DOCKET NO.: HHB-CV-23-6080635-S	:	SUPERIOR COURT
	:	
THADDEUS J. OLIVERIA	:	JUDICIAL DISTRICT OF
	:	NEW BRITAIN
v.	:	
	:	
COMMISSIONER OF MOTOR VEHICLES	:	MAY 10, 2024

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SUPERIOR COURT
2024 MAY 10 A 11: 2
JUDICIAL DISTRICT OF
NEW BRITAIN

MEMORANDUM OF DECISION

The plaintiff, Thaddeus J. Oliveria, appeals from the decision of the defendant, the Commissioner of Motor Vehicles, suspending Mr. Oliveria's license for 45 days and requiring the installation of an interlock device for one year. Mr. Oliveria argues that the hearing officer's decision should be overturned because there is no evidence in the record that Mr. Oliveria was operating his car within two hours of the administration of the alcohol test. The court agrees, and therefore, sustains Mr. Oliveria's appeal.

FACTS

The court recites the following undisputed facts from the record. At 1:00 a.m. on April 19, 2023, the Vernon Police Department received an anonymous phone call that there was a person passed out and sitting in the parking lot of the Taco Bell restaurant located at 129 Talcottville Road (Route 83) in Vernon. Police officers arrived at the Taco Bell at approximately 1:05 a.m. and found Mr. Oliveria sitting, asleep in the front driver's seat of a red 1987 Jeep Wrangler. When officers arrived, the Jeep was not running and the exterior lights were on. The ignition keys to the Jeep were in Mr. Oliveria's front pocket and the car was parked in front of the Taco Bell entrance. The Taco Bell had been closed since midnight that evening. The police officers did not

Electronic notice sent to all counsel of record: 1) Atty B. Putnam and 2) Atty. J. Russo. 109
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determine at what time Mr. Oliveria arrived at the Taco Bell parking lot and never saw the Jeep running (its engine turned on). Return of Record (ROR), at R-36.

Upon engaging with Mr. Oliveria, police officers detected the strong odor of alcohol on Mr. Oliveria's breath and police found several empty miniature sized bottles of whiskey in the center console area of the Jeep and one partially consumed bottle of vodka in Mr. Oliveria's coat pocket. Mr. Oliveria failed field sobriety tests at the scene, was arrested, and voluntarily submitted to two breathalyzer tests at 2:20 a.m. and 2:39 a.m. Mr. Oliveria failed both breathalyzer tests, which indicated blood alcohol levels of .2366% and .2259%, respectively. After being arrested, Mr. Oliveria told officers that he had stopped drinking about a "half an hour before you picked me up."

After a hearing on June 6, 2023, the hearing officer concluded that each of the four relevant sections of General Statutes § 14-227b had been met. The hearing officer specifically concluded that one of the arresting officers "appeared at the hearing and gave testimony establishing that the chemical test was initiated within two hours of operation." ROR, at R-21.

LEGAL STANDARD

"We review the issues raised by the plaintiff in accordance with the limited scope of judicial review afforded by the [Uniform Administrative Procedure Act (UAPA), General Statutes § 4-166 et seq.]. . ." (Internal quotation marks omitted.) *O'Rourke* v. *Commissioner of Motor Vehicles*, 156 Conn. App. 516, 522, 113 A.3d 88 (2015).

Judicial review of an administrative agency decision "requires a court to determine whether there is substantial evidence in the administrative record to support the agency's findings of basic fact and whether the conclusions drawn from those facts are reasonable. . . . Substantial evidence exists if the administrative record affords a substantial basis of fact from which the fact in issue can be reasonably inferred. . . . The substantial evidence rule imposes an important limitation on the power of the courts to overturn a decision of an administrative agency . . . and . . . provide[s] a more restrictive standard of review than standards embodying review of weight of the evidence or clearly erroneous action. . . . [I]t is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." (Citations omitted; internal quotation marks omitted.) *Huang Do* v. *Comm'r of Motor Vehicles*, 330 Conn. 651, 666-67, 200 A.3d 681 (2019) (hereinafter *Huang Do*).

"We previously have stated that administrative tribunals are not strictly bound by the rules of evidence and . . . may consider exhibits that would normally be incompetent in a judicial proceeding, as long as the evidence is reliable and probative. It is axiomatic, moreover, that it is within the province of the administrative hearing officer to determine whether evidence is reliable[,] and, on appeal, the plaintiff bears the burden of proving that the commissioner, on the facts before him, acted contrary to law and in abuse of his discretion. . . . Neither this court nor the Appellate Court may retry the case or substitute its own judgment for that of the [hearing officer with respect

to] the weight of the evidence or questions of fact. . . . Our ultimate duty is to determine, in view of all of the evidence, whether the agency, in issuing its order, acted unreasonably, arbitrarily, illegally or in abuse of its discretion." (Citations omitted; internal quotation marks omitted.) Id., at 667-68.

"[A]s to questions of law, [t]he court's ultimate duty is only to decide whether, in light of the evidence, the [agency] has acted unreasonably, arbitrarily, illegally, or in abuse of its discretion. . . . Conclusions of law reached by the administrative agency must stand if the court determines that they resulted from a correct application of the law to the facts found and could reasonably and logically follow from such facts. . . ." (Internal quotation marks omitted.) *O'Rourke* v. *Commissioner of Motor Vehicles*, supra, 156 Conn. App. 523.

A license suspension hearing is strictly "limited to a determination of the following issues: (1) Did the police officer have probable cause to arrest the person for operating a motor vehicle while under the influence of intoxicating liquor or any drug or both; (2) was such person placed under arrest; (3) did such person . . . submit to [a] test or analysis, commenced within two hours of the time of operation, [which] . . . indicated that such person had an elevated blood alcohol content; and (4) was such person operating the motor vehicle. If the hearing officer finds affirmatively on all four issues, the hearing officer must uphold the commissioner's suspension of the person's license." (Internal quotation marks omitted.) *Huang Do*, 330 Conn. 658-59.

<u>LEGAL ANALYSIS</u>

In this appeal, Mr. Oliveria only challenges the hearing officer's conclusion that the chemical test was administered within two hours of Mr. Oliveria's operation of the Jeep. It is undisputed that there is no direct evidence that Mr. Oliveria operated the Jeep within two hours of the administration of the first breathalyzer test at 2:20 a.m. The police officer testifying at the administrative hearing was clear that the Jeep was not operating when she arrived, the keys were in Mr. Oliveria's front pocket, and officers did not determine when Mr. Oliveria arrived at the Taco Bell. Nevertheless, the commissioner argues that there is substantial evidence in the record from which the hearing officer could make the reasonable factual inference that Mr. Oliveria drove the Jeep sometime after 12:20 a.m. (2 hours before the first breathalyzer test). The commissioner argues that a car sitting in a fast food parking lot with its lights on, and along a busy commercial thoroughfare such as Route 83, is bound to attract attention quickly. Therefore, the commissioner argues, it is a reasonable factual inference that the anonymous caller who called Vernon Police at 1:00 a.m., must have noticed Mr. Oliveria's car shortly after the car arrived at Taco Bell and, therefore, Mr. Oliveria must have driven his Jeep and arrived at the Taco Bell parking lot only a short time before the 1:00 a.m. anonymous telephone call, and, in any event, sometime after 12:20 a.m.

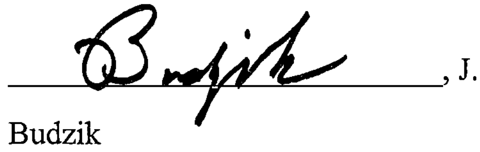
In making the above argument, the commissioner relies on *Clark* v. *Commissioner*, 183 Conn. App. 426, 437-38, 193 A.3d 79 (2018), in which our Appellate Court affirmed the factual inference that a car that had crashed through a snow bank near a busy intersection was unlikely to go unnoticed for very long, and

therefore, operation of the vehicle could be inferred as occurring only a short time before the accident was reported by a passerby. The court is not convinced.

It is a reasonable factual inference that a car that has gone off the side of the road through a snow bank would appear to a reasonable passerby to have been in some kind of accident or, at a minimum, to be such an out of the ordinary circumstance that it would be worthy of notice and some kind of action. Thus, the factual inference that a passerby of such a scene would act to alert authorities in a timely fashion is a reasonable factual inference given that particular fact set. Nevertheless, in the exercise of common sense and human experience, the court concludes that a car merely parked in a Taco Bell parking lot after hours is not such an unusual occurrence that it would be reasonably likely to warrant the attention of passersby. There is no evidence that Mr. Oliveria's car was parked in an odd or out of the ordinary manner, or any evidence in the record suggesting that a reasonable passerby would think that the operator of such a car is in any particular danger (as would be the case with a car running off the road and through a snow bank) such that the sighting of such a circumstance might prompt a reasonable passerby to call authorities in a timely fashion. The court concludes that the hearing officer's inference that the anonymous caller must have noticed Mr. Oliveria's car shortly after it arrived in the Taco Bell parking lot is not a reasonable inference. Instead, the court concludes it is mere speculation.

Because there is no substantial evidence in the record supporting the factual inference drawn by the hearing officer that Mr. Oliveria operated his car within two hours of being administered the first breathalyzer test at 2:20 a.m., the court sustains

Mr. Oliveria's appeal and remands this matter back to the commission for proceedings consistent with this memorandum of decision.



______________________, J.

Budzik