**STATE OF MAINE**
**SUPREME JUDICIAL COURT**
**SITTING AS THE LAW COURT**

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**LAW DOCKET NO. CUM-25-279**

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**ALIJA SEJDIC**

**V.**

**SECRETARY OF STATE**

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**ON APPEAL FROM THE MAINE SUPERIOR COURT IN PORTLAND**

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# BRIEF OF THE APPELLANT

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## STATEMENT OF THE FACTS

The Hearing Officer issued an opinion with findings of fact. Appendix hereinafter A at14. On June 16, 2024, at approximately 2:12 a.m., Officer Cloutier observed a vehicle speeding, traveling a 45 in a 35 mile per hour zone. As Officer Cloutier pulled the vehicle over, the vehicle slowed but did not immediately come to a complete stop and traveled at slow speed for an extra 25 feet. Based on Officer Cloutier's training and experience, he found it strange that the vehicle did not stop sooner as in his experience, most vehicles pull over as soon as possible when they see police lights. A at14-15.

After the vehicle was stopped, the driver was identified as Mr. Sejdic. Officer Cloutier smelled the odor of intoxicating beverages coming from the vehicle. There was also a male passenger in the vehicle. A at 15.

Mr. Sejdic told Officer Cloutier that he had 2 Bud Light beers. Mr. Sejdic also told Officer Cloutier that his last beer was 45 minutes prior. Officer Cloutier asked Mr. Sejdic to exit the vehicle and once out of the vehicle, Officer Cloutier smelled the odor of intoxicating beverages coming from Mr. Sejdic. A at 15.

Officer Cloutier administered standardized field sobriety tests. As part of the test, Officer Cloutier asked Mr. Sejdic about his medical condition and Mr. Sejdic

told Officer Cloutier that he had suffered a work injury about 4 weeks prior and had a concussion and knee injury. Mr. Sejdic also claimed to have balance issues due to two left ankle injuries. A at 15.

Officer Cloutier administered the horizontal gaze nystagmus test and observed 4 out of 6 clues. On the walk and turn test, Officer Cloutier observed 4 out of 8 clues. On the one leg stand test, Officer Cloutier observed 3 out of 4 clues. Officer Cloutier told Mr. Sejdic that he could use either leg to perform the one leg stand. A at 15.

After the standardized field sobriety tests, Officer Cloutier asked Mr. Sejdic to rate himself on a 1 to 10 intoxication scale with 1 being sober. Mr. Sejdic rated himself "2 beers" and then corrected himself and said 1.5. Officer Cloutier arrested Mr. Sejdic and took him in for a breath test. A at 15.

Officer Cloutier read Mr. Sejdic the implied consent form verbatim. Mr. Sejdic asked for further explanation of the implied consent form. Officer Cloutier told Mr. Sejdic that he could not try to explain it but would read it again and could get an interpreter if Mr. Sejdic wanted it read to him in another language. Mr. Sejdic told Officer Cloutier that he did not need an interpreter but wanted advice on whether he should take the test or not. Officer Cloutier did not provide Mr. Sejdic any additional explanation but read the implied consent form twice. A at 15.

After the 15 minute observation period, Officer Cloutier gave Mr. Sejdic another opportunity to give a breath sample and he refused. Mr. Sejdic signed the implied consent form indicating he was notified of the consequence of failing to submit to a chemical test and that he was refusing to provide a sample. A at 15.

The Hearing Officer found that it was more likely than not that there was probable cause to believe Mr. Sejdic operated a motor vehicle while under the influence of intoxicants. The Hearings officer explained, that on June 16, 2024 at 2:12 a.m., Mr. Sejdic was speeding after drinking alcohol, that he took an extra 25 feet to stop, that he admitted to drinking 2 beers, that the last beer had been 45 minutes before he had been stopped. The hearing officer further explained, that Officer Cloutier smelled the odor of intoxicating beverages coming from inside the vehicle and also directly from Mr. Sejdic. A at 16.

The Hearing Officer determined that the 4 out of 6 clues for the Horizontal gaze nystagmus and 3 out of four on the walk and turn were sufficient indicators of Mr. Sejdic's impairment without counting the walk and turn test. The hearing Officer chose not to credit Officer Cloutier's observation on the walk and turn test because of Mr. Sejdic's ankle surgeries. The Hearing Officer treated Mr. Sejdic's subject rating on the intoxicated scale of 1.5 as an admission as to impairment. A at 16.

The Hearing Officer made credibility judgments in favor of Officer Cloutier. In particular, the hearing officer agreed with Officer Cloutier that the extra 25 feet might be a sign of impairment. The Hearing Officer did not make findings with respect to the extent of Officer Cloutier's experience and Officer Cloutier's testimony supports only the conclusion that he had been an officer for about 6 months at the time of the stop. Officer Cloutier also testified that it was the second operating under the influence investigation of his career. The Hearing Officer also did not address Officer Cloutier's generalized suspicion that people traveling at that time of night might be under the influence. The Hearing Officer affirmed Officer Cloutier's decision to require a blood alcohol test. A at 16.

Mr. Sejdic appealed the Hearings Officer's decision and filed a petition for review of agency action. A at 2. Briefing was submitted to the Maine Superior Court in Portland. A at 3. Justice Cashman entered a decision affirming the Hearing Officer's decision. A at 3. Within 21 days, Mr. Sejdic appealed. A at 3. Mr. Sejdic now asks the court to reverse the finding of probable cause.

## QUESTION PRESENTED

I. Was there sufficient probable cause to require Alija Sejdic to take a blood alcohol test?

## ARGUMENT

### I. The standard of review for a determination of probable cause is de novo as required by a recent decision of the United States Supreme Court.

Mr. Sejdic asserts the standard of review is de novo despite this Court's previous provision of deference to the Superior Court when it is acting as an intermediate appellate court. In particular, factual findings are reviewed for clear error in this Court even when it is a probable cause determination:

> Where the Superior Court acts as an intermediate appellate court, "we review the hearing examiner's decision directly for abuse of discretion, error of law, or findings not supported by substantial evidence in the record." Payson v. Sec'y of State, 634 A.2d 1278, 1279 (Me.1993). "The agency's factual determinations must be sustained unless shown to be clearly erroneous." Imagineering, Inc. v. Superintendent of Ins., 593 A.2d 1050, 1053 (Me.1991). The party seeking to vacate the agency decision bears the burden of persuasion on appeal. Zegel v. Bd. of Soc. Worker Licensure, 2004 ME 31, ¶ 14, 843 A.2d 18, 22.

*Turner v. Secretary of State*, 2011 ME 22, ⁋ 8; 12 A.3d 1188, 1191. *Turner* was a challenge to the finding of probable cause to require a blood alcohol test just like Mr. Sejdic's case. There are two reason for de novo review. First, the probable cause challenge here is a legal determination of a mixed question of fact and law. Second, as a Constitutional standard there is a presumption of de novo review.

This Court should not apply the clear error standard.

The United States Supreme Court has recently explained why probable cause determinations receive de novo review in the context of disability awards of veterans benefits. While the Supreme Court rejected de novo review for benefit determinations, both the majority and dissent addressed review of probable cause determinations:

> Two features of the probable-cause determination distinguish it from the approximate-balance determination, however, and underscore why courts review it *de novo*. First, because probable cause is a constitutional standard, we start with a strong presumption that determinations under that standard are subject to *de novo* review, even if they require courts to "plung[e] into a factual record." Second, probable cause at bottom poses a question that requires substantial "legal work." Because probable cause asks whether the "officer's understanding of the facts and his understanding of the relevant law" was "reasonable," it requires an objective, legally grounded inquiry as to what a hypothetical person could have found. The answer to how a hypothetical person would act is, by its nature, one that courts refine over time, building out principles that "acquire content only through application." *De novo* review is therefore essential so that courts can ensure "unif[orm] precedent" that will "provid[e] law enforcement officers with a defined set of rules which, in most instances, makes it possible to reach a correct determination beforehand as to whether an invasion of privacy is justified."

*Bufkin v. Collins*, 604 U.S 369, 384-85 (2025) (internal citations omitted). In Mr. Sejdic's case, the Hearing Officer's conclusions were based on observations like speeding, the way the vehicle pulled over, and the admission of alcohol use,

instead of focusing on the lack of evidence of slurred speech, red or glassy eyes, and other indicators of physiological impairment. The challenge here is not to the existence of facts but to how they were applied to the standard of probable cause of physiological impairment.

## II. The probable cause standard promulgated by *State v. Webster* has resulted in a functional standard that has deviated too far from physiological state of impairment.

Maine law and this Court have required more than mere consumption as probable cause to take a blood alcohol test for drivers over 211 years of age who are neither conditional nor commercial drivers. This Court has implicitly rejected mere consumption as the standard for non-commercial and non-restricted license holders:

> The hearing officer further found that "probable cause to require a [blood-alcohol content] test exists when a law enforcement officer detects the mere presence of intoxicants on the [commercial] driver's breath," and held that there had been sufficient probable cause for the sergeant to require the test. Because there was sufficient probable cause and Turner's blood-alcohol content exceeded the statutory limit, the hearing officer affirmed the suspension.

*Turner* at, ¶ 8. Turner is an implicit rejection of mere consumption, which is largely a result of the Court's application to the facts. In Turner, the hearings officer was deciding a commercial case where the limit was .04% and physiological impairment was unnecessary because the legislature adopted the

federal regulations within the statute nor was the hearings officer deciding a license restriction case where the legislature had reduced the level of probable cause of mere consumption by statute. The rejection of mere consumption occurred when the Court noted that was not the standard for non-commercial and non-restricted licenses. These separate sets of standards for non-commercial and non-conditional basis for requiring a blood alcohol test have diluted the probable cause standard for physiological impairment.

The problem is that hearing officers are not making these decisions in a way that functionally recognizes just what justifies requiring a blood alcohol test. To be sure, this Court has recognized the three discrete levels of probable cause justifying a blood alcohol test:

> Those cases, however, dealt with the statute regulating the operation of non-commercial vehicles, which prohibits operation with a blood-alcohol level of 0.08% or more. *See* 29–A M.R.S. § 2453(2), (3) (2008). Here, Turner was operating a commercial vehicle, for which the Legislature chose the lower blood-alcohol threshold of 0.04%, *see* 29–A M.R.S. § 1253(5), thus targeting a physiological state that is less likely to be accompanied by visible signs of impairment. The Legislature did not, however, drop the standard to probable cause of mere consumption, as it did for drivers operating with conditional licenses, *see* 29–A M.R.S. § 2457(2) (2008), or drivers under the age of twenty-one, *see* 29–A M.R.S. § 2472(4) (2008). We addressed a conditional license statute with a 0.05% threshold in *Payson.* 634 A.2d at 1278. In that case we agreed with the hearing officer that "evidence of impairment is not always necessary," and affirmed the finding of probable cause. *Id.* at 1279.

*Id.*, at ¶ 12; 1191-92. While the Court has recognized the three levels of probable cause for different license statuses, that has not translated into applications that adhere to the physiological impairment standard for non-commercial and non-conditional license holders. Instead, it has forced hearing officers to rely on evidence best characterized as non-physiological. Mr. Sejdic now asks this Court to focus the analysis for non-commercial and non-conditional license holders over 21 years of age back to physiological impairment.

At the heart of the probable cause determination for non-commercial and non-conditional driver licenses is a showing of the physiological state of impairment. This has long been the standard in Maine:

> The trial court clearly erred in finding that there was not probable cause to believe that Bolduc was operating under the influence. In the aggregate, the report that a truck with a similar style and color had recently been driving erratically on the same road, the smell of alcohol on Bolduc's breath, his admission that he had consumed two beers that evening, his slurred speech and glossy eyes, and his poor performance on a field sobriety test, warranted a reasonable officer to conclude that Bolduc was driving while intoxicated. *See Boylan*, 665 A.2d at 1019 (officer could have formed reasonable belief that defendant was driving while intoxicated where defendant's breath smelled of alcohol, his eyes were bloodshot and glassy, and he failed field sobriety tests).

*State v. Bolduc*, 1998 ME 255 ¶ 9; 722 A.2d 44, 46. In Mr. Sejdic's case, there are only two indicators of the physiological state of impairment: the smell of

intoxicating beverages, and the clues from the field sobriety tests. While *Bolduc* has been construed as not requiring any exhaustive list of possible indicators of impairment, it does require a focus on the physiological state of impairment. The other remaining indicators used by the Hearing Officer in Mr. Sejdic's case are improperly included from the probable cause required of drivers with restricted licenses or drivers with commercial licenses.

The majority of decisions addressing probable cause for non-commercial and non-conditional license holders over 21 years of age are tightly intertwined with the physiological state of impairment. *State v. Morrison* , 2015 ME 153; 128 A.3d 1060 droopy bloodshot eyes and thick speech. *State v. Forsyth*, 2002 ME 75; 795 A.2d 66 includes the facts of red and glassy eyes. Among the facts included in *State v. Eastman*, 1997 ME 39, ¶ 9, 691 A.2d 179, 182 were the observations of blood shot eyes and slurred speech. Similarly, *State v. Wood*, 662 A.2d 919, 920–921 (Me.1995) included the facts of a raspy voice with slurred speech and bloodshot eyes. *State v. Bolduc* also identifies slurred speech and glassy eyes as support for the finding of probable cause. It is only after *State v. Webster*, 2000 ME 115 ¶ 2; 754 A.2d 976, 978 was decided that this Court moved away from physiological state of impairment and the mention of glassy eyes, bloodshot eyes, slurred speech, and thick speech in *State v. Warren*, 2008 ME 154; 957 A.2d 63

where the driver was slumped over in the driver's seat and *State v. Palmer*, 2018 ME 108; 190 A.3d 1009 where there had been a serious accident.

The seminal case defining the standard for probable cause for drivers over the age of 21with non-commercial licenses and non-conditional licenses is *State v. Webster.* The holding of *Webster* is too broad and takes the focus way from the physiological state of impairment:

> Shortly after 1 a.m. on the morning of September 7, 1996, an Augusta police officer observed Webster execute an improper u-turn by driving in an improper direction around a large traffic island. The officer testified and the District Court found that after stopping Webster, the officer smelled a strong odor of alcohol coming from Webster. When asked if he had had anything to drink, Webster responded that he had consumed one drink four hours earlier, at approximately 9 p.m.

*State v. Webster*, 2000 ME 115 ⁋ 2; 754 A.2d 976, 978. In addition to upholding the probable cause determination with facts only remotely connected to the physiological state of intoxication, *Webster* further points out probable cause can be independent of any actually impaired driving citing *State v. Eastman*, 1997 ME 39, ¶ 9, 691 A.2d 179, 182 and *State v. Wood*, 662 A.2d 919, 920–921 (Me.1995) as support. This broad interpretation of the probable cause standard in *Webster* appears analogous to the interpretation of mere consumption rejected in *Turner*. Mr. Sejdic asks that this Court redirect the interpretation to the physiological state

of impairment.

The overly broad interpretation is further compounded by the untethering of probable cause from field sobriety tests. *Webster* further diminishes the quantum of evidence by reducing the role of field sobriety tests:

> Considering the probable cause threshold for administering a blood alcohol test, this combination of evidence was more than sufficient to establish probable cause. With this evidence, probable cause could be found without regard to Webster's performance on the field sobriety tests. While performance on field sobriety tests is relevant to determinations of both probable cause and ultimate guilt or innocence, such performance on the field sobriety tests does not control either issue. There is sufficient evidence to support the court's probable cause finding external to the field sobriety tests. Accordingly, the court committed no error in denying Webster's motion to suppress.

*Webster*, at ¶ 8. While the facts of Mr. Sejdic's case have some similarities in that some clues from field sobriety test were present and there was the smell of intoxicating beverages coming from Mr. Sejdic, the remaining factors used to justify probable cause strayed from evidence of the physiological state of impairment. The 45 in a 35 violation is not really evidence of erratic driving and the 25 foot "suspicious" stopping distance is nothing like going around a traffic island the wrong way. Moreover, Mr. Sejdic's admission to consuming two beers, the last of which was about 45 minutes prior to the stop, is not facially incredible. The Hearing Officer too readily analogized Officer Cloutier's description of the

evidence of impairment to the less demanding probable cause determinations required for commercial license holders or conditional license holders.

### III. The probable cause standard applied to Mr. Sejdic was too broad with a reduced burden akin to commercial licenses, conditional license, or license holders who are not yet 21 years of age.

Since *Webster*, the Court has endorsed a probable cause standard in another context that only requires an admission to drinking and the odor of alcohol. This even lower standard applies to commercial drivers:

> Here, the police officer, after stopping a commercial vehicle carrying propane tanks, smelled an odor of alcohol on Turner's breath, and heard Turner admit that he had consumed alcohol ninety minutes before the stop. Field sobriety tests were not necessary to support probable cause because those exercises test for impairment, and a commercial driver may be in violation of the law without being impaired. Combining the odor of alcohol with Turner's admission that he had consumed alcohol ninety minutes prior to operating a commercial vehicle loaded with two thousand pounds of propane gas tanks, an ordinarily prudent and cautious officer could have believed that Turner had misstated his alcohol consumption and that, if tested, his blood-alcohol level would equal or exceed 0.04%.

*Turner*, at ¶ 13. *Turner* has resulted in a reduction in the level of probable cause even for non-commercial, non-conditional drivers over 21 years of age even though the opinion itself limits this reduced probable cause standard to commercial drivers. In Mr. Sejdic's case, the Hearing Officer's conclusions were based on observations like speeding, the way the vehicle pulled over, and the admission of

alcohol use, and the smell of alcohol instead of focusing on the lack of evidence of slurred speech, red or glassy eyes, and other indicators of physiological impairment. Conspicuously absent from Officer Cloutier's description of the physiological state of impairment is red or glassy eyes, and slurred speech. There was also no evidence of impaired movement outside the context of the field sobriety tests themselves. The Hearing Officer's failure to account for Mr. Sejdic injuries only compounded the problem of using the wrong standard.

In Mr. Sejdic case, the fact pattern found by the Hearing Officer mirrors the fact pattern for a finding of probable to require a blood alcohol test for a driver with a conditional license. Conditional license holders have less stringent probable case threshold than non-commercial and non-conditional license holders over 21 years of age:

> At about 1:00 a.m. on November 28, 1991, an officer of the Bath Police Department observed a pickup truck driven by Payson make an erratic U-turn and spin its wheels as it entered an on-ramp. The officer followed the truck, which was traveling at 45 miles per hour in a 35-mile-per-hour zone. When the officer stopped the truck, he observed that Payson had glassy eyes and gave off "a faint odor of intoxicating liquor." When asked, Payson admitted that he had been drinking. Payson got out of the truck without difficulty and successfully performed both the alphabet and heel-to-toe field sobriety tests.

*Payson v. Secretary of State*, 634 A.2d 1278, 1279 (Me. 1993). In Mr. Sejdic's case, the hearing officer analogizes the U-turn and spinning of tires with the failure

to stop as expected. The speeding factor is identical, as is the smell of intoxicating beverages from Mr. Sejdic. *Payson* is distinguishable because the field sobriety test performed did not reveal any clues but did included the presence of glassy eyes. There was no finding of any observation of glassy eyes, red eyes, or slurred speech in Mr. Sejdic case.

The Hearing Officer's conclusions are simply too similar to the probable cause standard for restricted licenses to meet the more stringent standard of non-commercial driver licenses for people over the age of 21. Admissions to drinking alcohol and the smell of alcohol are enough only in probable cause determinations for restricted license holders: "When, as here, the examiner found that the officer knew that Payson had been drinking and that Payson showed the effects of the use of alcohol, that evidence alone is sufficient to support a finding of probable cause…" *Payson*, at 1279. The Law Court's analysis also focused on the physiological state of impairment but is less stringent because the physiological state of impairment is less likely to be apparent when the standard is mere consumption. As the Law Court held, "[t]he examiner based that finding on the odor of alcohol coming from Payson, his glassy eyes, and the admission that he had been drinking." *Id*. Mr. Sejdic's suspension should be reversed because there is no evidence suggesting the physiological state of impairment beyond the

admission to drinking and the smell of intoxicating beverages coming from Mr. Sejdic.

## CONCLUSION

For the reasons stated above, Alija Sejdic requests this Court overturn the finding of probable cause and remand the case for further proceedings that are consistent with this Court's holding.

Dated at Portland, Maine this 15th day of October, 2025.

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