

ISSUED JANUARY 22, 2001

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

CHANG HO YOON and MYUNG SOOK	)	AB-7583
YOON)	
dba El Rey Market	)	File: 20-171697
506 South San Pedro	)	Reg: 99047203
Los Angeles, CA 90013,)	
Appellant s/Licensees,	)	Administrative Law Judge
	)	at the Dept. Hearing:
v.	)	John P. McCarthy
)	
	)	Date and Place of the
DEPARTMENT OF ALCOHOLIC	)	Appeals Board Hearing:
BEVERAGE CONTROL,	)	November 3, 2000
Respondent.	)	Los Angeles, CA
)	

Chang Ho Yoon and Myung Sook Yoon, doing business as El Rey Market (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which revoked their license for having sold an alcoholic beverage to a minor, 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). The violation was

¹The decision of the Department, dated January 13, 2000, is set forth in the appendix.

appellants' third within a 36-month period.

Appearances on appeal include appellants Chang Ho Yoon and Myung Sook Yoon, appearing through their counsel, Charlie Chi, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon E. Logan.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on May 15, 1985. Thereafter, the Department instituted an accusation against appellants charging the sale of an alcoholic beverage to a minor on July 16, 1999, and, in addition, alleging two prior sale-to-minor violations, on August 11, 1997, and May 11, 1999, respectively.

An administrative hearing was held on December 9, 1999, at which time oral and documentary evidence was received regarding the transaction at issue, which was the sale by appellant Chang Ho Yoon to Allan Corrales ("Corrales"), a police decoy. Corrales was 19 years of age on the day of the sale.

Subsequent to the hearing, the Department issued its decision, which determined that the violation had been proven as alleged, that the prior violations were proven, and that appellants' license was revoked.

Appellants thereafter filed a timely notice of appeal. In their appeal, appellants allege they were entrapped.

DISCUSSION

Appellants contend they were the victims of entrapment. They contend that they would have requested identification had not the authorities "willfully disguised the decoy to appear well beyond the legal drinking age." Appellants refer to a

photograph of the decoy taken on the day of the sale (Exhibit 4) and state (App.Br., at page 2):

“[T]he photograph reveals a man with short slicked hair, a full mustache, and well dressed. Such outward manifestations of maturity make the decoy appear more than ten years beyond the legal drinking limit and is a clear case of entrapment.”

Appellants make it very clear that they are alleging affirmative misconduct on the part of the police, when they assert (App.Br., at page 3):

“Masquerading an underage individual to appear well over the legal drinking age is a clear violation of a business owner’s Constitutional rights. This is precisely what occurred when the Los Angeles Police department escorted Allan Corrales to El Rey market to purchase a can of beer. We will never know whether the Appellant would have requested identification from the decoy had he not been maturely disguised.”

The test for an entrapment defense is whether the conduct of the public agent was such that a normally law-abiding person would be induced to commit the prohibited act. Official conduct that does no more than offer an opportunity to act unlawfully is permissible. (People v. Barraza (1979) 23 Cal.3d 675 [153 Cal.Rptr. 459].)

We think it fair to say that, if the evidence showed that the police had utilized a decoy who wore a full mustache and conveyed the appearance of a person well over the legal drinking age, the Board would, without hesitation, reverse a decision of the Department which found that a sale to that decoy violated the law. This is not such a case.

Exhibit 4 is a photograph of Corrales and appellant Chang Ho Yoon taken on the day of the sale. The photograph demonstrates, contrary to appellants’ contention, that Corrales was clean shaven on the day in question. He wore no

mustache. Indeed, appellant Chang Ho Yoon's testimony reveals that although he thought Corrales' appearance older at the time of the sale than at the hearing, it was not because of any mustache or beard. (See RT 41-42.)

We note further that appellants were represented at the hearing by Rick Blake, an experienced practitioner in this area of the law. While Mr. Blake also argued that the decoy's appearance at the time of the hearing differed from that depicted in Exhibit 4, he never made any claim that the decoy wore a mustache.

We believe appellants' claims not only lack merit, but their accusations of wrongful police conduct far exceed the bounds of vigorous advocacy.

ORDER

The decision of the Department is affirmed.²

TED HUNT, CHAIRMAN
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

² This final decision is filed in accordance with Business and Professions Code §23088 and shall become effective 30 days following the date of the filing of this final decision as provided by §23090.7 of said code.

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