

Office of Adjudications

IN THE MATTER OF

***: SUSPENSION OF SAFE BOATING
CERTIFICATE
DEEP # 15-004***

WILLIAM CARPENTER

: AUGUST 13, 2015

FINAL DECISION

A hearing was held on August 10, 2015 at DEEP Marine District Headquarters in Old Lyme regarding the suspension of the Safe Boating Certificate of William Carpenter. General Statutes §15-140q. Present were: Mr. Carpenter's Attorney Patrick T. Paoletti, Officer Christopher J. Murray of the Stonington Police Department and Timothy Delgado of the DEEP Boating Division. Testimony was offered by Officer Murray. The following exhibits were entered into the record:

DEEP-1 – Arrest Report prepared by Officer Murray with attachments including a “Vessel Operator’s Chemical Alcohol Test Report,” the “BUI 24 Hour License Revocation & Interim Certificate” a “Misdemeanor Summons and Compliant” and a summary of the investigation provided to the DEEP Boating Division. A witness statement included as part of the original report was withdrawn and not considered in reaching this decision.

DEEP-2 – Notice of Rights Form

RESP-1 – Receipt from the “Dog Watch Café”

PROCEDURAL HISTORY

On June 20, 2015, Mr. Carpenter’s vessel, a twenty-seven foot Larson boat, was involved in an accident at Dodson’s Boatyard in the Stonington section of the Town of Stonington, CT. Officer Christopher J. Murray of the Stonington Police Department responded. Mr. Carpenter was subsequently arrested for boating while intoxicated. §15-140q. A Notice of Suspension was mailed to Mr. Carpenter on June 26, 2015 and a hearing was requested before the July 3, 2015 deadline. I granted a continuance of this matter on July 16, 2015, and this hearing was scheduled.

FINDINGS OF FACT

After a probable cause hearing limited to those factors set forth in General Statutes § 15-140q, I find the following facts:

1. At approximately 7:20 p.m. on June 20, 2015, Mr. Carpenter was operating his vessel, a twenty-seven foot Larson boat, as it left the dock at Dodson’s Boatyard, located at 194 Water St. in the Stonington section of Stonington, CT. As his boat left the dock, traveling in reverse, it veered off course and came near the “Tabasco,” a red seventy-six foot Baltic sailboat, which was docked opposite Mr.

Carpenter's vessel. Mr. Carpenter put his vessel in drive and the port side bow of his vessel impacted the Tabasco. (Ex. DEEP-1; test. C. Murray, 8-10-2015.)

2. John Dipollino, a witness who indicated that he was assisting Mr. Carpenter, advised Mr. Carpenter to dock his vessel and called the police. (Ex. DEEP-1; test. C. Murray, 8-10-2015.)
3. In the period between the accident and Officer Murray's arrival, Mr. Carpenter purchased a gin from the Dog Watch Café, also located at 194 Water St. in Stonington. (Ex. RESP-1.)
4. When Officer Murray arrived at Dodson's Boatyard, at approximately 8:07 p.m., he spoke with Mr. Dipollino who described the accident and indicated he believed Mr. Carpenter to be intoxicated. Mr. Dipollino identified a cooler, full of empty beer cans and bottles that had come off of Mr. Carpenter's vessel. Mr. Dipollino also identified Mr. Carpenter. (Ex. DEEP-1; test. C. Murray, 8-10-2015.)
5. Upon approaching Mr. Carpenter, Officer Murray detected the odor of alcoholic beverage from three feet away, observed that Mr. Carpenter's eyes were glassy and bloodshot, and that Mr. Carpenter was swaying while standing. Officer Murray then spoke with Mr. Carpenter, who admitted consuming a "couple beers" at 2:00 p.m., but indicated he had not had anything else to drink after he docked at Dodson's Boatyard. (Ex. DEEP-1; test. C. Murray, 8-10-2015.)
6. Officer Murray administered the Horizontal Gaze Nystagmus test which indicated nystagmus at maximum deviation, onset prior to 45 degrees and a lack of smooth pursuit in both eyes, all signs of intoxication. Officer Murray then advised Mr. Carpenter that he would be administering standardized field sobriety tests. Mr. Carpenter indicated that he was refusing to complete the tests. (Ex. DEEP-1; test. C. Murray, 8-10-2015.)
7. Mr. Carpenter was placed under arrest and transported to the Stonington police station. Mr. Carpenter was advised of his Constitutional rights, which he stated he understood and waived and refused the opportunity to contact an attorney. Mr. Carpenter was advised of the consequences of a chemical alcohol test refusal, which he stated he understood. Mr. Carpenter then refused to submit to a breath test. This refusal was witnessed by other Stonington police Department Officers. (Ex. DEEP-1; test. C. Murray, 8-10-2015.)
8. Mr. Carpenter was issued a "24 Hour License Revocation & Interim Certificate" which he signed and a "Notice of Rights" form, which he also signed, and was released. (Exs. DEEP-1, 2; test. C. Murray, 8-10-2015.)

CONCLUSIONS AND ORDER

To suspend Mr. Carpenters' safe boating certificate pursuant to General Statutes § 15-140q, I must determine: (1) whether the officer had probable cause to arrest Mr. Carpenter for operating a vessel while under the influence of intoxicating liquor or drugs, or both, or while having an elevated blood alcohol content; (2) whether Mr. Carpenter was placed under arrest; (3) whether Mr. Carpenter (A) refused to submit to a blood,

breath, or urine test or analysis at the request of the peace officer, or (B) submitted to such test or analysis, and the results of such test or analysis indicated that at the time of the alleged offense there was an elevated blood alcohol content; and (4) whether Mr. Carpenter was operating the vessel. If I find in the affirmative on each of these four questions, I must suspend Mr. Carpenters' certificate.

It is not disputed that Mr. Carpenter was operating the vessel, was placed under arrest and refused to submit to a breath test for alcohol. The only issue in dispute is whether probable cause existed to arrest Mr. Carpenter.

Counsel for Mr. Carpenter argues that the effects of alcohol witnessed by Officer Murray were the result of the consumption of the gin purchased from the Dog Watch Café in the period between Mr. Carpenter's operation of the vessel and the arrival of Officer Murray. To resolve this issue, I must determine whether the substantial evidence in the record establishes probable cause that Mr. Carpenter was under the influence of intoxicating liquor at the time of the operation of the vessel. "Probable cause, broadly defined, comprises such facts as would reasonably persuade an impartial and reasonable mind not merely to suspect or conjecture, but to believe that criminal activity has occurred. . . . Reasonable minds may disagree as to whether a particular [set of facts] established probable cause. . . . Thus, [a determination of probable cause] need only have a substantial basis of fact from which [it] can be inferred . . . that the evidence in the administrative record supports a finding of probable cause with respect to the plaintiff's violation." (Citations omitted; internal quotation marks omitted.) *Murphy v. Commissioner of Motor Vehicles*, 254 Conn. 333, 344 (2000). This record contains a substantial basis in fact from which it can be inferred that Mr. Carpenter was operating his vessel under the influence of intoxicating liquor, establishing probable cause for his arrest.

The record indicates that Mr. Carpenter admitted to consuming beer prior to the accident, and that a cooler full of empty beer bottles and cans was removed from his vessel. Mr. Carpenter operated his vessel in a manner that would suggest he was intoxicated. Mr. Dipollino, who witnessed the accident, told Officer Murray he believed Mr. Carpenter to be intoxicated. A strong odor of alcohol emanated from Mr. Carpenter, who was having trouble maintaining his balance and had glassy bloodshot eyes. Our Supreme Court has held that "our case law clearly establishes that sufficient evidence justifying the commissioner's determination of probable cause may be found when the totality of the circumstances existing at the time of the plaintiffs arrest supports such a finding." (Internal quotation marks omitted.) *Id.* at 345. Here, the totality of circumstances indicates that Mr. Carpenter operated his vessel while intoxicated.

While the evidence in the record indicates that Mr. Carpenter purchased, and likely consumed, alcohol in the period between his operation of the vessel and his initial contact with Officer Murray, that evidence alone does not require the conclusion that there was insufficient cause for Mr. Carpenter's arrest. In *Kirei v. Hadley*, our Appellate Court considered similar facts. In that case, a driver crashed his vehicle into a snowbank and left the scene. *Kirei v. Hadley*, 47 Conn. App. 451, 453 (1998). An officer found the driver near the vehicle, walking in the direction of his nearby home. *Id.* That officer observed the driver appeared to be intoxicated, the presence of a strong odor of alcohol and the failure of field sobriety tests and arrested the driver. *Id.* At the administrative hearing on the suspension of his license, the driver testified that "when the police officer came upon him, he was under the influence of intoxicating liquor only as a result of consuming alcohol at his home *after* he had operated his motor vehicle." (Emphasis original.) *Id.* at 456-457. In that case, the court found probable cause to arrest the driver existed and held that

[t]he credibility of witnesses and the determination of factual issues are matters within the providence of the administrative agency and this court cannot disturb conclusions reached by the [Commissioner of Motor Vehicles] if there is evidence that reasonably supports his decision. Thus, it was within the hearing officer's province to determine whether he believed the [driver's] testimony regarding when the plaintiff consumed liquor in relation to the time of operating his motor vehicle. The record shows that the testimony of the police officers, the police reports that were admitted into evidence and the totality of the circumstances existing at the time of the plaintiff's arrest support the hearing officer's finding that there was probable cause to arrest the plaintiff.

Id. at 457. Mr. Carpenter's purchase, and probable consumption, of alcohol between his operation of the vessel and his arrest does not explain the totality of circumstances in this case. An impartial and reasonable mind can conclude that the consumption of one drink would not result in the strong odor of alcohol emanating from Mr. Carpenter or entirely explain his trouble maintaining his balance and glassy, bloodshot eyes. Those circumstances, along with his erratic operation of his vessel, are better explained by the cooler full of empty beer bottles and cans removed from his vessel and his admission that he consumed beer prior to the accident. That Mr. Dipollino, who had observed and interacted with Mr. Carpenter before he purchased the gin from the Dog Watch Café, described Mr. Carpenter as intoxicated further supports this conclusion.

Mr. Carpenter's argument faults Officer Murray for failing to conduct additional investigation into Mr. Carpenter's activities after the accident. However, when asked by Officer Murray, Mr. Carpenter indicated that he had not consumed alcohol after docking at Dodson's Boatyard. Mr. Carpenter did not inform Officer Murray that he had purchased, and likely consumed, a gin at the Dog Watch Café after the accident. Had Mr. Carpenter been forthcoming, it is possible that the additional investigation he now calls for may have occurred. While I agree that additional investigation may have provided useful information, such information is not necessary to my determination that probable cause existed to arrest Mr. Carpenter given the totality of the circumstances in this case.

Mr. Carpenter was operating the vessel in question. He was arrested and there was probable cause for his arrest. Once arrested, he refused an alcohol breath test. Therefore, there is probable cause to suspend the Connecticut Safe Boating Certificate of William Carpenter and it is hereby ORDERED suspended for a period of not more than *six (6) months, effective July 31, 2015 through January 31, 2016*. If it is still in his possession, **Mr. Carpenter is hereby ordered to surrender his Connecticut Safe Boating Certificate**, by personal delivery or first class mail, to the Division of Boating, Department of Environmental Protection, 333 Ferry Road, Old Lyme, CT 06371-0280, *within 2 days of receipt of this decision*.

Entered as a final order of the Commissioner of Environmental Protection by:



Brendan Schain, Hearing Officer

PARTY LIST

Final Decision in the matter of William Carpenter, Ref. #15-004
(Suspension of Safe Boating Certificate)

PARTY

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DEP Boating Division
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(Via *electronic mail*)

REPRESENTED BY

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