

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

STATE OF FLORIDA
Plaintiff

CASE NO: 2006 CT 9733

v.

*see attached list

JOHN FABIAN, et. al.,
Defendant (s) /

**ORDER ON STATE'S MOTION TO STRIKE,
DEFENDANT'S MOTION TO CONSOLIDATE and
DEFENDANTS' MOTION IN LIMINE**


THIS CAUSE came on for hearing on the State's Motion to Strike, the Defendants' Motion in Limine and the Defendants' Motion to Consolidate. After review of the record and after considering the arguments of counsel, the court finds as follows;

The State's Motion to Strike is DENIED. The present motion seeks primarily the issuance of a subpoena to a third party. Neither the county nor circuit court previously determined the present issue in prior rulings regarding the Intoxilyzer. The legislative amendments to Chapter 316 do not prevent a Defendant from seeking discovery from a third party under the Florida Rules of Criminal Procedure; they merely modified the State's discovery obligations. After careful review of the recent appellate and circuit court opinions, the court concludes that the present request for discovery is not precluded by res judicata.

The Defendant seeks permission under Florida Rule of Criminal Procedure 3.220 to issue a subpoena duces tecum to CMI regarding the source code for the Intoxilyzer 8000. The court finds that this information is both relevant and material, and that the subpoena should issue. The Sarasota County Courts, in some cases en banc, have previously conducted evidentiary hearings as to the source code. The Court has also

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CLERK OF CIRCUIT COURT
SARASOTA COUNTY, FLORIDA

Case: 2006 CT 009733 NC
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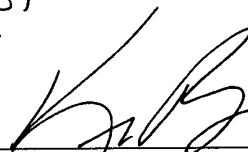
reviewed evidence in the present case as to issues specific to the Intoxilyzer 8000 and apparent malfunctions of this instrument. Shortly after implementation of the instrument, there were source code irregularities which were acknowledged by FDLE. This Court takes judicial notice of those other proceedings and finds that there is ample record evidence that demonstrates materiality. At this time, the court does not require further evidentiary proceedings to establish the minimum threshold of materiality for discovery purposes.

However, the Court declines to enter an order in limine at this time finding that any subsequent failure to produce the subpoenaed items would constitute a due process violation such that exclusion of the breath test results would be necessary. Rather, the court will address any objections or privileges raised by CMI on the merits after issuance of the subpoena. At that time, the Court would address any due process claims.

The Court therefore GRANTS the Defendant's request for discovery and directs the Defendant to prepare a proposed subpoena duces tecum to CMI for issuance by the Court. The remaining requests in the Motion in Limine are DENIED without prejudice.

The Defendants' Motion to Consolidate is GRANTED. A list of cases is attached hereto. These matters shall be set for status on April 12th, 2007 at 3:00 p.m., before the Honorable Kimberly Bonner at the Judge Lynn N. Silvertooth Judicial Center, Courtroom 2A, 2002 Ringling Blvd., Sarasota, Florida. Any previously scheduled trial or pre-trial conference is vacated.

DONE AND ORDERED in chambers at the Sarasota County Judicial Center, Sarasota, Florida on this 2 day of March, ²⁰⁰⁷2003.



Kimberly Bonner
County Court Judge

Cc: See attached list

John Fabian, et. al.	06 CT 9733 NC ✓
Kimberlyn Geary	06 CT 10394 NC
Kyle Steven Kozel	06 CT 16092 NC
Michael Bacon	06 CT 14249 NC
Kevin Bennett	06 CT 16826 NC
Kati Clark	06 CT 15368 NC
Guy Fox	06 CT 14094 NC
Joseph Frizalone	06 CT 18574 NC
Tammy Lynch	06 CT 7860 NC
Joseph Henry	06 CT 14247 NC
Leonardo Ferreira	06 CT 6481 NC
Henry Gibson	06 CT 13373 NC
Jay D. Koerner	06 CT 7791 NC
Denise Kircher	06 CT 13753 NC
Leslie Wayne Fisher	06 CT 13062 NC
Robert E. Laubach	06 CT 20434 NC
Lynn Kirsten	06 CT 19382 NC
David Davenport	06 CT 17987 NC
Jeremy Allen Horn	06 CT 20427 NC
Ernesto Gonzalez Barrueco	06 CT 20565 NC

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The Honorable David L. Denkin