

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

STATE OF FLORIDA, :  
 :  
 Plaintiff :  
 :  
 Vs. : CASE NO. 2004 CT 014406 SC  
 :  
 CAROLE MAE BJORKLAND, et al.\*, :  
 :  
 Defendant. :  
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\*Attached is a complete list of all cases

**MOTION FOR SANCTIONS**

COMES NOW, the above named Defendants, by and through their undersigned attorney, and files this Motion for Sanctions and says:

1. The Defendants filed a Motion for Supplemental Discovery seeking this Court to require the State Attorney to produce the source code of the Software Program on the Intoxilyzer 5000 used in this case, together with the source code of this Software Program that was approved for use in 11D-8.003.

2. On November 2, 2005, this Court ordered the State to produce the source code(s) for the EPROMs located in the Intoxilyzer 5000 instruments used in Sarasota County, within 15 days.

3. On November 17, 2005, the final day the State had to produce the source code(s), the State filed a Notice of Inability to Comply with Court's Order.

4. The State failed to produce the source code(s) within the 15-day time period provided in this Court's Order of November 2, 2005.

5. The State's failure to comply with the Order of this Court to produce the source code(s) has frustrated the defendants' quest to determine whether the Intoxilyzer actually used in this case contains the software approved by the State of Florida, whether it is functioning as per the approved source code and whether any alterations have affected its operation or reliability.

6. The State's discovery violation causes prejudice and harm to the defendants' ability to ascertain whether the changes to the software are substantial or inconsequential.

7. In this case, the State's discovery violation prevents the defendants from properly preparing their cases for trial.

8. The Defendants have not received "full information" about the breath test, as provided in Section 316.1932, Florida Statutes.

9. The appropriate sanction for failure to provide "full information" is exclusion of the results of the breath test. *State v. Muldowny*, 871 So.2d 911(Fla. 5<sup>th</sup> DCA 2004).

WHEREFORE, The Defendant requests that this Court to enter an order excluding the results of the breath test as sanctions for failing to comply with this Court's Order of November 2, 2005.

*Robert N. Harrison*

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been furnished by regular U.S. mail to Jason Miller, State Attorney's Office, 2071 Ringling Boulevard, Sarasota, Florida 34237 this 10<sup>th</sup> day of November 2005.

*Robert N. Harrison*

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Robert N. Harrison