STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF WATONWAN | FIFTH JUDICIAL DISTRICT

State of Minnesota, | Court File No.: 06030634

Plaintiff,

v. | **MOTION TO COMPEL DISCOVERY PURSUANT TO RULE 9.01, SUBD. 1(4)**

S[redacted] M[redacted] D[redacted],

Defendant. | **"DISCOVERY MOTION"**

TO: THE HONORABLE [redacted], JUDGE OF THE WATONWAN COUNTY DISTRICT COURT; MR. B[redacted] Y[redacted], MADELIA CITY ATTORNEY.

INTRODUCTION

On December 31, 2007, New Years Eve, Defendant was arrested and taken to the Madelia Police Department. While at the police department, Defendant was given two field sobriety tests, the first test of which he passed and the latter test he failed. Defendant was then read the motor vehicle implied consent advisory and thereafter agreed to submit to a blood test.

The Minnesota Bureau of Criminal Apprehension conducted a laboratory examination on the blood collection, kit number B294418, and the analysis revealed an ethyl alcohol concentration of .08 grams per 100 milliliters of blood. Defendant was later charged with DWI in the Fourth Degree. Pursuant to the discovery request below, Defendant requests that the State produce and provide him with a sample of his blood that taken on December 31, 2006 so that he can arrange an independent examination pursuant to Minn.R.Crim.P. 9.01, Subd. 1(4).

It should be noted that on December 13, 2007, the Honorable [redacted], Judge of the Sherburne County District Court, ruled in State of Minnesota v. M[redacted] R. S[redacted], District Court File Number [redacted], that the destroyed blood test in that case made the test report of the BCA inadmissible at trial, and certified it's conclusion regarding the inadmissibility of the blood test report to the Minnesota Court of Appeals for a decision pursuant to Minn.R.Crim.P. 28.03, Subd. 1.[1] The Minnesota Court of Appeals decision is pending.

DISCOVERY REQUEST

PLEASE TAKE NOTICE, pursuant to Minn.R.Crim.P. 9.01, Subd. 1(4), and the United States and Minnesota case law cited below, Defendant requests a sample of his blood the State withdrew on December 31, 2006.[2]

MEMORANDUM IN SUPPORT OF DISCOVERY REQUEST

The Sixth Amendment to the United States and Minnesota Constitution provides that "in all criminal prosecutions, the accused shall enjoy the right … to be confronted with the witnesses against him." *United States Constitution*, Amendment VI. Minn. Const. Art. 1, § 6. The constitutional right to be confronted by one's accusers guarantees an opportunity for adequate and effective cross-examination of the state's witnesses. *United States v. Owens*, 484 U.S. 554, 559, 108 S.Ct. 838, 842 (1988).

[1] Attached with this motion is the district court decision in State of Minnesota v. M[redacted] R. S[redacted], Court File Number [redacted], Sherburne County District Court, Tenth Judicial District.

[2] Minn.R.Crim.P. 9.01 Subd. 1(4) provides in pertinent part: "(5) Reports of Examination and Tests. The prosecuting attorney shall disclose and permit defense counsel to inspect and reproduce any results or reports of physical or mental examinations, scientific test, experiments or comparisons made in connection with the particular case. The prosecuting attorney shall allow the defendant to have reasonable tests made. If a scientific test or experiment of any matter, except those conduct under Minnesota Statutes, chapter 169, may preclude any further tests or experiments, the prosecuting attorney shall give the defendant reasonable notice and an opportunity to have a qualified expert observe the test or experiment.

In this case, the State intends to offer as evidence in its case in chief Defendant's alcohol concentration analyzed via a blood test prepared by the BCA. The blood report is evidence that the United States Supreme Court in *Crawford v. Washington*, 541 U.S. 36 (2004), characterizes as "testimonial." *See State v. Caulfield*, 722 N.W.2d 304, 305 (Minn. 2006). Accordingly, admission of the report has Confrontation Clause implications. Satisfying the Confrontation Clause requires that the prosecutor in this case disclose the contents of the blood test to Defendant before trial for his own inspection.[3]

Should Defendant's request for disclosure be denied, or should the State claim that the BCA destroyed Defendant's blood sample, Defendant's constitutional due process rights are infringed. Even if Defendant is given the opportunity to confront the person who prepared his blood test report, the effectiveness of that cross-examination must be considered in light of the fact that Defendant is unable to indendently analyze his own blood sample, especially considering the fact that Defendant's ethyl alcohol concentration of .08 grams per 100 milliliters of blood is *exactly* at the legal limit.

Due process requires that a criminal defendant have the same access to information as the State when the State offers the result of a scientific test at trial. *See State v. Schwartz*, 447 N.W.2d 422, 427 (Minn. 1989) (noting that "[e]ven if a laboratory has followed reliable procedures to ensure accurate test results, constitutional concerns may prevent the admissibility of such evidence). The fair trial and due process rights are implicated when data relied upon by a laboratory in performing tests are not available to the opposing party for review and cross examination. Under our broad discovery rules,

[3] Although not directly relevant to this specific discovery request, but also pursuant to *Crawford*, that disclosure must also inform the defendant of his right to request that the person who prepared the test testify in person at trial. Minn. Stat. § 634.15, subd. 1(c); subds. 1(c), 2(a)(2). Of course, Defendant does not waive this right.

defense counsel has the right 'to inspect and reproduce any results or reports of physical or mental examinations, scientific tests, experiments, or comparisons made in connection with the particular case.' Minn. R. Crim. P. 9.01, subd. 1(4); *see also id.*, 9.03 subd. I (discovery investigations not to be impeded). The prosecution has a similar right. *Id.* 9.02, subd. 1(2). These rules reflect an important presumption in favor of discovery. *Cf. Spencer II*, 384 S.E.2d at 785, 791 (holding that written scientific reports were discoverable by defendant, but the "work notes [or] memorandum" upon which the reports were based because such data was expressly excluded by the state's discovery rules)."). *See also Caulfield*, 772 N.W.2d 313 (holding that adequate notice must be given to a defendant of the contents of the report and the likely consequences of failure to request the testimony of the preparer or there is no reasonable basis to conclude that defendant's failure to request the testimony constituted a knowing, intelligent, and voluntary waiver of his confrontation rights) *See also State v. Traylor*, 656 N.W.2d 885, 889 (Minn.2003)(a defendant's due process rights are satisfied when "the defense [has] the same amount of information as the prosecution on a scientific test so that the defense is able to adequately cross examine the prosecutions experts).

Minnesota case law makes it clear that if the State offers into evidence the blood-test report, the State must also call the person who prepared the blood-test report and a person who can testify as to the chain of custody. However, without access to the blood sample itself, Defendant is denied the right granted in the rules of discovery to reproduce and confirm the accuracy of the State's test results. The ability to reproduce scientific test results is an important factor when considering the reliability of the test results. The blood test in this case is especially important given the State's claim that the BCA

reported the blood alcohol level at .08, *exactly* the legal limit. If the BCA has destroyed Defendant's blood sample, that action eliminates Defendant's ability to reproduce the blood test results and limits the methods available to him to challenge the reliability of those results. The scope of Defendant's cross-examination of the witnesses who prepared the report would be unconstitutionally limited.

CONCLUSION

For the foregoing reasons, and because the Minnesota BCA reported that his blood alcohol concentration on the date of the offense was at the legal limit of .08, Defendant moves this Court to compel discovery and order the State to produce a sample of Defendant's blood for independent testing.

Respectfully submitted,

CAPLAN LAW FIRM, P.A.

Dated: _____

Ryan P. Garry
Attorney No. 336129
Attorney for Defendant
Caplan Law Firm, P.A.
525 Lumber Exchange Bldg.
10 South Fifth Street
Minneapolis, MN 55402
Phone: (612) 341-4570