

STATE OF WISCONSIN
IN SUPREME COURT

Case No. 2019AP1404-CR

STATE OF WISCONSIN,
Plaintiff-Respondent,
v.

GEORGE STEVEN BURCH,
Defendant-Appellant.

MOTION TO SUPPLEMENT RECORD

TO: Clerk of Supreme Court
Brown Clerk of Court
Assistant Attorney General Aaron O'Neil

Please take notice that the defendant, George Burch, by his attorney, Ana L. Babcock, hereby moves this Court, pursuant to Wis. Stat. § 809.15(3) for an order to supplement the record. As grounds for and in support of this motion, the defendant states the following:

1. In this Court's December 17, 2020 press release, the Court indicated that this case presents (among others) the following issues:

- After police downloaded information from the cell phone, what portion of Burch's data could it lawfully retain?
- If the police department was permitted to retain some or all of the downloaded material, how long could it do so?

2. In his opening brief, Burch asks this Court to hold that once the electronic evidence relevant to the investigation is identified and isolated, police must return or destroy the non-relevant information. (Burch Br. At 16). As to the relevant information, Burch asks this Court to hold that police can retain this information until a trial is complete or a decision is made that no charges will be filed. *Id.*

3. In response, the State asserted, in part, that “Burch has not proven that the [hit and run] investigation was closed[]” because another officer was still investigating the matter. (State’s Br. at 24 citing to R. 77:2). According to this record entry, “Officer Scharenbrock is still investigating the hit and run accident” R. 72:2 (attached as Exh. A).

4. Burch maintains that the record portion he cited (attached as Ex. B), establishes that the hit and run investigation was closed. To the extent there is any uncertainty as to this fact, the discovery provided by the State establishes this fact beyond question. (Exh. C). According to Officer Scharenbrock’s report, on July 14, 2016, he followed up with the owner of the vehicle (Lynda Clayton) involved in the hit and run as to whether she had any additional information as to the driver of the vehicle. The report indicates that “there is no definitive evidence that George was operating the vehicle at the time of the accident.” *Id.* Because no driver could be identified, Officer Scharenbrock issued Clayton a citation “for owner liability hit and run traffic.” *Id.*

Accordingly, Burch requests that the record be supplemented with Officer Scharenbrock's report attached as Ex. C.

Dated: February 23, 2021



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GREEN BAY POLICE DEPARTMENT CASE REPORT

Page:
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of
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Case #:
16-206674

Incident #:
16-034976

Incident Type:
AUTO THEFT

Printed On:
1/19/2018 7:58:51 AM

surveillance onto a dvd for evidence and will view the footage for any usable evidence/information that might assist me in my investigation.

I was able to view the video from Richard Craniums Bar. The video does show Steve at the bar, drinking, and texting on his phone. Steve is also socializing with other patrons. I attempted to change the aspect ratio of the video screen and zoom in while watching the video, but was not able to clearly see whether Steve had a scrape on his forehead and knee that were consistent with the injuries I observed while speaking with him the morning of 06-08-16, which he said he had previously received at work. The dvd was placed into evidence.

On 06-15-16, I returned from my days off and listened to a voice message that Lynda Clayton left for me on 06-13-16 at 10:34 am indicating she had signed over the title for her Blazer to Heavy Duty Wrecker and said they were going to get rid of the vehicle for her because it was not salvageable. Lynda said she did not have any new information for me regarding this incident. I attempted to contact Lynda, but had to leave her a voice mail regarding the status of the investigation.

At this time there is no information to prove Steve was the one driving the Blazer during the accident, and an unknown cause for the fire other than it possibly started on fire due to the damage from the accident. There are no current suspects for the vehicle theft.

Officer Scharenbrock is still investigating the hit and run accident, and has been notified of my incident.

End of narrative.

Exh. A (R. 77:2)

FILED

02-26-2018

Clerk of Circuit Court

Brown County, WI

Brown County

1 STATE OF WISCONSIN CIRCUIT COURT
2 BRANCH VI

3 STATE OF WISCONSIN, Case No. 16 CF 1309

4 Plaintiff,

5 -vs-

6 GEORGE S. BURCH,

7 Defendant.

8
9 MOTION HEARING

10 HONORABLE
11 JOHN P. ZAKOWSKI
12 PRESIDING

13 FEBRUARY 1, 2018

14 A P P E A R A N C E S

15 DAVID LASEE, District Attorney, MARY KERRIGAN-MARES and
16 CALEB SAUNDERS, Assistant District Attorneys, Law
17 Enforcement Center, 300 E. Walnut Street, Green Bay, WI
54301 appeared on behalf of the State.

18 LEE SCHUCHART and SCOTT STEBBINS, Assistant State Public
19 Defenders, 139 S. Washington Street, Green Bay, WI 54301
appeared on behalf of the defendant.

20 GEORGE S. BURCH, the defendant, appeared in person.

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Lisa K. Koenig
Registered Professional Reporter

1 failure of equipment or heat source with
2 contributing factors determined to be collision,
3 knock down, run over or turnover. That's accurate
4 from information you received from the, I believe,
5 the fire department?

6 A Yes.

7 Q So nowhere in that paragraph does it say any foul
8 play was suspected, correct?

9 A Correct.

10 Q Then I just want you to look on the second page of
11 this report, your very last paragraph and I believe
12 this is on June 15th then, a few -- about a week
13 later. You conclude this report with, at this time
14 there's no information to prove that Steve was the
15 one driving the Blazer during the accident and an
16 unknown cause for the fire other than it possibly
17 started on fire due to the damage from the accident.
18 There are no current suspects for the vehicle theft,
19 is that correct?

20 A Yes.

21 Q And does the report accurately reflect your memory
22 from that incident?

23 A Yes.

24 MR. SCHUCHART: Judge, I would ask that
25 Exhibit Five be admitted.

1 THE COURT: Any objection to Five?

2 MR. LASEE: No.

3 THE COURT: Five is received.

4 BY MR. SCHUCHART:

5 Q So Officer, what happens when you close an
6 investigation?

7 A Just, it gets filed pending further information.

8 Q So one of the things that you testified to is that
9 you had a hunch that Steve was involved in this
10 accident, correct?

11 A Yes.

12 Q But ultimately, then once June 15th came there was
13 no way to prove that, there was no information that
14 proved that, correct?

15 A Correct.

16 Q And then I do want to, if you could look at that
17 exhibit that's been admitted. That's the statement
18 that was taken by Officer Scharenbroch.

19 THE COURT: Exhibit Four.

20 MR. SCHUCHART: Sure.

21 BY MR. SCHUCHART:

22 Q So Exhibit Four is from an eyewitness to that event,
23 hit and run incident, correct?

24 A I believe so, yes.

25 Q And in that statement I believe the eyewitness

1 department normally hold onto downloaded information
2 from cell phones when that type of procedure is
3 done?

4 THE WITNESS: I'm not sure where they
5 store that information if -- because they give you a
6 printout of all the, almost like a phone bill. It
7 gives a printout of time and date stamps of phone
8 calls and text messages and who it's from and who
9 it's to. So I believe that information probably got
10 scanned into the report. I can't say for sure but I
11 got a copy of it so I was able to review, you know,
12 the text messages and things like that around the
13 time that I was -- the time that I was investigating
14 and didn't find anything to indicate that he made
15 plans to go over there or anything like that.

16 THE COURT: All right. The question is
17 how long does the department, if you know, hold on
18 to the original information?

19 THE WITNESS: I don't know what the time
20 lines are.

21 THE COURT: All right. Do you have any
22 redirect, Attorney Lasee?

23 MR. LASEE: Just a couple of questions.

24 THE COURT: Sure.

25 R E D I R E C T E X A M I N A T I O N

GREEN BAY POLICE DEPARTMENT**NARRATIVE SHEET****GBPD CR-4**

On July 14, 2016 I was working as a patrol officer for the Green Bay Police Department in full uniform as Unit 4A1. At approximately 11:45 p.m., I had dispatch send me this call to follow up with the vehicle owner **Lynda Marie Clayton (01/31/1961)** who lives at 912 S. Greenwood Avenue in Green Bay, Wisconsin.

Upon arriving to the address I was able to make contact with Lynda who verbally identified herself. I asked if she had any more information about who the driver was of the vehicle the night of the crash. As indicated in the auto theft report that occurred after the accident, case #16-206674, Lynda indicated that **George Steven Birch (02/14/1978)** was operating the vehicle the night of the accident. I read through the auto theft report and there is no definitive evidence that George was operating the vehicle at the time of the accident. The auto theft report indicates the vehicle was stolen out of the driveway of 912 S. Greenwood Avenue after George had stopped operating the vehicle for the night. Due to no definitive driver information I issued Lynda a citation for owner liability hit and run traffic. I explained the citation to her and asked if she had any questions. She said she did not.

Lynda said there are strong indications that George was the driver of the vehicle; however she understood that since there was no definitive proof that was why she was getting the citation. She indicated she would go to court and explain her side of the story to the judge. I asked if she had any additional questions and she said she did not. I provided Lynda a business card with this case number and the case number of the auto theft written on the business.

I have no further information at this time. Please refer to other details for further information.

END OF NARRATIVE**Page 1 of 1**

Patrol Officer Michael Scharenbrock**# 16-206671****Exh. C**

