

IN THE COUNTY COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, STATE OF FLORIDA

STATE OF FLORIDA,
Plaintiff,

vs.

CASE NO. 04 CT 14406 SC

CAROLE BJORKLAND, et al.,
Defendant.

_____ /

STATE'S NOTICE OF INABILITY TO COMPLY WITH COURT'S ORDER

COMES NOW the State of Florida represented by Earl Moreland State Attorney for the Twelfth Judicial Circuit, files this Notice of Inability to Comply with Court's Order, and states:

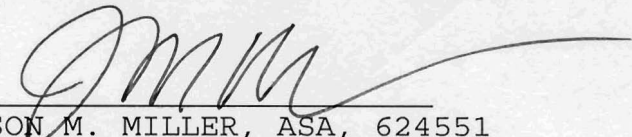
1. In an attempt to comply with this Court's November 2, 2005 order compelling the State to produce a trade secret from a third party unnamed in this case, the State contacted CMI, Inc., a Kentucky Corporation.

2. The third party, CMI, Inc. responded to our request on November 11, 2005 with the following attached letter indicating their denial of our request.

3. Without the cooperation of the third party, the State is unable to comply with this Court's November 2 Order.

Respectfully submitted,
EARL MORELAND, STATE ATTORNEY

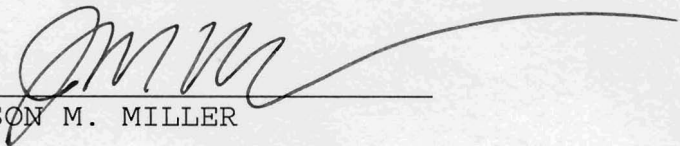
BY:



JASON M. MILLER, ASA, 624551
Office of the State Attorney
2071 Ringling Blvd., Suite 400
Sarasota, Florida 34237-700

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by hand to: Robert Harrison, Esquire, 825 S. Tamiami Trail, Ste. 2, Venice FL 34285 this 17 day of Nov, 2005.

BY:



JASON M. MILLER

SULLIVAN, MOUNTJOY, STAINBACK & MILLER PSC

ATTORNEYS AT LAW

Ronald M. Sullivan
Jesse T. Mountjoy
Frank Stainback
James M. Miller
Michael A. Fiorella
William R. Dexter
Allen W. Holbrook
R. Michael Sullivan
P. Marcum Willis
Bryan R. Reynolds
Tyson A. Kamuf
Mark W. Starnes
Julia B. Hawes

November 11, 2005

VIA-FACSIMILE & REGULAR MAIL
941-861-4465

W. Earl Varn, Assistant State Attorney
Division Chief, County Court
Criminal Justice Building
2071 Ringling Blvd., Suite 400
Sarasota, FL 34237-7000

Re: State v. Bjorkland et. al.
2004-CT014406 SC

Dear Mr. Varn:

This firm represents CMI, Inc., the manufacturer of the Intoxilyzer 5000. Thanks for your letter of November 8, along with the attached copy of the "Order on Defendant's Motion to Compel Production of the Source Code", entered November 2, 2005.

CMI must respectfully decline your request that it produce for you, for use by the defendants, the source code for the Intoxilyzer 5000. CMI has not provided this information to any prosecutor's office in Florida, nor to the Florida Department for Law Enforcement (FDLE). Contrary to the undocumented footnote 3 of the Order, CMI has no "agreement" with FDLE that FDLE will not disclose the source code. As stated, FDLE does not have the source code.

CMI is not, of course, a party to this proceeding. CMI contends that the defendants cannot obtain information directly from CMI except through the "Uniform Act to Secure the Attendance of Witnesses from Within or Without a State in Criminal Proceedings." Both Florida and Kentucky are signatories to this Act. See: Florida Statutes Annotated 942.01 to 942.06 and Kentucky Revised Statutes 421.230 to 421.270.

Pursuant to the terms of that Act, defense counsel must first obtain a certification from a Florida Court after a hearing in Florida, and then provide that certification to a judge here in Kentucky. There would then be a separate hearing here in Kentucky. Thus, in

Telephone (270) 926-4000
Telecopier (270) 683-6694

100 St. Ann Building
PO Box 727
Owensboro, Kentucky
42302-0727

SULLIVAN, MOUNTJOY, STAINBACK & MILLER PSC

Earl Varn, Esq.
November 11, 2005
Page 2

terms of the "available alternatives" (Order, p. 7), such an alternative does exist if any of the defendants wish to avail themselves of it.

Sincerely yours,



Allen W. Holbrook

AWH/bcj
cc: CMI, Inc.