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STATE OF ILLINOIS  
IN THE CIRCUIT COURT FOR THE 15TH JUDICIAL CIRCUIT  
OGLE COUNTY

THE PEOPLE OF THE )  
STATE OF ILLINOIS, )  
vs. ) NO. 17 CF 168  
MARC MONGAN, )  
Defendant. )

REPORT OF PROCEEDINGS of the hearing before  
ASSOCIATE CIRCUIT JUDGE JOHN C. REDINGTON on **JANUARY 22,**  
**2018.**

APPEARANCES:

DAVE NEAL and BROOKE SHUPE,  
Illinois Attorney General's Office,  
for the People.

RUSSELL CRULL,  
Attorney at Law,  
for the Defendant.

CYNTHIA KOROLL,  
Attorney at Law,  
for the crime victims.

ER TRANSCRIBED BY:

ANGELA M. MILLER, CSR, RPR, CRR  
Official Court Reporter

1 (WHEREUPON, the following proceedings  
2 were held in open court, commencing at  
3 11:00 a.m.)  
4

5 THE COURT: For the record, this is 17 CF 168,  
6 People of the State of Illinois vs. Marc Mongan. Show  
7 that Mr. Mongan is present with his attorneys, Mr. Tess  
8 and Mr. Crull. Mr. Neal is here as special prosecutor.  
9 Ms. Koroll is here on behalf of David and Robin Swaziek.

10 This matter is set for final pretrial today. We  
11 have a jury setting to commence on February 14th. I have  
12 before me at this time People's First, Second and Third  
13 Motions in Limine that were filed on December 29th as  
14 well as People's Motion for Clarification of Defendant's  
15 Supplemental Motion for Discovery that was filed today.

16 Mr. Crull, you've received all those documents?

17 MR. CRULL: Yes, your Honor.

18 THE COURT: You'd be prepared to move forward on all  
19 of those today?

20 MR. CRULL: I'd be prepared to move forward on the  
21 three motions in limine previously received. As your  
22 Honor stated, I only did get one earlier this morning.

23 THE COURT: All right.

24 MR. CRULL: I guess if that's what we need to do

1 today to keep the trial on track, that's what we do  
2 today.

3 THE COURT: Mr. Neal, are you ready to go forward on  
4 all motions today?

5 MR. NEAL: We are, your Honor.

6 THE COURT: All right. Let me take up, first of all,  
7 People's First Motion in Limine relative to allegations  
8 of consumption of alcohol or prescription medication by  
9 the victim in this case.

10 Mr. Neal?

11 MR. NEAL: Ms. Shupe will be handling these motions.

12 THE COURT: All right. Ms. Shupe?

13 MS. SHUPE: Judge, pursuant to the investigation that  
14 took place, an autopsy was performed on the victim, Megan  
15 Wells. Pursuant to that autopsy there was a toxicology  
16 report that was completed. Ms. Wells had consumed  
17 alcohol and she was also prescribed some antidepressant  
18 medications that came up on the toxicology report.

19 Judge, pursuant to Illinois Rule of Evidence  
20 401, this evidence is not relevant. Therefore, we ask  
21 that nothing be admitted in regard to the toxicology  
22 report of Megan Wells. The only thing that we're looking  
23 to put forward in that -- in the autopsy report is the  
24 fact that she was killed based on the blunt force trauma

1 that occurred as a result of the defendant's actions, and  
2 anything regarding the toxicology would be irrelevant.

3 THE COURT: Mr. Crull?

4 MR. CRULL: Thanks, your Honor. Your Honor, with all  
5 due respect to the victim, of course, I disagree that  
6 those things would be irrelevant. As the charges are  
7 filed at this time, it requires that the State must prove  
8 that Mr. Mongan was the proximate cause of Ms. Wells's  
9 death, and there could be other things that could have  
10 caused that death, specifically what level of impairment  
11 or if there was perhaps drugs that were being mixed  
12 together at this time. And I think that's very  
13 important. It's something that the jury would need to  
14 consider and the jury would in effect (unintelligible)  
15 have to see.

16 Also, your Honor, and I think perhaps even more  
17 important, there's likely to be witness testimony that  
18 will say that Ms. Wells was drinking with the driver of  
19 the pontoon boat earlier in that day, and I think that  
20 would also be relevant to note, A, not only that she was  
21 drinking with the driver of the pontoon boat, but also at  
22 what level she was drinking, which we would know from the  
23 toxicology report. And therefore the jury could say,  
24 okay, perhaps the driver of the pontoon boat was equally

1 (unintelligible), and maybe perhaps he was the proximate  
2 cause. And therefore, your Honor, I think that it's of  
3 the utmost importance and it's clearly relevant that both  
4 the toxicology and -- toxicology for alcohol and also any  
5 prescription drugs or any combination thereof, I think  
6 it's of the utmost importance for Mr. Mongan to be able  
7 to enter as evidence.

8 THE COURT: Do you intend to call any expert witness  
9 that's going to draw a line between the contents of  
10 Ms. Wells's system and the proximate causation of her  
11 death?

12 MR. CRULL: Your Honor, we had retained an expert in  
13 this matter. The earliest we could get a conference with  
14 him is on Wednesday. We have been generally waiting  
15 until we had all of the discovery to proceed with that.  
16 However, since it was coming down to the wire we did  
17 retain an expert. I can't answer that for sure until  
18 after that conference on Wednesday.

19 THE COURT: Ms. Shupe, anything else as part of your  
20 motion?

21 MS. SHUPE: Judge, if what I heard is correct in that  
22 the defense thinks that they have a defense in stating  
23 that any consumption of alcohol Ms. Wells had consumed  
24 that day was a cause of her death, Judge, I'd like to

1 hear further evidence as to that.

2 The only thing that we're here to determine in  
3 this trial is whether the defendant's actions were  
4 reckless and whether his consumption of alcohol caused  
5 the death. That is what he is being charged with. Now,  
6 Ms. Wells' consumption of alcohol does not make that fact  
7 any more or any less probable. Therefore, it meets the  
8 definition of it being irrelevant, and we ask that it be  
9 excluded.

10 THE COURT: Well, I'm not buying the argument that I  
11 might have had a really drunk passenger so that might  
12 factor into whether I was drunk as a driver. So the  
13 second part of your argument I don't think I'm buying,  
14 Mr. Crull. As to the cause of the death, I don't think  
15 it's going to be relevant simply to put that before a  
16 jury and then argue to the jury, "Hey, that might have  
17 been the cause of her death," for example. But that's  
18 why I asked you the question.

19 So I'm going to reserve my ruling as it relates  
20 to that motion in limine until I find out if, in fact,  
21 it's going to be necessary evidence to support the  
22 foundation of expert testimony put forth by the defendant.

23 So Ms. Shupe, make sure you remind me to  
24 readdress that prior to the start of trial.

1 MS. SHUPE: I will, Judge.

2 THE COURT: All right. Plaintiff's Second Motion in  
3 Limine as it relates to the defendant's refusal to submit  
4 to chemical testing. Is there an objection to that?

5 MR. CRULL: Your Honor, I guess just if I might  
6 briefly.

7 THE COURT: Sure. I'm going to start with him  
8 because I read your motion and I'm familiar with the law.

9 MS. SHUPE: Thank you, Judge.

10 MR. CRULL: I guess, Judge, as it relates to the  
11 consciousness of guilt, my only argument at this point,  
12 I know that's what the statute specifically says. In the  
13 meantime, there's been a first district case, the Eubanks  
14 decision, which has now said that you cannot force  
15 somebody to do a blood or urine draw. And I think that  
16 kind of -- it definitely muddies the waters in that I  
17 don't know how you can tell somebody you're standing up  
18 for your constitutional rights, you're using your  
19 constitutional rights, we're not giving a blood draw, but  
20 you can be forced to give this Breathalyzer test  
21 otherwise it's a consciousness of guilt.

22 And, Judge, after having the opportunity to  
23 review that decision, the Eubanks decision as well as  
24 People vs. Ealy, I think when putting those together I

1 think an argument could be made that the same -- the same  
2 unconstitutional argument that was made and upheld by the  
3 Court in Eubanks could apply to that case.

4 THE COURT: Ms. Shupe?

5 MS. SHUPE: Judge, with all due respect, Mr. Crull  
6 has confused two issues on the law. Whether the First  
7 District court ruled that you can't force someone to take  
8 a blood draw is a completely separate issue than the  
9 issue that we post in our Second Motion in Limine before  
10 the Court.

11 Judge, pursuant to statute, if a person is under  
12 arrest and -- I'm sorry, this is 625 ILCS 5/11-501.2(c),  
13 if a person is under arrest and refuses to submit to a  
14 chemical test under the provisions of Section 11-501.1,  
15 evidence of refusal shall be admissible in any civil or  
16 criminal action or proceeding arising out of the acts  
17 alleged to have been committed while the person under the  
18 influence of alcohol, other drug, or drugs or  
19 intoxicating compound or compounds or any combination  
20 thereof was driving or in actual physical control of a  
21 motor vehicle. Or in this case a watercraft.

22 Judge, it's well established case law that  
23 pursuant to the statute it can also be argued that the  
24 refusal was consciousness of guilt. Now, this isn't a

1 matter of whether he could have been forced to take a  
2 chemical test. This is a matter of what the State is  
3 permitted to argue. What the State is permitted to argue  
4 is to first and foremost introduce evidence at trial of  
5 the defendant's refusal to submit to that chemical test,  
6 but in addition to that, not burden shift when we make  
7 that argument of consciousness of guilt, but, in fact,  
8 make the argument that he had the opportunity to give a  
9 chemical test. And he knew that he would be over if he  
10 submitted to that chemical test. Therefore, he had  
11 consciousness of guilt.

12 That's the argument that's well established in  
13 case law that is permitted to be made by the prosecution,  
14 and that's not an improper argument, and, in fact, it  
15 doesn't burden shift. It's a separate issue of whether a  
16 force of any type of chemical test is permitted or not.  
17 These are two separate issues and they shouldn't be  
18 confused.

19 I do have case -- People of the State of  
20 Illinois vs. Mario Stroud. It's a -- I'm sorry. I  
21 apologize. 2013 Ill.App.4d 120213. And I do have a copy  
22 for counsel as well as -- May I approach, Judge?

23 THE COURT: Read it this morning. You're fine.

24 MS. SHUPE: Thank you. So, Judge, that would be a

1 proper argument for the State, and we'd be asking to --  
2 we'd be asking for the Court to allow us to make that  
3 argument.

4 THE COURT: At this point until the Appellate Court  
5 or Supreme Court takes up the exact language of the  
6 statute as it relates to the constitutionality, I think  
7 we're going to live with the language of the statute and  
8 I'm going to grant the defendant's motion -- strike that.  
9 I'm going to grant the People's motion and I'm going to  
10 allow the evidence as it relates to the consciousness of  
11 guilt.

12 That leaves me with No. 3: Prior DUI conviction  
13 of Mr. Daily.

14 Ms. Shupe?

15 MS. SHUPE: Judge, pursuant to Illinois Rule of  
16 Evidence 401, Mr. Daily who would be a witness in the  
17 case, his prior DUI convictions are not relevant. Just  
18 as if the defendant had a prior DUI conviction, that type  
19 of evidence and testimony would be barred about a prior  
20 conviction, that should hold true for a witness in the  
21 case as well. Anything that happened prior to the date  
22 in question wouldn't be relevant to what issues and what  
23 evidence are going to be presented to the date that the  
24 homicide occurred.

1 THE COURT: Mr. Crull?

2 MR. CRULL: Thanks, your Honor. Your Honor, it's my  
3 belief that both the prior DUI conviction as well as the  
4 fact that Mr. Daily's license was revoked at the time of  
5 the accident are relevant in this matter. Assumably,  
6 that matter is going to go down the road and as it's been  
7 charged is that Mr. Mongan was driving recklessly and  
8 something that he had done had caused an accident.  
9 Similarly, if I put Mr. Daily on the stand and I have to  
10 ask him, "How is your driving record," he can say,  
11 "Great," and I'm not allowed to then bring in the fact  
12 that he can't drive a car or has a license revoked for  
13 driving choices?

14 THE COURT: I think the motion probably would not  
15 apply to that evidence as it relates to impeachment if,  
16 in fact, you were allowed to ask him that question and he  
17 was to give that answer.

18 MR. CRULL: I guess I wouldn't have any further  
19 argument other than that as long as I could use it for  
20 that purpose, your Honor.

21 THE COURT: All right. Yeah, I don't see where  
22 bringing up a prior conviction on the part of Mr. Daily  
23 helps us at all as it relates to what happened on that  
24 particular day. Similarly, and I know nothing about

1 Mr. Mongan's record, but if he had a prior DUI and the  
2 State wanted to bring in a prior DUI that suggested he  
3 was driving bad on the particular day, I think we'd be in  
4 the same situation. So we're going to limit this at this  
5 point to evidence as to what people saw other people do  
6 on the river on the day in question, and I'm going grant  
7 the motion, obviously, that relates to the State's case  
8 in chief. Bring the matter in for substantive evidence  
9 if it's necessary for impeachment based upon properly put  
10 forth questions, we'll take up that issue at that time.  
11 Certainly if anybody wants to use it for that purpose,  
12 let me know you're going to do it before you do it.

13 All right. I think we can probably -- Over  
14 Mr. Crull's objection, we can go forward on the Motion  
15 for Clarification of Defendant's Supplemental Motion for  
16 Discovery.

17 Ms. Shupe, I've read your motion. I'm going to  
18 pass by you for just a second.

19 Mr. Crull, tell me why you need all this stuff.

20 MR. CRULL: Your Honor, as you will recall, when this  
21 matter was in front of your Honor last summer there was  
22 some new information that had come to light that was  
23 brought up in this courtroom. That new information  
24 required a new prosecutor. We haven't received any of

1 that information. I think we need to have our  
2 quote-unquote fishing expedition because we need to know  
3 what this new information was. I don't have a report  
4 that says what it was. I don't have anything other than  
5 I came to court and was told there was new information.  
6 So I think it's only appropriate to cast a net that was  
7 possibly going to catch that information and to get that  
8 information.

9 THE COURT: I'm going to leave it to the State to  
10 live up to their obligations under the rules of discovery  
11 and tender all discoverable materials to the defendant.  
12 I think there's a myriad of problems with me requiring  
13 them to turn over the notes between Ms. Koroll and  
14 Mr. Morrow or Ms. Koroll and Mr. Neal. I don't believe  
15 that information between them is actually discoverable,  
16 and I'm going to leave it to the State -- I'm going to  
17 rely on the State that they've answered all of the  
18 discovery requests, they've tendered to you all documents  
19 and other evidence that they're required to, and whatever  
20 the new information, whatever it might or might not be,  
21 has been passed to you in one form or another.

22 So I'm going to grant, I guess, it's just a  
23 motion for clarification, so I'm going to strike those  
24 provisions of the supplemental motion for discovery that

1 required the turnover of emails, phone calls, notes and  
2 letters between Ms. Koroll and Mr. Morrow and Ms. Koroll  
3 and Mr. Neal and Ms. Koroll and the Illinois Department  
4 of Natural Resources and Ms. Koroll and the Ogle County  
5 Sheriff.

6 MR. CRULL: You're striking all four of those, Judge?

7 THE COURT: Yes.

8 MR. NEAL: May I?

9 THE COURT: Yes.

10 MR. NEAL: As to the other paragraphs here, I think  
11 that we have complied with them, but because this is  
12 ongoing discovery I did ask a paralegal from our office  
13 to request are there any additional reports from DNR and  
14 from the sheriff's department. I asked that last  
15 Thursday. She was off on Friday with the flu. If there  
16 are any additional reports, I'll certainly get to them.  
17 If there are any new training materials or something,  
18 I'll -- I'm trying to find that out. I'm not 100 percent  
19 sure why a recent training material would be relevant,  
20 but that's up to Counsel if he thinks he can argue  
21 something. Maybe they made a change because of this case  
22 and that's helpful to him.

23 THE COURT: If the new book says what they did under  
24 the old book isn't the right thing to do, maybe it's

1 something the jury needs to hear.

2 MR. NEAL: It might be meaningful, I agree. So we're  
3 in the process of trying to do that.

4 Judge, there's one issue that I want to raise.  
5 Part of it came up in my discussions with Mr. Crull  
6 earlier and part of it came up in court. I'm not  
7 100 percent sure ...

8 (Discussion held off the record between  
9 counsel.)

10 MR. NEAL: If I could inquire one second.

11 THE COURT: Sure.

12 (Discussion held off the record between  
13 counsel.)

14 MR. NEAL: Judge, it's my understanding that Mr. Tess  
15 and Mr. Crull are awaiting a report from an expert  
16 witness. They've shared with me some of their thoughts  
17 on what might be in that report. It appears that the  
18 earliest that they will receive a report is maybe  
19 Wednesday of this week. I've let Mr. Crull know and I  
20 want to let the Court know, I'm as sure as I can be as  
21 I'm sitting here that if I'm getting an expert report on  
22 Wednesday it's going to cause me to file a motion  
23 regarding the commencement of the trial on February 14th.

24 Again, I have to see what's in it and I have to

1 see who the expert is and everything else, but I may very  
2 well want to have one of our experts look at it and say  
3 this makes sense or it doesn't make sense.

4 Clearly I don't have a motion on file and I'm  
5 not ready to make a motion, but I guess I'm asking the  
6 Court if we can have time set aside next week, should I  
7 get a report from them on Wednesday, for me to file and  
8 appear and argue any reasons that that report may cause  
9 the State to need time on that February 14th date.

10 THE COURT: Mr. Crull?

11 MR. CRULL: Your Honor, I would have no objection to  
12 setting a time next week to go through those issues just  
13 knowing that there's no motion to continue filed at this  
14 time.

15 THE COURT: All right. I mean, I held off to today  
16 which is the last day I'm told by the clerk's office to  
17 send out 100 jury summonses for this trial. So if I set  
18 some time next week, either you're going to have received  
19 a report and you're going to be asking to continue the  
20 trial, or you're going to decide that you're not going to  
21 have an expert and we're going to be good to go. Is that  
22 basically our options?

23 MR. CRULL: Yes, Judge. At least from our  
24 perspective.

1 THE COURT: Any particular reason we're down this far  
2 and we're still trying to figure out if you're going to  
3 have an expert?

4 MR. CRULL: I guess, Judge, the only thing that I  
5 would -- not to put on anybody else, but just waiting for  
6 the discovery has taken some time. We've consulted with  
7 him before. It's an expert that we've used before. We  
8 just wanted to make sure we can get him all the  
9 information.

10 THE COURT: Well, there's not much else I can do.  
11 All right.

12 MR. NEAL: Your Honor, if I can -- We -- I could be  
13 here either Tuesday, Wednesday, or Thursday next week  
14 about any time.

15 THE COURT: Okay. How about Tuesday afternoon at  
16 1:30?

17 MR. NEAL: That would work for the State.

18 MR. CRULL: That's agreeable with me, your Honor.

19 THE COURT: But you're going to have -- But you're  
20 going to disclose your expert and his or her findings by  
21 9:00 o'clock on Thursday the 25th, right?

22 MR. CRULL: As soon as we get them, I'll get them to  
23 Mr. Neal.

24 THE COURT: Are you going to disclose your expert and

1 his or her findings by 9:00 o'clock on Thursday the 25th?

2 MR. CRULL: Yes.

3 THE COURT: All right.

4 MR. NEAL: Judge, I have one other request. We have  
5 attempted from time to time to file a motion either via  
6 email or by facsimile, and that's something the clerk  
7 hasn't been able to do. But in regard to this specific  
8 motion for a continuance, would it be permissible for us  
9 to ask the Court to order that we could file that by  
10 email or -- I am looking to get on file the same day a  
11 motion to continue. Otherwise, I have to try to find  
12 somebody to drive from Springfield to do that.

13 THE CLERK: In the criminal division, I don't know if  
14 we have capability to e-file. However, if you granted  
15 leave to receive it electronically --

16 THE COURT: Here's what I'm going to do. Assuming  
17 there's no objection, Mr. Crull, I'm going to let you  
18 file it in the following fashion:

19 You email it to me, and I'll walk it 20 feet  
20 that way and hand it to the circuit clerk on your behalf,  
21 or I'll have somebody do it.

22 Any objection to doing it that way?

23 MR. CRULL: No, your Honor.

24 THE COURT: Okay. And then you'll email one to

1 Mr. Crull as well at the same time as everybody else and  
2 Ms. Koroll?

3 MR. NEAL: We will. We'll file a hard copy the same  
4 day. I just want to get it to everybody ahead of time.

5 THE COURT: All right. That's fair enough.  
6 January 30th at 1:30. Anything else today on behalf of  
7 the State?

8 MS. SHUPE: No, Judge.

9 THE COURT: Defense?

10 MR. CRULL: No your Honor.

11 THE COURT: Ms. Koroll, anything on your behalf?

12 MS. KOROLL: No, your Honor.

13 THE COURT: All right. Ms. Shupe, are you going to  
14 be assisting with the trial?

15 MS. SHUPE: I am, Judge. You'll get used to seeing  
16 me around.

17 THE COURT: All right. So I'll write your name on  
18 something a little more permanent than my docket sheet  
19 today.

20 All right, folks. Thank you very much. I'll  
21 see you back here next Tuesday.

22

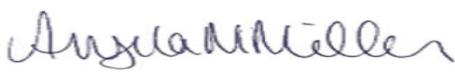
23

(End of proceedings.)

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1 STATE OF ILLINOIS  
2 IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT  
3 OGLE COUNTY  
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6 I, ANGELA M. MILLER, an Official Court  
7 Reporter for the Circuit Court of Ogle County, 15th  
8 Judicial Circuit of Illinois, transcribed the electronic  
9 recording of the proceedings in the above-entitled cause  
10 to the best of my ability and based on the quality of the  
11 recording, and I hereby certify the foregoing to be a  
12 true and accurate transcript of the said electronic  
13 recording.  
14  
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17   
18 Official Court Reporter  
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20  
21 Dated this 15th day of May, 2019.  
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