

STATE OF MINNESOTA

In re: Source Code Evidentiary Hearings in
Implied Consent Matters

In re: Source Code Evidentiary Hearings in
Criminal Matters

DISTRICT COURT

Master File No. 70-CV-09-19459

FILED

MAR 08 2011

Master File No. 70-CR-09-19749

SCOTT COUNTY COURTS

**ORDER 20 - ORDER AND
MEMORANDUM FOLLOWING
FINAL EVIDENTIARY HEARING**

The above-entitled matters came before the Honorable Jerome B. Abrams, Judge of District Court, at the Dakota County Judicial Center, Hastings, Minnesota, pursuant to an assignment by the Minnesota Supreme Court. The Court received testimony and exhibits into the record on December 8-10, 2010; December 13-17, 2010; December 20, 2010; December 22 and 23, 2010. Counsel requested the opportunity to submit their final arguments in writing, and the Court ordered the parties to do so by 4:00 p.m. on January 31, 2011. This matter was taken under advisement at that time.

The Court has heard and taken under advisement dispositive motion arguments regarding a Motion in Limine brought on behalf of Prosecutors in the assigned criminal matters and a Motion for Summary Judgment brought by the Minnesota Attorney General's Office in the assigned implied consent matters on November 23, 2010. The Court elected to defer its ruling on these dispositive motions until after the evidentiary hearing was held in December. All parties agreed on the record that the Court should defer its ruling and provide a comprehensive decision on all matters submitted. The decision was further based upon the Court's desire not to further delay the proceedings in order to provide the Court with the necessary time to prepare a written decision which

adequately addressed the dispositive motions. The Court has therefore considered the dispositive motions and the opposition thereto in light of the testimony and exhibits offered into the record during the December hearing.

Counsel directly involved in these proceedings were as follows: (1) appearing as counsel in the assigned criminal matters and on behalf of the implied consent petitioners were Marsh Halberg, Jeffrey Sheridan, Charles Ramsay, and Derek Patrin; (2) appearing as counsel for the criminal defendants represented by Public Defenders in the assigned criminal matters was Pamela King; (3) appearing as prosecution counsel in the assigned criminal matters were Mark Schneider, William Bernard, Sean McCarthy, and Pamela Converse; and (4) appearing as counsel for the Minnesota Attorney General's Office and on behalf of Minnesota's Commissioner of Public Safety were David Voigt, Emerald Gratz, and Kristi Nielsen. William McNabb, counsel for CMI, Inc., was also present but did not formally appear as counsel of record.

At all times the proceedings were open to counsel and the parties involved in the underlying assigned matters, as well as to the public. To the extent other appearances were made by counsel or parties involved in the underlying assigned matters, they have been noted in the record.

Based upon the court files, the proceedings herein, and the substantive record developed by the parties hereto, this Court makes the following:

ORDER

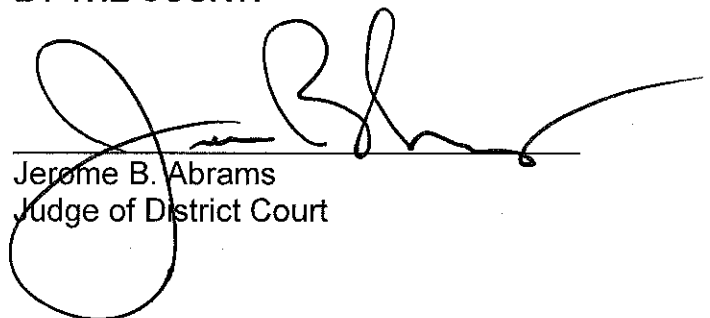
1. The results of breath alcohol testing conducted on the Intoxilyzer 5000EN which express a numerical value for measured breath alcohol are reliable and unaffected by actual or alleged problems with the Source Code of the instrument. To the

extent challenges to test results are premised upon problems with the Source Code, such challenges are overruled, and evidence of same should not be allowed.

2. In cases in which the Intoxilyzer 5000EN running version 75_0240 ("240 software") reported a "Deficient Sample," the Source Code of the instrument does impact the reliability, solely, of this result. Evidence in such cases of a "Deficient Sample" test report should not be allowed unless other evidence exists which provides reasons and/or observations of testing which supports the sample being deficient.
3. The decision herein is limited to challenges of breath alcohol test results based upon the Source Code of the Intoxilyzer 5000EN and is not intended to impair other defenses or challenges as may be permitted.
4. Based upon thorough analysis of the Source Code, and exhaustive presentations made by or on behalf of all parties, this Court will consider new challenges to the Source Code of the Intoxilyzer 5000EN only upon a showing of newly discovered evidence or that a substantial new analysis has been performed which supports position(s) not previously asserted.
5. This Court, in accordance with Minnesota Supreme Court Order A09-2109, retains jurisdiction over pending or new cases which challenge the results of the Intoxilyzer 5000EN based upon the Source Code of the Instrument.
6. The attached memorandum is fully incorporated herein.

Dated: 3-7-11

BY THE COURT:



Jerome B. Abrams
Judge of District Court