

IN THE COUNTY COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

CASE NO: 07-28236MM10A

VS.

RICHARD MEDINA,

JUDGE: LEE J. SEIDMAN

Defendant.

ORDER ON DEFENDANT'S MOTION TO SUPPRESS
FOR LACK OF SUBSTANTIAL COMPLIANCE

The Defendant was arrested on December 12, 2007 for an alleged Violation of Florida Statue 316.193 (DUI).

Pursuant to his arrest, Defendant Medina submitted to a test of his breath to determine its alcohol content. The machine used by law enforcement to test said Defendant's breath was a CMI Intoxilizer 8000, Serial Number 80-001047. This machine is kept and maintained by law enforcement and is, as a matter of law, inspected routinely by The Florida Department of Law Enforcement (F.D.L.E.) to ensure it meets the requirements of Law so that said test results are accurate and reliable for evidentiary purposes.

A former South Florida Department Inspector for F.D.L.E., a Ms. Sandra Veiga, discovered that *data from failed inspections* of said Intoxilizer could be **erased** by cutting the power ("pulling the plug") to an Intoxilizer 8000 **before** the inspection cycle would be completed. This same State Inspector admitted this to other Law Enforcement Officers here in South Florida, who subsequently notified F.D.L.E.

Ms. Sandra Veiga was subsequently fired by F.D.L.E. on 10/7/08 as a direct result of its investigation into this issue. She gave testimony that by cutting the power to the Intoxilizer 8000 machine **before** the inspection cycle was completed, *all data* indicating a *failed test* could be *removed* from the hard disk within the Intoxilizer 8000.

This phenomenon would result in no data reflecting a failed or problematic inspection of a machine to be thereafter placed in service into the community. This phenomenon was *never documented* by F.D.L.E. *prior to* their initiating the investigation into this issue.

The F.D.L.E. opened its investigation due to allegations made by other South Florida Law Enforcement agencies of potential fraudulent practices and/or the systematic intentional destruction of evidence concerning the CMI Intoxilizer 8000. This F.D.L.E. investigation was initiated in the *interests of justice* on behalf of the citizens of this State who were and are subject to these state regulated breath alcohol testing machines under Florida Law regarding DUI cases. This was the precipitous for the defense filing the motions at bar.

Upon learning of these disturbing allegations, F.D.L.E. notified the Dade County State Attorney's Office in an effort to provide them with "Brady Notices".

Based upon all of the evidence presented in the form of sworn expert witness testimony and documents stipulated into evidence by the parties, this Court makes the following findings of facts.

The Court finds that the law pertaining to the CMI Intoxilizer 8000 used in this case was ***not substantially complied with***. Moreover and certainly more troubling is the further finding that ***fraudulent practices and the systematic intentional destruction of evidence occurred*** regarding these state regulated breath alcohol testing machines.

The *integrity* of the Broward County Intoxilizer 8000's, which were under the actual and direct care, control and frequent possession (during routine state inspections) of former F.D.L.E. Inspector Sandra Veiga, has been *fatally compromised*.

No forensic computerized machine designed and used by humans to provide their government with evidence in a criminal prosecution against its citizens can ever overcome or replace the integrity of its human caretakers and operators.

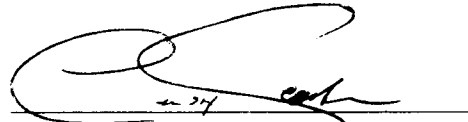
Due Process of Law does not allow the Court to place before a Jury, evidence gathered under such troubling circumstances herein, for them to then *weigh* in the determination of a person's innocence or guilt in a criminal trial.

To allow anything less would critically undermine the public's confidence and trust in *their* criminal justice system.

The gravity of this Court's findings as outlined herein, renders any other claims and grounds within the Defendant's Motion hereby, Moot.

Accordingly, the Defendant's Motion to Suppress said breath alcohol machine test result evidence is hereby, **GRANTED**.

DONE AND ORDERED this 21st day of August, 2009, in and for Broward County, Ft. Lauderdale, Florida.

A handwritten signature in black ink, appearing to read "Lee Jay Seidman", written over a horizontal line.

JUDGE LEE JAY SEIDMAN
County Court Judge
17th Judicial Circuit

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