DOCKET NO.: HHB-CV-23-5034033-S	:	SUPERIOR COURT
LEWIS A. NICKENS	:	JUDICIAL DISTRICT OF NEW BRITAIN
v.	:	
COMMISSIONER OF MOTOR VEHICLES	:	MAY 14, 2024

MEMORANDUM OF DECISION

The plaintiff, Lewis A. Nickens, appeals from the decision of the defendant, the Commissioner of Motor Vehicles, suspending Mr. Nickens' license for 45 days and requiring the installation of an interlock device for six months. Mr. Nickens argues that the hearing officer's decision should be overturned because there is no substantial evidence in the record that the arresting officer had probable cause to arrest Mr. Nickens for operating a motor vehicle while under the influence of alcohol. The court does not agree, and therefore, dismisses Mr. Nickens' appeal.

FACTS

The court recites the following undisputed facts from the record. On November 4, 2022, at approximately 9:35 p.m., officers from the Town of Orange Police Department were dispatched to 739 Riverside Drive in Orange for a possible home invasion. Police dispatchers advised the officers while in route that a homeowner and Mr. Nickens were involved in a physical altercation. Upon arriving at the scene, the arresting officer, Amable Colon, interviewed John Lanzante who lived at 739 Riverside Drive. Mr. Lanzante stated that at about 9:30 p.m. he noticed Mr. Nickens shining a flashlight at his house. Mr. Lanzante went outside to confront Mr. Nickens. When Mr.

Electronic notice sent to atty of record for defendant DMV: Raoul Rodriguez.
Mailed to Pl. address of record. A. Jordanopoulos, Clerk's Office 5/14/24

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Lanzante asked Mr. Nickens what he was doing, Mr. Nickens stated that he was trying to make a delivery. Mr. Lanzante told Mr. Nickens to get off his property. An argument ensued and Mr. Nickens hit Mr. Lanzante in the face with the flashlight causing Mr. Lanzante to bleed. Mr. Lanzante observed Mr. Nickens get into his car and drive to 748 Riverside Drive. Mr. Lanzante followed Mr. Nickens by driving his car to 748 Riverside Drive, in an attempt to get Mr. Nickens' license plate number.

At the scene, Officer Colon spoke with Mr. Nickens who stated that he was making a food delivery and that he used the flashlight to see house addresses. Mr. Nickens said he approached the wrong address and an altercation ensued. Mr. Nickens admitted that after the altercation he "got into his vehicle and drove to the area near the residence where he was making his delivery." Upon speaking to Mr. Nickens, Officer Colon observed that Mr. Nickens' eyes were glossy and Officer Colon detected the odor of alcohol on Mr. Nickens' breath. Officer Colon asked Mr. Nickens if he had had anything to drink. Mr. Nickens initially denied drinking anything, but later admitted to having one drink three hours earlier.

Officer Colon also spoke with Gianna Banks, an eyewitness who resided at 748 Riverside Drive. Ms. Banks gave a written statement that she witnessed the altercation with Mr. Lanzante. Ms. Banks said she observed Mr. Nickens get into his car and drive from Mr. Lanzante's property to her property. Officer Colon placed Mr. Nickens under arrest for assault and breach of peace. Mr. Nickens was transported to the Orange Police Department. At the police station, Mr. Nickens was asked to submit to Standardized Field Sobriety Tests (SFST) and Mr. Nickens agreed. Officer Colon

administered the standardized field tests at the police station and Mr. Nickens failed those tests. Officer Colon determined that he had probable cause to arrest Mr. Nickens for driving a motor vehicle under the influence of alcohol.

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.

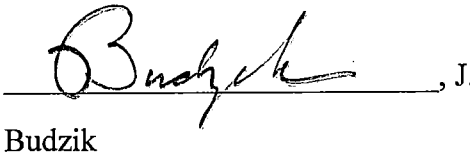
"Probable cause exists when the facts and circumstances within the knowledge of the officer and of which he has reasonably trustworthy information are sufficient in themselves to warrant a person of reasonable caution to believe that the person arrested had committed an offense. An arrest for driving under the influence of intoxicating liquor, just as an arrest made for any other criminal offense, may properly be made on a finding of probable cause which is based on circumstantial, as well as direct evidence." *Clark* v. *Muzio*, 40 Conn. Sup. 512, 514-15, 516 A.2d 160 (1986), affirmed, 14 Conn. App. 212, cert. denied, 208 Conn. 809, 545 A.2d 1105 (1988) (citing *Beck* v. *Ohio*, 379 U.S. 89, 91, 85 S. Ct. 223, 225, 13 L. Ed. 2d 142 (1964) and *State* v. *Wilson*, 153 Conn. 39, 42, 212 A.2d 75 (1965)).

LEGAL ANALYSIS

In this appeal, Mr. Nickens only challenges the hearing officer's conclusion that there was substantial evidence in the record to support the hearing officer's conclusion

that Officer Colon had probable cause to arrest Mr. Nickens for driving a motor vehicle while under the influence of alcohol. The court concludes that Officer Colon had probable cause to arrest Mr. Nickens for driving a motor vehicle under the influence of alcohol because Ms. Banks told Officer Colon that she had observed Mr. Nickens drive his car to her house, Officer Colon smelled alcohol on Mr. Nickens' breath, Officer Colon observed that Mr. Nickens' eyes were glossy, Mr. Nickens admitted to Officer Colon that he had had at least one drink, and Mr. Nickens failed to adequately perform field sobriety tests at the Orange police station after Mr. Nickens had been arrested for assault and breach of peace (based on the statements of Mr. Lanzante).

Because there is substantial evidence in the record supporting the hearing officer's conclusion that Officer Colon had probable cause to arrest Mr. Nickens for driving a motor vehicle under the influence of alcohol, the court dismisses this appeal.

 , J.

Budzik