

Office of Adjudications

IN THE MATTER OF

***: SUSPENSION OF SAFE BOATING
CERTIFICATE
DEEP # 15-010***

JACK R. WRIGHT

: OCTOBER 15, 2015

FINAL DECISION

A hearing was held on October 9, 2015 at DEEP Marine District Headquarters in Old Lyme regarding the suspension of the Safe Boating Certificate of Jack R. Wright. General Statutes §15-140q. Present were: Mr. Wright's Attorney Robert Britt, Sgt. James Kane, Environmental Conservation Officer Gregory Ulkus and Agency Police Officer John Torres of the Department's Environmental Conservation Police Division, and Timothy Delgado of the Department's Boating Division. Testimony was offered by Sgt. Kane and Officers Ulkus and Torres. The following exhibits were entered into the record:

DEEP-1 – Arrest Report prepared by Officers Ulkus and Torres with attachments

DEEP-2 – Notice of Rights Form

PROCEDURAL HISTORY

On August 29, 2015, Mr. Carpenter's vessel was stopped for a routine boating safety check at the state-owned boat launch at Barn Island Wildlife Management Area in Stonington. Mr. Wright was subsequently arrested for boating while intoxicated. §15-140q. A Notice of Suspension was mailed to Mr. Wright on September 8, 2015, and a hearing was requested on September 15, 2015. I granted a continuance of this matter on September 24, 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 6:30 p.m. on August 29, 2015, Sgt. Kane observed Mr. Wright operating his vessel into the state-owned boat launch within the Barn Island Wildlife Management Area. Sgt. Kane stopped the vessel and conducted a routine boating safety check. Sgt. Kane determined that the vessel had an insufficient number of personal flotation devices. Sgt. Kane also observed a cooler with thirteen full Budweiser beers and nine empty Budweiser beers. (Ex. DEEP-1; test., 10/9/15, J. Kane, G. Ulkus, J. Torres.)

2. Officer Torres continued the investigation of Mr. Wright. In response to questioning, Mr. Wright, who is underage, admitted to consuming four beers during the day. (Ex. DEEP-1; test., 10/9/15, J. Kane, G. Ulkus, J. Torres.)
3. Officer Torres administered the following field sobriety tests: horizontal gaze nystagmus; walk and turn; and, one leg stand. Mr. Wright was unable to successfully complete any of these tests, failing to follow instructions, keep accurate counts or maintain his balance, all indicators of the consumption of intoxicating liquor. (Ex. DEEP-1; test., 10/9/15, J. Torres, G. Ulkus.)
4. Officers Torres and Ulkus transported Mr. Wright to the Stonington Police Department. Mr. Wright was read his rights as stated on the Notice of Rights form, which he indicated he understood and signed. Mr. Wright was also read the implied consent advisory and relevant portion of the Officer's BUI Arrest and Alcohol Test form, at which point he stated that he refused to take a breath alcohol test. (Exs. DEEP-1, DEEP-2; test., 10/9/15, J. Torres, G. Ulkus.)
5. Mr. Wright was issued a BUI 24-Hour License Revocation and Interim Certificate form, charged with operating a vessel under the influence of intoxicating beverage, possession of alcohol by a minor, and insufficient personal flotation devices, and released to his parents' custody. (Ex. DEEP-1; test., 10/9/15, J. Torres, G. Ulkus.)

CONCLUSIONS AND ORDER

To suspend Mr. Wright's safe boating certificate pursuant to General Statutes § 15-140q, I must determine: (1) whether the officer had probable cause to arrest Mr. Wright 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. Wright was placed under arrest; (3) whether Mr. Wright (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. Wright was operating the vessel. If I find in the affirmative on each of these four questions, I must suspend Mr. Wright's certificate.

Mr. Wright, through his attorney, did not dispute that he was operating the vessel or that he was placed under arrest. Mr. Wright's vessel was stopped for a routine boating safety check, authorized by General Statutes § 15-154(b)(2). The discovery of alcoholic beverages while conducting that safety check, Mr. Wright's subsequent admission to the consumption of alcohol, and Mr. Wright's inability to satisfactorily complete any field sobriety tests establish probable cause for his arrest.

Mr. Wright's counsel argues, essentially, that the Department cannot meet its burden of proving that Mr. Wright refused to submit to a breath alcohol test. The gravamen of this argument is that neither the report prepared by Officer Torres nor the report prepared by Officer Ulkus indicates that Officer Ulkus witnessed Mr. Wright's refusal.

In a different forum, adjudicating this matter under a more stringent standard of proof, it is possible that this omission may be sufficient to cast doubt on whether Mr. Wright did, in fact, refuse a breath alcohol test. That question, however, is for a different finder of fact on a different day, and I reach no conclusion on it here. Instead, in this administrative proceeding, I must focus my review on the record in this matter and determine whether the preponderance of the evidence in the record indicates that Mr. Wright refused a breath alcohol test. Regs., Conn. State Agencies § 22a-3a-6(f). It is axiomatic that the preponderance of the evidence is “[t]he greater weight of the evidence; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.” Blacks Law Dictionary 1201 (7th Ed. 1999).

The weight of the evidence in the record indicates that Mr. Wright refused a breath alcohol test, and that his refusal was witnessed by both Officers Torres and Ulkus. This conclusion is supported by the credible testimony of both officers and the Implied Consent Advisory form (part of DEEP-1), signed by both officers at the time of Mr. Wright’s refusal. This evidence is sufficient to incline an impartial mind to conclude that Mr. Wright did indeed refuse a chemical alcohol breath test.

Mr. Wright 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 Jack R. Wright and it is hereby ORDERED suspended for a period of not more than *six (6) months, effective October 15, 2015 through April 15, 2015*. If it is still in his possession, **Mr. Wright 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 Jack R. Wright, Ref. #15-010
(Suspension of Safe Boating Certificate)

PARTY

Jack R. Wright
17 Dewey Ave.
Terryville, CT 06786

REPRESENTED BY

Robert J. T. Britt, Esq.
Rome McGuigan, P.C.
One State St., 13th Floor
Hartford, CT 06103
rbritt@rms-law.com

DEP Boating Division
333 Ferry Road
Old Lyme, CT 06371
(Via electronic mail)

Timothy Delgado
timothy.delgado@ct.gov