William & Mary Law Review

Volume 5 | Issue 1 Article 8

Evidence-Privilege - Use of Accident Report of Impeach

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EVIDENCE—PRIVILEGE

Use of Accident Reports to Impeach

In *Carter* v. *Nelms*[1] a trial court permitted plaintiff's counsel to impeach defendant's testimony by showing inconsistent statements contained in an accident report which defendant had filed with the Division of Motor Vehicles pursuant to Virginia Code § 46.1-400. On appeal, the Supreme Court of Appeals summarily dismissed defendant's objection to such use of the report because defendant had failed to make timely objection.

This case and the subsequent federal court case of *Krizak* v. *W. C. Brooks & Sons, Inc.*[2] have completely exploded all notions that Virginia Code § 46.1-400 et seq. afford absolute privilege to such reports. The cases parallel each other factually, differing only in that defendant made timely objection in the latter. The trial court overruled the objection and the appellate court affirmed.

Krizak seems to suggest the rationale underlying the summary dismissal in *Carter*. The Court distinguishes the privilege afforded by Code § 46.1-408[3] from the attorney-client privilege and various other privileges saying that Code § 46.1-410[4] makes copies of the report available to any party involved in the accident; thus, its contents are not confidential in all respects. The Statute, therefore, provides only limited privilege—it merely precludes admission of the report itself and does not prohibit using information contained therein.

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1 204 Va. 338, 131 S.E.2d 401 (1963).

2 302 F.2d 37 (4th Cir. 1963).

3 This section states that "No such report shall be used as evidence in any trial, civil or criminal, arising out of an accident. . ."

4 Important parts of this section are as follows: But any report of an accident made pursuant to . . . § 46.1-407 and 46.1-408 shall be open to the inspection of any person involved or injured in the accident or as a result thereof, or his attorney; and provided, further, that the Commissioner or Superintendent shall upon the written request of any such person or attorney or any authorized representative of any insurance carrier reasonably anticipating exposure to civil liability. . .furnish a copy of any such report. . .

Wigmore states that a number of modern statutes requiring one to report certain matters to administrative officials have created privileges respecting such requirements. Since such privileges are mere creatures of statute, one must look to the statute to define the limits of such privilege.[5] The court in *Krizak* appears to have used this method and in this respect the decision seems logically sound. But such logic contains weakness in ignoring the probable purpose of the statute.

Erhardt v. *Ruan Transport Corp.*[6] discusses the Uniform Act Regulating Traffic on Highways[7] and states that such statutes were passed to permit the highway department to obtain accurate information concerning accidents. "It becomes evident", continues the court, "that to obtain such information the source must be carefully guarded so that no prejudice will result to the informant. . . ."[8]

The Virginia statute, although more specific than the Uniform Act, endeavors to fulfill a like purpose. But attainment of such an end, however, under the *Krizak* interpretation appears impossible, for few persons would give a candid report of facts knowing that such statement could be used against them. The court faced an obvious interpretative dilemma: Should they interpret the Statute strictly using the above Wigmore criterion and thus limit its effectiveness, or should they interpret generally in order to make the statute more effective? They interpreted strictly probably feeling that to do otherwise would be judicial legislation.

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5 8 WIGMORE, EVIDENCE, § 2377 (3rd Ed.) (1940). (McNaughton's rev. 1961).

6 245 Iowa 193, 61 N.W. 2d 696 (1953).

7 11 U.L.A. 18. All accident reports made to the department or to any city department under local ordinance shall be without prejudice, shall be for the information of such department and shall not be open to public inspection. The fact that such reports have been so made shall be admissible in evidence solely to prove a compliance with this section, but no such report nor any part thereof or statement contained therein shall be admissible in evidence for any other purpose. . . .

8 *Ibid.* note 6, p 701.

Wigmore, however, states another general interpretative criterion which might allow a more liberal interpretation of the Statute. He states that "The *injury* that would inure to the relation by the disclosure of the communications *must be greater than the benefit* thereby gained for the correct disposal of litigation."[9] Under this criterion, the court could consider the overall purpose of the statute and, thus, permit it to be an effective aid in the study of accident prevention.

A more liberal interpretation by some method would seem preferable, for otherwise, the statute will serve only to encourage untruths.

J.F.P.

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[9] 8 WIGMORE, EVIDENCE, § 2285 (3rd Ed.) (1940). (McNaughton's rev. 1961).