

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

sSTATE OF FLORIDA,

CRIMINAL DIVISION "W"  
CASE NO. 502010CF005829AXXXMB

vs.

JOHN B. GOODMAN,

Defendant.

FILED  
2014 MAR 21 PM 3:52  
PALM BEACH COUNTY  
CIRCUIT CRIMINAL

**ORDER GRANTING STATE'S MOTION TO INVOKE  
THE DOCTRINE OF PRIMARY JURISDICTION**

**THIS CAUSE** came before the Court on Defendant's "Motion to Exclude [sic] Blood Test Results Based upon the Insufficiency [sic] of the FDLE Regulations and the Lack of Scientific Reliability of the Test Results" ("Motion to Exclude") filed on February 24, 2014 and the State's Motion to Strike [Defendant's Motion] and to Invoke the Doctrine of Primary Jurisdiction," ("Motion to Invoke") filed March 7, 2014. After a review of both motions, the argument of counsel at the hearing held on March 14, 2014, and relevant case law, the Court finds as follows:

In support of his argument that the results of a blood draw taken while he was a patient at Wellington Regional Hospital after the crash should be excluded, Defendant asserts that Florida Department of Law Enforcement ("FDLE") Rule 11D.8.012 is inadequate, deficient, and scientifically unsound for a variety of reasons. (*See* Def. Mot. at 4-6.) Defendant specifically attacks the preservation of a blood sample for later analysis and the type of needle to be used to draw the blood sample. The lengthy Motion to Exclude contains a substantial number scientific diagrams, hypotheses, and analyses of the effect of following certain testing techniques. (*Id.* at 8-30.) Key to Defendant's argument is the fact that in his case, a different gauge needle than the one provided in the standard law enforcement kit. According to Defendant, these kits are made

widely available throughout the State to law enforcement agencies and all contain a specific gauge needle. (*See Id.* at 8-9.)

In response to Defendant's arguments, the State asserts in its Motion to Invoke that the more proper venue for challenges to the sufficiency of rules promulgated by administrative agencies, like FDLE, is to file a petition with the Department of Administrative Hearings ("DOAH"), pursuant to the Administrative Procedure Act, Chapter 120, Florida Statutes. (*See State Mot.* at 2.) This section provides that "[a]ny person substantially affected by a rule or proposed rule may seek an administrative determination of the invalidity of the rule on the ground that the rule is n invalid exercise of delegated legislative authority." § 120.56(1), Fla. Stat. (2013). The procedure calls for an affected party to file a petition with DOAH and then an administrative law judge would rule on the merits of the petition within thirty days of filing the petition. § 120.56(1)(c), Fla. Stat. (2013). The State acknowledges that the trial court still possesses jurisdiction over this matter, but explains that it is discretionary when confronted with an administrative rules challenge. (*State Mot.* at 3.)

"The doctrine of primary jurisdiction dictates that when a party seeks to invoke the original jurisdiction of a trial court by asserting an issue which is beyond the ordinary experience of judges and juries but within an administrative agency's special competence, the court should refrain from exercising its jurisdiction over that issue until such time as the issue has been rule upon by the agency." *Flo-Sun, Inc. v. Kirk*, 783 So. 2d 1029, 1036-37 (Fla. 2001). Where a defendant challenges the sufficiency of the rules as promulgated by FDLE rather than a lack of compliance with the rules, a trial court can defer action on those issues to the DOAH based on the doctrine of primary jurisdiction. *See State v. Sabates*, 17 Fla. L. Weekly Supp. 45a (Fla. Broward Cty. Ct. Sept. 23, 2009).

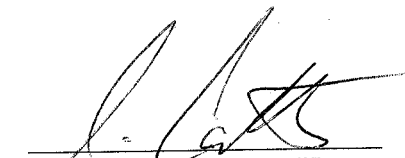
The Court finds that Defendant's challenge goes more to the sufficiency of FDLE Rule

11D.8.012, rather than an allegation of lack of compliance with the Rule. *See State v. Waller*, 17 Fla. L. Weekly Supp. 139a (Fla. Broward Cty. Ct. June 10, 2009). Therefore, the Court concludes this matter would be better addressed as a petition to DOAH. The matters raised by Defendant's Motion present an issue of statewide concern beyond the facts of his own case and DOAH would provide a fair and efficient forum for its resolution. The Court is comfortable with adopting this procedure because of its prior successful use in this Circuit with respect to challenging an FDLE Rule. *Morales v. State*, 20 Fla. L. Weekly Supp. 608a (Fla. Palm Beach Cty. Ct. August 15, 2012). Accordingly, it is hereby

**ORDERED AND ADJUDGED** the State's Motion to Invoke Primary Jurisdiction is **GRANTED**. The Court reserves ruling on Defendant's Motion to Exclude pending the outcome of the proceedings before the Department of Administrative Hearings. This order has no impact on the Court's ability to rule on other pretrial motions pending before the Court. It is further,

**ORDERED AND ADJUDGED** that Defendant shall file his petition challenging FDLE Rule 11D.8.012 pursuant to section 120.56(1)(c), Florida Statutes within twenty (20) days of the date of this Order. Defendant shall file a status report thirty (30) days from the date of this Order and each thirty (30) days thereafter to update the Court on the progress of the proceedings.

**DONE AND ORDERED**, in Chambers at West Palm Beach, Palm Beach County, Florida this 21 day of March, 2014.

  
JEFFREY COLBATH  
CIRCUIT JUDGE

Copy provided to:

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