

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

APPELLATE DIVISION (CIVIL): AY
CASE NO. 502019CA008960XXXXMB

CARA MICHELE SMILEY,
Petitioner,

v.

THE STATE OF FLORIDA
DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES,
Respondent.

Opinion filed: DEC 20 2019

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 her driver license based on her refusal to submit to a blood test. Petitioner contends that the suspension order is not supported by competent, substantial evidence because one of the legal requirements for requesting a blood test—that a breath or urine test was impossible or impractical when the officer requested that Petitioner submit to a blood draw—was not satisfied. We agree and grant the Petition for Writ of Certiorari.

After being involved in an accident, Petitioner was arrested for driving under the influence. She was then taken to the hospital where medical personnel withdrew blood and urine samples from Petitioner as part of the treatment. The medical tests showed that Petitioner had cocaine in her system. While at the hospital, the arresting officer requested a blood test from Petitioner to check her blood for alcohol or chemical substances. The officer warned Petitioner that refusal to submit to a blood test under the implied consent law would result in the suspension of her driver license. Petitioner refused to submit and her license was suspended. At the request of Petitioner, a hearing officer for the Department of Highway Safety and Motor Vehicles reviewed the suspension and affirmed it.

Section 316.1932, Florida Statutes, known as the implied consent law, addresses driver license suspensions based on refusal to submit to a blood test. A driver is deemed to have given his or her consent to submit to “an approved blood test for the purpose of determining the alcoholic content of the blood” or determining the presence of chemical or controlled substances where 1) there is a reasonable cause to believe that the person was driving while under the influence of alcohol or chemical substances; 2) “the person appears for treatment at a hospital, clinic, or other medical facility;” and 3) **“the administration of a breath or urine test is impractical or impossible.”** § 316.1932(1)(c), Fla. Stat. (2019) (emphasis added). Based on the plain language of subsection 316.1932(1)(c), the impracticality of a breath or urine test is a necessary precondition for a driver’s implied consent to a blood test. *See State v. Davis*, 264 So. 3d 965, 967 (Fla. 4th DCA 2019).

The first two preconditions were met here, but the third was not. There is nothing in the record to suggest that the officer requested a breath or a urine test or that a breath or urine test was impractical or impossible before requesting a blood test from Petitioner. DHSMV argues that

impracticality of administering a breath or urine test can be inferred from the fact that Petitioner had been in the hospital for two and a half hours at the time of the blood request. However, as this Court held in *Mejia v. Florida Department of Highway Safety & Motor Vehicles*, 25 Fla. L. Weekly Supp. 781a (Fla. 15th Cir. Ct. Nov. 28, 2017), “the mere passage of time is not . . . sufficient to establish impossibility or impracticality of a breath [or urine] test.” Something more must be shown, such as “some minimal indication that Petitioner would continue to remain at the hospital.” *Id.*

Additionally, the hearing officer’s final order made no findings that a breath test or urine test was impractical, nor that the request was lawful—that is, that the impracticality requirement was met before requesting the blood test. The tests performed by the hospital before the officer’s blood draw request are irrelevant. The basis for a license suspension due to refusal to submit to a test under the implied consent law is that the test be administered at the request of the officer. *See generally* § 316.1932, Fla. Stat. (2019) (indicating that refusal to a test is aimed at the request of a law enforcement officer). A test performed by medical personnel for treatment is not a test requested by the officer. Although we agree with DHSMV that highway safety is a vital public interest, the law is the law. Subsection 316.1932(1)(c) clearly addresses the requirements for implied consent to a lawful blood test.

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

KERNER, ROWE and NUTT, JJ., concur.

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Opinion/Decision filed: **DEC 20 2019**

v.

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

STATE OF FLORIDA
DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES,
Respondent.

Petition filed: July 11, 2019

DATE OF PANEL: NOVEMBER 13, 2019

PANEL JUDGES: KERNER, ROWE, NUTT

GRANTED/DENIED/OTHER: PETITION GRANTED

PER CURIAM OPINION/DECISION BY: PER CURIAM

CONCURRING:

) DISSENTING:

) CONCURRING SPECIALLY:)

) With/Without Opinion)

) With/Without Opinion)

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