

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

STATE OF FLORIDA,
Plaintiff,

vs.

CASE NO. 2006 CT 002109 SC

Jack Irish et al,
Defendants.

FILED 2006 DAY June 2006
KAREN E. RUSHING, CLERK
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STATE'S MOTION TO RECONSIDER PRIOR RULING

COMES NOW the State of Florida, represented by Earl Moreland, State Attorney for the Twelfth Judicial Circuit, and files this Motion to Reconsider Prior Ruling, as such:

1. On June 13, 2005, Defendant's filed a Motion for Supplemental Discovery (Seeking Source Code). On November 2, 2005, this Court granted Defendant's request, and ordered the State to obtain the Intoxilyzer 5000 source code and provide it to the defense. The Court based its opinion, in part, on a ruling from the Fifth District Court of Appeals in Muldowny v. State, 871 So. 2d 911 (Fla. 5th DCA 2004), and in part, on a statutory interpretation of F.S. § 316.1932(1)(f)(4) ("full information.")

2. Since this Court's prior ruling F.S. § 316.1932(1)(f)(4) has been amended to specifically exempt all computer programs (including the Intoxilyzer 5000 source code) from the statutory definition of "full information." This statute has been found to apply to cases arising prior to its October 1, 2006 amendment. State v. Deville, 14 Fla. L. Weekly Supp. 191a (20th Judicial Circuit 2006). Second, the Fifth District Court of Appeals recently revealed in Moe v. State, 944 So. 2d 1096 (Fla. 5th DCA 2007), that their Muldowny opinion should not be read to justify ordering the State to furnish information which it cannot obtain.

3. This Court has previously ruled in State v. Bjorkland, et al. that Moe v. State is binding case law and has granted a similar motion to reconsider.

4. Since Moe v. State, the fourth DCA has ruled similarly in Pflieger v. State, 952 So.2d 1251 (Fla. 4DCA 2007).

5. As such, the justification for this Court's prior order has been addressed and clarified by the State Legislature and the Fifth District. The State asks this court to reconsider its prior ruling in light of these changes and deny Defendant's Request for Supplemental Discovery. *see* State v. Harvey, 573 So. 2d 111, 112 (Fla. 2d DCA 1991) ("trial court has inherent power to reconsider a ruling...").

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WHEREFORE, the State moves this honorable Court to reconsider its prior ruling and, in light of the changes above, deny the Defendant's Request for Supplemental Discovery.

Respectfully submitted.
EARL MORELAND
STATE ATTORNEY

BY: 

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I HEREBY CERTIFY that a true copy of the foregoing has been furnished by mail to:
Robert N Harrison, 825 S Tamiami Trail, Suite 2, Venice, FL 34285
this 22 day of June, 2007.

BY: 

JASON CHAPMAN