

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

J. L. H.

District Court File No

Petitioner,

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

v.

Commissioner of Public Safety,

Respondent.

The above-entitled matter came on for hearing before the undersigned Judge of District Court on January 8, 2008, at the Dakota County Judicial Center, Western Service Center, Apple Valley, Minnesota, upon Petitioner's Motion for Supplemental Discovery. Petitioner was represented by Ryan P. Garry. Respondent was represented by _____ Assistant Attorney General.

The issue presented by Petitioner for the Court's determination was whether Petitioner was entitled to discovery of the complete computer source code for the Intoxilyzer 5000EN used in the State of Minnesota.

NOW, THEREFORE, the Court, having considered all of the files, records and proceedings herein, together with the arguments of counsel, and being fully advised in the premises, makes the following:

FINDINGS OF FACT

1. That Petitioner is before the Court because Respondent revoked Petitioner's driving privileges for testing at or above 0.08 on an Intoxilyzer 5000EN instrument.

FILED

DAKOTA COUNTY
Court Administrator

MAR 17 2008

BY

DEPUTY

2. That prior to the Implied Consent hearing in this matter, Petitioner requested the complete computer source code for the Minnesota model of the Intoxilyzer 5000EN instrument.
3. That Respondent has objected to the request for the source code and has failed to produce it for Petitioner.
4. That CMI, Inc., a Kentucky corporation, has a genuine interest in protecting the source code as intellectual property.

Based upon the foregoing Findings of Fact, the Court now makes the following:

CONCLUSIONS OF LAW

1. That the Minnesota Rules of Civil Procedure allow for the discovery of information that is relevant but may not be admissible at trial, as long as the discovery is “reasonably calculated to lead to the discovery of admissible evidence.” Minn. R. Civ. P. 26.02(a). The district court “has wide discretion to issue discovery orders, and absent clear abuse of that discretion,” an appellate court will not overturn the discovery order. *Shetka v. Kueppers*, 454 N.W.2d 916, 921 (Minn. 1990). A writ of prohibition shall issue “when a trial court orders production of nondiscoverable information.” *Id.*
2. That the Minnesota Supreme Court ruled in *In re Comm’r of Pub. Safety v. Underdahl*, 735 N.W.2d 706 (Minn. 2007), that a writ of prohibition sought by the Commissioner of Public Safety was not justified where the District Court ordered the production of the computer source code for the Intoxilyzer 5000EN in an implied consent case. While noting that “this case does not raise any issue relating to a rule of practice affecting all litigants,” *id.* at 713, the Court also held that the District Court Order neither exceeded its jurisdiction nor mandated discovery that was clearly not discoverable.

Based upon the foregoing Conclusions of Law, the Court makes the following:

ORDER

1. That the Respondent shall produce for inspection by Petitioner's counsel only, and not Petitioner, the complete computer source code for the Intoxilyzer 5000EN currently in use in the State of Minnesota, within 30 days of the entry of this Order.
2. That experts or consultants retained by either party, or his counsel shall not have been employed or affiliated in any other way with any manufacturer of breath alcohol instruments, nor worked on behalf of any such manufacturers within the last twenty-four (24) months. Prior to disclosure of the source code by any party or his counsel to any expert or consultant, said expert or consultant shall be informed of the existence of this Order and shall be provided with a copy of this Order to read. No expert or consultant retained by either party shall share the source code with any other person or entity other than the parties hereto, except by an Order of this Court. Any analytical report of said expert or consultant shall be filed with this Court as a confidential document, kept under seal until further Court Order.
3. That this matter is continued for 30 days pending completion of the discovery ordered herein.
4. That if the source code is not produced within 30 days of entry of this Order, then the Intoxilyzer 5000 test record will be inadmissible in this proceeding, leading to rescission of Petitioner's license revocation.

DATED: March 14, 2008

BY THE COURT:



Judge of District Court