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FHP broke rules on mystery witness, judge says, but I-595 hit-run trial begins

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March 21, 2012 | By Paula McMahon, Sun Sentinel

A Plantation man charged with leaving the scene of a crash that killed a 62-year-old woman is taking his case to a jury this week to decide if he is innocent or guilty, after a judge turned down his request to dismiss the charge.

Broward Circuit Judge Carlos Rebollo ruled Wednesday that Florida Highway Patrol investigators broke legal rules that oblige them to turn over all evidence to the prosecution and defense – especially anything that might exonerate an accused person or otherwise help their defense.



Joseph McGowan, 24, looks at his attorney, Robert Buschel, as Buschel approves... (Amy Beth Bennett, Sun Sentinel)

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Joseph McGowan, 24, of Plantation, is accused of failing to promptly report the Nov. 3, 2010 accident that killed Maebell Johnson, of Fort Lauderdale, who suffered from dementia and was standing in the middle lanes of Interstate 595. McGowan said he now realizes that the 2001 Dodge Caravan he was driving hit Johnson about 3:30 a.m., but at the time he thought some debris had fallen off a truck in front of him.

McGowan reported the accident about four hours later after his father, a Plantation police captain, examined the vehicle in daylight and told him there was blood and damage to the vehicle that suggested he had struck a person.

Rebollo ruled that the defense would be very negatively affected by the FHP investigator's failure to turn over information about a mystery witness who called 911 to report that he saw another unidentified motorist – in a small white car, possibly a Lexus – flee the scene and then stop to remove his license plate.

"Here we are on the eve of trial and the defendant now knows there's another vehicle, distinct from the vehicle the defendant was driving ... [leaving the scene and] taking off the license plate," Rebollo told the prosecutor and defense lawyer. "From that witness, we may get to a person who may become a

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defendant."

The male caller said he was from Miami-Dade County and was in a red Jeep Cherokee, possibly with a passenger. Police records show he was calling from a Verizon mobile phone with the number 443-591-9726, which was later assigned to a different person. The prosecution and defense have not been able to track down either the witness or the motorist.

"What occurred in this case is prejudicial," the judge said, a lawyer's way of saying the defense was harmed by it.

Rebollo said it would be too much of an "extreme sanction" to dismiss the charge against McGowan because of the misconduct by the FHP, but he offered to give the defense more time to prepare for trial and let prosecutors try to track down the witness.

Prosecutors offered to allow McGowan to plead guilty in exchange for a sentence of just probation, moments before jury selection began at noon. If convicted, McGowan faces from two to 30 years in prison, though his prior clean driving record and lack of any criminal history would likely mean a lesser punishment.

Prosecutor Sasha Shulman and defense attorney, Robert Buschel, both said they only received a copy of the 911 call to Sunrise police earlier this month, after Buschel and a defense investigator, Patrick Roberts, tracked down information about the call.

The lawyers for both sides finally got a copy of the recorded call on March 6, a day after the defense questioned FHP Corporal Victor Luquis about his investigation during a sworn deposition.

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Buschel turned down the offer of more time before going to trial, saying prosecutors had long enough to prepare the case and that crucial evidence has already been lost because the FHP did not follow up appropriately on all leads.

"We're ready to pick a jury and explore the trooper's grossly negligent investigation in front of the jury," Buschel said after the court hearing.

The accident happened on Nov. 3, 2010, and McGowan was not charged until September of last year. Buschel said that was more than enough time for the FHP to do a proper investigation, but they failed.

"Another 30 days, another 60 days to go to trial wouldn't increase my confidence in this investigation," Buschel said.

Shulman, the prosecutor, said she could not comment on the day of trial.

The prosecution is expected to argue that McGowan's vehicle was the first to strike Johnson — who had wandered away from home almost a day earlier — as she tried to pick up cans or highway reflectors in the middle of the highway. By law, drivers must stop and report a crash that results in a death, and the prosecution has charged McGowan with failing to do so.

The defense's theory is that McGowan's minivan was likely the second of several vehicles that struck the victim and that FHP botched the investigation by not following up on important leads.

The accident happened just west of the I-95 junction on the westbound side of the highway. Johnson was hit by more than one vehicle and was dragged by a tractor-trailer. Prosecutors say it's impossible to tell which was the fatal injury.

A mystery witness provided a running commentary to a Sunrise police dispatcher as he followed the unidentified driver and saw the unidentified man taking his license plate off after getting off the highway at University Drive. The witness said he was calling from University Drive, just south of Sunrise Boulevard before the call was disconnected.

McGowan, who lives in Plantation and works in a food store, was driving home from his girlfriend's Fort Lauderdale house when the accident happened.

McGowan got off the highway at the State Road 7 exit to examine the damage to his vehicle, then went home.

Road Ranger Pedro Nieves told troopers at the time that he witnessed the crash and saw a small, light-

