

STATE OF MINNESOTA

COUNTY OF RAMSEY

FILED

JAN 25 2010

RAMSEY DISTRICT COURT

DISTRICT COURT

SECOND JUDICIAL DISTRICT

CRIMINAL DIVISION

In Re:

Source Code Evidentiary Hearings in Criminal Cases

ORDER 1

Consolidated file no. 62-DT-VB-10-5

To secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay regarding source code issues raised by either party in criminal matters, the Court, pursuant to its authority in Minn.Stat. §484.69 subd. 3, and in accordance with the order of the Minnesota Supreme Court issued on January 11, 2010, (A092109) issues the following order:

1. In cases where the parties consent to participate in the statewide consolidation, the defendant in such cases shall file immediately a copy of the document with the Ramsey County District Court, mailed to the attention of the case manager. Upon the filing of the document, the cases shall be removed from pending court calendars.

2. The Honorable Judge William H. Leary, III, of the Second Judicial District, having consented, is assigned to administer, hear, and decide all pre-trial matters concerning challenges to the reliability of the Intoxilyzer 5000EN results based on the source code of the instrument, including scheduling, discovery, and an evidentiary hearing, if necessary, in all pending and future criminal cases in which a defendant challenges the reliability of the Intoxilyzer 5000EN results based on the source code of the instrument and the parties do not consent to participation in the

statewide consolidation, with the exception of cases in which a timely and valid notice to remove Judge Leary is filed and served as prescribed by rule.

3. The Honorable Judge John H. Guthmann of the Second Judicial District, having consented, is assigned to administer, hear, and decide all pre-trial matters concerning challenges to the reliability of the Intoxilyzer 5000EN results based on the source code of the instrument, including scheduling, discovery, and an evidentiary hearing, if necessary, in all pending and future criminal cases in which a defendant challenges the reliability of the Intoxilyzer 5000EN results based on the source code of the instrument and the parties do not consent to participation in the statewide consolidation, and a timely and valid notice to remove Judge Leary has been filed and served as prescribed by rule.

4. Judges Leary and Guthmann will not handle any other aspect of the cases identified in paragraphs 2 and 3, respectively, unless assigned as the trial judge.

5. A defendant who has had a first appearance prior to the date of this order and who intends to contest an issue as provided in paragraphs 2 or 3 shall file and serve notice of such intent within twenty-one (21) days of the date of mailing of this order. The notice shall state the issue(s) to be contested. Failure to file and serve such notice shall constitute a waiver of defendant's right to contest the reliability of the Intoxilyzer 5000EN results based on the source code of the instrument. Upon filing and serving such notice, the parties shall be given a hearing date to determine the issue contested, and the cases shall be removed from pending court calendars.

6. A defendant whose first appearance occurs after the date of this order and who intends to contest an issue as provided in paragraphs 2 and 3 shall file and serve notice of such intent within twenty-one (21) days of the date of first appearance. The notice shall state the

issue(s) to be contested. Failure to file and serve such notice shall constitute a waiver of defendant's right to contest the reliability of the Intoxilyzer 5000EN results based on the source code of the instrument. Upon filing and serving such notice, the parties shall be given a hearing date to determine the issue contested, and the cases shall be removed from pending court calendars.

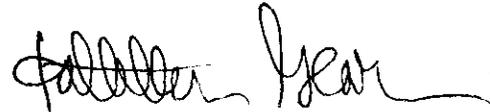
7. Upon resolution of the issue identified in paragraphs 2 and 3, the cases shall be scheduled for pre-trial and trial as normally assigned.

8. The case manager assigned to the cases subject to this order is Cathy Clausen, Criminal Assignment Office, Ramsey County Courthouse, 15 West Kellogg Boulevard, Saint Paul, Minnesota, 55102. Ms. Clausen's telephone number is 651.266.8304.

DATED:

1-22-10

BY THE COURT



Kathleen Gearin
District Court Judge