

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

STATE OF FLORIDA,

Plaintiff,

Vs.

Kenneth Arnold Baker, ET. AL*

Defendant.

04 CT 011276 SC
CASE NO. 2005 MM 002364 SC

*Attached is a complete list of cases

**ORDER DIRECTING CLERK TO ISSUE SUBPOENA DUCES
TECUM**

KAREN E. RUDOLPH
CLERK OF CIRCUIT COURT
SARASOTA COUNTY, FL

2007 MAR 12 AM 11:25

FILED FOR RECORD
VENICE BRANCH

THIS CAUSE having come before the Court on the Defendants' Motion for Issuance of Subpoena Duces Tecum, and the Court being fully advised herein, finds as follows:

1. The Defendants in this cause were arrested and charged with DUI, including Driving with an Unlawful Breath Alcohol Level (DUBAL).
2. Following the Defendants' arrest, each Defendant submitted to a breath test on an Intoxilyzer 5000.
3. The Defendants are seeking production of the Source Code for the EPROMs (versions 900.08 and 900.10) located on the Intoxilyzer 5000.
4. This Court on November 2, 2005, entered an Order in this cause directing the State of Florida to produce this code.

Case: 2004 CT 011276 SC
00001955797
Dkt: ORD

5. This Court granted the State's Motion for Reconsideration of the November 2, 2005 Order based upon the intervening decision of the 5th District of Appeal in *Moe v. State*, 944 So.2d 1096 (Fla. 5th DCA 2006) and vacated the November 2, 2005 Order.

6. This Court did not vacate the findings of fact set forth in the November 2, 2005 Order, including "the factual finding that the defendants have established that the source code is material to their theory of defense in these cases."

7. On November 25, 2002 CMI, Inc., a Kentucky Corporation, (Hereinafter CMI) registered with the Florida Secretary of State to transact business in the State of Florida using the name "CMI Inc of Kentucky", with the stated purpose to sell breath alcohol testing equipment.

8. CMI since 2002 has filed annual reports with the Florida Secretary of State to continue transacting business in the State of Florida, the most recent filing occurring on February 23, 2007.

9. CMI, not only registered to transact business in the State of Florida, but actually did transact business in State of Florida by selling breath alcohol testing equipment.

10. As a foreign corporation registered to transact business in the State of Florida, CMI is subject to the same duties, restrictions, penalties, and

liabilities imposed on a domestic corporation of like character. §607.1505(2), Florida Statutes.

11. This Court has jurisdiction to issue a subpoena duces tecum to CMI, a foreign corporation registered to transact business in the State of Florida.

12. A subpoena duces tecum served upon the Florida registered agent of CMI properly requires production not only of those documents located within the State of Florida, but those documents located outside Florida. *General Motors Corp. v. State*, 357 So.2d 1045 (Fla. 1978).

13. The Defendant is entitled to the issuance of a subpoena duces tecum directed to a foreign corporation to produce the source code upon a sufficient showing of materiality. *State v. Jugov*, Case no. 2005 CF 11805 NC (Sarasota Cty. Cir. Ct. 2006).

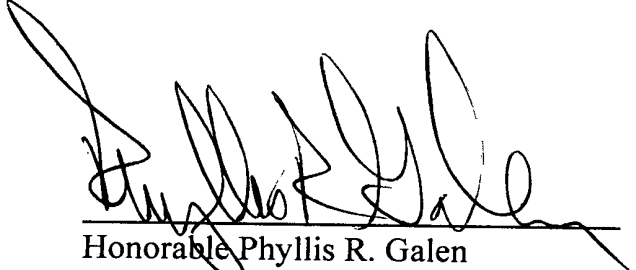
14. Based upon the ruling of this Court dated November 2, 2005, the defendants have established that the source code is material to their theory of defense in these cases.

IT IS, THEREFORE, ORDERED AND ADJUDGED:

The Defendants' Motion for issuance of a subpoena duces tecum is granted. The Clerk of Court will issue a subpoena duces tecum to CMI to

produce the Source Code for the EPROMs (900.08 and 900.10) located on the Intoxilyzer 5000 in substantially the same form as the attached subpoena.

DONE AND ORDERED in chambers in Sarasota County, Florida,
this ^{12th} day of March, 2007.



Honorable Phyllis R. Galen
County Court Judge

cc: Robert N. Harrison, Esquire
Kerry Mack, Esquire
Linda Mason, Assistant Public Defender
Don Hartery, Assistant State Attorney

*Kenneth Arnold Baker,	2005 MM 002364 SC
Willis Chambers,	2005 CT 007721 SC
Christopher Forrester,	2004 CT 011276 SC
Cathy Gange,	2003 CT 018650 SC
Kevin F. Gaul,	2005 MM 010208 SC
Kristin Carla Havlin,	2004 CT 017591 SC
Georges Hilaire,	2005 CT 011530 SC
James Joyce,	2005 CT 007664 SC
Jon Barton Keenan,	2005 CT 012195 SC
Bernard Killion,	2005 CT 003999 SC
Norman Lussier,	2006 CT 014271 SC
Perry A. Lytle,	2004 CT 000450 SC
Kevin E. Mooney,	2005 CT 003776 SC
Mary D. O'Keefe,	2004 CT 012679 SC
Scott Pickering,	2005 CT 017384 SC
Robert I. Pillsbury,	2005 CT 004833 SC
Brandy Lynn Pusateri,	2005 CT 006732 SC
Steven Rosado	2005 MM 011846 SC
Steven Stinson,	2004 CT 016192 SC
James E. Taylor,	2005 CT 010276 SC
Alfred Tesch,	2005 CT 014594 SC
Gary Thome,	2005 CT 017075 SC
James Traywick,	2004 CT 005463 SC
John R. Van Arnam,	2004 CT 017504 SC
Glen Wedmore,	2004 CT 011521 SC
Stephen Gregory Weeks,	2004 CT 005363 SC
Stephen Gregory Weeks,	2005 CT 009462 SC
Jaimee Welch,	2003 CT 015180 SC
Anthony Wolf,	2005 CT 008885 SC

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

DIVISION:

Criminal

CASE NUMBER:

2005 MM 002364 SC

PLAINTIFF

State of Florida

VS. DEFENDANT

Kenneth Arnold Baker, ET. AL*

COPIES

SUBPOENA DUCES TECUM WITHOUT DEPOSITION

THE STATE OF FLORIDA:

TO: CMI INC of Kentucky
BY SERVING: NRAI Services, Inc., Its Registered Agent
2731 Executive Park Drive, Suite 4
Weston, Fl. 33331

State Attorney's Office
YOU ARE COMMANDED to appear at 4000 S. Tamiami Trail, in Venice, Florida, on April 18, 2007, at 9:00 A.M., and to have with you at that time and place the following: Any and all evidence existing in paper, electronic or other form of any and all source

code(s) used in the Intoxilyzer 5000, EPROM versions 900.08 and 900.10.

These items will be inspected and may be copied at that time. You will not be required to surrender the original items. You may comply with this subpoena by providing legible copies of the items to be produced to the attorney whose name appears on this subpoena on or before the scheduled date of production. You may condition the preparation of the copies upon the payment in advance of the reasonable cost of preparation. You may mail or deliver the copies to the attorney whose name appears on this subpoena and thereby eliminate your appearance at the time and place specified above. You have the right to object to the production pursuant to this subpoena at any time before production by giving written notice to the attorney whose name appears on this subpoena. **THIS WILL NOT BE A DEPOSITION; NO TESTIMONY WILL BE TAKEN.**

If you fail to: (1) appear as specified; or (2) furnish the records instead of appearing as provided above; or (3) object to this subpoena, you may be in contempt of court. You are subpoenaed by the attorneys whose names appear on this subpoena and unless excused from this subpoena by the attorneys or the Court, you shall respond to this subpoena as directed.

DATED ON March 12, 2007.

Robert N. Harrison

ATTORNEY FOR: Defendants

ADDRESS: Robert N. Harrison
825 Tamiami Trail S., Suite 2 Venice, Florida 34285

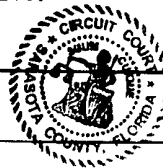
If you cannot afford to pay an attorney, call the Bar Association Legal Aid Society at (941) 366-0038. The mailing address is 1900 Main Street, Suite 311, Sarasota, Florida 34238-5921. An individual not eligible for free legal assistance may obtain a referral to an attorney by calling The Florida Bar Referral Service at (800) 342-8011. The mailing address for the Florida Bar Referral Service is 650 Apalachee Parkway, Tallahassee, Florida 32399-2300.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the Sarasota County Jury Office, 2002 Ringling Blvd., Sarasota, Florida 34237, (941) 951-5785, within two (2) working days of your receipt of this Subpoena; if you are hearing impaired, call 1-800-955-8771; if you are voice impaired, call 1-800-955-8770.

FILED FOR RECORD STAMP

KAREN E. RUSHING
CLERK OF THE CIRCUIT COURT

BY: [Signature]
Deputy Clerk



DATE: 3/12/07

<input type="checkbox"/> IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT IN AND FOR SARASOTA COUNTY, FLORIDA <input checked="" type="checkbox"/> IN THE COUNTY COURT IN AND FOR SARASOTA COUNTY, FLORIDA	
DIVISION: Criminal	CASE NUMBER: 2005 MM 002364 SC
PLAINTIFF State of Florida	VS. DEFENDANT Kenneth Arnold Baker, ET. AL*

SUBPOENA DUCES TECUM WITHOUT DEPOSITION

THE STATE OF FLORIDA:
 TO: CMI INC of Kentucky
 BY SERVING: NRAI Services, Inc., Its Registered Agent
 2731 Executive Park Drive, Suite 4
 Weston, Fl. 33331
YOU ARE COMMANDED to appear at State Attorney's Office
4000 S. Tamiami Trail, in Venice, Florida, on
April 18, 2007, at 4:00 A.M., and to have with you at that time and place the

following: Any and all evidence existing in paper, electronic or other form of any and all source code(s) used in the Intoxilyzer 5000, EPROM versions 900.08 and 900.10.
 These items will be inspected and may be copied at that time. You will not be required to surrender the original items. You may comply with this subpoena by providing legible copies of the items to be produced to the attorney whose name appears on this subpoena on or before the scheduled date of production. You may condition the preparation of the copies upon the payment in advance of the reasonable cost of preparation. You may mail or deliver the copies to the attorney whose name appears on this subpoena and thereby eliminate your appearance at the time and place specified above. You have the right to object to the production pursuant to this subpoena at any time before production by giving written notice to the attorney whose name appears on this subpoena. **THIS WILL NOT BE A DEPOSITION; NO TESTIMONY WILL BE TAKEN.**

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DATED ON _____, _____.

ATTORNEY FOR: Defendants
 ADDRESS: Robert N. Harrison
825 Tamiami Trail S., Suite 2 Venice, Florida 34285

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FILED FOR RECORD STAMP

KAREN E. RUSHING
CLERK OF THE CIRCUIT COURT
 BY: _____ DATE: _____

 Deputy Clerk