

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

AB-9196

File: 20-482280 Reg: 11074093

SUKHWINDER SINGH, dba Fast & Easy Market
244 West Harding Way, Stockton, CA 95204,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Sonny Lo

Appeals Board Hearing: January 3, 2013
Sacramento, CA

ISSUED FEBRUARY 5, 2013

Sukhwinder Singh, doing business as Fast & Easy Market (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked his off-sale beer and wine license for his and his employees having purchased and received cigarettes and distilled spirits believed to have been stolen, a violation of Business and Professions Code section 24200, subdivisions (a) and (b) and Penal Code sections 666 and 496, subdivision (a).

Appearances on appeal include appellant Sukhwinder Singh, appearing through his counsel, Douglas S. Srulowitz, and the Department of Alcoholic Beverage Control, appearing through its counsel, Tamara Colson.

¹The decision of the Department, dated August 31, 2011, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on February 17, 2010. In December, 2010, the Department instituted an accusation against appellant charging that, on five separate dates in July, August, and September of that year, appellant and two of his agents or employees purchased cigarettes and alcohol (distilled spirits), believing such items had been stolen, in violation of Penal Code sections 664 and 496, subdivision (a). The accusation also alleged that appellant had entered a plea of nolo contendere to a violation of Penal Code sections 664 and 496, subdivision (b).²

An administrative hearing was held on June 28, 2011, at which time documentary evidence was received and testimony concerning the violation charged was presented by Department Investigator Robert Martin and appellant Singh.

Subsequent to the hearing, the Department issued its decision which determined that the charges of the accusation had been established. Appellant's license was ordered revoked.

Appellant filed a timely notice of appeal in which he raises the following issues: (1) there is no evidence appellant bought items believed to have been stolen; (2) there was no evidence from which the investigator could have believed the items were purchased for resale at the market; (3) the ALJ erred in admitting appellant's plea of nolo contendere in evidence; and (4) the investigative reports were improperly admitted

²Penal Code §664 provides that a person who attempts to commit any crime, but fails, or is prevented or intercepted in its perpetration, shall be punished. Section 496 makes it unlawful to buy or receive property which has been stolen, knowing it to have been stolen. The two provisions embrace the conduct here involved. (*Singh v. Manzanita Food and Liquor* (2001) AB-7521.)

in evidence.

DISCUSSION

We find no merit in any of the issues raised by appellant.

Appellant's entry of a plea of nolo contendere to charges of, and his conviction on that plea for, violations of Penal Code sections 664 and 496, subdivision (a), are dispositive of this appeal. Business and Professions Code section 24200 specifies grounds for suspension or revocation. Subdivision (d) thereof specifies as one of those grounds "the plea, verdict, or judgment of guilty, or the plea of nolo contendere to any public offense involving moral turpitude."

Although no definition of what constitutes "moral turpitude" has been given by the Legislature, courts have found that certain crimes involve moral turpitude, including theft, receiving stolen property, extortion, and fraud. In *Rice v. Alcoholic Beverage Control Appeals Board* (1979) 89 Cal.App.3d 30, 37 [152 Cal.Rptr. 285], the court said that "moral turpitude is inherent in crimes involving fraudulent intent, intentional dishonesty for purposes of personal gain" See also *Ullah* (1984) AB-6414, where the crimes of insurance fraud, grand theft, and perjury were held to be crimes of moral turpitude.

The crime to which appellant pled is dishonest conduct for personal gain. This brings the offense within the language of section 24200, subdivision (b).

Whether the items were purchased for resale in appellant's store or for his personal use is irrelevant. The crime was in the act of purchasing items believed to have been stolen. The claim that appellant could not have believed the cigarettes were stolen because the investigator referred to them as "legit" was factually resolved against appellant.

Appellant's plea of nolo contendere, and his conviction, were properly admitted into evidence. Appellant's reliance on the decision in *County of Los Angeles v. Civil Service Commission* (1995) 39 Cal.App.4th 620 [46 Cal.Rptr.2d 256] is misplaced. In that case, there was no counterpart statute to section 24200, subdivision (d).

Appellant's authenticity and hearsay objections to the admissibility of the court documents evidencing his nolo contendere plea and conviction (Exhibit 2), and the investigative reports, also fail. The nolo contendere plea and conviction documents were self-authenticating by virtue of the original court seal and clerk's signature, and the foundation for the investigative reports under Evidence Code section 1280 was established through the testimony of Investigator Martin and the absence of any objection from appellant's counsel.³

³Appellant's attorney argued at the hearing before the Board that the court records (Exhibit 2) concerning his plea of nolo contendere to charges of attempted purchase of property believed to have been stolen were improperly admitted into evidence because they lacked proper authentication. He argued in his brief to the Board (App. Br., at p. 4) that the "Judgment of No Contest" (more accurately described on the document itself as a Misdemeanor Advisement of Rights, Waiver and Plea Form) was received in evidence over his objection because of lack of foundation. And, at the administrative hearing, he argued that the plea was inadmissible in a civil proceeding. None of these arguments or objections have merit.

Aside from the fact that the Misdemeanor Advisement of Rights, Waiver and Plea Form bears the signatures of both appellant and his attorney, the official seal and signature of the clerk of the Superior Court of San Joaquin County are sufficient to authenticate the documents making up Exhibit 2 as official court records.

Language in *Poland v. Department of Motor Vehicles* (1995) 34 Cal.App.4th 1128, 1135 [40 Cal.Rptr.2d 693] not only supports the admissibility of the court records in question, but also of the investigator's reports. In *Poland*, objections based on authenticity and hearsay were made to reports of a CHP officer recording symptoms of intoxication and BAC test results, and to an "Administrative Per Se Order of Suspension/Revocation [and] Temporary License Endorsement." The court rejected appellant's argument, relying on Evidence Code section 1453:

The argument ignores Evidence Code section 1453, which provides, in part, "A signature is presumed to be genuine and authorized if it purports to be the signature, affixed in his official capacity, of [¶] . . . [¶] (b) A public

(continued...)

We would be remiss if we did not comment on an unusual aspect of the investigation that preceded the filing of the accusation. Two of the transactions, those described in counts III and IV of the accusation, were alleged to have been conducted with an employee named Harmin, referred to in the transcript, and, occasionally, in the investigative reports, as "Harry." Harmin's last name was redacted from counts III and IV after Department counsel advised the ALJ that Harry "is actually or at the time of the events was a juvenile." [RT 8-9.] The accusation charged Harmin with purchasing cigarettes and distilled spirits, neither of which he would have been old enough to purchase legally. Nonetheless, the investigative reports reveal that he engaged in discussions dealing with the exchange of offers and counteroffers as to the price to be paid for the cigarettes and spirits which were the subject of the transactions, and acted as a broker in others. The investigative reports described Harmin, or "Harry," as having the appearance of a person in his mid-twenties, and the investigative report relating to the transaction of August 12, 2010 (Exhibit 5, at p. 3) states that, on August 5, a

³(...continued)
employee of any public entity in the United States. Given this presumption, the apparent signature of Officer Hagen, apparently affixed in his official capacity as an employee of the State of California, furnishes "evidence sufficient to sustain a finding" that the writings were what the Department claimed them to be. (Evid. Code, §1400, subd. (a).) Since this was a presumption affecting the production of evidence (Evid. Code §1450), the trier of fact was "required" to accept the documents as authentic in the absence of evidence which would support a contrary finding.

Appellant produced no contrary evidence, nor did he ever deny the events described in the court records.

Stockton police officer identified "Harry," and stated his date of birth was May 17, 1984. This, of course, is inconsistent with the representation of Department counsel, which we have no reason to doubt. There is no photograph of Harmin in the record. We are left to wonder whether the Department investigator knew or should have known he was negotiating with a teenager.

Although Harmin was apparently active and/or present in all of the negotiations, it must be noted that another employee, 39-year-old Mohammad Ozal, was also present during all of the transactions except the final transaction on September 1 , when only licensee/appellant and Harmin were present.

For all these reasons, appellant's appeal lacks merit.

ORDER

The decision of the Department is affirmed.⁴

BAXTER RICE, CHAIRMAN
FRED HIESTAND, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

⁴This 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.