant’s constitutional rights.

## **II. Custodial interrogation and voluntariness**

Defendant asserts that this Court erroneously concluded that the interrogation of Defendant on February 19, 2008 was not custodial. The Court incorporates and reaffirms the analysis of the May 6, 2008 Order in this regard. The Court further notes that Defendant's argument (she would only have known that she had the right to ask the Troopers to leave if they had informed her of that right) misses the point. Defendant did not need to be informed of her rights under Miranda because she was not in custody (for the reasons outlined in the prior Order). The assertion that failure to inform Defendant of her rights makes the interrogation custodial is not supported by the law.

Defendant has filed affidavits and exhibits outlining medications she had been prescribed and their possible side-effects. Some of those listed include: anxiety, memory problems, sedation, mental clouding, impairment of mental and physical performance, confusion, disorientation, hallucinations, mental depression, and others. Relying upon this information, Defendant asserts that, because of the medications, she was unable to voluntarily give the statement on February 19, 2008, and, therefore, the Court should reconsider its ruling.

In Finding of Fact #14 of the May 6, 2008 Order, this Court specifically found:

"During the interview on that date [February 19, 2008], Defendant appeared to understand the questioning that was posed to her (via the interpreter) and she gave appropriate responses (again, via the interpreter)."

In the attached Memorandum, this Court, citing State v. Miller, 573 N.W.2d 661, 673 (Minn. 1998), outlined the law that a statement must be given voluntarily and enumerated the appropriate factors. This Court, citing State v. Williams, 535 N.W.2d 277, 288 (Minn. 1995) and State v. Garner, 294 N.W.2d 725, 727 (Minn. 1980), noted that intoxication implicates the voluntariness of a statement. While Trooper Dana Larsen testified that he was unaware of any

drugs Defendant was taking at the time of the interview, this Court found that there was “no evidence that Defendant was under the influence of any drugs.”

The Court based its decision based upon the record and the testimony at the hearing. Part of that testimony included the following exchange during Defense Counsel’s cross-examination of Trooper Larsen as to the February 19, 2008 interview:

Q: And Ms. Franco was under the influence of certain drugs at that point, hadn’t she?

A: That I don’t know.

Q: Well, did you ask her?

A: No.

Q: Did you ask the medical personnel whether or not she had been drugged?

A: No.

(April 22, 2008 Transcript, Page 14, Lines 10-17.) Trooper Larsen and Sergeant Koenen also testified that Defendant appeared to understand questions asked and that her responses were appropriate (Tr., P. 24, L. 5-9 and P. 27, L. 12-17), and this Court found the same, as noted above. The only evidence before the Court was the testimony outlined above.

Defendant is now asking the Court to consider pharmacological evidence, some of which was known well in advance of the hearing, which was consciously not made part of the record. The Court notes that, well prior to the hearing, this Court, upon Defendant’s request, had ordered expert fees for a pharmacologist. After Trooper Larsen and Sergeant Dean Koenen testified, the following exchange occurred, on the record:

THE COURT: From the State’s perspective as far as the February 19<sup>th</sup> statement is concerned, do both counsel consider the evidence in?

MR. MAES: I do.

MR. GUERRERO: Yes, Your Honor. [...]

(Tr., P. 30, L. 14-18.) The record was closed, and Counsel was aware of that.

However, even upon consideration of the offer of proof submitted, reopening the record for additional documents or testimony would not change the Court's conclusion. Even a suspect under the influence may still voluntarily give a statement. See Jankord v. State, 186 N.W.2d 530, 533-34 (Minn. 1971) (suspect had 0.17 BAC, dozed periodically, and was "hysterical," however, he did not stagger, had good enunciation, and clear and sharp voice), cert. denied, 404 U.S. 942 (1971); see also State v. Garbow, No. A04-149, 2005 WL 221676, at \*4 (Minn. Ct. App. Feb. 1, 2005) (no evidence of intoxication or excessive fatigue, and suspect displayed no visible signs of intoxication), review denied, (Minn. April 27, 2005); State v. Halseth, No. C4-87-2017, 1988 WL 36731, at \*2 (Minn. Ct. App. April 26, 1988) (suspect had 0.26 BAC, however, he was able to comprehend and respond to questions, recall specific details, and immediately requested an attorney after implied consent advisory read), review denied, (Minn. June 10, 1988). The ultimate question is not whether the suspect had consumed substances that could impair the suspect. While no evidence of impairment was presented at the hearing or by any offer of proof, the question is not whether the suspect actually showed signs of impairment. Rather, the question is whether, regardless of any drugs or alcohol, the suspect was able to understand and communicate sufficiently to show that the statement was made voluntarily. Even considering a supplemented record showing that Defendant had been administered any or all of the drugs outlined, and if that record showed a likelihood that Defendant would experience side-effects that could impair her, the testimony of the officers as to their observations of Defendant and her ability to understand and respond is without contradiction. This Court found that in a brief, non-custodial interview, "Defendant appeared to understand the questioning" and "gave appropriate responses." If suspects with over two- and even three-times the BAC to legally drive

are able to give voluntary statements, the State has proved by a preponderance of the evidence that Defendant's statement in this case was voluntary.

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