STATE OF MAINE
CUMBERLAND, ss.

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
DOCKET NO. KEN-25-279

ALIJA SEJDIC,
Appellant

v.

SECRETARY OF STATE,
Appellee

ON APPEAL FROM THE SUPERIOR COURT

BRIEF OF APPELLEE

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STATEMENT OF THE ISSUES

I. Whether the Hearing Examiner's determination that probable cause existed to believe that Sejdic operated a motor vehicle while under the influence of intoxicants is supported by substantial evidence in the record.

II. Whether this Court should review the Hearing Examiner's probable cause determination de novo.

SUMMARY OF THE ARGUMENT

1. The Hearing Examiner's determination that probable cause existed to believe that Alija Sejdic (Sejdic) operated a motor vehicle while under the influence of intoxicants is supported by substantial evidence in the record. The evidence demonstrated that Sejdic smelled strongly of alcohol, admitted to consuming alcohol, gave several non-responsive answers, and exhibited multiple signs indicating impairment during the field sobriety testing. The totality of this evidence substantially supports the Hearing Examiner's probable cause determination.

2. This Court should decline Sejdic's invitation to upend its precedent and expand its scope of review of administrative findings resulting in driver's license suspensions. The administrative suspension of a driver's license impugns no constitutional rights. The Law Court routinely gives deference to agency decisions involving mixed questions of fact and law, and has already rejected the assertion that de novo review is proper simply because an issue

involves an agency's application of facts to the law. Under the circumstances of this case, de novo review would require this Court to weigh the evidence and reach its own independent conclusion, with no deference to the initial factfinder. This is both contrary to precedent and exceeds this Court's statutory authority. However, regardless of what standard this Court applies, the evidence clearly demonstrates that probable cause existed to believe Sejdic was operating his vehicle while under the influence of intoxicants.

STATEMENT OF THE CASE

On June 16, 2024, at approximately 2:12 a.m., Falmouth Police Officer Dominic Cloutier recorded on radar a vehicle traveling ten miles per hour over the posted speed limit on Route 100 in Falmouth. (Record, Tab 4, pp. 4-5, 15-17; Tab 5, Ex.1, p. 4 [R. Tab _, _]). After Ofc. Cloutier activated his blue lights to conduct a stop for the traffic infraction, the vehicle "took an abnormally long [time] to pull over" and, after reaching the side of the road, traveled an additional 25 feet before coming to a complete stop. (R. Tab 4, pp. 5-6, 17; Tab 5, Ex. 1, p. 4). Ofc. Cloutier found this odd; in his experience, as most operators stop their vehicles once reaching the side of the road rather than continuing to travel in the breakdown lane. (R. Tab 4, pp. 6, 18-21; Tab 5, Ex. 1, p. 4).

Ofc. Cloutier identified the operator as Sejdic by his Maine driver's license. (R. Tab 4, p. 7; Tab 5, Ex. 1, p. 4). While speaking with Sejdic, Ofc. Cloutier could

"smell a strong odor of intoxicants coming from inside the vehicle." (Id.). During this time, Sejdic admitted that he knew that he was speeding and informed Ofc. Cloutier that he was coming from Old Orchard Beach where he had been since 7:00 p.m. (Id.). Sejdic also admitted that he had only consumed two beers while in Old Orchard Beach and had consumed the second beer between roughly 1:00-1:30 a.m. (Id.). However, when asked again what time he had consumed the last beer, Sejdic responded that he did not remember and then stated he had consumed two beers. (R. Tab 5, Ex. 1, p. 5).

Sejdic complied with Ofc. Cloutier's request to exit the vehicle to perform field sobriety tests. (R. Tab 4, p. 8; Tab 5, Ex. 1, p. 5). Once outside the vehicle, Ofc. Cloutier smelled the strong odor of intoxicants emanating directly from Sejdic. (Id.). When asked about any medications or physical disabilities, Sejdic stated he had sustained a concussion a month ago, had two prior surgeries on his left ankle, and currently had a bruised left knee cap. (R. Tab 4, pp. 8, 27; Tab 5, Ex. 1, p. 5). Sejdic also stated he could walk, but that his balance was not great. Yet, Ofc. Cloutier did not note any balance problems when Sejdic exited his vehicle. (Id.). Sejdic also denied having any issues with his eyes or eyesight. (Id.).

Ofc. Cloutier administered the horizontal gaze nystagmus test (HGN) and observed four of six clues indicating impairment, including the lack of smooth pursuit and distinct and sustained nystagmus at maximum deviation in both

eyes. (R. Tab 4, pp. 8, 33; Tab 5, Ex. 1, p. 6). During the walk-and-turn test, Sejdic "lost his balance and had to be reminded six times to return to the instruction position" because he kept stepping out of position when watching Ofc. Cloutier's demonstration. (R. Tab 4, pp. 8, 31-33; Tab 5, Ex. 1, p. 6). Although Sejdic declined Ofc. Cloutier's offer to redemonstrate the test when Sejdic said he was confused, Ofc. Cloutier opted to redemonstrate anyway "to give [Sejdic] the best possible chance" to properly complete the test. (R. Tab 5, Ex. 1, p. 6). During Sejdic's performance, Ofc. Cloutier observed four of eight clues indicating impairment, including starting too soon, failing to maintain balance, an improper turn, and failing to complete the test as instructed before stopping. (R. Tab 4, pp. 8, 31-33; Tab 5, Ex. 1, pp. 6-7).

Finally, Ofc. Cloutier administered the one-leg stand and, based on Sejdic's information about his left leg, gave him the choice of which leg to use to perform the test. (R. Tab 4, pp. 8, 32; Tab 5, Ex. 1, p. 7). During Ofc. Cloutier's demonstration, Sejdic followed along by mimicking what Ofc. Cloutier was doing rather than remaining in the instruction position. (R. Tab 4, pp. 8, 33; Tab 5, Ex. 1, p. 7). When Sejdic performed the test himself (standing on his right leg), Ofc. Cloutier observed three of four clues indicating impairment, including Sejdic putting his foot down, swaying, and using his arms for balance. (Id.). After completing this test, Ofc. Cloutier asked Sejdic to rate his sobriety on a scale

from one to ten. (R. Tab 4, p. 9; Tab 5, Ex. 1, p. 7). Sejdic first responded, "two beers," but then rated his sobriety at 1.5. (Id.).

Sejdic was placed under arrest for operating under the influence and transported to the Cumberland Police Department for an Intoxilyzer test. (R. Tab 4, pp. 9-10; Tab 5, Ex. 1, p. 7). Ultimately, Sejdic refused to submit to the breath test and signed the implied consent form acknowledging that he had been advised on the consequences of his refusal. (R. Tab 4, pp. 10-11; Tab 5, Ex. 1, pp. 1, 7).

On September 5, 2024, the Secretary of State sent a notice to Sejdic that his driver's license was subject to a 275-day administrative suspension based on Ofc. Cloutier's report and his refusal to submit to a chemical test. (R. Tab 6, Ex. 2, p. 1). Sejdic timely requested an administrative hearing, which was held on October 22, 2024. (R. Tab 4, pp. 1-50; Tab 6, Ex. 2, p. 2). At the hearing, Sejdic only challenged whether probable cause existed to believe he operated his vehicle while under the influence of intoxicants. (R. Tab 4, pp. 1-50).

On October 30, 2024, the Hearing Examiner issued a written decision upholding the administrative suspension. (Appendix, 15-18 [A. _]). Applying the statutory standard of proof, the Hearing Examiner found by a preponderance of the evidence that probable cause existed to believe that Sejdic had operated a motor vehicle while under the influence of intoxicants. (A. 16-17); 29-A M.R.S.

§ 2484(3) (2023). This finding was based on the evidence that at 2:21 a.m. Sejdic was speeding after consuming alcohol; his failure to immediately stop; the smell of alcohol coming from both his vehicle and directly from himself; Sejdic rating his sobriety as a 1.5, an admission "that he was not sober;" and Sejdic exhibiting seven out of a possible ten clues during the HGN and one-leg stand tests.[1] The Hearing Examiner thus denied Sejdic's request to rescind his license suspension. (A. 15-17).[2]

Sejdic filed an appeal pursuant to 5 M.R.S. §§ 11001 *et seq.* and Maine Rule of Civil Procedure 80C in the Superior Court at Cumberland County. (A. 69-71). After briefing and oral argument, the Superior Court (*Cashman, J.*) affirmed the Hearing Examiner's decision on May 9, 2024. (A. 6-14).

This appeal followed.

[1] Based on Sejdic's claims regarding his left ankle, the Hearing Examiner did not consider the results of the walk-and-turn test as part of the probable cause determination. (A. 17).

[2] The Hearing Examiner also found that Sejdic was informed of the consequences of failing to submit to a chemical test and in fact failed to submit to said test. (A. 17-18). Sejdic has not challenged these findings.

ARGUMENT

I. The Hearing Examiner's determination that probable cause existed to believe that Sejdic operated a motor vehicle while under the influence of intoxicants is supported by substantial evidence in the record.

Sejdic contends that the Hearing Examiner's conclusion that probable cause existed to believe that he operated a motor vehicle while under the influence of intoxicants is not supported by substantial evidence in the record. (Blue Brief, 17-19 [Bl. Br. __]). Since the Superior Court (*Cashman, J.*) was acting as an intermediate appellate court, this Court will review the record of the administrative proceeding "directly for abuse of discretion, error of law, or findings not supported by substantial evidence in the record." *Turner v. Sec'y of State,* 2011 ME 22, ¶ 8, 12 A.3d 1188 (quoting *Payson v. Sec'y of State,* 634 A.2d 1278, 1279 (Me. 1993).

Although the administrative record will be reviewed directly, "[r]especting [the] constitutional separation of powers, Me. Const. art. III, and the statutes governing administrative appeals, [the Law Court's] review of state agency decision-making is deferential and limited." *Friends of Lincoln Lakes v. Bd. of Environmental Protection,* 2010 ME 18, ¶ 12, 989 A.2d 1128. Accordingly, "[t]he 'substantial evidence' standard does not involve any weighing of the merits of evidence." *Id.* at ¶ 14. Instead, if the entire record demonstrates that

"the agency could fairly and reasonably find the facts as it did," this Court "must affirm." *Id.* at ¶ 13 (citation omitted). "In this review, [Sejdic], the party seeking to vacate the agency decision, bears the burden of persuasion on appeal." *Id.* at ¶ 15; *Turner,* 2011 ME at ¶ 8, 12 A.3d 1188.

In an administrative hearing based on a refusal to submit to a chemical test, a Hearing Examiner must determine three issues; however, Sejdic only challenges the first issue: "whether [t]here was probable cause to believe [he] operated a motor vehicle while under the influence of intoxicants." 29-A M.R.S. § 2521(8)(A) (2023). "The probable cause standard for requiring a person to take a blood alcohol test has a very low threshold." *State v. Webster,* 2000 ME 115, ¶ 7, 754 A.2d 976. "The amount of evidence necessary to establish probable cause 'is less than the level of a fair preponderance of the evidence.' " *State v. Bolduc,* 1998 ME 255, ¶ 7, 722 A.2d 44 (quoting *State v. Cilley,* 1998 ME 34, ¶ 11, 707 A.2d 79). Indeed, all that is required to meet the probable cause standard is a reasonable belief "that the person's senses are affected to the slightest degree, or to any extent, by the alcohol that person has had to drink." *Webster,* 2000 ME at ¶ 7; *Bolduc,* 1998 ME at ¶ 8; *Cilley,* 1998 ME at ¶ 11; *State v. Bradley,* 658 A.2d 236, 237 (Me. 1995); *State v. Worster,* 611 A.2d 979, 981 (Me. 1992).

Whether a person's senses are impaired "to the slightest degree, or to any extent," *Webster,* 2000 ME at ¶ 7, is assessed upon the totality of the circumstances including "[a] driver's performance on field sobriety tests." *State v. Warren,* 2008 ME 154, ¶ 10, 957 A.2d 63; *see State v. Simons,* 2017 ME 80, ¶ 17, 169 A.3d 399 (the factfinder "may also consider a defendant's performance on field sobriety tests as evidence of intoxication."). "The HGN test is an integral part of a police officer's administration of the field sobriety test, and [the Law Court has taken] judicial notice of its reliability in making determinations of probable cause for arrest." *State v. Taylor,* 1997 ME 81, ¶ 10, 694 A.2d 907. Importantly, "because the [HGN] test examines involuntary movements and not speech or physical impairment, the United States Department of Transportation considers the test 'the single most accurate field test.' " *Id.* at ¶ 11 (citation omitted). Thus, "the results of an HGN test are … evidence supporting probable cause to arrest [and] *circumstantial* evidence of intoxication." *Id.* at ¶ 13 (emphasis original).

Here, Ofc. Cloutier's report (R. Tab 5, Ex. 1) and testimony (R. Tab 4, pp. 4-35) established that:

- Sejdic was speeding at 2:12 a.m. and took an unusually long time to stop his vehicle;
- The strong odor of alcohol was coming from Sejdic's car and directly from his person;

- He admitted to consuming two beers, the last of which allegedly between 45 and 60 minutes prior to the stop;

- He then stated he could not remember when he consumed the last beer and repeated that he had consumed two beers;

- He exhibited seven out of ten clues indicating impairment during the field sobriety testing, most significantly, four out of a possible six clues on the HGN test; and,

- When asked to rate his sobriety, Sejdic responded "two beers," but then rated himself a 1.5 on a one to ten sobriety scale.

The totality of this evidence is sufficient to meet the low threshold "to believe that [Sejdic's] senses [were] affected to the slightest degree, or to any extent, by the alcohol that [he admitted he] had to drink." *Webster,* 2000 ME at ¶ 7.

Sejdic's arguments to the contrary are meritless. (Bl. Br. 14-20). First, the Hearing Examiner wrote in his decision that he had "reviewed all the evidence in the record and the arguments presented." (R. Tab 3, p. 1). Beyond not agreeing with his position, Sejdic points to nothing in the record supporting his assertion that the Hearing Examiner failed to consider possible evidence of non-impairment or his injuries. (Bl. Br. 17-19). In fact, the Hearing Examiner *did* consider Sejdic's injuries by expressly declining to consider his poor performance on the walk-and-turn test as part of the probable cause determination. (A. 17).

Second, the Law Court has repeatedly rejected the contention that Sejdic makes here, that probable cause for operating under the influence requires erratic operation. (Bl. Br. 15-16, 18-19); *State v. Griffin,* 459 A.2d 1086, 1091 (Me. 1983) (operating under the influence prohibition applies to all drivers, not just those "whose intoxicated condition results in an erratic operation"); *State v. Wood,* 662 A.2d 919, 920-921 (Me. 1995) (objectively reasonable basis to administer field sobriety tests can exist even if stop not initially based on suspicion the driver is operating under the influence); *State v. Eastman,* 1997 ME 39, ¶¶ 2-3, 7-9, 691 A.2d 179 (same).

Third, Sejdic's assertion that probable cause cannot exist unless the driver exhibits slurred speech and bloodshot, glossy eyes is inherently inconsistent with the totality of the circumstances analysis. Under Sejdic's theory, because he did not exhibit slurred speech or blood shot eyes, Ofc. Cloutier, the Hearing Examiner, and this Court must ignore, among other factors: the strong smell of alcohol coming from his person, his admission to drinking, his non-responsive answers, his self-rating on a sobriety scale, and the fact that he exhibited over 60% of the clues "on the single most accurate field test" *Taylor,* 1997 ME at ¶ 11, which showed that his "senses [were] impaired however slightly or to any extent by the alcohol that [he admitted he] had to drink" *Webster,* 2000 ME at ¶ 7 (quotation marks and citation omitted).

In sum, accepting Sejdic's argument would require this Court to ignore facts established by the record and eviscerate the concepts of probable cause and the totality of the circumstances. Rather than being a flexible concept with a low threshold, probable cause to a require a blood-alcohol test would be dependent on three specific factors instead of the degree of impairment as shown by all the circumstances. This result would undermine the public safety purpose of administrative license suspensions and the State's "undeniably strong interest in protecting the public from the threat of drunk drivers." *State v. White,* 2013 ME 66, ¶ 14, 70 A.3d 1226 (quoting *State v. Kent,* 2011 ME 42, ¶ 11, 15 A.3d 1286); *see also Powell v. Sec'y of State,* 614 A.2d 1303, 1307 (Me. 1992) (recognizing the "great danger posed by persons operating motor vehicle while intoxicated, [and that] it is very much in the public interest that such persons be removed from our highways.").

Accordingly, because substantial evidence in the record supports the Hearing Examiner's probable cause determination, this Court must affirm the administrative decision upholding Sejdic's driver's license suspension.

II. The Court should decline Sejdic's invitation to review the Hearing Examiner's decision de novo.

Finally, Sejdic contends that this Court should upend its precedent and review the administrative findings resulting in driver's license suspensions de novo. (Bl. Br. 9-11). However, this argument was not raised at the administrative level or to the Superior Court and is therefore "unpreserved for appellate review." *Forest Ecology Network v. Land use Regulation Com'n,* 2012 ME 36, ¶ 24, 39 A.3d 74 (quotation marks and citation omitted); (R. Tab 4, pp. 40-48). Even if this argument is deemed preserved, it is meritless.

Regardless of whether "probable cause is a constitutional standard," *Bufkin v. Collins,* 604 U.S. 369, 384 (2025), no constitutional issue is before this Court. "There exists no absolute right to obtain and hold a driver's license." *State v. Savard,* 659 A.2d 1265, 1267 (Me. 1995). A "driver's license is a privilege which … for valid reasons involving public safety may be granted or withheld." *Richard v. Sec'y of State,* 2018 ME 122, ¶ 13, 192 A.3d 611 (quoting *Savard,* 659 A.2d at 1267-1268). Moreover, "a proceeding to [suspend] a driver's license is a reasonable regulatory measure to protect public safety." *Id.* at ¶ 18 (quoting *State v. Anton,* 463 A.2d 703, 707 (Me. 1983)); *DiPietro v. Sec'y of State,* 2002 ME 114, ¶ 11, 802 A.2d 399; *Savard,* 659 A.2d at 1268; *Powell,* 614 A.2d at 1307. Thus, the issue before this Court – the administrative suspension of Sejdic's

privilege to drive – is entirely "a creature of statute [that] does not dwell in the constitutional realm." *Bufkin,* 604 U.S. at 385 (2025) (analyzing the appropriate standard of review for an administrative decision involving the denial of certain statutorily created veteran disability benefits).

To the extent Sejdic's argument implies a due process issue with respect to the suspension of his license, he was afforded that right. The fundamental elements of due process are notice and an opportunity to be heard. *Logan v. Zimmerman Brush Co.,* 455 U.S. 422, 428 (1982). An opportunity to be heard merely requires a meaningful chance to assert a claim or objection, and to have the merits of the claim or objection "fairly judged." *Id.* at 433. The record demonstrates that Sejdic had that opportunity at the administrative hearing, and he has not directly contended otherwise.

Because no constitutional right, let alone the violation of a constitutional right, is at issue, this Court lacks the authority to expand its scope of review. *New England Tel. & Tel. Co. v. Public Utilities Com'n,* 329 A.2d 792, 799-800 (Me. 1974) (a court's authority to expand its scope of review of an administrative decision is limited to those which contain a "substantive error … involv[ing] a violation of [a] constitutional right.").

Sejdic also contends that he is entitled to de novo review because probable cause "is a legal determination of a mixed question of fact and law,"

and his challenge is to how the Hearing Examiner "applied [the facts] to the standard of probable cause." (Bl. Br. 9, 11). However, the Law Court has already rejected the argument that an administrative agency's "application of law to the facts" requires de novo review. *Stein v. Maine Criminal Justice Academy,* 2014 ME 82, ¶¶ 14-21, 95 A.3d 612. Indeed, even when the challenge to an agency decision is entirely "a question of law," the agency's "fact-findings as to what meets [the applicable legal] standard [are] accorded substantial deference." *Rudolph v. Golick,* 2010 ME 106, ¶ 8, 8 A.3d 684.[3]

Even the *Bufkin* Court, on which Sejdic relies, agrees. A Hearing Examiner's decision regarding a driver's license suspension does not "involve[] developing legal principles for use in [any type of] future case." *Bufkin,* 604 U.S. at 382; *see also Powell,* 614 A.2d at 1306 n.3 (recognizing the separation of, and lack of *res judicata* and issue preclusion effect between administrative license suspensions and criminal proceedings); *Richard,* 2018 ME at ¶ 16 (recognizing circumstances can result in an administrative driver's license suspension "and yet not result in any criminal prosecution."). Instead, the Hearing Examiner, as "the initial decisionmaker is marshaling and weighing evidence and making credibility judgments." *Bufkin,* 604 U.S. at 385 (alterations, quotation marks,

[3] *See also State v. Samson,* 2007 ME 33, ¶ 11, 916 A.2d 977 (on review "great deference" is afforded "the finding of probable cause made by the judicial officer who issued the warrant.").

and citation omitted). This type of "work is fact intensive, and [the Hearing Examiner's] determination should be reviewed with deference." *Id.*

The very essence of de novo review is affording "no deference" to the initial decisionmaker. *Stiff v. Town of Belgrade,* 2024 ME 68, ¶ 12, 322 A.3d 1167. For a reviewing court to properly "exercise[e] [its] independent judgment on facts as well as law," *New England Tel. & Tel. Com'n,* 329 A.2d at 799, a zero-deference standard necessarily "require[s] a full hearing on both the law and facts – a procedure that is not recognized by Rule 80C." *Zablotny v. State Bd. of Nursing,* 2015 ME 56, ¶ 20 n.6, 89 A.3d 143. A standard of review designed to "redecide the weight and significance given the evidence by the administrative agency [will] lead to ad hoc judicial decision-making … and [will] exceed [the court's] statutory authority." *Friends of Lincoln Lakes,* 2010 ME at ¶14; 5 M.R.S. § 11007(3). The result is the absorption of "the [Hearing Examiner's] administrative functions to such an extent that [administrative license suspension hearings] become mere fact finding bodies deprived of the advantages of prompt and definite action." *Gray v. Powell,* 314 U.S. 402, 412 (1941). Accordingly, this Court should decline Sejdic's invitation to apply a de novo standard of review to administrative license suspension decisions.[4]

[4] The Law Court has also declined to engage in a reassessment of the weight, significance, and inferences from the evidence in the criminal and civil contexts. *See State v. Connor,* 2009 ME 91, ¶ 9, 977 A.2d 1003 (the Law Court "will not substitute [its] judgment as to the weight or credibility of the

Ultimately, regardless of what standard this Court utilizes, Sejdic's conduct meets the "very low threshold" for probable cause. *Webster,* 2000 ME at ¶ 7. He was speeding late at night, took an unusually long time to stop, smelled strongly of alcohol, admitted to drinking, gave non-responsive answers to simple questions, and performed poorly on the field sobriety tests, most importantly, the HGN. The totality of these circumstances more than supports the Hearing Examiner's determination that probable cause existed to believe that Sejdic operated his vehicle while under the influence of intoxicants. The record does not compel a contrary conclusion. *See Kelley v. Me. Pub. Emps. Ret. Sys.,* 2009 ME 27, ¶ 16, 967 A.2d 676 (Court shall reverse a finding of failure to meet a burden of proof "only if the record compels a contrary conclusion to the exclusion of any other inference.").

evidence of that of the fact-finder if there is evidence in the record to rationally support the trial court's result."); *Jenkins, Inc. v. Walsh Bros., Inc.,* 2002 ME 168, ¶ 7, 810 A.2d 929 ("The meaning and weight to be given the [evidence] is for the fact-finder to determine and must be upheld unless clearly erroneous.").

CONCLUSION

This Court should affirm the Hearing Examiner's decision upholding the Secretary of State's 275-day administrative suspension of Petitioner Sejdic's driver's license, pursuant to 29-A M.R.S. § 2521 for refusing to submit to a test to determine his blood-alcohol concentration.

Respectfully submitted

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Dated: December 3, 2025

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CERTIFICATE OF SERVICE

I, Katie Sibley, Assistant Attorney General, certify that I have emailed a copy of the foregoing "BRIEF OF APPELLEE" to Sejdic's attorney of record, Robert C. Andrews, Esq.

Dated: December 3, 2025

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