

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

AB-7633

7-ELEVEN, INC., DILIP PATEL, and SAROJ PATEL dba 7-Eleven Store #2171-27635
5958 Magnolia Avenue, Riverside, CA 92506,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

File: 20-308366 Reg: 99047922

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: March 1, 2001
Los Angeles, CA

ISSUED APRIL 26, 2001

7-Eleven, Inc., Dilip Patel, and Saroj Patel, doing business as 7-Eleven Store #2171-27635 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 15 days for their clerk, Agha Azad, having sold an alcoholic beverage (Coors beer) to Jadon Crawford, a minor, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from a violation of Business and Professions Code §25658, subdivision (a).

Appearances on appeal include appellants 7-Eleven, Inc., Dilip Patel, and Saroj

¹The decision of the Department, dated April 20, 2000, is set forth in the appendix.

Patel, appearing through their counsel, Ralph Barat Saltsman and Stephen Warren Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, John W. Lewis.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on August 24, 1995. On December 15, 1999, the Department instituted an accusation against appellants charging that, on October 23, 1999, their clerk violated Business and Professions Code §25658, subdivision (a), by selling alcoholic beverages to each of two brothers, Jadon Crawford, 16 years of age, and Justin Crawford, 19 years of age.

An administrative hearing was held on March 14, 2000, at which time oral and documentary evidence was received. The evidence at the hearing disclosed that Jadon Crawford purchased three cans of Coors beer after having displayed to the clerk a valid California driver's license issued in 1996 to a person other than Crawford. Crawford was apprehended upon leaving the store by Gregory Lorek, a Department investigator, who had observed Crawford at the counter while he (Lorek) was driving past the store. Crawford admitted to Lorek that he had purchased the beer, and had displayed false identification to the clerk, Agha Azad, whom Crawford identified as the seller.

Subsequent to the hearing, the Department issued its decision which determined that the transaction involving Jadon Crawford had occurred as alleged, that no defenses to the charge had been established, and that appellants' license should be suspended for 15 days. Since no evidence was presented concerning Justin Crawford, the count of the accusation involving him was dismissed.

Appellants thereafter filed a timely appeal in which they assert that the Administrative Law Judge (ALJ) erroneously rejected their defense under Business and Professions Code §25660.

DISCUSSION

The ALJ made the following factual findings pertinent to the issue on appeal:

“Although the minor is a youthful looking male and although he displayed the appearance and demeanor which could generally be expected of a person under 21 years of age, he does not look like a sixteen or seventeen year old. The photographs depicted in Exhibits 4A and 4B were taken on October 23, 1999. Exhibit 4 shows the minor wearing a cap and that is how he looked when he entered the premises that night.”
(Finding of Fact III-5.)

“A. It was not established that Respondent’s clerk acted in reliance upon bona fide documentary evidence of majority and identity prior to the sale of beer to the minor.

“B. The minor presented a false California driver’s license (Exhibit 2) to the clerk when he was asked for identification. This driver’s license was given to the minor by a friend and it does not bear the minor’s photograph. The photograph contained in Exhibit 2 does not bear a close resemblance to the minor. Additionally, the height and weight indicated on Exhibit 2 is five feet eight inches and one hundred thirty pounds while the minor’s height and weight as of October 23, 1999 was five feet eleven inches and one hundred seventy pounds. The eye color indicated in Exhibit 2 indicates brown and the minor has hazel eyes. However, the color of the minor’s hair is brown and it did match the color indicated on Exhibit 2 since the minor was wearing a cap when he entered the premises and it covered the blond streaks which the minor has on the top of his head. Given all the factors indicated above, it was not reasonable for the clerk to rely on Exhibit 2 as evidence of majority.”
(Findings A and B re Section 25660 of the Business and Professions Code.)

Appellants contend that there is a presumption that the license which was presented was that of the minor, citing cases which it says have suggested that to be the rule. (See Conti v. State Board of Equalization (1952) 113 Cal.App.2d 465

[248 P.2d 31] and Keane v. Reilly (1955) 130 Cal.App.2d 407 [279 P.2d 152].)

Appellant further contends that the ALJ erred by neglecting to mention such a presumption, that there must be more than mere suspicion, that the presentation to the clerk was prima facie evidence and proof of majority and identity, and whether or not the clerk acted in good faith and without actual knowledge.

The clerk did not testify. All that the record shows with regard to what he may have thought or believed is that he looked at the license, sold the beer, and lied to the investigator that he had made an effort to confirm that the person depicted on the license was the person attempting to purchase the beer.

We are satisfied that the ALJ's consideration of the discrepancies between the minor's appearance and that of the person depicted on the driver's license, coupled with his conclusion that the clerk's reliance was unreasonable, accorded appellant's defense its due. The ALJ highlighted the discrepancies between the facial and physical appearance of the minor and the person depicted on the license. Appellant's suggestion that the discrepancies as to height and weight could be explained simply by the passage of time was made to the ALJ, and rejected. Even were we to disagree with the ALJ that such were possible, we cannot so easily reject his overall conclusion that there was no close resemblance between the minor and the photo.

Under appellant's view of § 25660, once an otherwise valid driver's license is presented, it does not matter whether the seller acted reasonably in relying upon it. Appellant would elevate the status of the presumption referred to in the Conti and

Keane decisions to conclusive. We decline to accept such an invitation.

A licensee has a dual burden under §25660:

“[N]ot only must he show that he acted in good faith, free from an intent to violate the law ... but he must demonstrate that he also exercised such good faith in reliance upon a document delineated by §25660. Where all he shows is good faith in relying upon evidence other than that within the ambit of section 25660, he has failed to meet his burden of proof.”

(Kirby v. Alcoholic Beverage Control Appeals Board (1968) 267 Cal.App.2d 895 [73 Cal.Rptr. 352, 355].)

As the cases contemporaneous with and prior to Kirby have made clear, that reliance must be reasonable, that is, the result of an exercise of due diligence.

(See, e.g., Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control (1968) 261 Cal.App.2d 181 [67 Cal.Rptr. 734, 739]; 5501 Hollywood, Inc. v. Department of Alcoholic Beverage Control (1957) 155 Cal.App.2d 748 [318 P.2d 820, 823].)

The reason the reliance must be reasonable is obvious. Otherwise, a seller need only go through the motions of requesting identification, accept any driver's license handed to him, and sell the alcoholic beverage with impunity.

Where, as here, the discrepancies between the appearance of the minor and that of the person whose license has been presented are sufficiently pronounced as to put any reasonable person on notice that something is amiss, any claim that the seller was protected by §25660 should be rejected.

ORDER

The decision of the Department is affirmed.²

TED HUNT, CHAIRMAN
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

² 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.