

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

AB-7976

File: 21-332089 Reg: 02052183

BUTA SANGHERA and CHARANJIT KAUR SANGHERA dba Scotty Liquors
2206 North Blackstone Avenue, Fresno, CA 93703,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Jerry Mitchell

Appeals Board Hearing: March 13, 2003
San Francisco, CA

ISSUED MAY 1, 2003

Buta Sanghera and Charanjit Kaur Sanghera, doing business as Scotty Liquors (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 50 days for their clerk having sold an alcoholic beverage while appellants' license was under suspension, in violation of Business and Professions Code section 23300.

Appearances on appeal include appellants Buta Sanghera and Charanjit Kaur Sanghera, appearing through their counsel, Alan Forester, and the Department of Alcoholic Beverage Control, appearing through its counsel, Dean Lueders.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale general license was issued on August 12, 1997. Thereafter, the Department instituted an accusation against appellants charging that, on September 26, 2001, appellants' clerk, Mohamad Naeem Akhtar ("Akhtar") sold an

¹The decision of the Department, dated May 9, 2002, is set forth in the appendix.

alcoholic beverage while appellants' license was under suspension.

An administrative hearing was held on March 28, 2002, at which time oral and documentary evidence was received. At that hearing, Department investigator John Acosta testified that, on September 20, 2001, he served an order of suspension on appellant Buta Sanghera, and posted the interior and exterior of the premises with a notice of suspension. On September 26, 2001, Acosta again visited the premises, this time to check on compliance with the suspension. Observing that the suspension signs were still posted, he picked a bottle of water from the cooler and took it to the counter. He then asked the clerk if he could get a bottle of Bacardi. Bacardi is a brand name for distilled rum, an alcoholic beverage. The clerk told him the license was suspended, but he would make the sale if the investigator would put the bottle in his pants pocket. Acosta paid for the rum, put it in his pocket, left the store, and then returned to inform the clerk that he had just sold an alcoholic beverage while the license was suspended.

Buta Sanghera testified that he was out of the country when the transaction took place, but, before he left, had instructed Akhtar that he was not to sell any alcoholic beverages. Akhtar also testified. He confirmed his instructions from Sanghera, but said he made the sale because an earlier customer to whom he had refused to make a sale had threatened to come back and kill him. Akhtar testified that he connected Acosta with the earlier customer, and made the sale out of fear. He did not report the threat to the police.

The Administrative Law Judge (ALJ) determined that a sale had been made in violation of section 23300, and that appellants' instructions to their clerk, appellants' absence from the store, and the clerk's claim that he had been threatened by an earlier customer, were, at best, mitigation, and did not constitute a defense.

DISCUSSION

The issue raised by appellant is whether the clerk's testimony that, out of fear, he associated Acosta's request to be sold a bottle of rum with a prior threat on his life by a customer to whom he refused to sell, is a defense to the charge of the accusation.

We are of the view that, assuming the facts to be those to which the clerk testified, appellants have not established a defense.

Penal Code section 26, subdivision 6, excludes, as persons capable of committing a crime, those who "committed the act ... charged with threats or menaces sufficient to show that they had reasonable cause to and did believe that their lives would be endangered if they refused."

The case law makes it clear that for duress to be a valid excuse, there must be a reasonable cause to believe and an actual belief that life is in danger and the danger must be one of present and immediate violence at the time of the commission of the forbidden act. (See *People v. Evans* (1969) 2 Cal.App.3d 877 [82 Cal.Rptr. 877, 881]; *People v. Villegas* (1938) 29 Cal.App.2d 658 [85 P.2d 480]; *People v. Sanders* (1927) 82 Cal.App.778 [256 P. 251].)

Assuming, in the face of contrary evidence, that Akhtar's testimony was truthful, there is nothing in it that establishes a "danger" that is "one of present and immediate violence at the time of the commission of the forbidden act." Consequently, there was no duress as a matter of law.

Appellants offer no explanation for the witness affidavit (Exhibit 2) signed by Akhtar on the day of the sale, in which he said nothing about having made the sale because his life had been threatened by some other person. The facts strongly suggest that Akhtar freely chose to make the sale, but sought to minimize the risk of

being caught by telling Acosta to conceal the bottle in his pocket.

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.