

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

NO. 34833-1-II

STATE OF WASHINGTON,

Respondent,

vs.

SINE LAUREE TVEIT,

Appellant.

INTEGRITY
STATE OF WASHINGTON
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COURT OF APPEALS

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR CLALLAM COUNTY
CAUSE NO. 05-1-00476-1

BRIEF OF RESPONDENT

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I. STATEMENT OF THE CASE

The State believes that for the purposes of the issue raised on appeal, that the defendant has set forth an accurate record of the facts of the case. The State would only comment that it does not believe that the Department of Licensing document admitted at trial had any pen marks on it, as does the copy of the Department of Licensing document attached to the defendant's brief as Appendix "A". The original exhibit is at the Court of Appeals, and therefore this could not be verified by the Prosecutor.

II. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

The Trial Court did not err when it admitted a certified copy of a Department of Licensing document which set forth the status of the defendant's privilege to drive in this state.

III. ARGUMENT

The Trial Court did not err when it admitted a certified copy of a Department of Licensing document which set forth the status of the defendant's privilege to drive in this state.

The defendant argues that pursuant to *Crawford v. Washington*,¹ that the Department of Licensing document was "testimonial" and therefore inadmissible. This is incorrect.

Although the *Crawford* Court did not specially define what constitutes a testimonial statement, the Court did reference what should

¹ 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2006)

be called the core class of testimonial statements – “that is material such as affidavits, custodial examinations, prior testimony that the defendant was unable to cross-examine, or similar pre-trial statements that declarants would reasonably expect to be used prosecutorially.” *Crawford*, at 51-52.

In arguing that the Department of Licensing document falls into this category of extra-judicial statements that should be excluded because the statement was created to be used prosecutorially, the defendant fails to distinguish between those statements wherein the actual content of the statement was created to be used at trial versus those statements, that although were created to be used at trial, simply reflect facts that exist in a record somewhere and that exist whether or not there is a criminal prosecution.

For example, the *Crawford* Court is very clear that business records are not testimonial. *Crawford*, at 56 – that is because business records exist independently of any criminal prosecution and are not created for the purposes of a criminal prosecution.

Here, the Department of Licensing record, simply reduces to writing, a record that existed in the computer files of the Department of Licensing. It’s really no different than having a person from the Department of Licensing testify that he or she reviewed the records of the Department of Licensing and the records indicate the existence or non-existence of a certain fact. The alternative would be for the Department of Licensing to produce its computer system at trial.

The same logic applies to public records. Like business records, public records are also records maintained independent of any criminal prosecution. For the purposes of the confrontation clause, they are the functional equivalent. *State v. N.M.K.*, 129 Wn.App. 155, 163, 118 P.3d 368 (2005). Although business records and public records are hearsay, they are not testimonial.

The defendant also argues that the Department of Licensing document is not a business record because business records are created for the purpose of promoting business:

5.45.010. “Business” defined

The term “business” shall include every kind of business, profession, occupation, calling or operation of institutions, whether carried on for profit or not.

5.45.020 Business records as evidence.

A record of an act, condition or event, shall insofar as relevant, be competent evidence if the custodial or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event, and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission.

To qualify as a business record, the record does not have to be made for the purpose of promoting business – the definition is much broader than that. A business record is simply any record made in the

regular course of business – here, the Department of Licensing’s business is the business of regulating licensings, including the license to drive.

The defendant further argues that the Department of Licensing document is not a public record because the document contains not simply facts, but conclusions that involve judgment, discretion or the expression of opinion. This is not correct:

4.55.040. Certified copies of public records as evidence.

Copies of all records and documents on record or on file in the offices of the various departments of the United States and of this state or any other state or territory of the United States, when duly certified by the respective officers having by law the custody thereof, under their respective seals where such officers have official seals, shall be admitted in evidence in the courts of this state.

The Department of Licensing document simply says that after a diligent search of the computer files, the official record indicates that the defendant “had not reinstated his/her driving privilege. Was suspended/revoked in the first degree. Subject was not eligible to reinstate his/her driving privilege on the above date of arrest” and “had not been issued a valid Washington license”.

Clearly, these statements are not conclusions that involve judgment, discretion or the expression of opinion. They are simply a reflection of what the Department of Licensing’s Official Record

indicate about the status of this defendant's license to drive – they are not Ms. Bausch's opinion.

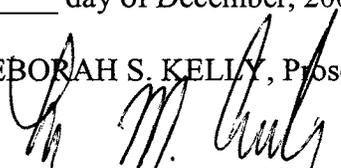
Moreover, it is important to remember that just because the hearsay goes to the heart of an issue at trial, it does not make the otherwise admissible hearsay inadmissible; that is, simply because the Department of Licensing document is central to the prosecution of the case, the rules of evidence do not change. As stated in *State v. Monson*,² “the certified copy of the defendant's driving record is a hearsay statement. It is a written assertion made out of court and offered at trial to prove the truth of the matter asserted; i.e., that at the time he was cited, the defendant's driving privilege was revoked.” *Monson*, at 836. The Court in *Monson*, specially rejected a rule that would limit admissible hearsay simply because it went to the heart of an issue at trial.

IV. CONCLUSION

The Trial Court did not err when it admitted a certified copy of a Department of Licensing document which set forth the status of the defendant's privilege to drive in this state. The defendant's convictions should be affirmed.

DATED this 8th day of December, 2006.

DEBORAH S. KELLY, Prosecuting Attorney


LAUREN M. ERICKSON WBA #19395
Deputy Prosecuting Attorney
Attorney for Respondent

² 113 Wn.2d 833, 784 P.2d 485 (1989)

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STATE OF WASHINGTON)
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County of Clallam)

The undersigned, being first duly sworn, on oath deposes and says:

That the affiant is a citizen of the United States and over the age of eighteen years; that on the 8th day of December, 2006, affiant deposited in the mail of the United States of America a properly stamped and addressed envelope containing a copy of the Brief of Respondent, addressed as follows:

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SUBSCRIBED AND SWORN TO before me this 8th day of December, 2006.

Elaine L. Sundt

(PRINTED NAME:) Elaine L. Sundt
NOTARY PUBLIC in and for the State of Washington
Residing at Port Angeles, Washington
My commission expires: 09/10/2010