

STATE OF FLORIDA
DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES
BUREAU OF ADMINISTRATIVE REVIEWS

In Re: J. R.T.

DL No. T1234567890

MOTION TO INVALIDATE DRIVER'S LICENSE SUSPENSION

Comes Now Petitioner, J.R.T., by and through the undersigned attorney, pursuant to Rule 15A-6.010, and moves the Hearing Officer to Invalidate the Driver's License Suspension. As grounds therefore, Petitioner would show:

1. On July 2, 2011, Petitioner was allegedly involved in an automobile accident at the intersection of U.S. Highway 301 and State Road 60.
2. Trooper Brett McCranie of the Florida Highway Patrol came into contact with Petitioner and determined, in his opinion, that Petitioner was the driver of the vehicle which caused the accident.
3. Furthermore, Trooper McCranie believed Petitioner was under the influence of an alcoholic beverage at the time of the accident and arrested Petitioner for Driving Under the Influence.
4. The paperwork submitted by Florida Highway Patrol is inconsistent and entirely unclear as to the sequence of (1) the arrest, (2) the reading of the Implied Consent Warning, and (3) whether Petitioner refused to submit to a test of his breath for alcoholic content.
5. First, the Incident and Arrest Narrative does not even mention a request to submit to testing. It merely states "I then placed Mr. _____ under arrest and transported him to the Hillsborough County jail for D.U.I."
6. Next, the Implied Consent Warning indicates that a request was made that Petitioner submit to a test of his breath and that Petitioner refused. However, the box after the Implied Consent reading and the question, "Do you still refuse to submit...?" is checked "No." The logical reading of this section indicates that Petitioner refused initially but acquiesced after the reading of Implied Consent.
7. Furthermore, the sequence of events is unclear. The Implied Consent Warning page indicates it was read at the crash scene at 11:31 a.m. However, the Affidavit of Refusal indicates that Petitioner was arrested at 11:31 a.m. and it does not list a time for the reading of Implied Consent.
8. The citations do not even have consistent times. Citations 4670-XBP (DUI Property Damage) and 4669-XBP (DUI Serious Bodily Injury), list the offense time at 9:48 a.m. while the citations for careless driving, refusal to submit to breath test, and leaving the scene of a crash list the offense time at 9:48 p.m. It can be assumed that the "p.m." is a typo and that 9:48 a.m.

- was intended because the offense occurred during the morning hours of July 2, 2011. This puts the refusal nearly two hours prior to Petitioner's arrest.
9. Where there are discrepancies in the documents relied upon by the Department to sustain a driver's license suspension the Department must present sworn testimony to explain the discrepancies. Hall v. DHSMV, 4 Fla. L. Weekly Supp. 208a (18th Cir. Ct., July 9, 1996); Flanary v. DHSMV, 17 Fla. L. Weekly Supp. 1078a (11th Cir. Ct., July 21, 2010).
 10. The First District Court of Appeal relied on Hall when it upheld a circuit court's decision invalidating a driver's license suspension based on inconsistencies in the submitted documents:

The critical determination of when or whether the motorist was given the consent warning required by law as a predicate for the conclusion that she refused to submit to the test, thereby leading to a suspension of the license, was supported only by evidence that gives equal support to inconsistent inferences, and as such can hardly be deemed so sufficiently reliable that a reasonable mind would accept it as adequate to support the conclusion reached. The hearing officer's 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 submitted. DHSMV v. Trimble, 821 So. 2d 1084, 1087 (Fla. 1st DCA 2002).
 11. The documents in this matter do not establish when Implied Consent was read to Petitioner. A person could assume that it was read after arrest and prior to refusal; but it would only be just that, an assumption. A Seventh Circuit panel held that documents which list both the arrest time and time of implied consent at 8:27 p.m. are not competent substantial evidence to sustain a license suspension. "...[S]ubstantial evidence is not evidence which gives equal support to inconsistent inferences." Valerio v. DHSMV, 15 Fla. L. Weekly Supp. 417a (7th Cir. Ct., January 24, 2008).
 12. Additionally, the failure to indicate the time the Implied Consent Warning was read on the Affidavit of Refusal renders that document inadmissible. Gass v. DHSMV, 8 Fla. L. Weekly Supp. 430a (20th Cir. Ct., April 26, 2001). Because Fla. Stat. § 322.2615(2) requires an valid Affidavit of Refusal to be submitted to the Department by law enforcement, the driver's license suspension must be invalidated.

WHEREFORE, Petitioner respectfully requests this Hearing Officer to invalidate the driver's license suspension.

I HEREBY CERTIFY that this Motion was provided to the Department via hand delivery on the 28th day of July, 2011.

ADAM L. BANTNER, P.A.

By: Adam L. Bantner, II
Fla. Bar No. 0030038
330 Pauls Dr., Ste. 100-3
Brandon, FL 33511
813.416.7965 / fax 813.681.6885
AdamBantner@gmail.com
Attorney for Petitioner