

Office of Adjudications

IN THE MATTER OF : ***SUSPENSION OF
SAFE BOATING CERTIFICATE
DEEP BUI # 21-006***

JEFFREY MORTON : ***August 6, 2021***

FINAL DECISION

A hearing was held on August 4, 2021, regarding the suspension of the Safe Boating Certificate of Jeffrey Morton. General Statutes §15-140q(j). Participating in the Zoom meeting were: Attorney Chinigo for Mr. Morton; Officer William Kerr of the DEEP Environmental Conservation Police; and Timothy Delgado of the DEEP Boating Division. Officer Kerr, the arresting officer, provided testimony. DEEP-1 was admitted as an exhibit, which included: Case/Incident Report, with attached Written Statements, 24-hour License Revocation & Interim Certificate, Affidavit and Application Search and Seizure Warrant, Search and Seizure Warrant, Medical Records, Request for Analysis, State of Connecticut Laboratory Results, and Notice of Rights (“Arrest Report”).

PROCEDURAL HISTORY

Jeffrey Morton was arrested by warrant on July 3, 2021 for boating while intoxicated at the time he was involved in a boating accident on July 26, 2020. General Statutes §15-133(d). A Notice of Suspension was mailed to Mr. Morton on July 12, 2021; a timely request for hearing followed.

FINDINGS AND CONCLUSIONS

General Statutes § 15-140q(j) provides that when an arrest is made by warrant, I must affirm the following five factors to suspend Mr. Morton’s boating certificate: (1) Whether the peace officer had probable cause to arrest Mr. Morton for operating a vessel while under the influence of intoxicating liquor or drugs, or both, or while he had an elevated blood alcohol content; (2) Whether Mr. Morton was placed under arrest; (3) Whether Mr. Morton was operating the vessel; (4) Whether the results of the analysis of the blood of Mr. Morton indicate that he had an elevated blood alcohol content; and (5) Whether the blood sample was obtained in accordance with conditions for admissibility as set forth in Section 15-140s.¹

¹Section 15-140s states: Evidence respecting the amount of alcohol or drug in the blood or urine of an operator of a vessel involved in an accident who has suffered or allegedly suffered physical injury in such accident, which evidence is derived from a chemical analysis of a blood or urine sample taken from such person at the scene of the accident, while in route to a hospital or at a hospital after such accident, shall be competent evidence to establish probable cause for the arrest by warrant of such person for a violation of section 15-132a, 15-133, 15-140l, or 15-140n and shall be admissible and competent in any subsequent prosecution thereof if: (1) The blood or urine sample was taken in the regular course of business of the hospital for the diagnosis and treatment of such injury; (2) the blood sample was taken by a person licensed to practice medicine in this state, a qualified laboratory technician, an emergency technician II or a registered nurse; (3) a police officer has demonstrated to the satisfaction of a judge of the Superior Court that such officer has reason to believe that such person was operating a vessel while under the influence of intoxicating liquor

It is undisputed that Mr. Morton was operating his vessel the night of his accident, that Mr. Morton was placed under arrest, that the results of the analysis of the Mr. Morton's blood indicated that he had an elevated blood alcohol content (BAC) of 0.20 and that the blood sample was obtained in accordance with conditions for admissibility as set forth in Section 15-140s. The only factor in dispute is whether the peace officer had probable cause to arrest Mr. Morton for operating a vessel while under the influence of intoxicating liquor while he had an elevated BAC.

Counsel for Mr. Morton argues that the suspension should be dropped as there was inconclusive evidence that Mr. Morton was operating under the influence, specifically, that Mr. Morton's elevated BAC of 0.20 could have been the result of events that occurred after the accident. He further asserted that the blood test could not be "truly reliable" given the passage of time between the accident and when the blood was drawn. The uncontested evidence entered into the record does not support either argument.

This record contains a substantial basis in fact from which it can be inferred that Mr. Morton was operating his vessel under the influence of intoxicating liquor, establishing probable cause for his subsequent arrest. "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).

The facts demonstrate that Ms. Oliver, who was with Mr. Morton at the time of the accident, provided a written and verbal statement to Officer Kerr, indicating that Mr. Morton consumed three alcoholic drinks while at a restaurant prior to the accident. Mr. Morton further indicated in his verbal statement that he drank one alcoholic beverage (Truly) while aboard the vessel. Mr. Morton further stated that he was operating the vessel at approximately 25-30 MPH at the time of the grounding and that he "grabbed two pool floats from inside the vessel [and] [t]hat the personal flotation devices were too far into the cabin and posed too much of a risk to retrieve as the vessel was *rapidly* filling with water and beginning to capsize." (Emphasis added.) (DEEP-1)

Counsel for Mr. Morton claimed at the hearing that Mr. Morton's elevated BAC could have been due to the use of an alcoholic beverage to treat Mr. Morton's wounds after the accident; specifically, that the beverage was poured on the open wounds, adding to his BAC. Even if there was evidence that the application of an alcoholic beverage to treat a wound could raise BAC, there was no evidence this treatment took place. There was no evidence that Mr. Morton or Ms. Oliver had the time to take such measures while on the boat; indeed, their hasty exit prevented the retrieval of personal floatation devices. Neither Mr. Morton nor Ms.

or drug, or both, and that the chemical analysis of such blood or urine sample constitutes evidence of the commission of the offense of operating a vessel upon the waters of this state while under the influence of intoxicating liquor or drug, or both, in violation of section 15-132a, 15-133, 15-140l, or 15-140n; and (4) such judge has issued a search warrant in accordance with section 54-33a authorizing the seizure of the chemical analysis of such blood or urine sample.

Oliver indicated that they took alcohol with them during their two-to-three-hour swim to the lighthouse, nor do either of the individuals state that they used the alcohol on board to clean either of their wounds prior to exiting the vessel. Notably, the attorney for Mr. Morton did not argue that either his client or Ms. Oliver have stated that they used alcohol, for any reason, after the accident to support his hypothesis that alcohol used to treat a wound can increase BAC.

There was also no evidence offered that could support the theory that Morton consumed alcohol after the accident occurred, nor is it likely that it would be physically possible for that to occur either on the vessel, as Mr. Morton indicated it was quickly capsizing, or while they swam holding on to pool floats for several hours to the lighthouse while he was suffering from significant injuries, including approximately twenty facial fractures to various bones in his face. The record further indicates that Officer Jacob Wells, a responding officer to the scene, stated that Morton "...smelled like a distillery" and he could smell an "overwhelming odor of alcoholic beverage" when he approached Mr. Morton. The preponderance of the evidence supports the fact that the peace officer had probable cause to arrest Mr. Morton for operating a vessel while under the influence of intoxicating liquor while he had an elevated blood alcohol content.

Additionally, no evidence was presented during the hearing to support an argument that the blood test was not reliable. It is uncontested that the blood sample was taken in compliance with Section 15-140s. Specifically, Mr. Morton's blood was taken in the regular course of business at the hospital for the diagnoses and treatment of his injuries, by a licensed medical professional and a police officer demonstrated to the satisfaction of Superior Court Judge Hillary Strackbein that such officer had reason to believe that Mr. Morton was operating his vessel while under the influence of liquor and that the chemical analysis of his blood constituted evidence of the commission of the offense of operating a vessel upon the waters of this state while under the influence of intoxicating liquor or drug, or both. Lastly, such Judge issued a search warrant in accordance with section 54-33a authorizing the seizure of the chemical analysis of such blood. While Mr. Morton's counsel raised an issue related to the time which had passed from the accident to when the blood was taken, the statute does not have a time requirement. Further, logically, an individual's blood alcohol level would decrease over time rather than increase after ceasing to consume alcohol. The evidence shows that at the time Mr. Morton's blood was taken his blood alcohol level was 0.20, above the legal limit of 0.08. General Statutes §15-133(d)(2)(A). Based on the evidence in the record, the blood sample was reliable and is viable and competent evidence that Mr. Morton was operating with an elevated blood-alcohol content.

ORDER

Having found in the affirmative on the five factors set out in General Statutes § 15-140q(j), it is hereby ORDERED that the **Connecticut Safe Boating Certificate** of **Jeffrey Morton** is suspended for a period of not more than ninety days, effective August 6, 2021, through November 4, 2021. If still in his possession, **Mr. Morton 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.*

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

Kathleen W. Reiser, Esq.

Kathleen W. Reiser, Esq., Hearing Officer

SERVICE LIST
DEEP BUI #21-006 *Morton*

Jeffrey Morton

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DEEP Boating Division

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