

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

AB-8279

File: 20-218325 Reg: 03056052

7-ELEVEN, INC., and DANILO RIVERA MANALASTAS, dba 7-Eleven # 2133-29390
23342 Valencia Boulevard, Santa Clarita, CA 91355,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Ronald M. Gruen

Appeals Board Hearing: February 3, 2005
Los Angeles, CA

ISSUED AUGUST 15, 2005

7-Eleven, Inc., and Danilo Rivera Manalastas, doing business as 7-Eleven # 2133-29390 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 10 days for their clerk selling alcoholic beverages to two persons under the age of 21, violations of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellants 7-Eleven, Inc., and Danilo Rivera Manalastas, appearing through their counsel, Ralph B. Saltsman, Stephen W. Solomon, and Gabriel Jimenez, and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

¹The decision of the Department, dated April 22, 2004, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on August 11, 1988. On October 15, 2003, the Department filed an accusation against appellants charging that, on August 8, 2003, their clerk, Antonio Rivera Manalastas (the clerk), sold or furnished alcoholic beverages to 19-year-old Kourosch Pourkazemi and 18-year-old Ryan Stallings.

At the administrative hearing held on February 20, 2004, documentary evidence was received and testimony concerning the sale was presented by Pourkazemi and Stallings (the minors), by Department investigators Charlotte Clark and Jeremy Suetos, and by the clerk.

The testimony disclosed that on August 8, 2003, investigator Clark observed two young-looking males enter appellants' licensed premises. Following them inside, she saw them select an 18-pack of Miller Light beer and three 40-ounce bottles of Miller High Life beer. Pourkazemi carried the 18-pack and Stallings carried the bottles and they placed them on the counter. The clerk rang up the sale, made change, and the minors left the store, each carrying some of the beer. Clark stopped them outside the premises and ascertained that they were under 21 years of age. An officer searched both minors, finding Stallings' own drivers' license showing his true age and finding no identification of any kind on Pourkazemi.

Following the hearing, the Department issued its decision which determined that the violation charged had been proven, and no defense had been established. Appellants filed an appeal in which they contend that they established a defense pursuant to Business and Professions Code section 25660, and the Department failed to prove that alcoholic beverages were furnished to the non-purchasing minor.

DISCUSSION

I

Appellants contend that they established the defense provided by section 25660 because the clerk reasonably relied on an ID Pourkazemi had shown him when purchasing beer on a prior occasion. Section 25660 states:

Bona fide evidence of majority and identity of the person is a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license or an identification card issued to a member of the Armed Forces, which contains the name, date of birth, description, and picture of the person. Proof that the defendant-licensee, or his employee or agent, demanded, was shown and acted in reliance upon such bona fide evidence in any transaction, employment, use or permission forbidden by Sections 25658, 25663 or 25665 shall be a defense to any criminal prosecution therefor or to any proceedings for the suspension or revocation of any license based thereon.

The administrative law judge (ALJ) made findings with regard to this contention as follows (Findings of Fact 8 & 9):

8. Although minor Pourkazemi denied ever presenting false identification in purchasing alcoholic beverages at the premises, the testimony of clerk Manalastas that he did, is more credible and is believed. Minor Pourkazemi had purchased beer from Manalastas at the premises on 2 prior occasions and on the first occasion approximately one month prior to the instant violation, the clerk had asked the minor for his driver's license prior to the sale. The clerk testified that in response to his request, Pourkazemi had produced a California driver's license, which he examined. He focused solely on the photograph and the age box on the license and concluded based on what he observed, that the minor was of the age of majority.

9. At the threshold, it is found that the clerk was derelict in his examination of the false driver's license that the minor had presented to him. The clerk was busy with other customers and did not take the time to make a thorough examination of the license. He did not take into account the license data on the issue of height and weight and eye color. There is nothing to suggest that he inspected the purported driver's license in more than a cursory way or had used his more than 7 years of experience as a sales clerk at this location to aid him in the process. It was paramount for him to have completed the sale and to move onto other patrons.

In Conclusion of Law 8, the ALJ explained how he reached his decision:

8. The identification the minor had used on a prior occasion was false and not issued by a government entity. Apart from this, there is little evidence of good faith reliance upon the part of the clerk, as he had rushed through his examination of the license because he was busy with other patrons. This was not prudent and it was unreasonable for the clerk to believe that a document was genuine based solely on the age shown on the false license as well as the photographic resemblance. To conclude otherwise would make successful almost any defense under Section 25660 involving false identification, and would defeat the purpose of the law.

The argument on the part of the respondents that the burden placed on licensees by statute and case law is unrealistically high with respect to what is necessary to constitute a successful defense under Section 25660, is a subject properly addressed by the legislature.

Section 25660, as an exception to the general prohibition against sales to minors, must be narrowly construed, and since it provides an affirmative defense, "[t]he licensee has the burden of proving . . . that evidence of majority and identity was demanded, shown and acted on as prescribed by . . . section 25660." (*Lacabanne Properties, Inc. v. Dept. of Alcoholic Bev. Control* (1968) 261 Cal.App.2d 181, 189 [67 Cal.Rptr. 734].)

To establish a defense under section 25660, there must have been displayed an identification which reasonably purports to be issued by a government agency, and there must be a demonstrated reasonable reliance upon that identification. (*Dept. of Alcoholic Bev. Control v. Masani* (2004) 118 Cal.App.4th 1429 [13 Cal.Rptr.3d 826].)

Reasonable reliance cannot be established unless the appearance of the person presenting identification indicates that he or she could be 21 years of age and the seller makes a reasonable inspection of the identification offered. (*5501 Hollywood, Inc. v. Dept. of Alcoholic Bev. Control* (1957) 155 Cal.App.2d 748, 753-754 [318 P.2d 820].) Although section 25660 was designed "to relieve vendors of alcoholic beverages from

having in all events to determine at their peril the age of the purchaser," by allowing vendors to rely on certain documentary evidence of majority and identity, "*the bona fides of such documents must be ascertained if the lack of it would be disclosed by reasonable inspection, the circumstances considered.*" (*Dethlefsen v. State Bd. of Equalization* (1956) 145 Cal.App.2d 561, 567 [303 P.2d 7] (italics added).)

The ALJ concluded that the clerk did not reasonably rely on the driver's license he said was shown to him previously by Pourkazemi because the clerk "rushed through his examination of the license" and studied only the birth date and the photograph on the document. We agree that appellant has not shown that the clerk reasonably relied on a document described in section 25660, but for a more fundamental reason: The document allegedly shown to the clerk was not offered as evidence at the hearing, so there was no basis on which to conclude whether or not the clerk's reliance on it was reasonable and in good faith.

Testimony that a minor produced an identification card purporting to show he or she was 21, by itself, is not enough to establish a defense under section 25660. Without seeing the alleged fake ID the clerk said he saw, it is simply impossible to determine if he reasonably relied on it.

II

Appellants contend the facts do not support a finding that the clerk furnished the beer to Stallings, since Pourkazemi paid for it, and Stallings was only present to help Pourkazemi carry the beer out of the store.

With regard to appellants' contention, the Appeals Board must review the Department's decision to determine if substantial evidence exists, even if contradicted, to reasonably support the Department's findings. (Cal. Const., art. XX, § 22; Bus. &

Prof. Code, §§ 23084, 23085; *Boreta Enterprises, Inc. v. Dept. of Alcoholic Bev. Control* (1970) 2 Cal.3d 85 [84 Cal.Rptr. 113].) "Substantial evidence" is relevant evidence which reasonable minds would accept as reasonable support for a conclusion. (*Universal Camera Corp. v. Labor Bd.* (1951) 340 U.S. 474, 477 [95 L.Ed. 456, 71 S.Ct. 456]; *Toyota Motor Sales U.S.A., Inc. v. Superior Court* (1990) 220 Cal.App.3d 864, 871 [269 Cal.Rptr. 647].)

In making its determination, the Board may not exercise its independent judgment on the effect or weight of the evidence, but must resolve any evidentiary conflicts in favor of the Department's decision and accept all reasonable inferences that support the Department's findings. (*Kirby v. Alcoholic Bev. Control App. Bd.* (1972) 7 Cal.3d 433, 439 [102 Cal.Rptr. 857]; *Kruse v. Bank of America* (1988) 202 Cal.App.3d 38, 51 [248 Cal.Rptr. 271]; *Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874 [197 Cal.Rptr. 925]; *Lacabanne Properties, Inc. v. Dept. of Alcoholic Bev. Control*, *supra*, 261 Cal.App.2d at p. 185; *Gore v. Harris* (1964) 29 Cal.App.2d 821 [40 Cal.Rptr. 666].)

Here, Stallings went with Pourkazemi to the beer cooler, selected several large bottles of beer from the cooler and took them to the counter, stood next to Pourkazemi while he paid for the beer, was given the change from the purchase by Pourkazemi, and picked up some of the beer from the counter and carried it outside. All this took place within the view of the clerk.

We believe these facts comprise the substantial evidence necessary to support the ALJ's finding that the clerk furnished beer to Stallings. In *Circle K Stores, Inc.* (2004) AB-8209, where a 21-year-old person purchased beer while accompanied and helped by several others who were not yet 21, the Board said:

The clerk is the person in control of the sale. He or she must be alert to the substance of the transaction, and cannot ignore circumstances that ought to raise questions in the mind of a reasonably prudent person. When the transaction is in the nature of a group purchase, as the one in this case appeared to be, a clerk must establish that each of those who are involved in the transaction are 21 or over. It is not enough that the person who assembles the various selections and pays for them is 21. A clerk may not close his or her eyes to the reality of what is taking place. The critical fact in this case is not the mere presence of minors, it is their participation in the transaction, all of which took place in front of the clerk.

Business and Professions Code section 23001 declares that “the subject matter of this division involves in the highest degree the economic, social, and moral well-being and safety of the state and of all its people,” and mandates that “all provisions of this division shall be liberally construed for the accomplishment of these purposes.” It would be an unduly restrictive reading of the word “furnish” to accept appellant’s contention that there was no furnishing in this case.

While the facts in AB-8029 were somewhat different from those in the present appeal, they are sufficiently similar to provide appropriate guidance. The appellant in AB-8029 attempted to draw the same analogy that appellants do here, to a parent purchasing beer while accompanied by a child. The Board rejected this attempt in language that, with minor modification, applies equally to the present case:

There is a considerable difference between the above scenario and those posited by appellant, in which children accompany their parents into a supermarket, or accompany their parents or other adults at dinner where the adults are served wine. In this case, the clerk knew, or should have known, that [Pourkazemi] was buying beer not only for himself, but also as a conduit for [Stallings], who selected and/or paid for [his] share of the overall purchase.

We have no difficulty concluding that the participation of Stallings in this transaction was sufficient to put a reasonable clerk on notice that it was necessary to verify Stallings' age, as well as Pourkazemi's, before completing the sale.

ORDER

The decision of the Department is affirmed.²

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

²This 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.