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MARIO MATA *v.* COMMISSIONER OF MOTOR VEHICLES
(AC 45598)

Bright, C. J., and Prescott and Elgo, Js.

Syllabus

The plaintiff, who had been arrested for, inter alia, operating a motor vehicle while under the influence of intoxicating liquor, appealed to the trial court from the decision of the defendant, the Commissioner of Motor Vehicles, suspending the plaintiff's motor vehicle operator's license pursuant to statute (§ 14-227b). The arresting officer, L, was dispatched to a motor vehicle accident in front of the plaintiff's home. When L arrived on the scene, the plaintiff was standing next to a vehicle that was lodged on top of the stone retaining wall that bordered the plaintiff's property. Another officer, T, who had arrived shortly before L, identified the plaintiff to L as the operator of the motor vehicle and told L that he had assisted the plaintiff out of the vehicle. The plaintiff had difficulty standing, his eyes were bloodshot, and he was slurring his words. L administered three field sobriety tests to the plaintiff, who failed all three tests. Following the plaintiff's arrest, L attempted to administer a Breathalyzer test to the plaintiff three times, but the plaintiff repeatedly failed to follow L's instructions and never provided an adequate breath sample. On the basis of the plaintiff's behavior, L determined that he was attempting to manipulate the testing procedures and deemed the plaintiff's conduct a refusal to perform the test. After an administrative hearing before the defendant's hearing officer, at which L was the only testifying witness, the hearing officer found that there was substantial evidence to determine that L had probable cause to arrest the plaintiff, the plaintiff refused to submit to a Breathalyzer test, and the plaintiff was operating the motor vehicle. On the basis of these findings, the defendant ordered that the plaintiff's license be suspended for a period of forty-five days and that an ignition interlock device be installed in the plaintiff's vehicle for two years. On the plaintiff's appeal to the trial court from the defendant's decision, he claimed that there was not substantial evidence in the record to support the hearing officer's determinations pursuant to § 14-227b that the plaintiff was the operator of the vehicle and that he refused to take the Breathalyzer test. The trial court rejected the plaintiff's claims and dismissed the appeal. On the plaintiff's appeal to this court, *held*:

1. The plaintiff could not prevail on his claim that the trial court improperly concluded that there was substantial evidence to support the hearing officer's finding that the plaintiff operated his motor vehicle pursuant to § 14-227b: L's testimony and written report were consistent that T had identified the plaintiff as the operator of the motor vehicle and assisted the plaintiff out of the vehicle, and it was reasonable to infer that T identified the plaintiff as the operator of the vehicle because the plaintiff was in the vehicle when T arrived; moreover, the plaintiff was the registered owner of the vehicle, and a photograph admitted into evidence taken at the scene of the accident showed the vehicle with its front driver's side door open, its headlights on, and its dashboard and center console screen lit, from which it was reasonable to infer that the vehicle was being operated by someone at the time it hit the retaining wall, and, because the plaintiff was the only person other than responding officers present at the scene when T and L arrived, these facts, taken together, reasonably supported an inference that the identity of the operator was the plaintiff; furthermore, the plaintiff made a statement to L at police headquarters that indicated that he knew he would be in trouble if he took the Breathalyzer test, from which it was reasonable to infer that he had been operating his vehicle while intoxicated because a positive test for an elevated blood alcohol content would not have been inculpatory unless he also had operated his motor vehicle while he was intoxicated.
2. The plaintiff could not prevail on his claim that the trial court improperly concluded that there was substantial evidence in the record to support

the hearing officer's determination that he refused to submit to a Breathalyzer test: although the plaintiff verbally indicated a willingness to take the Breathalyzer test, he also made a statement indicating that he would be in trouble if he took the test, which reasonably supported an inference that the plaintiff had a motive and intent to prevent an accurate reading of his blood alcohol content by performing the test improperly, L testified regarding his observations of the plaintiff's behavior and his determination based on those observations that the plaintiff was attempting to manipulate the testing procedures by intentionally inhaling rather than exhaling when placing his mouth on the mouthpiece, and the hearing officer could reasonably infer from the plaintiff's noncompliance with L's instructions, especially in light of his admission that he would be in trouble if he performed the test, that he had refused to take the Breathalyzer test.

Argued May 16—officially released August 8, 2023

Procedural History

Appeal from the decision of the defendant suspending the plaintiff's motor vehicle operator's license, brought to the Superior Court in the judicial district of New Britain and tried to the court, *Cordani*, *J.*; judgment dismissing the appeal, from which the plaintiff appealed to this court. *Affirmed.*

Devin W. Janosov, with whom was *Donald A. Papcsy*, for the appellant (plaintiff).

John M. Russo, *Jr.*, assistant attorney general, with whom, on the brief, were *William Tong*, attorney general, *Rosemarie Weber*, deputy associate attorney general, and *Anthony C. Famiglietti*, assistant attorney general, for the appellee (defendant).

Opinion

PRESCOTT, J. The plaintiff, Mario Mata, appeals from the judgment of the trial court rendered in favor of the defendant, the Commissioner of Motor Vehicles (commissioner), dismissing his administrative appeal from the decision of the commissioner to suspend his motor vehicle operator's license for forty-five days pursuant to General Statutes § 14-227b.[1] On appeal to this court, the plaintiff claims that the trial court improperly concluded that the administrative record contained substantial evidence to support the hearing officer's findings that he (1) operated the motor vehicle and (2) knowingly refused to submit to a Breathalyzer test. We affirm the judgment of the court.

The following facts and procedural history are relevant to the plaintiff's appeal. On June 25, 2021, at approximately 1:56 a.m., Officer Steven Luciano was dispatched to 24 Taylor Avenue in Norwalk, the residence of the plaintiff, for a motor vehicle accident.[2] Luciano arrived on the scene within a few minutes of being dispatched.[3] When Luciano arrived, the plaintiff stood next to a Jeep Wrangler that was lodged on top of the stone retaining wall that borders the plaintiff's property. The plaintiff was the registered owner of the Jeep. Officer Tejada, who had arrived at the scene shortly before Luciano, "identified" the plaintiff to Luciano as the operator of the Jeep and told him that he had assisted the plaintiff out of the Jeep. The plaintiff had difficulty standing, his eyes were bloodshot, and he was slurring his words. Before Luciano had the opportunity to ask the plaintiff any questions, the plaintiff stated that he was "borracho," which means "drunk" in Spanish.[4]

Luciano assessed the scene to determine how the accident occurred. Luciano concluded that the plaintiff had been operating the Jeep at a high rate of speed. When the plaintiff attempted to turn into his driveway, he lost control of the Jeep. The Jeep struck a vehicle that was legally parked along the side of the street in front of the plaintiff's residence, causing minor damage to the parked vehicle. The Jeep also hit the stone retaining wall located at the perimeter of the plaintiff's residence, at which point the Jeep became airborne from the impact and landed on the top of the retaining wall. Luciano observed grass and dirt on the sidewalk in front of the retaining wall, which indicated to Luciano that the plaintiff had attempted to drive the Jeep off of the retaining wall. The retaining wall sustained significant damage as a result of the accident.

After assessing the scene, Luciano asked the plaintiff if he would perform standardized field sobriety tests. The plaintiff agreed to do the tests, and Luciano administered three field sobriety tests. The plaintiff failed all three tests. As a result, Luciano arrested the plaintiff

for, inter alia, operating a motor vehicle under the influence of liquor in violation of General Statutes § 14-227a and transported him to police headquarters.[5]

At police headquarters, Luciano advised the plaintiff of his *Miranda* rights,[6] completed an A-44 form,[7] read him an implied consent advisory, and provided him with the opportunity to contact an attorney. Luciano then asked the plaintiff to take a Breathalyzer test. The plaintiff agreed to take the test but stated, in Spanish, that "I'm fucked . . . if I do the test, I know I'm fucked."

Luciano proceeded with the Breathalyzer test and instructed the plaintiff, in both English and Spanish, on how to take the test. Luciano instructed the plaintiff "to inhale prior to putting his mouth on the mouthpiece and then to continue to blow [into the mouthpiece] until he was advised to stop, which means until the machine indicates that enough breath was given in order to submit to a proper test." The plaintiff stated that he understood Luciano's instructions but inhaled after putting his mouth on the mouthpiece, resulting in an invalid test. Luciano testified that the plaintiff "would act like he was taking an inhale but really wouldn't do anything, and as soon as [Luciano] put the tube in [the plaintiff's mouth] he would inhale . . . ." Luciano reinstructed the plaintiff on how to properly take the test two additional times after the first failed attempt. Despite the repeated instructions, the plaintiff repeatedly failed to follow Luciano's directions and would initially inhale rather than exhaling into the mouthpiece. The plaintiff never provided an adequate breath sample. On the basis of the plaintiff's behavior, Luciano determined that he was attempting to manipulate the testing procedures by intentionally inhaling rather than exhaling when given the mouthpiece. Luciano deemed the plaintiff's conduct a refusal to perform the test.

On June 29, 2021, the commissioner sent a notice to the plaintiff to inform him of the suspension of his license pursuant to § 14-227b.[8] On September 14, 2021, an administrative hearing was held before a hearing officer, the commissioner's designee, pursuant to § 14-227b (g) to determine whether the plaintiff's license should be suspended. The administrative hearing concluded on October 5, 2021. During the hearing, the hearing officer admitted into evidence, without objection, the A-44 form.[9] Attached to the A-44 form were Luciano's incident report and narrative supplements. Luciano stated in the narrative supplement that, "[u]pon approaching the scene I made contact with the operator who was standing next to the vehicle and identified by Officer Tejada as the operator." Luciano was the only witness who testified at the hearing. Luciano testified that Tejada "identified" the plaintiff as the operator and that Tejada, at the very least, was present when the plaintiff got out of the Jeep.

Although the plaintiff did not testify, the plaintiff's

counsel introduced into evidence photographs of the scene of the accident and affidavits from Ena Julissa Lopez and Christian Toomey. Neither individual had witnessed the accident, but they averred that the accident occurred as a result of the Jeep being improperly parked at the top of the plaintiff's sloped driveway, rolling down the driveway, and crashing into the retaining wall.[10] The plaintiff's counsel argued that there was a lack of substantial evidence that the plaintiff operated the motor vehicle and refused to take a Breathalyzer test.

The hearing officer, acting on behalf of the commissioner, subsequently made the following determinations pursuant to § 14-227b (g): "(1) [Luciano] had probable cause to arrest the [plaintiff] for a violation [of § 14-227a]. . . . (2) The [plaintiff] was placed under arrest. . . . (3) The [plaintiff] refused to submit to such test or analysis. . . . (4) [The plaintiff] was operating the motor vehicle. . . ." The hearing officer also made the following subordinate factual findings: "Section F of [Luciano's] A-44 indicates that the breath test was chosen by [Luciano]. Section H indicates that the [plaintiff] refused the breath test through his conduct. The refusal was witnessed and subscribed to in Section H of the A-44 by [another Norwalk police officer]. [Luciano] credibly testified that when the [plaintiff] was asked to participate in breath testing, [he] state[d] in Spanish . . . 'I'm fucked if I do the test.' Then, despite being shown three different times as to how to perform the test, [he] inhaled first and then was unable to provide a sample. [Luciano] testified that he believed that the [plaintiff] was intentionally manipulating the test. The [plaintiff's] attorney's argument that the [plaintiff] was too drunk to perform the test is not persuasive. There is substantial evidence to infer [that] the [plaintiff] refused the breath test through his conduct. [Luciano] also credibly testified that when he arrived on the accident scene, [Tejada] told him that upon [Tejada's] arrival, he [had] assisted the [plaintiff] out of the vehicle and that the [plaintiff] was the owner of the vehicle. The [plaintiff's] attorney presented affidavits from two people who did not witness the accident. There is substantial evidence to find that the [plaintiff] was the operator of the vehicle." On the basis of these findings, the commissioner ordered that the plaintiff's license be suspended for a period of forty-five days and that an ignition interlock device be installed in the plaintiff's vehicle for two years.

Pursuant to General Statutes § 4-183,[11] the plaintiff appealed to the Superior Court from the decision of the commissioner. The plaintiff claimed that there was not substantial evidence in the record to support the hearing officer's determinations pursuant to § 14-227b that the plaintiff (1) was the operator of the vehicle and (2) refused to take a Breathalyzer test. The court rejected the plaintiff's claims and dismissed the appeal.

This appeal followed.

We begin by setting forth the relevant standard of review and legal principles. "[J]udicial review of the commissioner's action is governed by the Uniform Administrative Procedure Act [General Statutes §§ 4-166 through 4-189], and the scope of that review is very restricted. . . . [R]eview of an administrative agency decision requires a court to determine whether there is substantial evidence in the administrative record to support the agency's findings of basic fact and whether the conclusions drawn from those facts are reasonable. . . . Neither this court nor the trial court may retry the case or substitute its own judgment for that of the administrative agency on the weight of the evidence or questions of fact. . . . Our ultimate duty is to determine, in view of all of the evidence, whether the agency, in issuing its order, acted unreasonably, arbitrarily, illegally or in abuse of its discretion. . . .

"Section 14-227b, commonly referred to as the implied consent statute, governs license suspension hearings." (Citation omitted; internal quotation marks omitted.) *Moore* v. *Commissioner of Motor Vehicles*, 172 Conn. App. 380, 386, 160 A.3d 410 (2017). Section 14-227b (g) (2) provides that the hearing shall be limited to a determination of the following issues: "(A) Did the police officer have probable cause to arrest the person for operating a motor vehicle while under the influence of intoxicating liquor or any drug, or both; (B) was such person placed under arrest; (C) did such person (i) refuse to submit to such test . . . and (D) was such person operating the motor vehicle."

"In the context of a license suspension under the implied consent law, if the administrative determination of the four license suspension issues set forth in § 14-227b [g] is supported by substantial evidence in the record, that determination must be sustained. . . . An administrative finding is supported by substantial evidence if the record affords a substantial basis of fact from which the fact in issue can be reasonably inferred. . . . The substantial evidence rule imposes an important limitation on the power of the courts to overturn a decision of an administrative agency . . . and . . . provide[s] a more restrictive standard of review than standards embodying review of weight of the evidence or clearly erroneous action. . . . The United States Supreme Court, in defining substantial evidence . . . has said that it is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." (Citation omitted; internal quotation marks omitted.) *Moore* v. *Commissioner of Motor Vehicles*, supra, 172 Conn. App. 387.

The plaintiff first claims that the court improperly concluded that there was substantial evidence to support the hearing officer's finding that the plaintiff operated his motor vehicle pursuant to § 14-227b.[12] We are not persuaded.

The following legal principles are relevant to the plaintiff's claim. "The absence of [eye]witnesses to the plaintiff's operation of the vehicle is not dispositive on the issue of operation." *Murphy* v. *Commissioner of Motor Vehicles*, 254 Conn. 333, 347, 757 A.2d 561 (2000). Circumstantial evidence of operation may be sufficient to establish that there is substantial evidence to support a hearing officer's finding that the plaintiff operated the vehicle. See *Finley* v. *Commissioner of Motor Vehicles*, 113 Conn. App. 417, 427, 966 A.2d 773 (2009) ("operation may be proven by direct or circumstantial evidence").

Given the cumulative effect of the evidence in the record, there was substantial evidence to support the hearing officer's finding that the plaintiff operated the motor vehicle. Luciano testified at the hearing that Tejada "identified" the plaintiff as the operator. Luciano testified: "When I arrived on [the] scene, [the plaintiff] was standing on the sidewalk, and he was . . . identified by Officer Tejada, who was there prior to my arrival, as the operator of [the] motor vehicle." Luciano's testimony was consistent with the statement in his narrative report that Tejada identified the plaintiff as the operator.[13]

Luciano also testified that Tejada informed him that he had assisted the plaintiff out of the car after the accident. Although Luciano stated during cross-examination that he was "assuming" that Tejada had assisted the plaintiff in getting out of the vehicle, upon further cross-examination Luciano reiterated, in essence, that Tejada was present, at the very least, when the plaintiff got out of the vehicle. The hearing officer found Luciano's testimony that Tejada assisted the plaintiff out of the vehicle to be credible. See *Santiago* v. *Commissioner of Motor Vehicles*, 134 Conn. App. 668, 673, 39 A.3d 1224 (2012) ("[i]n administrative hearings . . . the hearing officer is the arbiter of the credibility of evidence"). Considering Luciano's testimony that Tejada identified the plaintiff as the operator and that Tejada was present at the scene of the accident when the plaintiff got out of the vehicle, it is reasonable to infer that Tejada identified the plaintiff as the operator of the vehicle because the plaintiff was in the Jeep when Tejada arrived.

The fact that the plaintiff operated the vehicle also can be reasonably inferred from Luciano's observations of the accident and the photograph of the Jeep at the scene of the accident. Luciano testified that he arrived at 24 Taylor Avenue shortly after being dispatched and that, at that time, the plaintiff was the only individual, apart from the responding officers, at the scene of the

accident. The plaintiff was the registered owner of the Jeep that was lodged on top of the retaining wall in front of the plaintiff's residence. On the basis of his observations at the scene of the accident, including the manner in which the Jeep struck a parked vehicle and landed on top of the retaining wall, Luciano testified that the accident occurred as a result of the plaintiff operating the Jeep at a high rate of speed and losing control of the Jeep when he attempted to turn into his driveway. As a result, it hit the retaining wall and became airborne. Luciano's incident report stated that the grass and dirt on the sidewalk indicated that the plaintiff had also operated the Jeep in an attempt "to get the vehicle off the wall."

Moreover, the plaintiff's counsel also had admitted into evidence a photograph of the Jeep at the scene of the accident. The photograph shows the Jeep with its front driver's side door open, its headlights on, and its dashboard and center console screen lit. From this evidence, it is reasonable to infer that the Jeep was being operated by someone at the time it hit the stone wall. Because the plaintiff was the only person present at the scene when Tejada and Luciano arrived, these facts, taken together, reasonably support an inference that the identity of the operator was indeed the plaintiff.[14]

The plaintiff also made a statement to Luciano at police headquarters that indicated his consciousness of guilt. When asked to take a Breathalyzer test, the plaintiff stated that he was "fucked" if he did the test. A reasonable inference to be drawn from his statement is that he had been operating his Jeep while intoxicated because a positive test for an elevated blood alcohol content would not have been inculpatory unless he also had operated his motor vehicle while he was intoxicated.

Despite the evidence in the record, the plaintiff makes three additional arguments as to why there was a lack of substantial evidence to support the hearing officer's finding that the plaintiff operated the vehicle. First, the plaintiff argues that there was no evidence in the record to establish a "temporal nexus" between operation and intoxication. This argument lacks merit for the following reasons.

A hearing pursuant to § 14-227b (g) is "limited to a determination of the following issues: (A) Did the police officer have probable cause to arrest the person for operating a motor vehicle while under the influence of intoxicating liquor or any drug, or both; (B) was such person placed under arrest; (C) did such person . . . refuse to submit to such test . . . and (D) was such person operating the motor vehicle." General Statutes § 14-227b (g) (2). It is important to note that the plaintiff has not challenged the hearing officer's determination, under subsection (g) (2) (A), that Luciano had probable

cause to arrest the plaintiff. Although a temporal nexus between operation and intoxication is certainly relevant to whether Luciano had probable cause to arrest the plaintiff for operating a motor vehicle *while* under the influence of intoxicating liquor, such a determination is not relevant to the discrete issue, under subsection (g) (2) (D), of whether the plaintiff operated the motor vehicle.

Moreover, even if a temporal nexus between operation and intoxication were necessary, under subsection (g) (2) (D) of § 14-227b, to support the hearing officer's finding that the plaintiff operated the vehicle, the evidence in the record clearly supports such a connection. Luciano was dispatched to a motor vehicle accident at 24 Taylor Avenue at approximately 1:56 a.m. and arrived at the scene within minutes. At the time that Luciano arrived, the plaintiff was the only individual apart from the responding officers at the scene of the accident, and he could hardly stand, smelled of alcohol, and failed all three field sobriety tests that Luciano administered. Luciano testified that Tejada was present when the plaintiff got out of the Jeep. Thus, it is reasonable to infer that the plaintiff was intoxicated at the time he operated the Jeep.

Second, the plaintiff argues that the hearing officer improperly failed to rely on the affidavits he offered into evidence to support his theory that the accident was caused by the Jeep rolling down the driveway rather than the plaintiff operating the vehicle. The hearing officer, however, considered the affidavits and was free to find them unpersuasive for several reasons.

To begin, the affidavits were not provided by actual eyewitnesses to the accident. Rather, Toomey left the plaintiff's residence before the accident occurred, and Lopez attested only that she "heard a crashing sound and it *appeared* that the [Jeep] had rolled down the driveway . . . ." (Emphasis added.) The plaintiff did not produce Toomey or Lopez as witnesses and, therefore, neither individual was subject to cross-examination regarding the statements made in their affidavits. Furthermore, the facts attested to in the affidavits were patently inconsistent with other facts in the record. Lopez stated that the Jeep rolled into the retaining wall and into the lawn area but does not explain how the Jeep got onto the top of the retaining wall. Toomey stated that he drove the plaintiff's Jeep home and parked it at the top of the driveway at 1 a.m., but an individual called to report the accident at 1:56 a.m. Finally, the facts in the affidavits were inconsistent with each other. Lopez stated that she heard the plaintiff and another individual pull into the driveway at 1:30 a.m., but Toomey stated that he and the plaintiff arrived at the plaintiff's residence at 1 a.m. For all the foregoing reasons, it was not improper for the hearing officer to conclude that the facts set forth in the affidavits were

not worthy of reliance.

Finally, the plaintiff argues that *Carlson* v. *Kozlowski*, 172 Conn. 263, 267, 374 A.2d 207 (1977), supports his position that hearsay statements made by Tejada identifying him as the operator of the Jeep were not substantial evidence. In *Carlson*, our Supreme Court stated: "If hearsay evidence is insufficiently trustworthy to be considered substantial evidence and it is the only evidence probative of the plaintiff's culpability, its use to support the agency decision would be prejudicial to the plaintiff, absent a showing . . . that the appellant knew it would be used and failed to ask the commissioner to subpoena the declarants." (Internal quotation marks omitted.) Id. *Carlson*, however, is inapplicable to the present case. As we previously stated, Tejada's identification of the plaintiff as the operator was not the only evidence probative of the plaintiff's operation of the Jeep. Accordingly, in light of all of the evidence in the record, we must conclude that there was substantial evidence in the record to support the hearing officer's finding that the plaintiff operated the vehicle.

II

The plaintiff also claims that the court improperly concluded that there was substantial evidence in the record to support the hearing officer's determination that the plaintiff refused to submit to a Breathalyzer test in violation of § 14-227b. We do not agree.

The following legal principles are relevant to this claim. "The determination of whether the plaintiff's actions constituted a refusal to submit to a Breathalyzer test is a question of fact for the hearing officer to resolve." *Wolf* v. *Commissioner of Motor Vehicles*, 70 Conn. App. 76, 81, 797 A.2d 567 (2002). "[D]ifficulties [are] inherent in ascertaining when a person is refusing to submit to the breath test. Refusal is difficult to measure objectively because it is broadly defined as occurring whenever a person remains silent or does not otherwise communicate his assent after being requested to take a blood, breath or urine test under circumstances where a response may reasonably be expected." (Internal quotation marks omitted.) *Fernschild* v. *Commissioner of Motor Vehicles*, 177 Conn. App. 472, 477, 172 A.3d 864 (2017), cert. denied, 327 Conn. 997, 175 A.3d 564 (2018). "This court has held that an operator's refusal to [submit to a chemical alcohol test] pursuant to § 14-227b need not be express and that a hearing officer may consider the operator's conduct in determining whether [the operator] refused to take the test. Refusal to [submit to a chemical alcohol test] can occur through conduct as well as an expressed refusal." (Internal quotation marks omitted.) *O'Rourke* v. *Commissioner of Motor Vehicles*, 156 Conn. App. 516, 525, 113 A.3d 88 (2015).

There was substantial evidence in the record to sup-

port the hearing officer's finding that the plaintiff refused to submit to a Breathalyzer test. Although the plaintiff verbally indicated a willingness to take the Breathalyzer test, he also stated, "I'm fucked . . . if I do the test, I know I'm fucked." This statement reasonably supports an inference that the plaintiff had a motive and intent to prevent an accurate reading of his blood alcohol content by performing the test improperly.

This inference was further supported by what happened next. Luciano instructed the plaintiff, in both English and Spanish, "to inhale *prior* to putting his mouth on the mouthpiece and then to continue to blow [into the mouthpiece] until he was advised to stop . . . ." (Emphasis added.) The plaintiff stated that he understood Luciano's instructions but inhaled *after* putting his mouth on the mouthpiece. Luciano testified that the plaintiff "would act like he was taking an inhale but really wouldn't do anything" and instead inhaled after putting his mouth on the mouthpiece. Luciano reinstructed the plaintiff to inhale prior to putting his mouth on the mouthpiece two additional times after his first failed attempt. Despite the repeated instructions, the plaintiff continued to initially inhale rather than exhaling into the mouthpiece and never provided an adequate breath sample.

On the basis of Luciano's observations of the plaintiff's behavior, Luciano determined that he was attempting to manipulate the testing procedures by intentionally inhaling rather than exhaling when placing his mouth on the mouthpiece. The hearing officer could reasonably infer from the plaintiff's noncompliance with Luciano's instructions, especially in light of his admission that he was "fucked" if he did the test, that he had refused to take the Breathalyzer test.

The plaintiff relies on *Bialowas* v. *Commissioner of Motor Vehicles*, 44 Conn. App. 702, 715–18, 692 A.2d 834 (1997), in arguing that there was not substantial evidence that the plaintiff refused the Breathalyzer test.[15] In *Bialowas*, this court held that an arresting officer's mere conclusion that a plaintiff "refused to be tested by not furnishing sufficient breath samples" was not substantial evidence to support the hearing officer's conclusion that the plaintiff had refused the test. Id., 715. In that case, however, the record was devoid of any information to support the arresting officer's inference that the plaintiff had refused the test. This court stated: "The police officer did not include in the police report or the narrative supplement adequate information about his observations to support his conclusion that the plaintiff's failure to provide sufficient breath was, in fact, a refusal to take the test. Such information, if it existed, could have been provided through testimony or other evidence such as the narrative supplement and might have described the officer's observations of the effort the plaintiff made in providing breath samples

and in following the officer's instructions, or other conduct of the plaintiff that would bear on whether his actions were intentional." Id., 716–17.

The present case is clearly distinguishable from *Bialowas*. Luciano testified regarding his observations of the plaintiff's behavior, and these observations supported his conclusion that the plaintiff intentionally frustrated the proper testing procedure. Luciano's observations of the plaintiff's behavior were also documented in his incident report. The facts in the record amply support the reasonable inference that the plaintiff's conduct constituted a refusal. Accordingly, there was substantial evidence in the record to support the hearing officer's finding that the plaintiff refused to take a Breathalyzer test.

The judgment is affirmed.

In this opinion the other judges concurred.

[1] Although § 14-227b has been amended by the legislature since the events underlying this appeal; see, e.g., Public Acts 2022, No. 22-40, § 14; those amendments have no bearing on the merits of this appeal. In the interest of simplicity, we refer to the current revision of the statute.

[2] The Norwalk police received a call from an individual who reported the incident at approximately 1:56 a.m.

[3] Luciano testified that he "most likely" arrived at 24 Taylor Avenue before 2 a.m.

[4] Luciano is bilingual and understood the meaning of "borracho."

[5] Luciano also arrested the plaintiff for operating a motor vehicle without a license in violation of General Statutes § 14-36a and failure to maintain the proper lane in violation of General Statutes § 14-236.

[6] See *Miranda* v. *Arizona*, 384 U.S. 436, 478–79, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

[7] "The A-44 form is used by the police to report an arrest related to operating a motor vehicle under the influence and the results of any sobriety tests administered or the refusal to submit to such tests." (Internal quotation marks omitted.) *Nandabalan* v. *Commissioner of Motor Vehicles*, 204 Conn. App. 457, 461 n.5, 253 A.3d 76, cert. denied, 336 Conn. 951, 251 A.3d 618 (2021).

[8] General Statutes § 14-227b provides in relevant part: "(e) (1) Except as provided in subdivision (2) of this subsection, upon receipt of a report submitted under subsection (c) or (d) of this section, the commissioner may suspend any operator's license or operating privilege of such person effective as of a date certain, which date certain shall be not later than thirty days from the later of the date such person received (A) notice of such person's arrest by the police officer, or (B) the results of a blood or urine test or a drug influence evaluation. Any person whose operator's license or operating privilege has been suspended in accordance with this subdivision shall automatically be entitled to a hearing before the commissioner to be held in accordance with the provisions of chapter 54 and prior to the effective date of the suspension. The commissioner shall send a suspension notice to such person informing such person that such person's operator's license or operating privilege is suspended as of a date certain and that such person is entitled to a hearing prior to the effective date of the suspension and may schedule such hearing by contacting the Department of Motor Vehicles not later than seven days after the date of mailing of such suspension notice. . . .

"(g) (1) If such person contacts the department to schedule a hearing, the department shall assign a date, time and place for the hearing, which date shall be prior to the effective date of the suspension, except that, with respect to a person whose operator's license or operating privilege is suspended in accordance with subdivision (2) of subsection (e) of this section, such hearing shall be scheduled not later than thirty days after such person contacts the department. At the request of such person, the hearing officer or the department and upon a showing of good cause, the commissioner may grant one or more continuances.

"(2) A hearing based on a report submitted under subsection (c) of this

section shall be limited to a determination of the following issues: (A) Did the police officer have probable cause to arrest the person for operating a motor vehicle while under the influence of intoxicating liquor or any drug, or both; (B) was such person placed under arrest; (C) did such person (i) refuse to submit to such test or nontestimonial portion of a drug influence evaluation, or (ii) submit to such test, commenced within two hours of the time of operation, and the results of such test indicated that such person had an elevated blood alcohol content; and (D) was such person operating the motor vehicle. . . .''

[9] We note that ''§ 14-227b-19 (a) of the Regulations of Connecticut State Agencies, which has the force and effect of a statute . . . provides . . . that a police officer's report concerning the arrest of a drunk driving suspect shall be admissible into evidence at [a license suspension] hearing if it conforms to the requirements of subsection (c) of [§] 14-227b of the . . . General Statutes. . . . Subsection (c) of § 14-227b itself provides that the report, to be admissible, must be submitted to the department within three business days, *be subscribed and sworn to by the arresting officer under penalty of false statement*, set forth the grounds for the officer's belief that there was probable cause to arrest the driver, and state whether the driver refused to submit to or failed a blood, breath or urine test.'' (Citation omitted; emphasis altered; internal quotation marks omitted.) *Do* v. *Commissioner of Motor Vehicles*, 330 Conn. 651, 668, 200 A.3d 681 (2019).

In the present case, the narrative portion of the A-44 form contains the electronic signature of Luciano but is missing the signature of the supervising officer, and Section I of the A-44 form does not contain any indicia that Luciano signed the form under oath because it is missing the name and signature of the individual who administered the oath. The plaintiff, however, did not object to the admission of the A-44 form or documents attached to it. Therefore, the plaintiff has waived any claim that the A-44 form was insufficiently reliable and should not have been admitted into evidence. Moreover, Luciano testified under oath to the truth and accuracy of the information within the A-44 form and its attachments.

[10] Lopez stated in her affidavit: ''[1] On the night of June 25, 2021 on or around 1:30 AM, I heard a vehicle come into the driveway next to my house, where [the plaintiff] lives. [2] On or around that time, I heard a man that I know to be [the plaintiff] speaking to another male individual in the same area where I heard the car come in. [3] Shortly thereafter, I heard a crashing sound and it appeared that the car had rolled down the driveway, into the wall and onto the lawn area.''

Toomey stated in his affidavit: ''[1] On the night of June 25, 2021 on or around 1:00 AM, I drove [the plaintiff's] Jeep to his home from where we were prior, and left his Jeep parked at the top of his driveway before proceeding home myself. [2] There was no accident involving the Jeep at that time, and the Jeep was parked at the top of his steep driveway before my departure.''

[11] General Statutes § 4-183 provides in relevant part: ''(a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision may appeal to the Superior Court as provided in this section. . . .''

[12] We note that the plaintiff's brief is not a model of clarity. Specifically, it is unclear whether he is attempting to raise a claim that the hearing officer improperly admitted evidence pertaining to Tejada's identification of the plaintiff as the operator of the vehicle as set forth in the A-44 form or as described by Luciano in his testimony at the hearing. Although the plaintiff refers to this evidence without distinction as being unreliable and not probative, he engages in no analysis in his principal appellate brief that pertains to whether this evidence was properly admitted at the hearing. Additionally, the plaintiff did not object to the admission of these statements when they were admitted as a part of the A-44 form or when Luciano originally testified that Tejada had identified the plaintiff at the scene as the operator of the vehicle. To the extent that the plaintiff is attempting to raise such a claim, it is both unpreserved and inadequately briefed, and, therefore, we decline to review it on its merits. See *Burton* v. *Dept. of Environmental Protection*, 337 Conn. 781, 801–802, 256 A.3d 655 (2021) (argument unsupported by legal authority was inadequately briefed); see also *Adams* v. *Commissioner of Motor Vehicles*, 182 Conn. App. 165, 176, 189 A.3d 629 (''[a] plaintiff cannot raise issues on appeal that he failed to present to the hearing officer below''), cert. denied, 330 Conn. 940, 195 A.3d 1134 (2018).

[13] Although Luciano did not testify to the precise manner in which Tejada communicated his ''identification'' of the plaintiff as the operator of the

vehicle to Luciano, and the report attached to the A-44 also does not include this information, it is reasonable to infer that Tejada did so verbally or through other nonverbal means intended to communicate that information. See Conn. Code Evid. § 8-1 (1) ("'[s]tatement' means (A) an oral or written assertion or (B) nonverbal conduct of a person, if it is intended by the person as an assertion"). Indeed, it was more than reasonable for the hearing officer to conclude that Tejada told Luciano that the plaintiff was the operator of the vehicle.

[14] This evidence is also plainly inconsistent with the plaintiff's "theory," based on the two affidavits he filed at the hearing, that the Jeep had been parked in his driveway and had rolled unattended and without an operator down his driveway.

[15] The plaintiff also argues that his high level of intoxication should have been considered and weighed against concluding that his conduct was a refusal. This argument is without merit. "[R]egardless of the ostensible reason for the plaintiff not submitting to the chemical test, *any failure to submit to the test* constitutes a refusal pursuant to . . . [§ 14-227b (g)]." (Emphasis in original; internal quotation marks omitted.) *O'Rourke* v. *Commissioner of Motor Vehicles*, supra, 156 Conn. App. 526. Furthermore, the fact that the plaintiff was able to understand and appreciate the consequence of taking the test permits an inference that he was not so intoxicated that he did not understand what he was doing while performing the test.