

STATE OF MINNESOTA
IN SUPREME COURT
A11-0560



In Re: Source Code Evidentiary Hearings in
Implied Consent Matters.

In Re: Source Code Evidentiary Hearings in
Criminal Matters.

O R D E R

Based upon a January 11, 2010, order of this court, more than 4,000 civil implied-consent and criminal DWI cases were consolidated before the Honorable Jerome B. Abrams, Judge of District Court, for the purpose of deciding pretrial matters concerning challenges to the reliability of the Intoxilyzer's results based on the instrument's source code ("the consolidated Intoxilyzer-source-code-challenge cases"). *See In re Minnesota Intoxilyzer 5000EN Source Code Litigation*, No. A09-2109, Order at 3-4 (Minn. filed Jan. 11, 2010). On March 8, 2011, the district court issued an order ("the Source Code Order"), in which it generally overruled challenges to the Intoxilyzer's test results based upon problems with the source code and concluded that "the results of breath alcohol testing conducted on the Intoxilyzer 5000EN . . . are reliable and unaffected by actual or alleged problems with the Source Code of the instrument."

The criminal defendants and implied-consent petitioners in the consolidated Intoxilyzer-source-code-challenge cases (the "appellants") filed a petition for

discretionary review of the Source Code Order. The court of appeals granted the petition for discretionary review on April 27, 2011. On June 28, 2011, this court granted petitions for accelerated review of the Source Code Order.

On June 10, 2011, appellants filed a motion for a stay pending appeal with the court of appeals, in which they sought: (1) a stay of the Source Code Order pending this appeal; (2) a stay of all cases in which the driver has challenged the accuracy and reliability of the Intoxilyzer test result based upon the computer source code while this appeal is pending; and (3) the vacation of any final order entered in any of the consolidated cases since the date the Source Code Order was issued. Appellants later requested a delay in a ruling on this motion until after a transcript of the district court hearing on appellants' motion to stay was prepared. The transcript has been filed, and in a July 14, 2011, order, this court ruled that it would consider and determine the pending motion for a stay pending appeal based on the materials submitted to the court of appeals.

The order assigning cases involving Intoxilyzer source code challenges to one judge noted that the interests of the parties and the judiciary would be furthered by that assignment because it would eliminate duplicative litigation in different districts, prevent inconsistent rulings, conserve the resources of the parties, their counsel, and the judiciary, and facilitate resolution of the cases. Staying proceedings in cases involving Intoxilyzer source code challenges pending this appeal will serve similar purposes.

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that appellants' motion for a stay pending appeal be, and the same is, granted in part and that: (1) all implied-consent cases in which a party

