

**BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD
OF THE STATE OF CALIFORNIA**

S.S. SCHOONERS, INC.	)	AB-7039
dba Schooners)	
959 Hornblend Street	)	File: 47-306984
San Diego, CA 92109,	)	Reg: 97040841
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Sonny Lo
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	November 4, 1998
	)	Los Angeles, CA
)	

S.S. Schooners, Inc., doing business as Schooners (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 25 days for appellant's employee selling alcoholic beverages to a person under the age of 21, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from a violation of Business and Professions Code §25658, subdivision (a).

Appearances on appeal include appellant S.S. Schooners, Inc., appearing through its counsel, Ralph B. Saltsman, and the Department of Alcoholic Beverage

¹The decision of the Department, dated January 29, 1998, is set forth in the appendix.

Control, appearing through its counsel, Jonathon Logan.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public eating place license was issued on June 6, 1995. Thereafter, the Department instituted an accusation against appellant charging that, on June 7, 1997, appellant's employee, Jeffrey Magnus, sold a beer and a mixed drink to Fiona Reade, who was 18 years old.

An administrative hearing was held on December 8, 1997, at which time oral and documentary evidence was received. Testimony was presented by San Diego Police Department (SDPD) detectives William Frew and Sherry Jackson, by Fiona Reade, and by Dan Doherty, appellant's general manager.

The testimony revealed that Reade presented identification to appellant's doorman at the entrance to the premises. Initially, she presented an Irish passport, issued 10½ years earlier, bearing the name of Christine Mary Allen. After examining the passport for a period of time, the doorman consulted with another employee and then asked for additional identification. Reade, who speaks with a noticeable Irish accent, told him she had another ID and produced a resident alien card that bore a photograph, the name of Christine Mary Allen, and the same date of birth as the passport. The doorman asked Reade her date of birth and Reade gave the date shown on the documents, which she had memorized. Eventually, the doorman returned the documents to Reade and allowed her to enter the premises. [RT 40-43, 46-49.]

Some time after entering the premises, Reade went to the bar, ordered a beer and a mixed drink, received them, paid for them, and drank the beer [RT 12-14, 43-45]. Frew and Jackson then approached Reade and asked for her identification, whereupon

she gave them the Irish passport she had shown the doorman. When the officers expressed doubt as to her ownership of the passport, Reade gave them the resident alien card [RT 15-19, 45.] The officers questioned Reade further and asked her to hold her hair back away from her face and to write the name shown on the passport three times [RT 21-22, 50-52, 58-59]. After 20 to 30 minutes, Reade admitted that the identifications were not hers and that she was 18 [RT 23, 26, 28-29, 33-34].

The Irish passport, resident alien card, and photographs of Fiona Reade, taken at the premises on the evening in question, were included in the exhibits admitted into evidence. (Exhibits 3, 4, 6, 7.)

Subsequent to the hearing, the Department issued its decision which determined that the violation had occurred as charged and that no defense had been established under Business and Professions Code §25660.

Appellant thereafter filed a timely notice of appeal. In its appeal, appellant raises the following issues: 1) The Department's determination that a defense was not established under Business and Professions Code §25660 was an abuse of discretion, since appellant sufficiently established a defense under that section; and 2) the findings are not supported by substantial evidence in the record. These contentions are related and will be discussed together.

DISCUSSION

Appellant contends that it sufficiently established a defense under Business and Professions Code §25660, making the Department's determination to the contrary arbitrary, capricious, and an abuse of discretion, and that the findings upon which that determination is based are not supported by substantial evidence in the record. Appellant argues that substantial evidence is lacking for Finding IV, where the ALJ stated "Reade does not look anything like the photographs of Ms. Allen on the passport and on the resident alien card," and the statement in Determination II, B that "the detectives did not believe for a second that either the photograph in the passport or the photograph in the resident alien card was a photograph of Reade."

Business and Professions Code §25660 provides:

"Bona fide evidence of majority and identity of the person is a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license or an identification card issued to a member of the Armed Forces, which contains the name, date of birth, description, and picture of the person. Proof that the defendant-licensee, or his employee or agent, demanded, was shown and acted in reliance upon such bona fide evidence in any transaction, employment, use or permission forbidden by Sections 25658, 25663 or 25665 shall be a defense to any criminal prosecution therefor or to any proceedings for the suspension or revocation of any license based thereon."

Appellant argues that the passport and resident alien card both had photographs of the person to whom issued, were issued by the appropriate national governments, were issued to the same person, and contained the same date-of-birth information. In addition, Reade spoke with an Irish accent, giving credence to the doorman's determination that the Irish passport was indeed hers.

Appellant's employee, appellant argues, in good faith, "demanded, was shown and acted in reliance upon" the apparently genuine identification presented by Reade.

The Department's decision finds no careless, reckless, inappropriate, or negligent conduct by appellant's employees, but, according to appellant, reflects only that the San Diego Police Department detectives, with their expertise and training, reached a different conclusion regarding Reade's identification. In essence, appellant contends, the Department's decision, contrary to the law, requires a licensee's employees to have the same expertise in examining identification as the SDPD.

The ALJ's determination that Reade did not look at all like the photographs on the identification documents, appellant argues, did not take into consideration that the photographs on the passport and the resident alien card were taken approximately 10½ years and 3 years, respectively, before they were presented as identification to appellant's employee. Furthermore, Reade's appearance was similar enough to the photographs that the detectives actually took about 20 minutes to finally determine that she was not the person whose picture was on the documents.

The §25660 defense requires that the licensee or the licensee's employee act "in good faith, that is, . . . as a reasonable and prudent man would have acted under the circumstances." (Keane v. Reilly (1955) 130 Cal.App.2d 407, 410 [279 P.2d 152,154].) The licensee must use reasonable caution in observing the appearance of the holder of identification and comparing the holder's appearance with that depicted or described on the identification to see that they correspond. The licensee may assume the holder of the identification is its owner, unless the appearance of the holder indicates "above mere suspicion" that he or she is not the legal owner. (Keane v. Reilly , supra, 279 P.2d at 155.)

The ALJ concluded the doorman did not reasonably rely on the two documents

presented because, in the words of the ALJ, “Reade does not look anything like the photographs of the person(s) in those documents. Also, the detectives did not believe for a second that . . . the photograph[s] [were] of Reade.”² (Det. of Issues II.C.)

The ALJ does not explain the basis for his conclusion, in Finding IV, that Reade did “not look anything like the photographs.” While we must accept as a fact that the ALJ held the subjective belief, for whatever reason, that Reade did not resemble the person in the photographs, we are not bound by the ALJ's determination, based on that belief, that appellant's employee was not reasonable in his reliance on the identification presented. We find that appellant's employee acted as a reasonable and prudent person would have acted under the circumstances.

First, there is substantial evidence, ignored by the ALJ, that Reade looked enough like the photographs to make both the doorman and the officers take additional steps to ascertain whether the ID's were hers. Appellant's doorman apparently thought Reade looked something like the photographs on the passport and the resident alien card, because he asked for a second ID after looking at the passport, looked at the ID's for some time, and also had another employee look at them [RT 43, 47].

Some resemblance must have been seen by the officers, since they had Reade pull her hair back so they could compare her ear with that in the photograph on the resident alien card. They also had her write the name “Christine Mary Allen” three times to compare it to the signature on the resident alien card. Significantly, officer

² The second sentence of this determination is not supported by the findings. Finding VI says merely, “Despite repeated attempts by Reade to convince them that the photograph in the passport and the photograph in the resident alien card were photographs of her, the detectives did not believe her.”

Frew testified that “Had she supplied me with a signature that was acceptable, in other words, so close, I would have given her the benefit of the doubt and allowed her to leave” [RT 30]. The officers may have suspected it was not Reade in the photographs, but until they had seen that her signature did not match the one on the alien resident card, they clearly had some doubt about it, since officer Frew would have released Reade if the signatures had been close enough.

The second significant factor the ALJ ignored was Reade's Irish accent. The addition of an unmistakable Irish accent to the other indicia checked by the doorman -- the Irish passport, a second photo ID corroborating the birthdate and name on the passport, Reade's correct response when questioned about the birthdate on the identifications, and enough resemblance to the photographs to preclude outright rejection of the ID's -- does away with any question about whether the doorman acted reasonably in allowing Reade to enter the premises. As noted above, if Reade's signature had sufficiently matched that on the resident alien card, officer Frew was prepared to let her go, at least in part, because her Irish accent substantiated her use of the Irish passport [RT 30].

The ALJ ignored the testimony of the officers and Reade showing that everyone involved was having difficulty deciding whether or not Reade was the person in the photographs. All had doubts or suspicions, but the appearance of the identification holder must do more than raise a mere suspicion that the identification is not that of the holder. (Keane v. Reilly , supra.) Appellant's employee was entitled to assume Reade was the owner of the identification, as long as he used reasonable caution examining Reade's appearance and the photographs on the identifications.

A licensee is required to act reasonably, not perfectly. Reasonable caution on the part of appellant's employee is not refuted by the San Diego police officers' determination, after an extensive examination and three writing samples, that Reade was not the true owner of the ID's. Appellant's employee was not required to have the same training and expertise as the San Diego police officers nor was he required to engage in the type of extensive examination of Reade that the police officers did. The doorman made a reasonable examination of the ID's and of Reade and, therefore, reasonably and in good faith relied on the identification in allowing Reade to enter the premises.

ORDER

The decision of the Department is reversed.³

RAY T. BLAIR, JR., CHAIRMAN
JOHN B. TSU, MEMBER
BEN DAVIDIAN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

³This final order is filed in accordance with Business and Professions Code §23088, and shall become effective 30 days following the date of the filing of this order as provided by §23090.7 of said code.

Any party, before this final order becomes effective, may apply to the appropriate court of appeal, or the California Supreme Court, for a writ of review of this final order in accordance with Business and Professions Code §23090 et seq.