

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

AB-9557

File: 20-528705 Reg: 15082467

7-ELEVEN, INC. and CONVECO CORPORATION,
dba 7-Eleven Store #35745A
4401 Redondo Beach Boulevard, Lawndale, CA 90260,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: September 1, 2016
Los Angeles, CA

ISSUED SEPTEMBER 28, 2016

Appearances: *Appellants:* Stephen W. Solomon, Melissa H. Gelbart, and Michelangelo Tatone of Solomon Saltsman & Jamieson as counsel for appellants 7-Eleven, Inc. and Conveco Corporation.
Respondent: Jacob L. Rambo, Jennifer M. Casey, and Jonathan Nguyen as counsel for the Department of Alcoholic Beverage Control.

OPINION

7-Eleven, Inc. and Conveco Corporation, doing business as 7-Eleven Store #35745A (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ suspending their license for fifteen days because their clerk sold an alcoholic beverage to a Department minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on January 29, 2013. On May 18, 2015, the Department filed an accusation against appellants charging that, on February 7,

1. The decision of the Department, dated November 18, 2015, is set forth in the appendix.

2015, appellants' clerk, Adolfo Daye (the clerk), sold an alcoholic beverage to 19-year-old Ryan Steele. Although not noted in the accusation, Steele was working as a minor decoy for the Department of Alcoholic Beverage Control at the time.

On June 8, 2015, appellants filed and served on the Department a Request for Discovery pursuant to Government Code section 11507.6 demanding, inter alia, the names and addresses of all witnesses. On June 15, 2015, appellants received a response providing the address of the Department's Lakewood District Office in lieu of the decoy's home address. On June 25, 2015, appellants sent a letter to the Department demanding that it furnish the decoy's contact information by June 29, 2015. On June 30, 2015, appellants received a response from the Department asserting that the contact information for the District Office was sufficient.

On July 2, 2015, appellants filed a Motion to Compel Discovery. On July 3, 2015, the Department responded and opposed the motion.

On July 15, 2015, the ALJ denied appellants' motion, arguing that the statute requires only an "address" and not necessarily a home address, and further, that this Board's decision in *Mauri Restaurant Group* (1999) AB-7276 was on point and mandated denial of the motion.

At the administrative hearing held on August 19, 2015, documentary evidence was received and testimony concerning the sale was presented by Steele (the decoy), by Agent Carlos Valencia of the Department of Alcoholic Beverage Control, and by Adolfo Daye, the selling clerk and president of co-appellant Conveco Corporation.

Testimony established that on the date of the operation, the decoy entered the licensed premises and went to the coolers, where he selected a six-pack of Bud Light beer. He took the beer to the counter. After standing in line, he set the beer and a \$20 bill down on the counter.

The clerk asked to see the decoy's identification. The decoy handed his California driver's license to the clerk, who scanned it through the register. The register beeped. The clerk looked at the identification and asked the decoy if he was born in 1995. The decoy said that he was. The clerk said "1995, OK" and proceeded with the sale. The decoy paid for the beer, and the clerk gave him some change. The decoy then exited with the beer.

The Department's decision determined that the violation charged was proved and no defense was established.

Appellants then filed this appeal contending (1) the ALJ abused his discretion by denying appellants' motion to compel release of the decoy's contact information, and (2) the Department failed to comply with Government Code section 11507.6 when it provided the address of its Lakewood District Office, rather than the decoy's home address. These issues will be discussed together.

DISCUSSION

Appellants contend the Department failed to comply with section 11507.6 of the Government Code when it provided the address of its Lakewood District Office, rather than the decoy's home address, during pre-hearing discovery. (App.Br. at pp. 7-9.)

Appellants further contend the ALJ abused his discretion by denying their motion to compel disclosure of the minor decoy's home address. (App.Br. at pp. 5-7.) They accurately observe that this Board has held that the burden of proving an affirmative defense falls on the party raising it, and that "[p]re-hearing discovery is necessary to have a meaningful chance to meet that burden." (App.Br. at p. 7.) Appellants insist the Department's refusal to provide the

decoy's address, coupled with the ALJ's denial of their motion to compel, prejudiced them and deprived them of the ability to meaningfully defend themselves. (App.Br. at pp. 2, 7, 9.)

This Board has recently addressed a number of cases raising this purely legal issue. In *7-Eleven, Inc./Joe* (2016) AB-9544, we held that the decoy's personal address is protected under section 832.7 of the Penal Code. (*Id.* at pp. 6-10.)

At oral argument, however, appellants strenuously objected to the *Joe* decision and to our application of Penal Code section 830.6(c) to minor decoys. According to appellants, section 830 of the Penal Code defines a "peace officer" and limits application of subsequent provisions, including section 830.6(c), to individuals who meet "all standards imposed by law on a peace officer"—including, for example, background checks and firearms training. Appellants argue it is absurd extend the definition to minor decoys, who undergo virtually none of the training or certification required of true peace officers. To underscore the alleged absurdity, appellants insist that the Board's reading of section 830 would allow minor decoys to carry firearms or respond to emergency calls.

Appellants misread both this Board's *Joe* decision and the statutes in question. First, the language of section 830 in no way precludes the application of section 830.6(c) to minor decoys assisting in alcoholic beverage operations. The first clause of section 830 uses inclusive language: "*Any* person who comes within the provisions of this chapter and who otherwise meets all standards imposed by law on a peace officer is a peace officer" (Pen. Code, § 830, emphasis added.) Thus, anyone who falls under a provision of the chapter *and* has undergone the training and certification cited by appellants is necessarily included in the definition of "peace officer" by operation of this clause—but nothing in the clause *excludes* others.

It is only in the second clause that we encounter exclusive language: “. . . and notwithstanding any other provision of law, *no person other than those designated in this chapter* is a peace officer.” (Pen. Code, § 830, emphasis added.) This second restrictive clause makes no reference to training, certification, or other “standards imposed by law on a peace officer”; it refers only to the statutes in that chapter of the Penal Code. If an individual falls under one of these provisions, she is a “peace officer” for purposes of the applicable statute, regardless of training or certification; anyone else is necessarily excluded.

Appellants have, in effect, put the cart before the horse. It is the subsequent provisions that supply the manifold definitions of “peace officer”; it is not, as appellants argue, an implicit definition of “peace officer” that limits application of the subsequent provisions.

Included in those provisions is section 830.6(c), which formed the basis of our decision in *Joe*. The statute provides, “[w]henever any person is summoned to the aid of any uniformed peace officer, the summoned person is vested with the powers of a peace officer that are expressly delegated to him or her by the summoning officer or that are otherwise reasonably necessary to properly assist the officer.” (Pen. Code, § 830.6(c).) The language expressly restricts the “powers of peace officer” to those “expressly delegated . . . by the summoning officer.” The grant of authority is quite limited and entrusted to the judgment of the summoning officer. Contrary to appellants’ claim, it does not permit an untrained minor decoy to wield a loaded sidearm or careen an ambulance willy-nilly through the city streets.

In *Joe*, we cited in a parenthetical to *Forro Precision*, a well-reasoned Ninth Circuit case applying California law to an analogous set of facts. (*7-Eleven, Inc./Joe, supra*, at p. 10, citing *Forro Precision, Inc. v. IBM* (9th Cir. 1982) 673 F.2d 1045, 1054 [1982 U.S. App. LEXIS 20438].) In that case, police obtained a valid search warrant for Forro Precision’s business

premises. (*Forro Precision, supra*, at p. 1054.) The warrant specified technical documents. (*Ibid.*) However, the technical documents, which related to computer systems, were beyond the understanding of a layperson—including police officers. (*Ibid.*) The police therefore enlisted the assistance of IBM employees in executing the search warrant. (*Ibid.*) Police maintained supervision over the assisting IBM employees at all times. (*Ibid.*)

The court concluded “IBM’s actions in assisting the police in making the search were privileged and could not serve as a basis for civil liability.” (*Id.* at p. 1053.) In interpreting Penal Code 830.6(b)—redesignated as the current subdivision (c) pursuant to a 1996 amendment—the court found,

California allows police officers to request the aid of citizens in executing search warrants. *People v. Turner*, 249 Cal.App.2d 909, 927, 57 Cal.Rptr. 854, 865, cert denied, 389 U.S. 963, 88 S. Ct. 348, 19 L. Ed. 2d 375 (1967); Cal. Penal Code § 1530 (West 1970). The California legislature has provided that a citizen aiding an officer has such powers as the supervising officer may delegate. Cal. Penal Code § 830.6(b). (West Supp. 1980). The officer himself is immune from suit arising out of the execution of a valid warrant. *Vallindras v. Massachusetts Bonding & Ins. Co.*, 42 Cal.2d 149, 265 P.2d 907, 910-11 (1954); Cal.Civ.Proc. Code § 262.1 (West 1954). The California legislature has not, however, expressly provided for such immunity for the citizen assisting a search.

We think that California Penal Code section 830.6(b) must be understood as according a citizen immunity that derives from the officer’s own immunity.

(*Id.* at p. 1054.) The court noted the importance of encouraging citizens to aid police: “A citizen should not have to assess his potential civil liability when presented with a reasonable police request for assistance. Otherwise, citizen cooperation might be deterred.” (*Ibid.*)

No court has interpreted section 830.6(c) with reference to minor decoys, or with regard to a summoned person’s address or other personal information. We find the Ninth Circuit’s reasoning persuasive, however. A minor should not have to face disclosure of her home

address to the target of a decoy buy operation. To hold otherwise might discourage minor participation in decoy operations.

We therefore reiterate our holding in *Joe*. (See *7-Eleven, Inc./Joe, supra*, at p. 10.) The minor qualifies as a peace officer, by delegation of limited powers, under section 830.6(c). She is protected from disclosure of her personal information, including home address, by section 832.7 of the Penal Code. This protection derives from the protections afforded the delegating officer—that is, where the officer delegates power, he also delegates relevant legal protections.

This holding merely protects the decoy's personal information, however. It does not excuse the Department from providing a valid address. In *7-Eleven, Inc./Nagra* (2016) AB-9551, we emphasized that the decoy must actually be reachable at the address provided. (*Id.* at p. 5, citing *7-Eleven, Inc./Joe, supra*, at p. 11.) We noted that “the Department is accountable for the validity of the addresses it provides.” (*Id.* at p. 7.) “It is not enough to provide a Department District Office address if the District Office is unable or unwilling to forward communications to the decoy.” (*Id.* at p. 6.) This Board will offer relief in the form of reversal if “we are presented with a well-established record showing that a decoy was legitimately unreachable at the address the Department provided during discovery, and the Department took no steps to provide an address at which the decoy could actually be reached.” (*Id.* at p. 8.)

In this case, there is nothing to suggest that appellants attempted to contact the decoy through the Lakewood District Office. They make no such allegation in their brief, and the record includes no such correspondence. If pre-hearing contact with the decoy was as essential to appellants' defense as they claim, then we are at a loss to explain their failure to

even *attempt* contact with the decoy through the District Office address. We see no cause to offer relief.

ORDER

The decision of the Department is affirmed.²

BAXTER RICE, CHAIRMAN
FRED HIESTAND, MEMBER
PETER J. RODDY, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

2. This final order is filed in accordance with Business and Professions Code section 23088, and shall become effective 30 days following the date of the filing of this order as provided by section 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 section 23090 et seq.