

Office of Adjudications

IN THE MATTER OF : ***SUSPENSION OF
SAFE BOATING CERTIFICATE
DEEP # 20-001***

METTHIAS DEGRAND : ***JULY 6, 2020***

FINAL DECISION

A hearing was held on June 30, 2020 regarding the suspension of the Safe Boating Certificate of Metthias Degrand. General Statutes §15-140q. Participating in the Zoom meeting were: Attorney Russell Palmer for Mr. Degrand; Colonel Christopher Lewis and Sergeant Stephen Stanko of the DEEP Environmental Conservation Police; and Timothy Delgado of the DEEP Boating Division. Sgt. Stanko, the arresting officer, provided testimony. The following exhibits were entered into the record:

DEEP- 1 – Officer’s BUI Arrest Report and Alcohol Test with DMV Boat Inquiry Detail

DEEP- 2 – Notice of Rights

DEEP -3 - BUI 24- Hour License Revocation and Interim Certification.

DEEP-4 - Body Camera Footage of SFSTs from Encon BUI Arrest Case #20-16109.

PROCEDURAL HISTORY

On May 31, 2020, Matthew Degrand was arrested for boating while intoxicated. Conn. Gen. Stat. §15-140q. A Notice of Suspension was mailed to Mr. Degrand on June 15, 2020; a timely request for hearing was filed.

FINDINGS AND CONCLUSIONS

EVIDENTIARY OBJECTION

Counsel for Mr. Degrand argued at the hearing that the Arrest Report should not be admitted because it was unsigned. In fact, the Report had no original (i.e., wet) signatures, but did have the electronic signatures of Col. Lewis and Sgt. Stanko, the arresting officer. I was advised that the Report with wet signatures could be in the Department’s files and, if so, would be submitted. Noting the objection, I admitted the offered Arrest Report. It was later confirmed that in fact no Report with wet signatures exists. In any event, the Report with the electronic signatures of Lewis and Stanko was properly admitted.

Section 1-272 of the General Statutes provides that a record or signature may not be denied legal effect solely because the record or signature is electronic. “If a law requires a record to be in writing, an electronic record satisfies the law.” §1-272(c). “If a law requires a signature, an electronic signature satisfies the law.” § 1-272(d).

Section 1-283 allows agencies to establish how electronic records and signatures will be received or used. The Department has enacted a temporary Directive regarding electronic signatures that permits reliance on documents signed electronically by Department employees. These signatures may be in forms that include a typed name, such as those of Col. Lewis and Sgt. Stanko on the Arrest Report.

I note that even if the Arrest Report was not properly admitted, I may base my decision on other evidence in the record and appropriate inferences that may be drawn from that evidence. See *Henderson v. Goldberg*, CV 91 47353 S, WL 197994 (Sup. Ct., JD of Tolland at Rockville, June 3, 1993. (Where police report improperly admitted, reviewing Court will determine if hearing officer’s findings, including appropriate inferences that may be drawn from the report, are supported by evidence properly admitted.)

SUSPENSION OF SAFE BOATING CERTIFICATE

To suspend Mr. Degrand’s safe boating certificate pursuant to General Statutes § 15-140q, I must determine: (1) whether Sgt. Stanko had probable cause to arrest Mr. Degrand 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. Degrand was placed under arrest; (3) whether Mr. Degrand (A) refused to submit to a blood, breath, or urine test or analysis at the request of Sgt. Stanko, 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. Degrand was operating the vessel. If I find in the affirmative on each of these four questions, I must suspend Mr. Degrand’s certificate.

It is undisputed that Mr. Degrand was operating his vessel the night of his arrest, that there was probable cause for Sgt. Stanko to perform sobriety tests, and that Mr. Degrand was arrested and charged with boating while intoxicated. §15-133(d). The record shows that Mr. Degrand admitted to the consumption of five alcoholic beverages at the time of his arrest. The arresting officer testified that Mr. Degrand had failed the field sobriety tests and was intoxicated at the time of this arrest. Sgt. Stanko was qualified as an officer with expertise and experience in BUI cases, and I may rely on the Department’s experts in making my decision. *Connecticut Building Wrecking Co. v. Carothers*, 218 Conn. 580, 593 (1991).

The only factor that is disputed is whether the results of the breath test confirm that at the time of the alleged offense there was an elevated blood alcohol content (BAC). §15-140q (3)(B) Specifically, it is asserted that because the results of the breath tests (Alcotest 9510) reported Mr. Degrand’s blood alcohol in units of weight/volume, and not in weight/weight as defined in CGS §15-140q, the results cannot be used to make my finding on this factor.

It is not alleged that the report of Mr. Degrand's ratio of alcohol in his blood is not correct, rather, just that the report does not show this as a ratio that is "eight-hundredths of one per cent or more of alcohol, *by weight*." §15-140q(n). If necessary, the weight/volume ratio can be converted to weight/weight by a mathematical calculation. If the accuracy of the results was in question and the record needed correction, that calculation could be performed. However, I need not convert the reported weight/volume ratio to weight/weight in order to determine that the results of the breath tests taken by Mr. Degrand confirm that his BAC was above the legal limit of 0.08%.

The Regulations of Connecticut State agencies recognize a direct comparison standard. BAC is defined in §15-140r-1 of the Regulations of Connecticut State Agencies as "the grams or alcohol per 100 milliliters of blood expressed as a percentage, *or grams of alcohol per 210 liters of breath*." (Grams/210 liters can be converted to directly compare to weight/weight.) In addition, §15-140r-10(b)(1)(C) provides the standard of performance for testing devices as "capable of alcohol analyses that result in a concentration less than 0.01 gram per 210 liters of air, *i.e. 0.01%...*" The results of the Alcotest 9510 are therefore reported in weight/volume.

Mr. Degrand did not dispute that he was operating the vessel, that he was arrested, that there was probable cause for this arrest, or that the BAC test results were correct. His only dispute is how the results were reported, a unit of measurement (weight/volume) that can be converted to the reporting convention of weight/weight.

While the results of the breath tests were not reported in the unit of measurement defined in §15-140q, "[i]t is axiomatic that administrative agencies are not strictly bound by the rules of evidence. ...[T]hey may consider exhibits [that] would normally be incompetent in a judicial proceeding, so long as the evidence is reliable and probative." (Internal quotation marks omitted.) *Gagliardi v. Commissioner of Children & Families*, 155 Conn. App. 610, 619 (2015)." *Angel Huang Do v. Commissioner of Motor Vehicles*, 164 Conn. App. 616, 618 (2016). The results of the breath tests were reliable and confirmed that the BAC of Mr. Degrand was above the legal standard for intoxication.

I also note that the primary purpose of this administrative proceeding, the suspension of a boating certificate, is to promote public safety by removing those operators who have demonstrated disregard for the safety of others. This is distinguished from a criminal proceeding, the primary purpose of which is punishment. Therefore, the subject of such an administrative hearing is not entitled to all of the procedural protections that would be available in a criminal proceeding. See *Fishbein v. Kozlowski*, 252 Conn. 38, 48 (1999) (questions as to compliance with procedures by the police do not preclude the suspension of a license when the elements for an administrative decision regarding the suspension of that license have been demonstrated). See also *State v. Hickam*, 235 Conn. 614, 624 (1995), cert. denied, 517 U.S. 1221 (1996) (principal purpose of the statute providing for the suspension of drivers' licenses is to protect the public by removing potentially dangerous drivers from the state's roadways).

ORDER

The **Connecticut Safe Boating Certificate** of **Metthias Degrand** is hereby ORDERED suspended for a period of not more than ninety days, effective July 6, 2020 through October 4, 2020. If still in his possession, **Mr. Degrand is hereby ordered to surrender his Connecticut Safe Boating Certificate**, 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*. The Division of Boating is hereby ordered to direct Mr. Degrand as to how he shall surrender his Safe Boating Certificate during this period of COVID-19 protections.

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

Janice B. Deshais, Esq.

Janice B. Deshais, Esq.
Hearing Officer