ISSUED JULY 12, 2000

BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD

OF THE STATE OF CALIFORNIA

MONTELL R. MEACHAM dba First King 14401-03 S. Western Avenue Gardena, CA 90249, Appellant/Licensee, v. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL, Respondent.	)	AB-7032 File: 48-150771 Reg: 96035015 Administrative Law Judge at the Dept. Hearing: Sonny Lo Date and Place of the Appeals Board Hearing: June 6, 2000 Los Angeles, CA

Montell R. Meacham, doing business as First King (appellant), appeals from a decision of the Department of Alcoholic Beverage Control[1] which, pursuant to Business and Professions Code §24200, subdivision (b), revoked his on-sale general public premises license for violations of Business and Professions Code §25601, subdivision (a), and §23804; and Rules 143.2 and 143.3 (4 Cal.Code Regs. §§143.2 and 143.3).

Appearances on appeal include appellant Montell R. Meacham, appearing through his counsel, Ralph Barat Saltsman and Stephen Warren Solomon, and the

[1] *The decision of the Department, dated January 15, 1998, is set forth in the appendix.*

Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public premises license was issued on March 23, 1984. Thereafter, the Department instituted an accusation against appellant charging that the premises were operated in violation of Business and Professions Code §25601 (operation as disorderly house)[2] and in such manner as to create a law enforcement problem, contrary to Business and Professions Code §24200, subdivision (a), and as a nuisance in violation of Penal Code §370.

The accusation, as originally filed, contained three counts: count 1 (the disorderly house count) contained 24 subcounts, covering events occurring between October 17, 1992, and June 1, 1995; count 2 (the law enforcement problem count) reincorporated the allegations of count 1, and alleged an additional 152 subcounts of police responses necessitated by the licensed premises; count 3 charged that appellant had operated the premises in such a manner as to create a public nuisance.[3]

A total of seven amendments to the accusation were filed. The first of these

---

[2] *"It is apparent that three distinct courses of conduct are described by section 25601: first, the keeping of a disorderly house; second, the keeping of a house which disturbs the neighborhood; and third, the keeping of a house to which people resort for purposes which injure, inter alia, public morals."* Boreta Enterprises, Inc. *v.* Department of Alcoholic Beverage Control *(1970) 2 Cal.3d 85, 97 [84 Cal.Rptr. 113].*

Pointing out that the original meaning of the term "disorderly houses" had to do with prostitution, the court in Boreta *explained that, in cases under Business and Professions Code §25601, the term had been applied to a relatively wide range of activities occurring on licensed premises "which have involved threats to the safety or tranquility of the surrounding neighborhood." (Ibid.) In* Stoumen *v.* Reilly *(1951) 37 Cal.2d 713 [234 P.2d 969], the court said that §25601 required proof of the commission of illegal or immoral acts on the premises, or resort thereto for such purposes.*

[3] *This count was ultimately dismissed by the ALJ.*

amendments added 15 new counts alleging violations of Rule 143.2 and 143.3 by two female entertainers, and a 16th count alleging these same rule violations as condition violations. Subsequent amendments added additional subcounts to counts 1 and 2, culminating in a total of 92 subcounts under count 1 and 208 subcounts under count 2.

Of the count 1 subcounts, 69 related to noise disturbances of three residents who lived 15, 30, and 60 feet, respectively, from the licensed premises parking lot. Other allegations of count 1 included incidents involving robbery, assault and battery, assault with a deadly weapon, attempted murder, intoxication, lewd acts, fighting, discharge of a firearm, sale of a controlled substance, commission of lewd acts, and theft. The count 2 subcounts, other than the count 1 subcounts that were realleged, were mostly responses to disturbances.

An administrative hearing was conducted on eighteen separate dates between August 15, 1996, and September 18, 1997, during which time a large volume of evidence was received, consisting of over 1,700 transcript pages of the testimony of 60 witnesses,[4] and a number of documentary exhibits.

Subsequent to the hearing, the Department issued its decision which determined that a sufficient number of the allegations in the accusation had been established by the proof as to sustain the charges of statutory and rules violations, and ordered revocation of appellant's license.

---

[4] *For reference purposes, the volumes of transcripts (RT) are identified as follows: Vol. 1 - August 15, 1996; Vol. 2 - August 16, 1996; Vol. 3 - August 20, 1996; Vol. 4 - August 21, 1996; Vol. 5 - August 22, 1996; Vol. 6 - August 23, 1996; Vol. 7 - August 26, 1996; Vol. 8 - December 4, 1996; Volume 9 - December 5, 1996; Vol. 10 - December 11, 1996; Vol. 11 - December 12, 1996; Vol. 12 - December 16, 1996; Vol. 13 - April 9, 1997; Vol. 14 - April 28, 1997; Vol. 15 - April 29, 1997; Vol. 16 - April 30, 1997; Vol. 17 - July 16, 1997; Vol. 18 - September 18, 1997.*

Appellant thereafter filed a timely notice of appeal, and has now raised numerous points of alleged error. Appellant's contentions are, for the most part, that the Department's evidence was insufficient, that the only proof was hearsay, and that, in many cases, there was no connection between the incident alleged and the premises. In addition, appellant contends that he was unlawfully discriminated against in the selection of his premises as a target of enforcement action because of the racial composition of his clientele, and by the failure of the Department to pursue its normal policy of timely enforcement and graduated discipline. It is this latter contention which gives us the most concern, for reasons we shall explain.

DISCUSSION

Appellant attacks many of the counts which were sustained, contending, variously, that the findings are not supported by substantial evidence, that many findings are supported only by hearsay, or that many suffer from some legal or proof defect. In addition, appellant contends that the Department acted without warning, failed to follow its usual policy of attempting to achieve compliance by the gradual imposition of discipline, and engaged in discriminatory enforcement by targeting First King because of the racial composition of its clientele.

In order to ensure that appellant's contentions are fairly considered, we have examined each of the counts and subcounts which were sustained by the Department in order to make our determination whether the rulings as to them were correct. That analysis is set forth at length in the addendum hereto, which we include as an integral part of our decision.

In this analysis, we have kept in mind the proper scope of the Board's review as limited by the California Constitution, by statute, and by case law. In reviewing the Department's decision, the Appeals Board may not exercise its independent judgment on the effect or weight of the evidence, but is to determine whether the findings of fact made by the Department are supported by substantial evidence in light of the whole record, and whether the Department's decision is supported by the findings.

"Substantial evidence" is relevant evidence which reasonable minds would accept as a reasonable support for a conclusion. (Universal Camera Corporation v. National Labor Relations Board (1950) 340 US 474, 477 [71 S.Ct. 456] and Toyota Motor Sales USA, Inc. v. Superior Court (1990) 220 Cal.App.3d 864, 871

[269 Cal.Rptr. 647].)

When, as in the instant matter, the findings have been attacked on the ground that there is a lack of substantial evidence, the Appeals Board, after considering the entire record, has been required to determine whether there is substantial evidence, even if contradicted, to reasonably support the findings in dispute. (Bowers v. Bernards (1984) 150 Cal.App.3d 870, 873-874 [197 Cal.Rptr. 925].)

Appellate review does not "resolve conflicts in the evidence, or between inferences reasonably deducible from the evidence." (Brookhouser v. State of California (1992) 10 Cal.App.4th 1665, 1678 [13 Cal.Rptr.2d 658].)

The Appeals Board is also authorized to determine whether the Department has proceeded in the manner required by law, proceeded in excess of its jurisdiction (or without jurisdiction), or improperly excluded relevant evidence at the evidentiary hearing.[5]

The Department is authorized by the California Constitution to exercise its discretion whether to deny, suspend, or revoke an alcoholic beverage license, if the Department shall reasonably determine for "good cause" that the granting or the continuance of such license would be contrary to public welfare or morals.

Where there are conflicts in the evidence, the Appeals Board is bound to resolve them in favor of the Department's decision, and must accept all reasonable inferences which support the Department's findings. (Kirby v. Alcoholic Beverage

---

[5] California Constitution, article XX, § 22; Business and Professions Code §§23084 and 23085; Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal.3d 85 [84 Cal.Rptr. 113].

Control Appeals Board (1972) 7 Cal.3d 433, 439 [102 Cal.Rptr. 857]; Kruse v. Bank of America (1988) 202 Cal.App.3d 38 [248 Cal.Rptr. 271]; Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control (1968) 261 Cal.App.2d 181 [67 Cal.Rptr. 734, 737]; Gore v. Harris (1964) 29 Cal.App.2d 821 [40 Cal.Rptr. 666].)

It is within this legal framework that we have reviewed the decision and order of the Department, and concluded that the ALJ's rulings as to the counts and subcounts were correct except in the following instances: subcounts 4, 9, 32, 42, 55, 75, 84, 102, 103, 159, 161, 162, and 165, of count 2. As to those counts, we have concluded there was not substantial evidence supporting them. As noted, a detailed consideration of all of these subcounts is set forth in the addendum hereto. We are satisfied that, all other issues aside, the record demonstrates an adequate basis for the imposition of discipline.

That having been said, we have also carefully considered appellant's claims that his premises were targeted for revocation because of the racial makeup of its clientele, and, in conjunction with that claim, that the Department and the City of Gardena never warned him that his license was at issue, and that the Department did not follow its customary policy of using progressive discipline in order to achieve compliance.

Despite this issue having been raised as a defense by appellant in its notice of special defenses, and despite it having been the subject of considerable testimony and some debate, we are unable to find anything in the decision of the Department to indicate the issue was even considered.[6]

---

[6] *But see footnote 7, infra.*

Appellant urged that a study intended to determine which licensees were the greatest police problem in the City of Gardena, a study in which First King emerged as the premises generating the greatest demand for police services, did not include the Normandie Club, a card room which also holds a license. Claiming that the Normandie Club required twice as many police responses in a shorter period of time,[7] and relying upon testimony that the racial composition of the Normandie Club's clientele was mostly Asian and Caucasian, while First King's patrons were almost exclusively African-American, appellant argued that it necessarily followed that the Normandie Club represented at least as great, if not greater, a demand on police resources as First King, the inference being that First King was improperly targeted.

Gardena police lieutenant David Morgan testified that he was the manager of a study conducted pursuant to an ABC grant in which an analysis of licensees responsible for police calls was conducted, and was the person who developed the criteria for the analysis, which was conducted by Gardena police sergeant Hernandes Lobo. Morgan testified:

Q: When you established the criteria, was that to define the nature of the

---

[7] *Appellant attempted to place in evidence Exhibit A, a computer printout of police responses to the Normandie Club. He argued that it showed more responses to the Normandie Club than to First King, but that the city did not consider the Normandie Club to be a police problem. Appellant argued that if the Normandie Club, with more incidents, was not a police problem, then First King was not.*

The ALJ denied appellant's offer of the printout as evidence, stating:

> *"Right now I'm inclined to not admit Exhibit A for the purpose of proving a defense.*
>
> *"Unequal enforcement, assuming it's even true, does not prove that First King was not a law enforcement problem. Maybe we have two law enforcement problems here. I don't know what the reason is that ABC chose to go after one of them only." [15 RT 27].*

The ALJ had, at the outset of the proceedings, ruled that a similar printout (Exhibit 14), purporting to show over 200 police responses to First King, also would not be admitted into evidence, because it had been shown to be unreliable.

licensees who would be included in the study?

A: Okay. My discussions with the sergeant, the criteria would have been to identify the locations where we would want to direct our efforts to achieve voluntary compliance.

Q: To do what?

Achieve voluntary compliance with the various ABC laws, to target these locations for training and enforcement.

Q: So the purpose of this study was to identify the ten highest enforcement - -

A: Highest problem locations."

Morgan and Lobo "looked at things like complaints from neighbors, volume of calls, and severity of the - - the seriousness of the calls." [17 RT 14].

Morgan believed there had been a meeting in Hawthorne where those licensees identified as being among the top ten were informed. He also was of the belief that there were "highly visible" contacts with the licensees, but that no enforcement action was taken. "I can't recall the name of that component right now, but that was the component then of the grant. High visibility, no enforcement action. Advisory type of contacts." [18 RT 13.]

Sergeant Lobo discussed the computer printout of police responses to the Normandie Club. He cited supplemental information showing 800 to 1300 subjects in the premises at the time of an incident. [15 RT 16.] This suggests that the Normandie Club was capable of hosting from five to almost ten times as many patrons as First King, which had a maximum capacity of 135 patrons.

Chief of Police Richard K. Propster testified that, although aware of studies being conducted under a grant shared with the City of Hawthorne, he was unaware of any which were directed at determining the ten licensed premises responsible for the

greatest number of police responses, and had no role in establishing the criteria for the study, or excluding the Normandie Club from the study. He believed that lieutenant Morgan, as manager of the study, would have established the criteria for inclusion or exclusion. Chief Propster was aware that First King had generated "a lot" of calls for service. It was his opinion that First King has created a law enforcement problem for the police department, and for the community. [18 RT 9.]

Brenda Kelly, a police assistant assigned to the Crime Analysis Unit/Information Services Unit of the Gardena Police Department, testified that she compiled a report of calls for service and crime reports, covering the period 1992-1995. Her report concerned a licensee list which was provided to her. [11 RT 55-65.] Based upon her work, she ranked First King first or second in calls for service and crime reports, along with Barbary Coast.[8] The bar ranking third would probably account for half as many calls as either of the top two. [11 RT 41-54.] Kelly believed the Normandie Club was not included in her analysis because it was viewed as a card club. While it had a bar, most people went there to play cards, not to drink.

Kelly acknowledged that she did not include the Normandie Club in her report. She also acknowledged that in some instances, when the police officer may have listed a street address, there was no way she could know that the incident may have occurred at a nearby intersection without talking to the officers, which she did not do.

Rodney Tanaka, a Gardena police lieutenant whose assignment for the four years prior to his testimony has been to manage the night shifts on patrol, testified that, in his opinion, First King "ranks as one of our busier as far as an A.B.C. licensed

---

[8] *Barbary Coast was located directly across the street. Apparently, it was at one time a licensee, but not during the period in question. It offered totally nude dancers.*

business." The trend is upward for calls for service to First King, he stated, and he does not believe there is any ABC licensed premises which gets more calls for service. In his opinion, the Normandie Club, which is also a licensee, accounted for fewer calls for service [11 RT 32-38].

Appellant's contention that it was discriminated against on racial grounds is based on his argument that the Normandie Club was responsible for a greater demand on police resources but was excluded from the study which showed that First King was the licensee placing the largest demands upon the city's police resources.

Appellant's burden is spelled out in People v. Battin (1978) 77 Cal.App.3d 635, 666 [143 Cal.Rptr. 731]:

> "Discriminatory prosecution constitutes adequate grounds for reversing a conviction ... when the defendant proves : '(1) that he has been deliberately singled out for prosecution on the basis of some invidious criterion;' and (2) that 'the prosecution would not have been pursued except for the discriminatory design of the prosecuting authorities.' ... The discrimination must be 'intentional and purposeful.' ... Further, defendant must carry the burden of proof that he has been deliberately singled out in order to overcome the presumption that '[prosecutorial] dut[ies have] been properly and constitutionally exercised.'" [Citations omitted].

It is not the province of this Board to analyze the testimony of the various employees of the City of Gardena and make a determinion whether, as appellant suggests, the study that the city conducted unfairly targeted First King. That was the responsibility of the ALJ in the first instance, and the Department, neither of which appears to have done so. We are unwilling to affirm an order of revocation where an issue of such magnitude is not even addressed in the decision.

Appellant has also claimed that the Department did not follow its customary policy of pursuing gradual discipline. The ALJ specifically found that any prior disciplines were too remote and would not be considered. (See Finding I-A.) While this

does not, in and of itself, invalidate the Department's order, since the Department is vested with wide discretion with regard to the determination of appropriate discipline, it does leave us wondering why the Department did not act at some earlier time, and whether, with timely discipline, it might possibly have prevented the occurrence of future incidents.

We think fairness requires us to remand this case to the Department for it to consider appellant's claim of selective and discriminatory enforcement in light of the evidence in the record, and to make findings on that issue and on such other issues as may be implicated therein. If the Department believes the record as a whole demonstrated the absence of selective enforcement, it should say so. If it has doubts, or is not prepared to say so, additional hearings may be required. If it has reasons for not having pursued its customary policy of gradual discipline, it should explain those as well. Without findings which satisfy this Board that appellant's defenses were accorded fair consideration, the decision of the Department is incomplete.

ORDER

The decision of the Department is reversed, and the matter is remanded to the Department for such further proceedings as may be necessary and appropriate in light of our comments herein.[9]

TED HUNT, CHAIRMAN

---

[9] 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.

RAY T. BLAIR, JR., MEMBER
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

ADDENDUM

The following is a summary of the counts and subcounts which were sustained by the ALJ, and the position of the Board as to each.

Count 1-A

Gardena police officer Eric Majors testified that, on October 17, 1992, he and his partner, Robert Preijers, responded to a police radio report of a robbery that was said to have occurred five minutes earlier. He interviewed several employees who described the incident. [1 RT 22-24, 27-37.]

The ALJ dismissed this subcount, which charged an armed robbery, as to count 1, stating that only hearsay evidence was offered to support it. (See Determination of Issues I-D.) However, he did include it as an incident contributing to the existence of a law enforcement problem.

We think the evidence justifies the inclusion of this subcount as a law enforcement problem, since there was a police response and investigation required.

Count 1-B

Gardena police officer Mark Wilson testified that, on November 14, 1992, he and his partner, officer Pardo, responded to a report of a battery upon an employee of First King. He was told by Kristen Grasseschi, the battery victim, that, after she had performed a dance for a patron, he went wild and hit her. Wilson did not recall seeing any visible injuries, but Grasseschi told him she was sore. His contemporaneous report

stated that she had been struck twice, and suffered a bloody nose and cut lip. He described her emotional status as upset. [4 RT 48-55, 73-78].

Appellant appears not to have challenged this subcount, which was sustained by the ALJ only as to the law enforcement count. In any event, the officer's testimony about the victim's injuries and emotional state tend to corroborate her description of the incident. This subcount was properly sustained.

Count 1-C

Bruce Hernandez testified that, on February 11, 1993, while in appellant's restroom, he was struck unconscious and robbed of his wallet, which had between $150 and $200 in it [9 RT 5-25].

Appellant's contention, that the attack and robbery could not have happened in appellant's premises because the 4' by 8' restroom was too small to hold as many persons as Hernandez said were there, is not persuasive.[10] The ALJ heard Hernandez testify [9 RT 5-25], and chose to believe him despite appellant's suggestion that the incident really occurred in another bar across the street.

Count 1-E

Gardena police officer Celeste Browning testified [8 RT 51-61] that, on January 13, 1994, she responded to a call about a fight at First King. She interviewed Wayne Wilson in the parking lot. Wilson told her that while he was escorting a patron from the premises after reports the patron had exposed himself to one of the dancers, the patron's friends tried to prevent him from doing so. In the course of the altercation, Wilson said, he was struck on the head with a pool cue ball. Browning said a bump was

---

[10] *Appellant's brief (at page 42) mistakenly refers to Hernandez as "Henderson."*

clearly observable on Wilson's shaved head.

This subcount was dismissed by the ALJ as to count 1 because it was based solely upon hearsay evidence. However, it was included among those count 1 subcounts which had been incorporated into count 2 which the ALJ counted as contributing to a law enforcement problem. Given that officers were called to the premises, and the fact that the person injured was an employee, it was proper for the ALJ to have included this incident.

Count 1-F

This subcount concerns the patron who exposed himself to one of the First King dancers. (See 1-E, above.) The ALJ sustained this count only as one contributing to the law enforcement problem, presumably for the same reasons applicable to subcount 1-E.

As so limited, this subcount was properly sustained, inasmuch as a police response was required.

Count 1-G

Gardena police officer Denny Ward testified that, on January 22, 1994, he responded to a radio call regarding a stabbing at First King. He went to First King and contacted the victim, Lashawn Cage. Ward was able to observe several shallow, bleeding cuts on Cage's back. Cage identified Beatrice Briggs as the assailant. Briggs was Cage's boyfriend's ex-girlfriend.

Ward drove Cage to a hospital, and while there, spoke to Cage's boyfriend, who was able to give him Briggs's address and make of vehicle. He then turned his report over to detectives, and had no further involvement.

The ALJ dismissed this subcount as to count 1, but sustained it as an incident

requiring a police response.

Again, while the statements by Cage are hearsay, her presence in the premises and Ward's ability to view her injuries are sufficient to lend trustworthiness to her statements.

This subcount was properly sustained as to count 2.

Count 1-I

Gardena police officer Uikilifi Niko testified that, on April 2, 1994, he and his partner, Carlos Vega, responded to a request from First King for assistance involving a belligerent patron who had been detained by First King security guards. Upon arrival, he met with the security guards and the patron, who was handcuffed. Based upon the patron's appearance, demeanor and behavior, Niko determined he was intoxicated, and arrested him for violating Penal Code §647, subdivision (f).

The ALJ dismissed this subcount as to Count 1 on the ground it was based solely on hearsay evidence, but included it as a necessary police response in connection with count 2, the law enforcement count. We think he was correct in so doing. This subcount was properly sustained.

Count 1-J

Gardena police officer Denny Ward testified that on April 22, 1994, he investigated an incident of reported pickpocketing at First King. The victim, Frederick Wooten, told Ward he had been in the premises a half-hour when he discovered his wallet was gone. Wooten did not remember anyone having brushed against him.

The ALJ sustained this count only to the extent it had been incorporated into the

law enforcement count. We think he was correct in so doing. A police response to the premises was required.

Count 1-K

Valerie Gordon, who was formerly a cook at First King, testified that while at work on April 24, 1994, two masked men, one of whom was armed, burst in behind an employee, forced that employee to the floor, and ordered Gordon to lie down. Her testimony as to anything that followed was based upon what others had told her. [3 RT 78-90.]

The ALJ dismissed this subcount as to the disorderly house count (count 1), which charged an armed robbery, stating that only hearsay evidence was offered to support it. (See Determination of Issues I-D.) However, he did include it as an incident contributing to the existence of a law enforcement problem.

While Gordon's testimony was hearsay as to whether there was an actual robbery, her testimony that masked, armed gunmen had forced their way into the premises was competent testimony as to an event reasonably considered to be a law enforcement problem. In addition, Gardena police officer Dwayne Taylor was required to respond to the robbery report. The subcount was properly sustained as a law enforcement problem chargeable to appellant.

Counts 1-N and 1-O

Count 1-N

Gregory Morrison, a Los Angeles County Safety Officer testified that, on July 6, 1994, while he was off duty, and in appellant's restroom, he was grabbed by a person standing behind him and told he would have to give up his money. A struggle broke out,

the assailant was joined by a second person, and Morrison's brother-in-law, David Martinez, came to his aid. The struggle moved from the restroom back into the bar, where it was quickly broken up. Morrison's gun, which had drawn when the robbery attempt began, was lost in the struggle, as was his wallet. As the assailants fled, Morrison saw a man running from the bar and firing a weapon in his direction. [4 RT 4-26.]

Count 1-O

Gardena police officer Avelino Oliverez testified that he responded to a "shots fired" call in connection with the count 1-N incident. He was told by one of appellant's security guards that the guard had momentarily detained one of the suspects who, while holding a weapon, was attempting to flee the premises. Another person with a weapon came along, and asked the guard to free the first suspect. Ultimately both escaped. [6 RT 5-14, 23-25.]

Appellant argues that both counts 1-N and 1-O should be dismissed because appellant's security personnel detained suspects for the police and helped the police with their investigation. In fact, according to officer Oliverez, no one was detained, except momentarily, and the assistance to the police appears to have been nothing more than providing a description of the person who had been detained, only to later escape. This seems no reason to overturn findings otherwise supported by credible evidence, as the ALJ appears to have found to be the case.

Both subcounts N and O were properly sustained as to counts 1 and 2.

Count 1-P

The ALJ dismissed this subcount, which charged an assault and battery in the

premises on August 11, 1994, stating that only hearsay evidence was offered to support it. (See Determination of Issues I-D.) However, he did include it as an incident contributing to the existence of a law enforcement problem.

Cedric Dale was struck in the eye with a pool cue when the woman wielding the pool cue missed her intended target. Gardena police officer Dillon Alley questioned Dale about the incident and observed Dale's "black and blue and swollen shut" eye. [3 RT 93-101].

Although Dale's statement was itself hearsay, the police were required to respond to the call reporting that such an incident had occurred. This subcount was properly sustained for the limited purpose stated by the ALJ.

Count 1-Q

Gardena police officer Dwayne Taylor testified that he took a report from Darryl Caldwell that Caldwell had been assaulted while at First King. Caldwell testified that, while there had been an incident at First King while he was there, he was not involved in it.

The ALJ dismissed this subcount as to count 1 on the ground the report was hearsay, but sustained it as to count 2. Taylor took the report while on desk duty, and apparently took no further action. This subcount should not have been sustained as to either count.

Counts 1-R and 1-S

These subcounts charged incidents of assault with a deadly weapon and attempted murder.

Officer Dillon Alley testified that he responded to a shooting call on November 6, 1994. Upon arrival at First King, he observed people running from the premises,

persons on the ground, bleeding from what appeared to be gunshot wounds, and bullets and weapons scattered on the ground. One of the wounded was lying in the entrance to the door, two others nearby. [3 RT 102-107, 139-140.]

Gardena police officer Celeste Browning also responded to the incident. She testified that she observed a total of five shooting victims, three of whom were deceased. One of the deceased was a security guard, as was one of the wounded. Another employee was also wounded. The original shooter was also one of the deceased. The third person who was killed was a patron. Officer Browning testified that she spoke to Lloyd Lewis, a security guard with whom she had prior contacts, and was told by Lewis that he ran into the bar after seeing a black male running from 144th Street. The black male chased Lewis into the bar, firing his weapon as he ran. At some point in the fray, Lewis then exited the bar, saw a white Monte Carlo that he recognized from a prior incident that night, and fired two shots at it. [8 RT 61-71.]

Appellant argues (App.Br., page 50) that he cannot be charged with having suffered or permitted the incident because one of his own security guards was wounded in the leg during the fray.

Appellant overlooks the fact that, according to officer Browning's testimony, Lewis, the wounded security guard, was apparently an intended target because of an earlier incident the same evening. This is a sufficient nexus to the premises for purposes of inclusion in a disorderly house charge. Both subcounts were properly sustained.

Count 1-V

Gardena police officer David Golf testified that he responded to a call about an incident which occurred on February 21, 1995. Upon his arrival, he observed a

commotion in the parking lot. He saw a woman seated on the ground, who told him she had been hit with a beer bottle. He observed small cuts on her face and a swollen left eye. The woman, identified as Venus Marie Strahan, told him she was a dancer at the club, and had been assaulted by a patron inside the premises after complaining to her manager that the patron had not paid her for a lap dance. Officer Golf also spoke to Carl Collins, who identified himself as Strahan's manager. Collins told Golf that it was Strahan who struck the patron. Golf conceded that he was unable to determine who struck first, but, based upon both accounts, was satisfied the incident had occurred inside the premises. [3 RT 145-154, 159-169.]

Although some of this evidence is hearsay, the statements of Collins were admissions chargeable to First King. This subcount was properly sustained.

Count 1-X

Gardena police officer David Mathiesen testified that he wrote the report which was received in evidence as Exhibit 15. He had no recollection of the incident which was the subject of the report, which, according to the written report, involved a response to a report of a theft of money and property by the victim's boyfriend. [12 RT 5-20].

The ALJ dismissed this count as based solely on hearsay, but, as incorporated in count 2, included it in his assessment of the law enforcement count.

We think he was correct in doing so, since the report, as explained by officer Mathiesen, reflected a request for police assistance at the First King premises.

Count 1-Y

Gardena police officer Lynn Hillard testified that, on June 27, 1996, while on routine patrol past First King, she observed security personnel having a problem with an intoxicated patron who had been asked to leave. She pulled over to check the situation,

but was told a cab had been called, and her assistance was not needed. Driving by 10 to 20 minutes later, she observed the same man walking back toward the bar and again being halted by security personnel. Concluding that the man was intoxicated, she took him to jail. [4 RT 80-89, 98-99].

The ALJ could reasonably have inferred that the man had become intoxicated in the premises, which was why he was asked to leave. This subcount was properly sustained.

Count 1-Z

Officer Alley returned to First King on January 29, 1996, in response to a radio call about a large fight. When he entered, he observed a "large group of males arguing." As the officers asked people to clear the bar, a shoving match and then a fight broke out directly in front of the officers, involving six individuals. Ultimately, with the assistance of pepper spray, the fight was broken up and several arrests were made, one of them by Alley. Alley testified that it took six to eight officers from Gardena and four to eight officers from neighboring Hawthorne to gain control of the situation. [3 RT 108-113, 118-139.]

This subcount was properly sustained.

Count 1-AA

Gardena police officer Victoria Alvarez testified that she and her partner, Paul Johnson, were on routine patrol on January 29, 1996, when called to First King in response to a report of a fight involving 10 or 15 people. Upon arrival, she observed other officers attempting to clear the scene. Two of the participants, identified as Tony Williams and Kyle Sanders, were ignoring the officers and attempting to gain entrance to First King. Both were, in her opinion, obviously intoxicated and unable to care for their

own safety, displaying speech that was slurred and not clear, a strong alcoholic odor, red and watery eyes, staggering and shouting to "get back in," despite the fact the premises were permeated with pepper gas, and resisting the attempts of the officers to keep them out of the premises. One of the two even fell against her. [8 RT 5-22.]

Although there was no direct evidence the two men had been in the club, their shout "We want back in. You can't tell us what to do," (see 8 RT 8) can be considered a spontaneous or contemporaneous statement, an exception to the hearsay rule, and, as such, sufficient to support an inference the two had been in the premises until it was cleared by the police. (See Evidence Code §§1240, 1241.)

This subcount was properly sustained.

Count 1-DD through Count 1-GGGG, and Count 1-TTTT

Scott Marsiglia was, from 1988 until November 1996, a resident of a condominium which overlooked the First King parking lot. He was the next door neighbor to Ethel Young. Marsiglia is married, with three children, ages ten, five, and four.

Marsiglia testified that, after he complained to the police about gunshots, cars speeding in and out of the parking lot, verbal and physical fights, bottles thrown and broken, car alarms, loud car radio music, and loud conversations, he was advised to maintain a log of the disturbances, and did so. The log, Exhibit 12, was admitted into evidence over appellant's objection.

Marsiglia also testified that he decided to move to a safe living environment after a drive-by shooting incident and a gun battle between a cyclist and security four months earlier.

Marsiglia's testimony, supplemented by the contemporaneous log which he

maintained, is sufficient to establish that there was a recurring noise problem generated by the operation of the premises, reflected in the specific incidents recorded in the log. [10 RT 128-179.] It would seem that a quiet late evening was an exception, and definitely not the rule.

These subcounts were properly sustained.

Count 1-JJJJ through 1-SSSS

Counts 1-JJJJ through 1-SSSS charged ten incidents in which Ethel Young, a resident of a condominium located 30 feet from appellant's parking lot, had complained of having been disturbed in late evening or early morning hours by noise emanating from appellant's parking lot, noise resulting from such things as loud music from car radios, loud voices, gunshots, car alarms, car horns, and screeching tires. These subcounts were based upon a contemporaneous log which Mrs. Young testified she maintained.

The ALJ rejected, as lacking credibility, her testimony about nineteen other incidents, apparently reflected on police logs, that she claimed to have reported, Although finding it quite likely that some, maybe even all, of the alleged incidents did occur, her "inconsistent testimony, due mainly to the fact that she was testifying from memory about events which took place at least nine months earlier, and as much as several years earlier" led the ALJ to conclude that the Department did not prove that the incidents occurred on the days alleged.

Appellant contends that the ALJ should have gone further, and found the events recorded in her log equally unreliable. Appellant cites, as an example, an incident (subcount 1-where Mrs. Young claimed to have heard six gunshots before being awakened - "I am a mathematician. I count even in my sleep. But when it gets to six, that forces me to wake up." - but no further noise once awake. [10 RT 46.]

We, like the ALJ, think it quite likely that Mrs. Young was disturbed by excessive late night and early morning noise on more than a few instances during the period in question. We find it hard to believe that a resident who lives only 30 feet from a parking lot that hosted as many incidents as are reflected in the overall record would not have been. While the ALJ heard Mrs. Young testify, and chose to believe that the instances of which she made a written record occurred as she claimed, we cannot help but note that the entries on the second page of her log appear to us to have been made all at the same time, probably as late as the last entry shown for August 14, 1995. Although we are inclined to agree with the ALJ that these subcounts were properly sustained, we think the weight given them in the overall context of this case must be discounted in some measure.

Count 2-B-4

Gardena police officer Celeste Browning testified that, on October 21, 1992, she took a telephone report of a car stolen from the First King parking lot. She contacted the registered owner by telephone and had him come to the station to sign a stolen vehicle report. Browning took no action other than take the report. [12 RT 22-28.]

The only evidence that the car was on the First King parking lot is hearsay. This count should not have been sustained.

Count 2-B-9

Gardena police officer Benjamin Awe testified that he took a telephone report from a person who identified himself as William Isely, and who said he had been robbed by two gunmen after leaving First King. Awe was unaware of any follow-up taken on the basis of his report. [3 RT 42-49.]

This subcount is supported solely by hearsay, and should not have been sustained.

Count 2-B-32

Gardena police officer Robert Preijers testified that he prepared a stolen car report on May 8 or May 9, 1993, after receiving a phone call from a person named Juan Carter, who said his car had been stolen. According to Preijers, the car had been parked in the 1800 block of 144th Street. [1 RT 141-148.]

Preijer's report, as well as his testimony, was dependent entirely on hearsay. This subcount should not have been sustained.

Count 2-B-42

Gardena police officer Janet Hunter testified that she took a telephonic report from a caller who said his car had been stolen from the parking lot The caller told her he had left his keys in the car, had gone in and come back out, and the car was gone. He did not tell her where he was when the car was taken, and she did not know from where he was calling. The only connection to First King was that its street address had been entered on the report. [6 RT 41-46.]

This subcount suffers from its total dependence upon hearsay. Additionally, the connection, if any, to First King, is speculative. This subcount should not have been sustained.

Count 2-B-55

Gardena police officer Dillon Alley testified that he took a telephone report of a car supposedly stolen from the First King parking lot on November 3, 1993. He was the

desk officer at the time, so did not take any follow-up action. [3 RT 114-117.]

This subcount was based solely upon hearsay, and should not have been sustained.

Count 2-B-62

Gardena police officer Avelino Oliverez testified that he responded to a report of mischief, involving a smashed windshield of a car belonging to an employee of First King. The car was parked at the rear of the building. Officer Oliverez interviewed the owner and inspected the damage. [6 RT 18-23].

Appellant argues that this subcount should not have been sustained because there was no evidence the vandalism was caused by an employee or patron. We think the fact that the incident occurred on the premises' parking lot is a sufficient connection to the premises to warrant its inclusion as an incident
contributing to a law enforcement problem.

Count 2-B-63

Gardena police officer Mark Wilson testified about a response on January 16, 1994, to a report that shots had been fired. He found a white Jeep parked near the Taco Bell across from appellant's premises. The driver and the person in the back seat had both sustained gunshot wounds. The driver had been shot in the head. A third occupant, Christopher Jones, told Wilson he and his companions had been in an argument inside First King. As he and his friends left the premises, a person with a gun emerged from the premises and began firing at them. The driver gave Jones his gun, and Jones fired back. The driver lost control of the vehicle when he was shot, and Jones brought it to a stop near Taco Bell. [4 RT 65-72.]

Jones also testified. His testimony was substantially similar to officer

Wilson's description of what Jones said to him on the night in question, and was sufficient to show that the assailant or assailants were persons with whom Jones and his friends had come in contact while at the premises. [10 RT 104-126.]

Contrary to appellant's contention (App.Br., pages 25-26, 52), there is sufficient evidence to establish the requisite nexus with the premises. This subcount was properly sustained.

Count 2-B-75

Gardena police officer William Moreno testified that he took a report over the phone from a man who said his car had been broken into while parked in appellant's parking lot, and a laptop and cellular phone stolen. Moreno prepared a report, but did not conduct any investigation. [4 RT 28-30.]

Without any other evidence, this is uncorroborated hearsay. The alleged incident generated nothing but a report. This subcount should not have been sustained.

Count 2-B-79

Gardena police officer David Golf testified that, on June 7, 1994, he responded to a report of a "boyfriend or boyfriend of an ex-girlfriend-type situation involving a gun in an argument." When he arrived, the incident was over. [3 RT 154-159.]

Since a police response was required, this subcount was properly sustained.

Count 2-B-84

Officer Moreno took a telephone report of a motorcycle stolen from the parking lot while its owner was inside the premises. As with count B-75, he prepared a report, but did not conduct any further investigation. [4 RT 30-33.]

Without any other evidence, this is uncorroborated hearsay, generated nothing

but a report, and this subcount should not have been sustained.

Count 2-B-102

Gardena police officer Eric Williams testified that while on routine patrol with his partner, Celeste Browning, he received a report of a vehicle assault on a person. Upon arrival at First King, he learned that the report was unfounded. He instead encountered an intoxicated woman in the parking lot. He was unable to ascertain where she had been, and was unable to confirm that she had any relationship with First King. [9 RT 85-97].

We think the evidence is insufficient to consider the a law enforcement problem chargeable to appellant. The subcount should not have been sustained.

Count 2-B-103

Gardena police officer Gina Zanone testified that, while she was working the front desk, Mark Hill came in to report that his vehicle had been struck by another vehicle while both were leaving the First King parking lot. The other vehicle did not stop. [6 RT 78-85.]

Without any other evidence, this is uncorroborated hearsay, generated nothing but a report, and this subcount should not have been sustained.

Count 2-B-125

Gardena police officer Tracy Van Raden testified that, on May 1, 1995, he responded to a call to First King that involved an unruly patron who refused to leave. Upon arrival, Van Raden encountered the patron on the sidewalk outside the premises. The patron told Van Raden there had been an argument after he complained he got incorrect change. Van Raden was told by First King security personnel that the patron

was removed because he was creating a scene. Van Raden concluded the patron was intoxicated, and arrested him for being drunk in public. [8 RT 6-12.]

This subcount was properly sustained as contributing to a law enforcement problem, a sufficient nexus to the premises having been established.

Count 2-B-126

Gardena police officer Erick Lee testified that he and officer Van Raden had responded to a report that three subjects were refusing to leave the bar. Security guards directed them to a car occupied by three black males. The occupants were ordered out of the car, and, after a search of the car disclosed several handguns, the three were arrested.

The ALJ properly sustained this subcount under the law enforcement charge.

Count 2-B-153

Gardena police officer Nick Pepper testified that, on January 23, 1993, he responded to a report of a robbery in the First King parking lot. He interviewed both victims, one of whom had been shot during the reported robbery. [1 RT 77-83; Exhibit 2.] While the evidence as to a robbery having been committed was hearsay, Pepper did observe the gunshot victim inside the bar.

There is sufficient evidence of a nexus to First King to include this incident in support of the law enforcement count. This subcount was properly sustained.

Count 2-B-156

Gardena police officer Tracy Van Raden testified that on January 31,1994, he responded to a report of shots being fired in the area of First King. When he arrived, he spoke to a man named Derrick Brown, who was seated in a car parked directly in front

of the premises. Brown told him he had been inside the premises, and when people began to rush out, he joined them, to discover his car had been moved from where he parked it, and sat five to seven feet away from the curb. The car had been returned to the curb by the time Van Raden arrived. Van Raden observed what appeared to be a bullet hole in the lower center of the windshield. Van Raden also spoke to a security guard named Lloyd Lewis and another named Smith. Both told him they had heard gunshots. Lewis also told Van Raden that another vehicle had collided with Brown's vehicle. [3 RT 12-31.

In connection with this same incident, Gardena police officer Damaso Bautista transported two First King security guards to a field show-up, at which they were able to identify a vehicle which was involved in the incident. [5 RT 19-20].

This subcount was properly sustained.

Count 2-B-157

Gardena police officer Blane Schmidt testified that, on May 7, 1994, while on front counter duty, he took a report from a woman who identified herself as Ollie Mae Knox, who told him she had been assaulted by her boyfriend's new girlfriend and several others while at First King. When she was finally able to leave, shots were fired at her car. Schmidt observed that she had suffered facial injuries, including bruises, two black eyes, swollen cheeks, and a patch of hair torn from her head. Her car had five bullet holes in it.

Knox said that she and the new girl friend had agreed to meet at First King at closing time to discuss her complaints about the other's threatening and harassing phone calls. When she arrived, the new girlfriend was waiting in front with her sister and five male friends. Things went downhill from that point.

Although Knox's statements to Schmidt were hearsay, the fact that he saw her facial injuries and the bullet-riddled vehicle tended to furnish corroboration to her account. In addition, Schmidt checked on the computer and found that shots had been reported at First King earlier, but when officers arrived, no one was to be found.

We think this subcount was properly sustained.

Count 2-B-158

Eric Anderson, a Gardena police officer, testified that, on May 29, 1994, while stopped at a traffic light in the area of Western and Rosecrans, he heard gunshots coming from the area of First King. He heard three shots, and then additional shots which appeared to be coming from the First King parking lot. As he proceeded toward the lot, he saw a black male running from the parking lot and firing back into the lot. He saw another group running from the parking lot toward the front door of First King. The shooter continued running, then entered a car, which drove off. Anderson pursued the car, pulled it over, and took the occupants into custody. [3 RT 54-64].

Lance Sellers testified that he and several friends, all minors, had returned to their car after having been unsuccessful in their attempt to gain entrance to First King. They were confronted by an armed man who first demanded Sellers' wallet, and then that Sellers get out of the car. Sellers said he panicked, tried to drive off, in reverse, and hit the car next to him. The gunman then broke the window of Sellers' car. The occupant of the car Sellers had hit, who, according to Sellers, was a uniformed security guard, then opened fire on the armed man, while Sellers and his friend who was in the front seat left their car and fled toward First King. When police arrived, one of the suspects was on the ground, apparently having been shot. [9 RT 37-53.]

There is clearly substantial evidence of a nexus to the premises to warrant its

inclusion among the counts supporting the law enforcement charge of the accusation.

Count 2-B-159

This subcount was based upon the testimony of Gardena police officer Russell Willett, who said he took a telephonic report from a woman who said she had been hit on the head and her purse stolen while she was standing on the sidewalk in front of First King at 2:00 a.m. on June 9, 1994. The woman identified herself as Leontine Miller, an exotic dancer at First King. [4 RT 103-109.]

Without any other evidence, this is uncorroborated hearsay. The alleged incident generated nothing but a report. This subcount should not have been sustained.

Count 2-B-160

Gardena police officer Carl Freeman testified that, while he and his partner, officer Celeste Browning, were on routine patrol, they observed a man dressed in casual attire standing a foot or two from the First King building. Upon seeing the officers, the man ran to the west door of First King, said by Freeman not to be a public entrance, ignored the shouts of officer Freeman, pounded on the door until it opened, entered, and the door closed. Shortly thereafter, a second individual approached the door, which was now locked. This person was stopped and questioned, and claimed he was a security guard for the premises. He was found to be carrying a firearm. Freeman later entered the premises, spoke to Samantha Sanson, and was told the man was not a security guard. The man was arrested. [5 RT 31-38.]

Although initially a connection to First King might have been questioned, the fact that the first person was allowed to enter the premises, and, thereby, elude the police, it was proper to sustain this subcount as an incident contributing to the existence of a police problem.

Count 2-B-161

Gardena police officer Damaso Bautista testified that he responded to a report that a weapon had been brandished. He was flagged down by a man near a phone booth in the First King parking lot. The man, who identified himself as Ricardo Emanuel, told Bautista that he had attempted to strike up a conversation with a woman seated with another woman in an automobile parked on a street near First King. After he ignored her request that he leave, she pointed a gun at him. He described the woman as a dancer at First King named Tang. Bautista was told by a person he believed to be a security guard that First King employed a dancer by that name. The car with the women was gone before Bautista arrived. [5 RT 13-18.]

The only evidence that connects this incident with First King is the supposed employment of the woman. This, in our mind, is not sufficient to sustain this subcount.

Count 2-B-162

Gardena police officer Damaso Bautista testified that, while on routine patrol at 1:00 a.m. on July 20, 1995, he was flagged down in front of First King by a number of people who told him there was a person in the parking lot they thought had a gun. Proceeding to the parking lot, he observed a car about to leave. The car was stopped, and the driver questioned. Identifying himself as Kenneth Dandy, the driver told officer Bautista that he had been robbed at gunpoint of his money and jewelry earlier that same evening, in the First King parking lot. Bautista described the driver as upset, but uninjured. [5 RT 6-12, 21.]

Without any other evidence, this is uncorroborated hearsay. The fact that the driver appeared upset is insufficient to render the hearsay trustworthy, since that could

just as likely been the result of his having been stopped by a police car with flashing red lights.

Count 2-B-165

Gardena police officer Uikilifi Niko testified that on December 16, 1995, he responded to a report of a theft of a motor vehicle which had been parked on the street near First King. He interviewed the victim, who told him she was a dancer at First King. He did not believe anyone from First King had taken the car. [1 RT 53-64.]

The mere fact that the vehicle was parked on a public street near First King is insufficient, without more, to justify charging the incident to First King. The victim's connection with First King is hearsay.

This subcount should not have been sustained.

Count 2-B-166

Gardena police officer Paul Johnson testified [9 RT 27-36] that, on January 21, 1996, he responded to a report of a vehicle burglary at First King. He found a vehicle backed into the south portion of the parking lot from which the stereo had been removed and wiring torn loose. The owner of the vehicle, identified as Cory Watson, told Johnson he had been at First King, and, when he came out, discovered his car had been broken into.

Appellant contends this subcount is supported only by uncorroborated hearsay.

We believe the subcount was properly sustained. It may be presumed that the vehicle was operable upon its arrival at the parking lot, but, when officer Johnson responded, had been rendered inoperative as a result of the theft of the stereo. The incident reflects a necessary police response.

Counts 4 through 19

Counts 4 through 19 charged violations of various subdivisions of Rules 143.2 and 143.3, on the part of three dancers employed by appellant, all occurring on April 7, 1995, the night a task force conducted an investigation of the premises. Based upon the testimony of Gardena police officers Juan Vasquez (1 RT 87-114) and Robert Preijers (1 RT 115-129, 149-156), the Department sustained count 4 (exposure of pubic hair); counts 5, 6, and 15 (exposure of buttocks while not at least six feet from nearest patron); counts 9 and 16 (permitted touching of breasts and buttocks; counts 10 and 17 (permitted simulation of sexual intercourse); and count 12 (display of vagina). Counts 7, 8, 11, 13, 14, and 18 were dismissed.

Count 19 charged, in subcounts A through 0, the same conduct as counts 4 through 18, as condition violations, the conditions consisting of a restatement of Rules 143.2 and 143.3. Subcounts A (display of pubic hair); F and M (touching of breasts); G and N (simulation of sexual intercourse); H and O (fondling of penis); and I (display of vagina) were sustained, and subcounts B, C, D, E, J, K, and L were dismissed.

Appellant contends that the violations which were sustained should be considered as a single count, and that the credibility of the two officers should be questioned because these were the only Rule 143 violations charged during the entire period of the accusation.

There is no valid reason why the nine counts which were sustained should be considered as a single count, and appellant has offered no reason. Each was based upon a separate act, and each of those acts was a separate rule violation.

The ALJ stated that he was not imposing discipline for those subcounts of count 19 that were duplicative of any of counts 4 through 18.

In sustaining the counts that he did, the ALJ chose to believe the testimony of the officers, and specifically rejected the testimony of Elsie Ellison, the only one of the three dancers who testified.

The Board is not entitled to substitute its views regarding credibility of witnesses for those of the finder of fact, who was able to observe the witness as he or she testified. The cases so holding are myriad.