

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

AB-9143

File: 21-434142 Reg: 10072604

RBI FOOD MART & DELI, INC., dba RBI Food Mart & Deli
22520 Sidding Road, Bakersfield, CA 93314,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Matthew G. Ainley

Appeals Board Hearing: November 3, 2011
Los Angeles, CA

ISSUED DECEMBER 7, 2011

RBI Food Mart & Deli, Inc., doing business as RBI Food Mart & Deli (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked its license, the order stayed for one year subject to a 15-day suspension, for having possessed illegal weapons (shurikens and metal knuckles), violations of Business and Professions Code section 24200, subdivisions (a) and (b), in conjunction with Penal Code section 12020, subdivision (a) (1) (hereinafter 12020(a)(1)).

Appearances on appeal include appellant RBI Food Mart & Deli, Inc., appearing through its counsel, Autumn Renshaw, and the Department of Alcoholic Beverage Control, appearing through its counsel, Valoree Wortham.

FACTS AND PROCEDURAL HISTORY

¹The decision of the Department, dated December 1, 2010, is set forth in the appendix.

Appellant's off-sale general license was issued on March 22, 2006. The Department instituted an accusation against appellant on March 2, 2010, charging that appellant's corporate officer, stockholder or agent, Jawahar Singh Sira, manufactured or caused to be manufactured, imported into the state, kept for sale, offered for sale or exposed for sale, or gave, lent, or possessed a shuriken and metal knuckles, in violation of Penal Code section 12020, subdivision (a).²

An administrative hearing was held on October 12, 2010, at which time documentary evidence was received and testimony concerning the violation charged was presented by Department investigators Paul D. Lopez and Raquel Segura. Appellant presented no witnesses in its defense.

Subsequent to the hearing, the Department issued its decision which determined that the violations alleged had been proved, and ordered appellant's license revoked, staying execution of the order for one year, subject to a 15-day suspension.

Appellant filed a timely notice of appeal in which it raises the following issues: (1) the Department failed to establish the culpable intent required by the statute, and (2) the items in question were not weapons. The issues are related and will be discussed together.

² Penal Code section 12020, subdivision (a), makes illegal the sale or offer or exposure for sale, or the possession of a variety of weapons, included among which are metal knuckles and shurikens. A shuriken, sometimes called a "throwing star," is defined as "any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond, or other geometric shape for use as a weapon for throwing." (Pen. Code, § 12020, subd. (c)(11).) Metal knuckles are defined as "any device or instrument made wholly or partially of metal which is worn for purposes of offense or defense in or on the hand and which either protects the wearer's hand while striking a blow or increases the force or impact from the blow or injury to the individual receiving the blow." (Pen. Code, §12020, subd. (c)(7).)

DISCUSSION

Our review of a decision of the Department is limited.

We cannot interpose our independent judgment on the evidence, and we must accept as conclusive the Department's findings of fact. (*CMPB Friends, Inc. v. Alcoholic Bev. Control Appeals Bd.* (2002) 100 Cal.App.4th [1250,]1254 [122 Cal.Rptr.2d 914]; *Laube v. Stroh* (1992) 2 Cal.App.4th 364, 367 [3 Cal.Rptr.2d 779]; [Bus. & Prof. Code] §§ 23090.2, 23090.3.) We must indulge in all legitimate inferences in support of the Department's determination. Neither the Board nor [an appellate] court may reweigh the evidence or exercise independent judgment to overturn the Department's factual findings to reach a contrary, although perhaps equally reasonable, result. (See *Lacabanne Properties, Inc. v. Dept. Alcoholic Bev. Control* (1968) 261 Cal.App.2d 181, 185 [67 Cal.Rptr. 734] (*Lacabanne*).) The function of an appellate board or Court of Appeal is not to supplant the trial court as the forum for consideration of the facts and assessing the credibility of witnesses or to substitute its discretion for that of the trial court. An appellate body reviews for error guided by applicable standards of review.

(*Dept. of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2004) 118 Cal.App.4th 1429, 1437 [13 Cal.Rptr.3d 826] (*Masani*).)

The facts of this case are fairly straightforward. On July 16, 2009, Department investigators Paul Lopez and Raquel Segura visited appellant's premises in an undercover capacity. Lopez went to a display case in the store containing an assortment of belt buckles and knives, and inspected its contents. The assortment included two round buckles, one brass-colored, the other silver, each with the word "Choppers" superimposed over a cross in the center portion of the buckle, and what appeared to be ornamental filigree on each side. Investigator Lopez removed the brass-colored "Choppers" buckle from the case. (See Exhibits 8, 9, 10 and 11.) He disassembled it in the presence of appellant's store manager/corporate secretary, Jawahar Singh Sira, by removing the filigreed pieces from each side of the buckle. The

investigator held the two pieces in his hands in a way that the curved portion of the metal covered the knuckles of his hands. The investigator simulated throwing a punch and commented that a person could hurt someone with it. Sira agreed. (See Finding of Facts 4 and 5.)

Investigator Lopez removed another buckle from a box which on its top displayed two pictures, one of an intact buckle, the other of a center portion of the buckle in the shape of a cross, with a graphic depicting it moving from left to right across the box. The words "throwing star"³ appeared on the left hand corner of the top of the box. (Exhibit 6A.) Investigator Lopez removed the cross in the center of the buckle he had taken from the box by turning and removing it. Each of the four prongs of the star were sharpened at the edges and matched the pictures on the box. The investigator demonstrated to Sira how the star could be thrown. Sira looked at it and also simulated throwing it. (Findings of Fact 7 and 8.)

Appellant does not dispute the findings and evidence summarized above, but contends that Sira lacked the culpable intent required by the statute. It asserts that the Department did not present any evidence that Sira had any knowledge that the items in question, as assembled, were violative of 12020(a)(1), or that they could be disassembled, releasing component parts which would be illegal under the statute. Instead, appellant argues, the investigator's demonstrations to Sira of how the buckles could be converted to weapons was "an apparent effort to give him knowledge sufficient to produce a violation of section 12020(a)(1)." (App. Br. at p. 8.) Sira's throwing motions, appellant claims, were simply imitations of the investigator's actions, and do

³ Investigator Lopez testified that "throwing star" was "slang," a "street name" for a shuriken. [RT 11, 49.]

not establish Sira knew beforehand that the buckles contained weapons.

Appellant's contention that the belt buckles were not weapons when in their "native format" is unpersuasive, and needs no discussion. Investigator Lopez's testimony, explaining how the belt buckles were designed to be disassembled, satisfies us that they would be considered weapons by one who knew what they were and how they could be disassembled.

The only real issue in this case is whether appellant, through its owner/manager, Sira, knew that the intact buckles in question were weapons of the kind made illegal under section 12020. "First, the prosecution must prove that the item had the necessary characteristic to fall within the statutory definition. It must also prove that the defendant knew of the characteristic." (*People v. King* (2006) 38 Cal.4th 617, 627 [42 Cal.Rptr.3d 743].) The investigator's testimony that the buckles, when disassembled and examined, yielded, in one case, metal knuckles, and the other a shuriken, established that each of them had the necessary characteristic to fall with the statutory definition.

Did the licensee know this before the investigator demonstrated what could be done with them? Does it matter, given the facts of this case?

Sira did not testify. There is no direct evidence of what he knew about the buckles in question prior to the demonstrations conducted by Investigator Lopez, and any inferences to be drawn from Sira's response to Lopez's demonstrations that he knew are so weak as to be unreasonable.

Holding one of the metal knuckles on his right hand, Lopez "simulated a striking blow, several striking blows." [RT 17.] Sira observed this, but did not say anything. Lopez then made a statement similar to "You could really hurt somebody with this." In

response, Sira said, according to Lopez, "something similar to 'Yes'." [RT 19-20.] An obvious response to Lopez's comment, this hardly suggests culpable knowledge, but does put Sira on notice of the dangerous potential of the buckle.

Investigator Lopez testified further that another item caught his eye and which he wanted to examine more closely. This was a metal belt buckle (designated a "pirate buckle" on the box) that had a skull in its center and four radiating points protruding from the sides in the shape of a cross. (See Exhibit 3.) Lopez rotated the cross, removed it from the buckle, and demonstrated that it could be thrown. The only evidence that the licensee might have known the center of the buckle could be removed and thrown is an inference drawn from the "throwing star" name on the box and the graphic of the cross and the fact that Sira imitated Lopez's throwing demonstration. There is no evidence that Sira had any prior knowledge that the cross could be removed from the buckle, that the ends of the arms of the cross were sharpened, as the statutory definition requires for it to be a weapon, or even that he knew what a throwing star was. Sira's laughter at and imitation of Lopez's throwing motion, separately or together, are not a basis from which to infer culpable knowledge.

Had Sira thrown up his hands at that moment and said something like "Oh, my, I had no idea what these things were, I will get rid of them right now," this case probably would not have been brought. Indeed, Department counsel so intimated. [RT 48.] That is not what happened.

Instead, after examining the cross, Lopez and his fellow investigator, Raquel Segura asked Sira if they could purchase the pirate buckle. Sira agreed they could, and directed them to the cashier area. Segura purchased the pirate buckle (the brass-colored Choppers buckle that Lopez had used in his demonstration), and a 24-ounce

can of Budweiser beer. The two left the store, and met with a third investigator. All three investigators reentered the store, displayed their credentials, and issued a citation to Sira. The investigators also seized the silver-colored Choppers buckle from the display case. Approximately 18 buckles that Lopez said did not contain illegal weapons remained in the display case. [RT 40, 44.]

It could very well be that, before the investigators came into his store, Sira knew exactly what the belt buckles concealed. It could equally be true that he thought they were nothing more than large belt buckles, akin to those buckles Lopez testified were not illegal weapons.

Despite having been shown that the Choppers and pirate buckles could be dangerous weapons, Sira nonetheless sold them to the investigators. The evidence clearly showed that they were weapons within the language of the statute, and that Sira was on notice of that fact, as would have been any other reasonable person who viewed the investigator's demonstration. Sira's sale of the Choppers and pirate buckles to Investigator Segura violated the statute. We must affirm the Department.

ORDER

The decision of the Department is affirmed.⁴

FRED ARMENDARIZ, CHAIRMAN
TINA FRANK, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

⁴ 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.