

In the District Court for the State of Alaska at Anchorage

Media No.: 3AN2108-6

Judge: P. Hanley

Date: Thursday, January 10, 2008

Clerk: C. Poorman

Plaintiff: Municipality of Anchorage

vs.

Defendant's Name:  
Jacqueline Camille  
LaFrance

Case No:  
3AN-06-10675CR

DOB:  
3-27-83

Address:

Type of Proceedings: Trial Day 3

Counsel Present: Plaintiff: Hanley Smith and Mike Shaffer, Asst. Municipal Prosecutor  
Defendant: Jim Gould, GL & G w/client NIC

Bail Set/Continues:		
Transport Order:		
Other Court Orders:		
Next Court Date(s) and Time(s):		
Friday, January 11, 2008	8:30am	Type of Hearing(s): Trial
		Location: 201

8:42:21 AM

On record  
Court identifies case and parties

Jury Absent

COURT:

any issues or supplements

Shaffer  
made corrections

COURT:

parties discuss jury instructions

Smith  
call one additional witness  
play portion of contact tape  
through Officer Jakeway

See pages  
5-7 for testimony

8:45:44 AM

Off record

8:58:22 AM

On record

Jury Absent

8:58:35 AM

Gould  
play portion of tape  
play the whole thing not for content, approximate time of arrest  
jury has right to hear whole tape  
if they want to play piece they want whole thing  
when officer is talking to her, responding in intelligent, sober manner

**COURT:**

contact and processing tape

Smith  
might me an hour and some change long  
an hour and 14 min.

Gould  
there is discussion going on

Smith  
there are some and could be skipped over

**COURT:**

you want portion of contact,

Smith  
the portion we want is 3 minutes

9:01:28 AM

Shaffer  
portion contains admissions on tape

**COURT:**

not for content and it is for demeanor

Gould  
anticipate her testifying  
that would not be the purpose of playing the tape  
that would be more appropriate, I can play it while she is on stand  
Officer already described he made such a tape  
that sounds like the tape I was making

**COURT:**

is there anything else

Gould  
Shaffer doesn't want it played in whole  
to avoid jurors hearing sober communication

**COURT:**

Officer Jakeway is your next witness?

Smith  
yes

**COURT:**

play portion when Officer Jakeway testifies  
will make a ruling on the entirety  
clerk retrieves jurors

9:04:19 AM

9:06:50 AM

**Jury Present**

9:07:13 AM

**Witness Sworn/Affirmed:**

Milton Jakeway

**Direct Examination by Ms. Smith**

- work for Anchorage Police Department
- lived in Alaska since Oct. 95
- describes duties
- was FTO for Officer Fortunato
- explains duty as FTO
- don't remember what phase he was in
- he was doing fine in his training, he was doing lateral training
- not regularly would I do a police report, only if I had to put my hands on them if they were fighting
- it is both of our reports, we are one unit
- we went to an auto accident, recollection is not that good, his police report would have better documentation, I reviewed his report, what would have been in his report would have been accurate
- it was a hit and run, Minnesota
- Officer Fortunato made contact with Ms. LaFrance and did field sobriety tests
- not right off the top of my head did I have to correct anything he did
- I believe there was a tape
- if you played tape I would recall events that happened

9:13:40 AM

**begin tape playing**

9:16:50 AM

**end tape playing**

- sounds familiar to me
- sounds like a tape on that day
- one was my voice the other voice was Officer Fortunato
- recall hearing question
- both times was Officer Fortunato and the third time was me
- Officer Fortunato made the decision to arrest

9:18:35 AM

**Cross Examination by Mr. Gould**

- can't recall what phase Officer Fortunato was in
- I am right there with him
- she was in her apartment, don't recall is how she was dressed
- I am not 100% there may have been
- there were other officers there, at least two
- I heard the tape stop
- yes he would have spoke to me
- when we are grading our recruits we ask what are you going to do
- unless they are off base, he made decision to arrest, sometimes when they are early in training
- what is your decision, encourage them to make decision
- I asked about subsequent drinking , don't know if there is more on the tape
- I would have been in same car and right with him
- I was letting him do the job

9:21:56 AM

**Redirect Examination by Ms. Smith**

- Officer Chinnis would have been his cover officer, take minimum of two officers

- Officer Chinnis would have been with his FTO
- his cover officer is there to make sure he is safe

9:22:50 AM

**Witness excused**

9:23:01 AM

**Witness Previously Sworn/Affirmed Resumes Stand:**  
**Mark Fortunato**

**Direct Examination by Ms. Smith**

9:23:34 AM

**BEGIN BENCH CONFERENCE**

9:27:57 AM

**END BENCH CONFERENCE**

- time investigation began at 4:30
- Minnesota and West Chester Lagoon
- time of initial investigation
- at about 5am
- I believe it was 5:30ish when I arrested her
- she provided sample at 6:22
- less than 2 hr time span

9:29:23 AM

**Witness excused**

9:30:15 AM

**BEGIN BENCH CONFERENCE**

9:30:31 AM

**END BENCH CONFERENCE**

9:32:02 AM

**silence as jurors look over Exhibit 's**

**City has rested**

9:41:29 AM

**COURT:**  
**take care of housekeeping measures**

9:42:05 AM

**Jury Absent**

9:42:41 AM

**COURT:**  
city has rested  
**Court advises defendant of right to insist on testifying**

La France  
I want to testify, it is free and voluntary

Gould  
was there an objection to my introducing the tape

Smith  
no objection about Defendant playing tape

**COURT:**  
parties discuss jury instructions

Smith  
Make motion to amend complaint

Gould  
no objection

9:49:33 AM

**COURT:**  
**amend complaint**

parties discuss jury instructions

9:56:04 AM

**Off record**

10:12:34 AM

**On record**

**Jury Absent**

**COURT:**  
any matters to discuss

10:12:41 AM

Shaffer  
instructions will be here soon

10:12:56 AM

clerk retrieves jurors

10:15:28 AM

Opening Statement by Mr. Gould  
play the contact tape between Defendant and the officer  
based on conversation with officer  
Defendant is going to testify

she also got a job at a new dining and drinking establishment, it is a joint owned establishment close to City Hall, it had been opened about a month, she was working as a cocktail waitress she was employed there, she had her vehicle parked downtown, she got off about 12:30-1am the crew member gets off and has a drink before they go home, there is always different rules you can get a drink for half price, the boss and a big activity planned for the next evening they were getting behind, she stuck around to help out, she stuck around to about 4am she went down and got into her vehicle and went down G one way and she recalled she turned down Minnesota

10:19:37 AM

on the way down the hill, she pulled up to Benson, she didn't have cell phone, her brother and his girlfriend and she went in and called the police  
she called the other number and reported incident, she took shower  
she had contact with them, she doesn't believe she was intoxicated

10:20:51 AM

**Witness Previously Sworn/Affirmed Resumes Stand:**  
Mark Fortunato

10:21:17 AM

**Exhibit A identified**  
- documents prepared for test  
- usually right after field sobriety test  
- they are all Xerox copies of notebook  
- the actual sheet yes  
- yes this is my document

10:22:31 AM

**Exhibit A admitted**  
- one clue

- it indicates a decision point
- same with one leg stand
- heard tape when Officer Jakeway
- it is a digital recorder
- used it during most of the contact
- heard it previously

Smith  
will stipulate

10:24:15 AM

**Cross Examination by Ms. Smith**

- yes I would arrest on HGN test alone
- it is a accumulation of all the data
- I would have to have scent of alcohol, slurred speech, balance and all of that stuff in addition to HGN

10:25:23 AM

**Witness excused**

10:25:40 AM

**Witness Sworn/Affirmed:**

**Jacqueline LaFrance**

**Direct Examination by Mr. Gould**

- I am 24 yrs. Old
- have two jobs and volunteer position
- Rabbit Creek Elementary school, I am child development leader
- work for Pub,
- I was employed in similar position
- worked for Sand Lake Elementary
- describes education
- I have about 5 semesters in towards education plan
- would like to teach K-12
- I got the job before they opened
- had been working there for about two weeks
- describes hours of work
- I moved in May 1<sup>st</sup> 2006
- had damage to vehicle, it was my vehicle
- in early May when I was working for Sand Lake, I was driving to Carr's and Reginald hit me
- he was pulled over by the police
- he is charged with DUI and have been subpoenaed and he is on a bench warrant for failure to appear

10:32:11 AM

**Exhibit 5**

- yes that is vehicle I was driving
- all of the headlight damage and body damage, in terms of this was present
- bumper stuff was new
- it is Jewel Lake Road, it was like a side swipe, he hit me and Jewel Lake Road has a sidewalk and there is a fairly big ditch, I had moved over, he was over correcting himself
- we contacted, another woman who witnessed it
- I went to work that evening, got to work about 6:20
- got off at 6, assuming place was busy I would get off at 1am
- we were doing earlier last call

- we don't have to close until 2am
- side work and other jobs to do
- no I didn't have a drink
- they have a soft opening
- going to have a party
- Dan, myself and Jennifer
- had drink at bar, Dan and I were splitting a pitcher
- I got a pint, I had a beer and was moving around, coming back and sipping, through course of chatting
- I suppose not, there was only like three of us in there, drinks get topped off
- it is possible
- I remember leaving the bar
- Jennifer and Dan left same time as me
- I walked to my car at 8<sup>th</sup> and H, it was dark
- four to five nights per week, they wanted to have as many staff members so they could feel the place out, get caught up
- they both gave me a hug and we left
- I felt fine, to drive, I felt perfectly normal
- I went to my vehicle, it is a 1987 car, had to let it warm up a little bit
- I was parked by the Alaska club downtown, left onto H and right onto 9<sup>th</sup> right onto L and go to Minnesota to Tudor
- pretty much Lake Otis and Tudor
- immediate building after it
- I passed a few cars
- I went down to Benson, I didn't see anyone there, I went home to call police
- I don't own a cell phone
- I ended up turning back on Northbound Minnesota
- across from the schools, brother was in his room, I came and called 911, they said it wasn't number to call, I called the other number
- I get up at 5am, I started to get ready, I took a quick shower
- I was in my bedroom, I could hear my brother Sam, Anchorage police said they couldn't find my apartment,
- at that moment I was in a towel, put clothes on they were in my apartment, put on jeans and sweater
- when I first saw police officer they were in apartment, Morgan was at door
- after I walked pass Officer Chinnis, he was the officer I had the most contact with Officer Fortunato
- I felt like it was quite awhile
- I was nervous about being late, it felt like 40 minutes
- I felt fine, I didn't feel intoxicated
- he told me that was the result, he told me I had right to blood test
- I didn't believe that could be my blood alcohol level
- blood was drawn same morning
- yes I made efforts to have blood tested, Carmen Clark and I asked to have it released

10:41:07 AM

10:47:52 AM

10:49:53 AM

Objection, hearsay

**Court** – sustained

strike response of it being lost

- blood never got it independently tested

- March 1<sup>st</sup> was date I got result
- three months after we asked to get it tested

Smith  
ask to take break

10:51:30 AM

Jury Absent

10:52:00 AM

Off record

11:11:51 AM

On record

Jury Absent

11:12:00 AM

clerk retrieves jurors

11:14:10 AM

Jury Present

**Cross Examination by Ms. Smith**

- clocked out at 1am
- doing odd jobs around bar
- working off clock
- rolling silverware takes 45 minutes
- can sit at bar and roll silverware
- as long as I am off the clock
- I left the drink
- I wasn't keeping track of drinks
- I do not as far as I can remember, I consumed one pint of Guinness
- I never ordered another drink or refilled that glass
- nothing else has come to me about how much I drank
- had not drank anything else since I arrived home
- when you turn onto L street I was in the farthest left lane
- you have to make a choice to one stop or turn to New Sagaya
- I was in the left lane until I moved into lane to avoid being hit
- there are a lot of one way streets, have large Bistro windows
- I agree it would make very little sense being in the other lane
- now I can see it from their point of view
- they were coming in the lane in the right
- not to my right but the lane I was in
- the collision took place at the top of the hill

11:19:49 AM

- I had to go through Northern Lights, the only way I was going to be able to turn around
- I am sure I could have drove further
- they are becoming obsolete
- I had responsibility to call police, I didn't see anyone else, wanted to make an official report
- yes that is when I called, I waited for a little while
- shortly is a relative term, no, she told me they would call before they arrive, I thought I would have a heads up, I rinsed off real quickly
- it felt like a very long time, can't say how long it was
- it took them awhile to get to my apartment
- because you are on a tight schedule
- it could have taken less than 40 minutes



11:23:44 AM Exhibit 11 identified  
 - haven't seen it before

**COURT:**  
 reviews document

**Court** – sustained

Smith  
 can lay foundation

11:24:54 AM **BEGIN BENCH CONFERENCE**

11:25:58 AM **END BENCH CONFERENCE**

- I was covered by two different policies  
 - lists names of companies  
 - no it does not effect my being a teacher  
 - it is not moral turpitude  
 - have to disclose my record, my employer can make a judgment if it makes me unable to work  
 safely around children  
 - licensing board it is fine

11:29:38 AM **Objection**

11:29:42 AM **BEGIN BENCH CONFERENCE**

11:31:25 AM **END BENCH CONFERENCE**

11:31:36 AM **Witness excused**

11:32:10 AM **begin tape playing**

12:25:39 PM **end tape playing**

12:25:51 PM **Exhibit A admitted**  
**defense rests**

12:26:28 PM **COURT:**  
**cautions jurors**

**Jury Absent**

Smith  
 rebuttal witness

Shaffer  
 lesser included instructions  
 careless driving  
 would oppose

**COURT:**

make copies for court and counsel  
be back at soon  
clerk to make copies

12:28:40 PM

**Off record**

12:56:23 PM

**On record**

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**Jury Absent**

**Smith**

three rebuttal witnesses

**COURT:**

jury instructions discussed

Gould

object to rebuttal witness

contrary to inference to what the defense has been put on

if it has already been said it is cumulative

tends to rebut what the defense put on

can convince the court of rebuttal, restating what was said

that is cumulative if they try to retry their case

Smith

call Jeanne Swartz, Hokkensen, he was an officer involved in the accident  
re: accident of Jewel Lake

he was present at accident, he witnessed damage to vehicle

he saw the car less damaged than what she said

retestify to two statements that Defendant said

**COURT:**

if there is something to dispute, not to redo again

Smith

name where there were payphones to call

**COURT:**

it would rebut and how much damage was done to the car

not sure how important about pay phones

that is fair

witnesses are appropriate to testify

1:03:33 PM

**clerk**

1:07:03 PM

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**Jury Present**

1:07:12 PM

**Witness Sworn/Affirmed:**

**Cameron Hokenson**

**Direct Examination by Ms. Smith**

- work for Anchorage Police Department
- on duty June 7<sup>th</sup>
- day shift
- was dispatched to automobile accident
- there were two collisions that day,
- recall Defendant being involved
- noted damage to her vehicle
- light or little damage, less than 500.00
- in vicinity of drivers door

1:09:19 PM

**Exhibit 5**

- yes same vehicle, Nissan Pathfinder
- I didn't take photo
- no this photo shows extensive damage to front of drivers side vehicle

1:10:10 PM

**Objection argumentative**

1:11:01 PM

**BEGIN BENCH CONFERENCE**

1:12:53 PM

**END BENCH CONFERENCE**

**Court – sustained**

- I would have to refer back to my report
- driver of other vehicle was at fault

1:14:23 PM

**Cross Examination by Mr. Gould**

- the second one occurred in my presence
- I was present during one of the accidents
- I investigated that accident
- not to the best of my knowledge if I took photos
- the way I remember it, I can't recall if she was north or south bound, he was driving reckless
- he went into another lane and struck her vehicle on the side
- that is what I remember
- I would have to look on my report for that sir, I would have to see my report, I didn't review it before testifying
- I only looked at portion of Ms. LaFrance's vehicle
- it is more than a box on the form, one to show location of damage, and the other showing dollar amount

1:17:58 PM

**Exhibit B identified**

- it shows damage location is drivers door area

witness shows attorney box on form

- it is a block that has to be checked
- when I talked to Ms. LaFrance that she described the contact
- I looked in area
- I don't recall that sir

1:19:36 PM

**Redirect Examination by Ms. Smith**

- less than \$ 500.00
- it shows the vehicle into areas, I indicated it was on drivers door area
- damage in this photo is over 1k

1:20:52 PM

**Witness excused**

1:21:01 PM

**Witness Previously Sworn/Affirmed Resumes Stand:**

**Jeanne Swartz**

**COURT:**

**witness has been qualified as expert witness**

- I was hear for the playing of the tape
- yes her demeanor is consistent with blood level
- she appeared to be very clear in what she was saying
- pleasant and cooperative, complied with all requests
- that is not sign of impairment
- in her employment is a teacher, she is food service
- everyday deals with a number of people
- speaking in a calm manner, when people are impaired people can perform tasks
- people in specialized occupations, who are very good performing one leg stand
- it is practiced in their ordinary work, interacts with them, she didn't slur her speech is not necessarily
- she was vague about where her car traveled, the fact that she is unclear and vague is sign of impairment
- I did notice clear and distinct and lack of memory re: landmarks
- having seen literally hundreds of people and training I perform at crime lab
- I have seen pleasant people who are at levels of alcohol
- there behavior can be deceiving
- heard her say she sipped all night
- when you say beer, she talked about drinking a pint, which is 16 oz. That is 12 oz that I was referring to yesterday
- Guinness has higher alcohol content
- one pint consumed two hours before breath test would not be consistent
- there would have been more alcohol involved

1:27:58 PM

- more than one drink and no more than three drinks she would have to consume for the test to be that amount
- 48 oz.
- my understanding was there was , drinking occurred before 5 am, test was 2 ½ hrs later
- she eliminated, .02-.04 worth
- there was more alcohol consumed than one pint of Guinness, it probably wasn't excessive
- more than one maybe three altogether

1:29:54 PM

**Cross Examination by Mr. Gould**

- I didn't hear any slurring of words
- slurring is just the inability for the speech to sound clear
- that is what slurring is yes, I didn't hear any of that

1:30:55 PM

**Witness excused**

**COURT:**

**will take break, will continue tomorrow**  
finish with any witnesses tomorrow  
come in at 9am  
cautions jurors

1:31:58 PM

**Jury Absent**

**COURT:**  
parties discuss jury instructions

1:34:33 PM

**Off record**