

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

AB-8206

File: 20-286534 Reg: 03054925

CHEVRON STATIONS, INC. dba Chevron
1020 Riley Street, Folsom, CA 95630,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Michael B. Dorais

Appeals Board Hearing: October 7, 2004
San Francisco, CA

ISSUED DECEMBER 9, 2004

Chevron Stations, Inc., doing business as Chevron (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 10 days for its clerk, Silvi Buntoro, having sold a 24-ounce can of Coors Light beer to Angela Springs, an 18-year-old police minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellant Chevron Stations, Inc., appearing through its counsel, Ralph B. Saltsman and Stephen W. Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, Robert Wieworka.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on August 3, 1993. On April 28, 2003, the Department instituted an accusation against appellant, charging the

¹The decision of the Department, dated October 30, 2003, is set forth in the appendix.

unlawful sale of an alcoholic beverage to a minor on November 16, 2002.

An administrative hearing was held on October 9, 2003. Subsequent to the hearing, the Department issued its decision which determined that the charge of the accusation had been established and appellant had failed to present any affirmative defense.

Appellant thereafter filed a timely notice of appeal. In its appeal, appellant contends that Rules 141(a) and 141(b)(5) were violated.

DISCUSSION

Appellant contends that there is an irreconcilable conflict between the testimony of the decoy and that of the police officer relating to the face-to face identification required by Rule 141(b)(5), and that, as a result, there was no compliance with the fairness requirement of Rule 141(a).²

Appellant asserts that the police officer's question to the decoy, as described by the decoy, "Is this the lady that sold you the alcohol?," was leading and unduly suggestive by identifying a specific person. It claims that the police officer's version of what he asked the decoy, "Can you point to or show me who the person was that sold you the alcoholic beverage?," irreconcilably conflicts with the decoy's description of what she had been asked. This conflict, appellant argues, needed to be resolved by the administrative law judge to comply with the requirement of *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515 [113 Cal.Rptr. 836] ("*Topanga*") that an agency's findings "bridge the gap between the raw evidence

² Rule 141(a) requires, among other things, that a decoy operation be conducted in a manner which promotes fairness. Rule 141(b)(5) requires the decoy to make a face-to-face identification of the seller of the alcoholic beverage prior to the issuance of any citation.

and the ultimate decision or order.”

Appellant misreads *Topanga*. *Topanga* addresses the need for findings. It does not address the function performed by an administrative law judge when reducing evidence to findings. If it could truly be said that there is a conflict between the testimony of the decoy and that of the police officer - and we do not agree that there is - that is something the ALJ traditionally resolves. 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 Bev. Control App. Bd.* (1972) 7 Cal.3d 433, 439 [102 Cal.Rptr. 857] (in which the positions of both the Department and the license-applicant were supported by substantial evidence); *Kruse v. Bank of America* (1988) 202 Cal.App.3d 38 [248 Cal.Rptr. 271]; *Lacabanne Properties, Inc. v. Dept. of Alcoholic Bev. Control* (1968) 261 Cal.App.2d 181, 185 [67 Cal.Rptr. 734]; *Gore v. Harris* (1964) 29 Cal.App.2d 821 [40 Cal.Rptr. 666].)

Appellant does not assert that there was no face-to-face identification. Instead, it subjects the witnesses' testimony about events occurring many months earlier to hypercritical scrutiny in its attempt to demonstrate what it claims is a testimonial conflict.

There is really little difference between what the decoy said and what the officer said. Both were describing what happened as best they could. But, appellant says, if one accepts what the decoy said, one must conclude that the identification was unduly suggestive. Once more, we disagree.

There were two clerks in the store. One of the clerks, male, was in the back of the store. The female clerk was at the register. The transaction had taken place

approximately three minutes before the decoy was brought back into the store. We find it highly unlikely that the manner in which the police officer asked the decoy who had sold the alcoholic beverage to her influenced her identification of the seller. Even if, as appellant contends, the way in which the question was asked implied that the police officer believed the female clerk to have made the sale, it is unlikely to have suggested anything to the decoy she did not already know.

The case upon which appellant relies, *Dept. of Alcoholic Bev. Control v. Alcoholic Bev. Control Appeals Bd.* (2003) 109 Cal.App.4th 1687, 1698 [1 Cal.Rptr.3d 339] ("*Keller*"), upheld a decoy identification even though the clerk was brought out from the store before the decoy was asked to identify him.

This case involves conduct far less suggestive than that in *Keller*. The identification process was not unfair, and it satisfied the requirement of Rule 141(b)(5).

ORDER

The decision of the Department is affirmed.³

TED HUNT, CHAIRMAN
KAREN GETMAN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

³ 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.