

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

TIMOTHY DORAN,

Petitioner,

APPELLATE DIVISION (CIVIL): "AY"  
CASE NO. 502011CA007061XXXXMB

v.

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

Respondent.

Opinion filed: August 30, 2011

Petition for Writ of Certiorari.

✓ For Petitioner: Jonathan R. Kaplan, Esq.  
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✓

For Respondent: Jason Helfant, Esq.  
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PER CURIAM.

Timothy Doran seeks review of the suspension of his driver's license. His license was suspended because he refused to submit to a blood test and this suspension was affirmed after a hearing in front of the Department of Highway Safety and Motor Vehicles, Division of Driver Licenses, Bureau of Administrative Reviews. Doran argues that there was no competent substantial evidence in the record before the Hearing Officer that a breath test was impossible or impractical when the blood test was requested. We agree.

Officer Matthew Owen of the Jupiter Police Department initiated a traffic stop after observing Doran exit the parking lot of a bowling alley in a white vehicle at a high rate of speed

with no headlights. Doran accelerated rapidly and continued to swerve across traffic lanes after Officer Owen engaged his red and blue lights. Doran made several sharp turns through residential neighborhoods and eventually collided with a parked car on a driveway. Once he stopped, Doran failed to comply with Officer Owen's instructions and physically assaulted the officer. In an attempt to subdue Doran, Officer Owen tased him twice. Doran was transported to Jupiter Medical Center to be medically cleared. At the hospital, Doran urinated on himself, had an odor of alcoholic beverage on his breath, slurred speech, bloodshot eyes, and had empty beer cans in his vehicle. Officer Owen suspected that Doran was under the influence of alcohol, read an Implied Consent Warning and requested Doran to submit to a blood test. Doran refused the blood test and was eventually cleared for entrance into Palm Beach County Jail.

Doran's driver's license was suspended for refusing to submit to a blood test to determine his blood alcohol content. Florida Statute section 316.1932(1)(c) (hereinafter, the Implied Consent Law) provides, in pertinent part:

Any person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by operating such vehicle, 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 a blood test for the purpose of determining the presence of chemical substances or controlled substances as provided in this section 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 chemical or controlled substances and the person **appears for treatment at a hospital ... and the administration of a breath or urine test is impractical or impossible.**

§ 316.1932, Fla. Stat. (2011) (emphasis added). The Department argues that the mere fact that Doran was at the hospital rendered a breath test impractical or impossible, however, the Implied Consent Law clearly requires a showing that a breath test was impractical or impossible in addition to the person's appearance at a hospital.

There is no competent, substantial evidence in the record that a breath test was impracticable or impossible. Officer Owen's Probable Cause Affidavit simply states that he requested the blood test at the hospital, but does not provide any details indicating that a breath test was impractical or impossible. For example, Officer Owens did not state that Mr. Doran was awaiting treatment, that he was unconscious, or that he was strapped to a gurney when he requested the blood test. *See, e.g., State v. Kliphouse*, 771 So. 2d 16 (Fla. 4th DCA 2000) (finding that a breath or urine test was impractical or impossible to administer because defendant was unconscious at the hospital). As Doran's mere appearance at the hospital is insufficient to establish that a breath test was impracticable or impossible, the Petition for Writ of Certiorari is hereby **GRANTED** and the order of suspension is **QUASHED**.

FRENCH, KEYSER, and ROSENBERG, JJ., concur.