

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

APPELLATE DIVISION (CIVIL): AY  
CASE NO.: 502017CA004541AXXXMB

HENRY ALBERTO MEJIA,  
Petitioner,

v.

FLORIDA DEPARTMENT OF  
HIGHWAY SAFETY AND MOTOR  
VEHICLES,  
Respondent.

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Opinion filed: NOV 28 2017

Petition for Writ of Certiorari from The Bureau of Administrative Review, Department of Highway Safety and Motor Vehicles

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PER CURIAM.

Petitioner seeks review of an order affirming the suspension of his driver license based upon his refusal to submit to a blood test. Petitioner contends that competent, substantial evidence does not support the hearing officer's finding that the legal requirements for requesting a blood test were satisfied; specifically, that a breath test was impossible or impractical when the officer requested that the Petitioner submit to a test of his blood. We agree, and grant the Petition for Writ of Certiorari.

The relevant facts regarding the impossibility or impracticality of a breath test are undisputed. Petitioner was pulled over at approximately 2:42 a.m. During the course of the ensuing DUI investigation, Petitioner became injured by self-inflicted wounds. Petitioner was arrested at 2:53 a.m. and was thereafter transported to the Breath Alcohol Testing (“BAT”) facility. BAT personnel could not perform a breath test, however, because blood from Petitioner’s forehead was entering his mouth. Petitioner was taken to the hospital to be medically cleared, arriving at approximately 4:11 a.m. While awaiting medical clearance, and concerned about obtaining an “accurate reading of [Petitioner’s] alcohol level” at the time he was stopped, the arresting officer asked Petitioner to submit to a blood sample, to which Petitioner refused at approximately 4:26 a.m. Petitioner was ultimately medically cleared and arrived back at the Palm Beach County Jail at 5:28 a.m.

The Legislature has authorized law enforcement officers to request a blood test:

if there is reasonable cause to believe the person was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages or controlled substances and the person appears for treatment at a hospital, clinic, or other medical facility and the administration of a breath or urine test is impractical or impossible.

§ 316.1932(1)(c), Fla. Stat. (2016). The extent of an officer’s knowledge of the suspect’s medical outlook at the time the officer requests a blood sample can determine whether a breath sample is impossible or impractical at the hospital. *Compare Gracia v. State*, 21 Fla. L. Weekly Supp. 875a (Fla. 15th Cir. Ct. May 8, 2014) (finding that a breath test was not impossible or impractical where the officer remained in his car outside of hospital during suspect’s treatment, did not ask medical staff how long treatment was expected to last, and did not know whether the suspect had been medically cleared at the time he asked for blood sample) *with Markgraff v. State*, 20 Fla. L. Weekly

Supp. 1046a (Fla. 12th Cir. Ct. July 26, 2013) (finding that a breath test was impossible and impractical where the doctor told the officer that the suspect would not be discharged from the hospital that night).

The facts of *Gracia* are strikingly similar to the instant case: both Gracia and Petitioner were initially transported to the BAT facility for a breath test but were told by BAT personnel that they must be medically cleared due to blood in their mouths. In finding that there was no competent, substantial evidence to support a finding that a breath test was impossible or impractical, the *Gracia* court focused on the fact that the officer “**did not inquire** with medical personnel **nor did he know** how long Gracia would have to remain at the hospital or what treatment Gracia needed prior to requesting the blood test.” (emphasis added).

As in *Gracia*, there is no evidence that Petitioner was unconscious or immobile at the time of the request, either of which could potentially establish the impossibility or impracticality of a breath test. There is also no competent, substantial evidence that prior to requesting the blood sample the officer made any inquiry with medical personnel as to how long Petitioner would remain at the hospital or what treatment he needed. Solely because the officer knew that Petitioner had not yet been medically cleared at the time he requested the blood sample does not make it “impossible” or “impractical” to administer a breath test without some minimal indication that Petitioner would continue to remain at the hospital. Thus, we cannot distinguish this case from this Court’s decision in *Gracia*.

The Court is mindful of, and shares the officer’s concern about the potential effect that the passage of time would have on breath-alcohol results. This is especially true in this case where the administration of the breath test would be several hours after the traffic stop. However, as this

Court pointed out in *Gracia*, the mere passage of time is not—standing alone—sufficient to establish the impossibility of impracticality of a breath test. *Id.* See also *Curry v. DHSMV*, 12 Fla. L. Weekly Supp. 421b (Fla. 6th Cir. Ct. Nov. 22, 2004) (department’s claim that immediate transportation to a breath testing facility would have placed an undue burden on law enforcement, would have interfered with Curry’s possible treatment, and that a breath test was impractical since it would be “subject to dissipation over time” does not establish impossibility or impracticality under § 316.1932(1)(c), Fla. Stat.).

Based on the foregoing, we conclude that the hearing officer’s finding that a breath test was impossible or impractical was not supported by competent, substantial evidence. Accordingly, we **GRANT** the Petition for Writ of Certiorari and **QUASH** the order affirming Petitioner’s license suspension.

OFTEDAL, BONAVIDA, and BLANC, JJ., concur.

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Petition for Writ of Certiorari from the  
Department of Highway Safety and Motor Vehicles

DEPARTMENT OF HIGHWAY  
SAFETY AND MOTOR VEHICLES,  
Respondent.

Petition filed: April 24, 2017

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DATE OF PANEL: OCTOBER 30, 2017

PANEL JUDGES: OFTEDAL, BONAVIDA, BLANC

GRANTED/DENIED/OTHER: PETITION GRANTED

PER CURIAM OPINION/DECISION BY: PER CURIAM

CONCURRING:	)	DISSENTING:	)	CONCURRING SPECIALLY:	)
	)	With/Without Opinion	)	With/Without Opinion	)
<u>11.28.17</u> <u>[Signature]</u>	)	_____	)	_____	)
DATE: _____ J.	)	_____ J.	)	_____ J.	)
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