

**IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA**

STATE OF FLORIDA
Plaintiff,

Vs.

Case No. 2008 CF 3193

JANET LANDRUM,
Defendant,

_____ /

MOTION TO SUPPRESS

The Defendant files this motion to suppress evidence, and in support of said motion would show:

FILED FOR RECORD
R.B. SHORE
2011 FEB 15 AM 11:51
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MANATEE CO FLORIDA

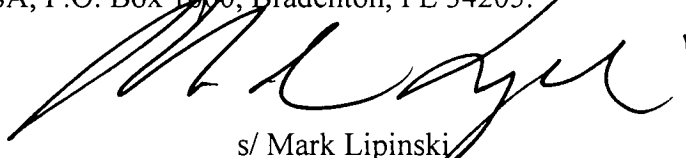
1. The Defendant has been charged with violating Section 316.193, Florida Statutes.
2. Following the Defendant's arrest, a sample of the Defendant's breath was seized without a warrant when the Defendant submitted to a breath test on an Intoxilyzer 8000.
3. The seizure of the Defendant's breath was a seizure within the meaning of the Fourth Amendment of the United States Constitution, along with the Florida Constitution. Blore v. Fierra, 636 So.2d 1329, 1331 (Fla 1994); Schmerber v. California, 384 U.S. 757 (1966).
4. The results of a blood of breath test are admissible into evidence only upon compliance with the implied consent law. State v. Bender, 382 So.2d 697, 699 (Fla. 1980).
5. The Florida Supreme Court recognized the "Implied Consent" law has an "exclusionary rule" when the State fails to comply with these laws. Robertson v. State, 604 So.2d 783, 790 (Fla. 1992).
6. The Defendant's consent to the seizure of the breath sample cannot be implied. For a condition precedent to consent being implied, the State must first comply with the Florida Implied Consent Law, (Florida Statutes, Section 316.7932).
7. The Intoxilyzer 8000 that was utilized in this case was not an approved instrument to implied consent.
8. On May 29, 2002, the Florida Department of Law Enforcement "approved" a version of the Intoxilyzer 8000 for use in the State of Florida.
9. In order to approve the Intoxilyzer 8000, Rule 11D-8.003(6) required FDLE to conduct an evaluation in accordance with procedures in Form 34.

10. Form 34 provides that only machines on the US DOT conforming products list can be evaluated.
11. The version of the Intoxilyzer 8000 placed on the US DOT conforming products list is materially different than the version of the Intoxilyzer 8000 "approved" by FDLE.
12. The version of the Intoxilyzer 8000 placed on the US DOT conforming products list uses a computer program that is materially different than the program used by the version of the Intoxilyzer 8000 "approved" by FDLE.
13. The Florida Supreme Court in Robertson ruled the protections of the implied consent laws only apply when the testing provisions of that law actually are being invoked by the State. In this vein, the Court recognized three exceptions to this exclusionary rule:
 - A. (voluntary) consent;
 - B. Consent is implied on some basis independent of the DUI laws; or
 - C. Voluntary waiver of implied consent rights.
14. The Defendant's breath sample was obtained using coercive measures of the implied consent laws (i.e.: submit to the breath test or lose your driver's license).
15. None of the exceptions to the Implied Consent Statutes exclusionary rule, as set forth in Robertson, apply.
16. The Defendant's breath sample was seized without a warrant, and there is not a legal exception to the warrant requirement for the seizure.

WHEREFORE, the Defendant requests this Court grant this motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by Hand Delivery on this 14 day of February, 2011 to STATE ATTORNEY'S OFFICE, ASA, P.O. Box 1000, Bradenton, FL 34205.



s/ Mark Lipinski

MARK LIPINSKI, ESQUIRE

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