

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
APPELLATE DIVISION**

JOHN BOWMAN,  
Petitioner,

v.

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

Respondent.

Ref. No.: 14-000083-AP

UCN: 522014AP000083XXXXCV

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**ORDER AND OPINION**

Petitioner challenges a final order of the Department of Highway Safety and Motor Vehicles' (DHSMV) suspending his license under Fla. Stat. § 322.2615 for refusing to submit to an alcohol breath test. Petitioner urges that DHSMV's order is not supported by competent substantial evidence because (1) the documentary evidence relied upon by DHSMV contained material discrepancies preventing a determination that Petitioner's refusal was incident to a lawful arrest; and (2) the order was not supported by live testimony to resolve those discrepancies. The Court disagrees and upholds the suspension of Petitioner's license.

**FACTS AND PROCEDURAL HISTORY**

Officer Christopher Bragg of the St. Petersburg Police Department performed a traffic stop of Petitioner, John Bowman, for driving with an expired registration. At the time of initial contact, Officer Bragg smelled alcohol on the Petitioner's breath and noticed his watery, bloodshot eyes. Bragg called for Officer Lenard Cox to perform a DUI investigation. Cox performed several field sobriety tests on Petitioner, all of which indicated impairment, and placed Petitioner under arrest for suspected DUI.

Cox read Petitioner his Miranda rights at approximately 11:38 p.m. on October 16. The Alcohol Influence Report Form, which is undated, indicates that the observation period of Petitioner at the St. Petersburg Police Department began at 12:05 a.m. and that the Petitioner was given the implied consent warning at 12:06 a.m. According to the DUI Citation, the Incident/Investigation Report, the Supplemental Report Narrative, and several other documents, the stop took place between 11:17 p.m. and 11:19 p.m. on October 16, 2014. The Affidavit for

Refusal to Submit to Breath, Urine or Blood Test lists the time of Petitioner's arrest as 11:54 p.m. on October **16** and the time Cox requested Petitioner submit to an alcohol breath test as 12:31 a.m. on October 17.

In contrast to the foregoing, the Arrest Affidavit and DUI Observation Report both reflect the date of the **stop** as October **17**. Thus, nine of eleven documents in the record reflect the same date for the traffic stop, while two give the next day's date.

Petitioner made a request to DHSMV for a formal hearing to review the suspension of his license. The hearing took place on November 20, 2014 and no witnesses testified. DHSMV admitted multiple documents into the record, including those with date discrepancies. After the hearing, DHSMV upheld Petitioner's license suspension and he filed this petition for writ of certiorari.

#### DISCUSSION

For the suspension of a driver's license to be valid, proper legal procedure must be followed. A blood or breath test to determine an individual's level of intoxication "must be incidental to a lawful arrest and administered at the request of a law enforcement officer who has reasonable cause." Fla. Stat. Ann. § 316.1932(1)(a) (2014). Additionally, "[t]he person shall be told that his or her failure to submit to any lawful test of his or her breath will result in the suspension of the person's privilege to operate a motor vehicle." *Id.* Thus, the suspension of a driver's license based on the individual's failure to submit to a breath test requires the refusal to occur only after a lawful arrest and an implied consent warning. *Fla. Dept. of Highway Safety and Motor Vehicles v. Hernandez*, 74 So. 3d 1070, 1078 (2011); *see also Fla. Dept. of Highway Safety and Motor Vehicles v. Trimble*, 821 So. 2d 1084, 1086 (Fla. 1st DCA 2006); *Cellamare v. Fla. Dept. of Highway Safety and Motor Vehicles*, 14 Fla. L. Weekly Supp. 908a (Fla. 6th Cir. App. Ct. Apr. 13, 2007).

Petitioner contends the documentary discrepancies in the record create such uncertainty that it is impossible to determine whether the procedures took place in the proper order, citing *Trimble*. That case presented the following chronology: the petitioner was arrested at 11:40 p.m.; the Affidavit for Refusal to Submit to a Breath Test stated the test was offered at 12:45 a.m.; the Breathalyzer printout indicated the refusal was at 12:47 a.m.; and, the Alcohol Influence Report reflected the consent warning had been given at 12:50 a.m. 821 So. 2d at 1086. The petitioner in *Trimble* argued that these conflicting times created uncertainty as to whether the consent warning preceded or followed her refusal.



The instant case is distinguishable from *Trimble*, where the “finding that Trimble was given a consent warning before her refusal could have rested as much on the flip of a coin as on the documentary evidence...” *Id.*, at 1087; *see also Cellamare*, 14 Fla. L. Weekly Supp. 908a. In the instant case, although there are inconsistencies between the documents in the record as to the date of the incident, a review of the documents together provides competent substantial evidence that the events took place in the proper legal order. All of the documents agree that the arrest took place at 11:54 p.m. The discrepancy arises from two documents indicating that the arrest took place on October 17, while the other nine documents indicate October 16. This is clearly a clerical error in identifying events which took place on either side of midnight.

The case at bar is distinguishable from *Trimble* and more factually resembles *Collins v. Fla. Dept. of Highway Safety and Motor Vehicles*, which this Court decided in 2010. 18 Fla. L. Weekly Supp. 11a (Fla. 6th Cir. App. Oct. 29, 2010). In *Collins*, the DUI and speeding citations both specified that the petitioner was arrested on March 11, 2010, at 11:44 p.m. In contrast, the DUI Observation Report gave an arrest date and time of March 11 at 12:54 a.m., while the Affidavit of Refusal said the arrest was on March 12 at 12:54 a.m. *Id.* This Court held the “slight discrepancies as to the dates and times of the offense [were] an apparent scrivener’s error.” Suspension of the petitioner’s license was upheld because “this inconsistency is immaterial, as there is no real discrepancy about the *order* of events.” *Id.* (emphasis in original). Moreover, because the discrepancies in the record were a matter of scrivener’s error rather than material inconsistency, the Court held that the documentary evidence required no additional live testimony to satisfy the competent substantial evidence standard. *Id.* *See also Rysdon v. Florida Dept. of Highway Safety and Motor Vehicles*, 18 Fla. L. Weekly Supp. 1087b (Fla. 6th Cir. App. Aug. 11, 2011) (holding that where the times in the record together “provide competent substantial evidence to establish that the arrest occurred *prior* to the breath alcohol tests,” the discrepancies in the record do not require “clarification of live testimony” on the record; emphasis in original).

The instant case is analogous to *Collins*. The Alcohol Influence Report, although undated, shows Cox provided Petitioner with the implied consent warning at 12:06 a.m. The Affidavit for Refusal states the arrest took place before that time, at 11:54 p.m. on October 16, and that Petitioner’s refusal was at 12:31 a.m. on October 17. Thus, despite discrepancy as to the date of the arrest, the documents in the record indicate that the lawful arrest, implied consent warning, and Petitioner’s refusal, all took place in the proper legal order. Taken together, the documents are competent substantial evidence that proper procedures were followed. Petitioner refused to submit to a breath test *after* he received the implied consent warning, which was *after* he had been lawfully arrested.

### CONCLUSION

Because the discrepancies in the record were obvious scrivener's errors that do not cause any confusion as to the timing of Petitioner's refusal, relative to his lawful arrest and the implied consent warning, DHSMV properly relied upon documentary evidence, without the necessity of live testimony, as competent substantial evidence that proper procedures were followed. Accordingly, it is

**ORDERED AND ADJUDGED** that the above-styled petition for writ of certiorari is DENIED.

**DONE AND ORDERED** in Chambers at St. Petersburg, Pinellas County, Florida, on this 23 day of July 2015.

Original Order entered on July 23, 2015, by Circuit Judges Jack Day, Amy M. Williams, and Thomas M. Ramsberger.

Copies furnished to:

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