

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

AB-8354

File: 20-247548 Reg: 04057191

ELI ADRABI dba California Quick Mart
26500 West Agoura Road, Nos.100 & 101, Calabasas, CA 91302,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Ronald M. Gruen

Appeals Board Hearing: August 4, 2005
Los Angeles, CA

ISSUED: NOVEMBER 7, 2005

Eli Adrabi, doing business as California Quick Mart (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended his license for 25 days, with 5 days thereof conditionally stayed, subject to one year of discipline-free operation, for his clerk, Neville Peiris, having sold a 12-pack of Coors Light beer to James Struble III, a 20-year-old non-decoy minor, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellant Eli Adrabi, appearing through his counsel, Andreas Birgel, Jr., and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on August 3, 1990. On

¹The decision of the Department, dated October 14, 2004, is set forth in the appendix.

April 30, 2004, the Department instituted an accusation alleging the February 7, 2004, sale-to-minor transaction which underlies this appeal. An administrative hearing was held on August 10, 2004, at which time oral and documentary evidence was received. At that hearing, testimony regarding the circumstances of the transaction was presented by Ricardo Carnet (“Carnet”), a Department investigator, James Struble III (“Struble”), and appellant Eli Adrabi.

Carnet, accompanied by another Department investigator, was in the parking lot in front of the premises, conducting a compliance investigation, when his attention was drawn to Struble as Struble was exiting his vehicle. Carnet left his vehicle and watched as Struble entered the store, selected a 12-pack of Coors beer from the cooler, and took it to the counter. Neville Peiris (“Peiris”), the clerk, examined an ID in Struble’s wallet for about five seconds, accepted a credit card from Struble, and completed the transaction. Carnet and his partner identified themselves to Struble as he left the store, and asked him his age. Struble told them he was 20 years old. When asked for identification, Struble handed Carnet his wallet, showed him a Texas driver’s license, and told him it was fake. Carnet subsequently found Struble’s true Texas driver’s license. The fake license (Exhibit 3) showed Struble’s date of birth as January 30, 1981, while his true license (Exhibit 4) showed a date of birth of January 30, 1984.² The fake license also bore an expiration date of January 30, 2004, one week prior to the transaction. Struble told Carnet he had displayed the fake license to Peiris. Carnet checked the fake license against an identification booklet he carried, and determined that there were features of the fake license which did not comport with a

² Exhibit 4 (Struble’s legitimate Texas driver’s license) bears the legend “Under 21 until 1-30-05.”

valid Texas license. On cross-examination, Carnet testified that his attention was first drawn to the fact the license had expired, and that led him to check his identification booklet.

Struble confirmed that he showed the clerk the fake Texas driver's license and paid for the beer using his credit card.

Appellant Adrabi testified on his own behalf. He said he was in his office at the time of the transaction, but did not observe the sale to Struble. Adrabi admitted that neither he nor Peiris had received any training in the sale of alcoholic beverages from the Department or the local police, but after the transaction in question he had installed a machine which verifies the age and authenticity of an identification by the magnetic stripe it bears.

Subsequent to the hearing, the Department issued a decision which determined that the violation had occurred as alleged, and that appellant had failed to establish a defense under Business and Professions Code section 25660.

Appellant thereafter filed a timely notice of appeal, and renews his contention that a defense was established under section 25660.

DISCUSSION

Business and Professions Code section 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.

"It is well established that reliance in good faith upon a document issued by one of the governmental entities enumerated in section 25660 constitutes a defense to a license suspension proceeding even though the document is altered, forged or otherwise spurious." (*Kirby v. Alcoholic Bev. etc. Appeals Bd.* (1968) 267 Cal.App.2d 895, 897 [73 Cal.Rptr. 352].) However, to provide a defense, reliance on the document must be reasonable, that is, the result of an exercise of due diligence. (See, e.g., *Lacabanne Properties, Inc. v. Alcoholic Beverage etc. Appeals Board* (1968) 261 Cal.App.2d 181, 189 [67 Cal.Rptr. 734] (*Lacabanne*); *5501 Hollywood, Inc. v. Dept. of Alcoholic Bev. Control* (1957) 155 Cal.App.2d 748, 753 [318 P.2d 820] (*5501 Hollywood*).)

Reasonable reliance cannot be established unless the appearance of the person presenting identification indicates that he or she could be 21 years of age and the seller makes a reasonable inspection of the identification offered. (*5501 Hollywood, supra*, 155 Cal.App.2d at pp. 753-754.) A licensee, or a licensee's agent or employee, must exercise the caution which would be shown by a reasonable and prudent person in the same or similar circumstances. (*Lacabanne, supra*; *Farah v. Alcoholic Bev. Control Appeals Bd.* (1958) 159 Cal.App.2d 335, 339 [324 P.2d 98]; *5501 Hollywood, supra*, 155 Cal.App.2d at p. 753.)

Although section 25660 was designed "to relieve vendors of alcoholic beverages from having in all events to determine at their peril the age of the purchaser," by allowing vendors to rely on certain documentary evidence of majority and identity, "the bona fides of such documents must be ascertained if the lack of it would be disclosed by reasonable inspection, the circumstances considered." (*Dethlefsen v. State Bd. of*

Equalization (1956) 145 Cal.App.2d 561, 567 [303 P.2d 7].)

The licensee or his agent must act in good faith and with due diligence in relying on an apparently valid but actually fraudulent ID:

The defense must be asserted in good faith, that is, the licensee or the agent of the licensee must act as a reasonable and prudent [person] would have acted under the circumstances. Obviously, the appearance of the one producing the card, or the description on the card, or its nature, may well indicate that the person in possession of it is not the person described on such card.

(Keane v. Reilly (1955) 130 Cal.App.2d 407, 409-410 [279 P.2d 152].)

Section 25660 requires that the seller of alcoholic beverages "demanded, was shown, and acted in reliance upon" a government-issued document containing the prospective purchaser's name, date of birth, description, and picture in order to maintain a defense under the section. Case law has established that a fake ID, purporting to be government-issued, may qualify for the defense, but reasonable reliance upon that identification must be demonstrated. (*Dept. of Alcoholic Bev. Control v. Masani* (2004) 118 Cal.App.4th 1429 [13 Cal.Rptr.3d 826].)

The decision contains erroneous findings of fact underlying its determination whether a defense has been established under section 25660. Whether the errors in the findings so permeate the conclusions of law as to require a reversal is a close call. The findings and conclusions in question are set out below; we have italicized those parts of the findings that are critical to this analysis:

FF 7 The minor upon exiting the premises was stopped by Department Investigators, who after identifying themselves as peace officers, asked the minor his age. He responded that he was 20 years old and showed them his Texas Driver's License, which he admitted was fake and was used by him to buy beer. If believed, the license made the minor out to be 23 years of age. The one apparent discrepancy on the face of the identification was that by its terms the license had expired on January 30, 2004, about a week prior to the violation. Otherwise the vital statistics on the license as to height and weight were

accurate. The minor and the clerk were thereafter cited.

FF 8 The minor at all times pertinent hereto did in fact possess a valid and authentically issued driver's license from the State of Texas. The undersigned did have a jury view of that license and *it was at variance with the fake license the minor used in at least two obvious respects.*

First, unlike a California license, a Texas Driver's license issued to a person under 21 years of age is prepared in a vertical format rather than a horizontal format. Secondly, the component parts of the information on the face of the license are arranged in a format markedly different than the fake Texas license the minor had used. Thus anyone with any familiarity of the State of Texas license formats would have no trouble identifying as a fake [the] license the minor used in this transaction.

Struble's legitimate driver's license (Exhibit 4) is, as the finding states, prepared in a vertical format. An adult license, as the finding implies, is prepared in a horizontal format. The fake license (Exhibit 3) is in a horizontal, adult, format. It does not follow, therefore, that anyone with any familiarity with Texas license formats would have identified Exhibit 3 as a fake merely from its format or its arrangement of its component parts. What are said to be discrepancies appear not to be discrepancies at all.³ They are discrepancies between Struble's genuine license and the fake license, not discrepancies between a real adult license and the fake license.

The conclusions of law are, at least in part, premised on the faulty reasoning found in Findings of fact 7 and 8, as the following reveals:

CL 6 The evidence established a violation of law based on findings of fact. The question now is whether the licensee has established a defense under Section 25660.

CL 7 *As to the first step regarding the making of a diligent inspection of the*

³ We pursued the Department's suggestion, in footnote 27 to its brief, that a Texas license might be verified on-line, by going to the Texas Department of Public Safety web-site. Much to our surprise, when we followed the links cited by the Department, we found the sample driver's license pictured to be an almost perfect match with the fake license displayed by Struble when he bought the beer.

Texas license used by the minor, it is quite apparent that anyone having any familiarity with a genuinely issued license from that state, would most certainly spot that the license was indeed a fake based on the two criteria set forth in findings of fact 8.

Based on the lack of training and knowledge on the part of the respondent or his clerk, they lacked the basic tools to make such an informed evaluation. Had the respondent taken the trouble to avail himself and his clerks of readily available training and information on out of state licenses, the sale in this instance would most likely not have taken place. Ignorance of the law is no excuse and the respondent cannot be allowed to benefit from such ignorance in claiming that a diligent inspection had been made of the documentary evidence of majority and identity offered by the minor.

CL 8 *The second step with regard to the exercise of caution shown by a reasonably prudent person in similar circumstances required the respondent to have taken action similar to that set forth in the first step. Failure on the part of the licensee to undergo appropriate training for himself and his clerks is incautious especially since the licensee had close to 14 years experience as a licensee with a less than sterling disciplinary history at the time of the violation. As one might say in the vernacular "It is time to wake up and smell the coffee."*

CL 9 As to the third step requiring an inspection of the documentary evidence and an appraisal of the physical appearance of the minor "prior to the sale", the facts demonstrate a stronger case in support of the respondent. The data on the fake Texas license were correct and the photograph on it was that of the minor. Thus, at first blush an inspection of the document and an appraisal of the minor certainly would be persuasive in creating a belief that the minor was one and the same individual as shown on the purported license. However, the clerk was at fault with respect to his appraisal of the minor in that the appearance of the minor did not indicate that he could have been 21 years of age at the time of the sale.

The thrust of the decision is that the clerk should have recognized the license as fake. The ALJ, despite concerns he expressed at the hearing about difficulties licensees might face in educating themselves on what they needed to know, faulted the licensee for his failure to provide adequate training.⁴ The irony is that, had the clerk

⁴ It is unclear from the testimony whether or to what extent the subject of out-of-state licenses is part of the Department's LEAD training, and whether licensees are informed of the existence and availability of governmentally or commercially published driver's license identification manuals. Although the ALJ found that the Department

(continued...)

been trained in Texas license format, he might still have had no reason to question the license. The failure to note that the license had expired a week earlier would not, in and of itself, have raised suspicion (the Board has said as much in its decisions involving expired licenses; see, e.g., *Thrifty Payless, Inc.* (2004) AB-8125, review den. *sub nom. Dept. of Alcoholic Bev. Control v. Alcoholic Bev. Control Appeals Bd.*(2005) Second Dist. B180138).

⁴(...continued)

makes available for free or at a nominal charge a manual of out-of-state exemplar licenses, there is little evidence to support the finding. The Department investigator was uncertain whether this was the case. The Department itself utilizes such a manual, and although investigator Carnet referred to that manual, it was not made a part of the record. Hence, we do not know what it may have disclosed with respect to Texas licenses.

The ALJ saw the question whether such manuals were made available to licensees at their request as a “very important issue,” stating [RT 38-39:

It is a complex set of issues. The ultimate issue is basically what steps are reasonable for the licensees to take to make themselves informed of resource information to be able to equip themselves to compare ID’s presented to them from out of state. How many hoops does he have to jump through?

It becomes a question of reasonableness and fairness. If have you [sic] to make a licensee jump through a number of hoops to get that information, there may be a question as to whether the Department is conducting its policies fairly with respect to the licensee by expecting them to be able to inform themselves on their own about various resources. And that would be a question of fairness versus, in fact, as Mr. Carnet said that the information is available free, even handed out at the LEAD training, maybe even available at the front desk for licensees to take. In other words, is it readily available to them that all they have to do is be told about it and be able to pick it up at the front desk without so much as a wink, you know.

There is a sense that I’m having of how difficult it is for licensees to have access to this information, so they are able to do their duty and make those comparisons. That’s what is going through my mind right now. That’s the reasons for these questions. I’m apprising you of that because I think we have had these before, and they can be very serious issues.

The license in this case bore a strong resemblance to a genuine Texas license. We do not believe the licensee should be penalized simply because his clerk saw no reason to question it.

ORDER

The decision of the Department is reversed.⁵

FRED ARMENDARIZ, CHAIRMAN
SOPHIE C. WONG, MEMBER
TINA FRANK, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

⁵ 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.