

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPSHIRE, ss,

EASTERN HAMPSHIRE DIVISION

Docket No.: 1298CR0374

|              |   |
|--------------|---|
| COMMONWEALTH | ) |
| VS.          | ) |
| A R          | ) |

Filed  
AUG 28 2012  
Eastern Hampshire  
District Court

FINDINGS AND ORDER ON DEFENDANT'S  
MOTION TO SUPPRESS BREATH TEST EVIDENCE

Defendant, Ms. R. , has been charged with Operating Under the Influence of Intoxicating Liquor or .08% and Speeding. She has moved to suppress all evidence resulting from the breath test administered during her arrest on February 14, 2012, in the above-referenced matter. Ms. R. maintains that the administration of the breath test on February 15, 2012, was in violation of 501 CMR §2.13 *et seq.* and inadmissible pursuant to M.G.L. c. 90 §24K and 501 CMR §2.51.<sup>1</sup> The Commonwealth counters that there was no substantial deviation from regulatory compliance in the administration of Ms. R. 's breath test and that Ms. R. 's Motion should be denied. The issue before the Court is whether there was a violation of 501 CMR §2.13(3), and, if so, what effect did any such violation have on the admissibility of the breath test results. After an evidentiary hearing, Ms. R. 's Motion to Suppress is ALLOWED.

<sup>1</sup> Counsel for Ms. R. : waived argument relative to alleged *Miranda* violations and the alleged warrantless search of Ms. R. 's motor vehicle. No evidence was adduced pertaining to those issues, and such arguments are not before the Court.

**II. ORDER**

For the reasons set forth above, the Defendant's Motion to Suppress is ALLOWED. All evidence relating to the breath test and the breath test results are suppressed.

August 29, 2012



Associate Justice



WILLIAM P. NAGLE, JR.  
Clerk, Magistrate

### Commonwealth of Massachusetts

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SUBJECT: Commonwealth v. R. 1298CR374

COMMENTS: Judges' Findings and Order as