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IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT,
IN AND FOR BREVARD COUNTY, FLORIDA

CRIMINAL DIVISION D

STATE OF FLORIDA,

05-2008-MM-020434-AXXX
~~CASE NO 08 CF 020434 AXXXXX~~

VS

CHRISTINE ABRAMS,

Defendant

_____ /

SCOTT ELLIS
2008 JUN 13 A 9 02

MOTION TO SUPPRESS EVIDENCE
AND MEMORANDUM OF LAW IN SUPPORT

Defendant, **CHRISTINE ABRAMS**, by and through her undersigned attorney moves this Honorable Court pursuant to Florida Rule of Criminal Procedure 3.190(1), the Fourth and Fourteenth Amendments of the United States Constitution and Article I sec 12 of the Florida Constitution for the entry of an order suppressing the evidence all of the items seized from the property located at 1112 Peachtree Street, Coca, Florida and all of the evidence that was derived from those items as the fruit of the poisonous tree and in support thereof submits to this Honorable Court as follows

INTRODUCTION

All of the items seized on January 18, 2008, by law enforcement officers from the property located at 1112 Peachtree Street, Coca, Florida, should be suppressed due to the fact that they were obtained as a result of an unlawful search and seizure in violation of the Four and Fourteenth Amendments of the United States Constitution and Article I sec 12 of the Florida Constitution. The entry and search of the house by law enforcement officers constituted a violation of Fourth Amendment search and seizure. Since there was no consent given to enter and search the premises, and there were no exigent

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circumstances that existed to enter and search the premises, the law enforcement officers were clearly required to have a warrant to enter and search the 1112 Peachtree Street, Coca, Florida. Since they did not have a warrant the initial search of the house was illegal and requires that anything seized during that initial search be suppressed.

FACTS

Defendant is charged in an Amended Information with cruelty to animals and unlawful confinement of animals (Amended Information filed). It is evident that law enforcement officers have attempted to try and justify the unjustifiable, an illegal warrantless search and seizure. The facts giving rise to this motion are as follows:

On or about March 12, 2008, the Cocoa Police Department responded to 1112 Peachtree Street, Coca, Florida in response to a telephone call from Mr. Robert Arisohn. Mr. Arisohn knocked on the door of 1112 Peachtree Street, on the above date, because he swore he was looking after the home of the owner, Christine Abrams. Mr. Arisohn did not receive any answer after knocking on the door of Ms. Abram's home, so he decided to contact the above agency. Sergeant Dovale and Officer Aiken responded to the address of 1112 Peachtree Street, Coca, Florida. Sergeant Dovale and Officer Aiken made entry into the home at 1112 Peachtree Street, Coca, Florida without a search warrant.

Sergeant Dovale and Officer Aiken entered the home without a search warrant after receiving information from Mr. Arisohn, who according to the report signed by Officer Meisner told the two law enforcement officers that a smell was emitting from the home, flies were observed on the window and the owner of the home had not been seen for some time (Narrative Report Officer Meisner page 2 of 2). Upon entering the home, through a window, the law enforcement officers observed a large white dead dog inside.

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of a cage (JJ Aiken's Report pg 1) A further search of the home also produced numerous pieces of evidence including a bag of dog food and other tangible and non-tangible evidence

All of the evidence seized from the house should be suppressed due to the fact that it was discovered as a result of an unlawful warrantless search. As evident from the probable cause affidavit there was no consent given to enter the home and there were no exigent circumstances that justified a warrantless entry into the home (Probable Cause pgs 1-3)

Since the entrance into the house was illegal all of the contraband discovered should be suppressed. Thus, all of the evidence seized from the premises should be suppressed.

WHEREFORE, the Defendant respectfully request that all of the evidence seized at the subject location be suppressed as the fruit of an unlawful search and for such other further relief as this Honorable Court deems just and proper.

MEMORANDUM OF LAW IN SUPPORT

A All of the Evidence discovered during the Initial Search Should Be Suppressed

1 The Defendant has standing to contest the search due to the fact that he had a legitimate expectation of privacy in the house

The United States Supreme Court has held that a defendant has the burden to establish that his own Fourth Amendment rights have been infringed. *Rakas v Illinois*, 439 U.S. 128, 99 S.Ct. 421, 58 L.Ed.2d 387 (1978), *See also Dean v State*, 478 So.2d 38, 40 (Fla. 1985). A search violates a defendant's Fourth Amendment rights only if (1) a defendant demonstrates that he or she had an actual, subjective expectation of privacy in

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the property searched and (2) a defendant establishes that society would recognize that subjective expectation as objectively reasonable Minnesota v Olson, 495 U S 91, 95, 110 S Ct 1684, 109 L Ed 2d 85 (1990), Smith v Maryland, 442 U S 735, 740-41, 99 S Ct 2577, 61 L Ed 2d 220 (1979)

The residence that was searched was Ms Abram's primary residence where she lived and she was a legitimate tenant who possessed a valid lease from her mother. Clearly, Ms Abrams had a legitimate expectation of privacy in her own home and therefore she has standing to contest the illegal search and seizure. See Mixon v State, 54 So 2d 190, 192 (Fla 1951)

2 The Initial Search of the Premises Violated the Defendants' 4th Amendment Rights

The Fourth Amendment to the United States Constitution (and Article I, sec 12 of the Florida Constitution) give citizens the right to be secure in their homes against unreasonable searches and seizures. *Fourth Amend, US Constitution, Art I sec 12 Fla Const*. The seizure of items from a person's home without a warrant violates this right and renders the items seized inadmissible as evidence. *Art I, § 12, Fla Const, Davis v State*, 834 So 2d 322 (Fla 5th DCA 2003), Hornblower v State, 351 So 2d 716, 717 (Fla 1977)

The courts of this State have consistently held that a warrantless search of a home is presumed illegal. MJR v State, 715 So 2d 1103 (Fla 5th DCA 1998), Anderson v State, 665 So 2d 281 (Fla 5th DCA 1995), Espiet v State, 797 So 2d 598, 603 (Fla 5th DCA 2001). This presumption may be overcome only if the State can demonstrate that law enforcement had consent to enter the home or that exigent circumstances

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existed that allowed the police to invade the sanctity of the home without a warrant
Davis v State, 834 So 2d 322 (Fla 5th DCA 2003)

If there was ever a case that supported the exclusion of evidence for an unlawful search and seizure this is it. In the instant case, there was no basis to enter the house and search it without a search warrant. In an effort to justify the unjustifiable, law enforcement officers contend that a warrantless entry into the house was justified based upon exigent circumstances. However, such a contention is quite far fetched, when one reviews the facts of this case.

3 The Police Did Not Have Consent to Enter the Premises

The United States Supreme Court has approved consensual searches as a permissible warrantless search, since it is reasonable for the police to conduct a search once they have been permitted to do so. Florida v Jimeno, 500 U S 248, 111 S Ct 1801, 114 L Ed 2d 297 (1991). The general prohibition against the warrantless entry into a person's home does not apply to situations in which a voluntary and freely given consent to search has been given, from either the individual whose property is searched or from a third party who possesses authority to give consent to search. Illinois v Rodriguez, 497 U S 177, 110 S Ct 2793, 111 L Ed 2d 148 (1990), Ohvia v State, 553 So 2d 1284 (Fla 3rd DCA 1989), Jorgenson v State, 714 So 2d 423 (Fla 1998). In this case, neither Ms Abrams nor any other occupants of the home gave consent to search it. The sworn facts alleged in the police reports and arrest affidavits do not allege consent, and therefore it is axiomatic that no consent was ever provided.

4 There was No Exigent Circumstance That Justified a Warrantless Entry into the Premises

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The Fourth Amendment safeguards against a warrantless entry into a person's home Payton v. New York, 445 U S 573, 100 S Ct 1371, 63 L Ed 2d 639 (1980) However, when exigent circumstances exist certain warrantless entries are permitted Arango v. State, 411 So 2d 172 (Fla 1982) The kinds of exigencies or emergencies that may support a warrantless entry include those related to the safety of persons, property or the police Jones v. State, 440 So 2d 570 (Fla 1983) The essential requirement for the exigency to validate a warrantless entry is that the police lack time to secure a search warrant Rolling v. State, 695 So 2d 278 (Fla 1997) Police may not enter and search for dangerous instrumentalities or other evidence, even if they have probable cause to believe evidence is on the premises or that the evidence may be removed or destroyed, if they have time to obtain a warrant and enter the premises under its authority Rolling, Supra, Jennings v. State, 419 So 2d 750 (Fla 2nd DCA 1982), Graham v. State, 406 So 2d 503 (Fla 3rd DCA 1981)

Here, there was ample time to secure the home and then apply for a search warrant through the channels provided to law enforcement There is no evidence that shows the time period that it would take to secure the search warrant would prejudice the law enforcement officers ability to search the home Meaning no exigency existed to enter the home without a warrant

In this case there was no exigency that existed, to justify a warrantless entry into the house There is not one shred of evidence to support the proposition that there was a danger to others or that evidence was about to be destroyed There were numerous police officers at the residence and they certainly could have secured the house and the rest of the property to make sure there was no danger to other persons, property or

themselves In fact, at no time was it ever alleged in any of the police reports that the officers were in fear for their safety or that others inside the house were in danger

The probable cause affidavit and additional reports filed in this case are without any articulable facts as to the removal or destruction of the alleged evidence contained within the home Therefore, the sworn facts do not demonstrate facts supporting the destruction of evidence or otherwise, which supports entering the home without a search warrant

Law enforcement officers had all of the time they needed in order to obtain a search warrant There were numerous law enforcement officers available to attend the house and secure it, assuring that nothing went inside of the home and that nothing came outside of the home that could harm the officers or led to the destruction of evidence

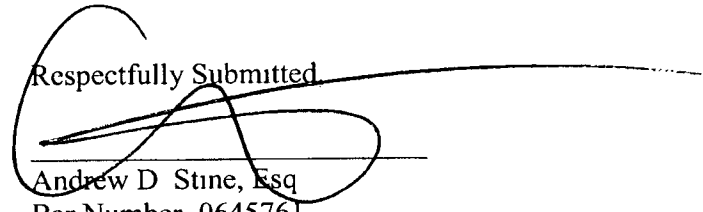
Therefore, pursuant to the "fruit of the poisonous tree" doctrine stated in Wong Sun v United States, 371 U S 471, (1963), State v Hunwick, 434 So 2d 1000 (Fla 4th DCA 1983) all of the evidence obtained in this matter ought to be suppressed

B Conclusion

The undersigned recognizes that the granting of this motion would be an unpopular decision that carries serious consequences and would lead to an unpopular result Nevertheless, the end can never justify the means when it involves one's Constitutional Rights This is especially the case when the Constitutional Rights are violated by those law enforcement officers who have sworn to uphold the law and protect the Constitution Therefore, all of the evidence seized on January 18, 2008, by law enforcement officers from the property located at 1112 Peachtree Street, Coca, Florida, should be suppressed due to the fact that it was obtained as a result of an unlawful search and seizure in

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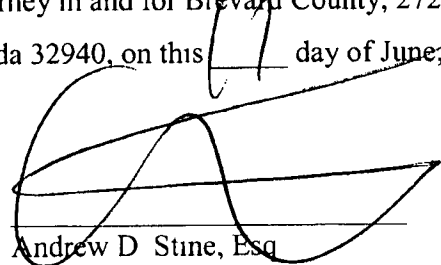
violation of the Fourth and Fourteenth Amendments of the United States Constitution and Article I sec 12 of the Florida Constitution

Respectfully Submitted


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered via facsimile 321-617-7518 and by U S Postal Service to Michael J Raska, Assistant State Attorney, at the Office of State Attorney in and for Brevard County, 2725 Judge Fran Jamison Way, Building D, Viera, Florida 32940, on this 11 day of June, 2008



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