

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

802

TP 23-00659

PRESENT: WHALEN, P.J., CURRAN, MONTOUR, OGDEN, AND NOWAK, JJ.

IN THE MATTER OF KRISTEN JOHNSON, PETITIONER,

V

MEMORANDUM AND ORDER

NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES
APPEAL BOARD, RESPONDENT.

LEONARD CRIMINAL DEFENSE GROUP, PLLC, ROME (JOHN G. LEONARD OF
COUNSEL), FOR PETITIONER.

LETITIA JAMES, ATTORNEY GENERAL, ALBANY (ALEXANDRIA TWINEM OF
COUNSEL), FOR RESPONDENT.

Proceeding pursuant to CPLR article 78 (transferred to the Appellate Division of the Supreme Court in the Fourth Judicial Department by an order of the Supreme Court, Oneida County [David A. Murad, J.], entered August 25, 2022) to review a determination of respondent. The determination revoked petitioner's license to drive.

It is hereby ORDERED that the determination is unanimously confirmed without costs and the petition is dismissed.

Memorandum: Petitioner commenced this proceeding pursuant to CPLR article 78 seeking to annul the determination revoking her driver's license based on her refusal to submit to a chemical test following her arrest for driving while ability impaired by drugs. We confirm the determination.

Contrary to petitioner's contention, the determination is supported by substantial evidence (*see Matter of Thompson v New York State Dept. of Motor Vehs.*, 170 AD3d 1657, 1657 [4th Dept 2019]). The arresting officer's testimony at the hearing established that he responded to multiple calls that petitioner's vehicle was being driven erratically and across grass lawns and that, upon arrival, he found petitioner unresponsive in the driver's seat of the still-running vehicle. Once petitioner was roused, her speech was very slow and slurred. We conclude that the arresting officer's testimony at the hearing established that the officer had reasonable grounds to believe that petitioner had been operating her vehicle in violation of Vehicle and Traffic Law § 1192 (*see Matter of Malvestuto v Schroeder*, 207 AD3d 1245, 1245-1246 [4th Dept 2022]).

We reject petitioner's contention that the arresting officer's testimony was insufficient to establish that the refusal warnings were

given in clear and unequivocal language. The arresting officer testified that he issued the standardized warning following petitioner's arrest (see *Matter of Dennstedt v Appeals Bd. of Admin. Adjudication Bur.*, 206 AD3d 1693, 1694 [4th Dept 2022]).

Entered: November 17, 2023

Ann Dillon Flynn
Clerk of the Court