

ISSUED AUGUST 26, 1997

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

AMADOR LOPEZ & ISIDRO URBINA	)	AB-6750
dba Rosita's Bar)	
8202 San Fernando Road	)	File: 40-176776
Sun Valley, CA 91352,	)	Reg: 96035416-
Appellants/Licensees,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Sonny Lo
DEPARTMENT OF ALCOHOLIC)	
BEVERAGE CONTROL,	)	Date and Place of the
Respondent.	)	Appeals Board Hearing:
	)	July 2, 1997
	)	Los Angeles, CA
)	

Amador Lopez and Isidro Urbina, doing business as Rosita's Bar (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which revoked their on-sale beer license for appellants' employees destroying evidence and committing other acts which obstructed justice, concerning a homicide which had occurred in the licensed premises, 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 §24200, subdivision (a),

¹The decision of the Department dated October 17, 1996, is set forth in the appendix.

and Penal Code §135.

Appearances on appeal include appellants Amador Lopez and Isidro Urbina, appearing through their counsel, Armando H. Chavira; and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale beer license was issued on September 18, 1985. Thereafter, the Department instituted an accusation alleging that on November 11, 1995, co-appellant Urbina and some of his employees obstructed police officers in the performance of an investigation of a homicide which had occurred within the premises, by the removal of the victim's body from the premises and cleaning portions of the premises' interior where the body had fallen, as well as evidence of the body's removal. The accusation also alleged that Urbina lied to the police concerning his knowledge of the homicide.

An administrative hearing was held on June 10, July 19, and September 23, 1996, at which time oral and documentary evidence was received. At that hearing, testimony was presented concerning the homicide.

Francisco Nava, an employee of a restaurant across the street from the premises, testified at the administrative hearing that he heard shots coming from the direction of the subject premises, and that he observed shortly thereafter, two males leaving the premises through the front door, followed by other men and women. Thereafter, he observed someone exiting the rear of the premises dragging

something. He later observed Urbina and employees leaving the premises from the front door. While driving away from his employment that evening, Nava observed a body lying in the alley way, close to the premises [RT II, 8-12, 15-16, 23-36, 60-62].

Elizabeth Cardinas, an employee of appellants, testified she had worked at the premises the night of the homicide and witnessed the confrontation of the killer and victim. After the homicide, the killer left the premises with an associate, followed by patrons of the premises. However, she, two other employees, and Urbina, stayed. Urbina, after viewing the body of the victim, opened the rear door and with Cardinas' help, took the body into the alley, pulling the body by the upper torso. The employees mopped the floor near where the body had fallen. Urbina watched the clean up process. Urbina and the employees then exited the premises through the front door [RT II, 10-16, 18-21, 41, 53-54].

Mark Arragon, a detective for the Los Angeles Police Department, testified that he observed the body of the victim in the alley way near the rear door of the premises, observed drag marks and blood smears from the rear of the premises as well as within the premises. He noticed what appeared to have been an attempt to clean the inside of the premises. He talked to Urbina, who denied knowing of the homicide, and further denied there had been shots fired, a fight, or even the existence of a body [RT I, 33-37, 41, 38].

Subsequent to the hearing, the Department issued its decision which revoked

appellants' license. Appellants thereafter filed a timely notice of appeal.

In their appeal, appellants raise the following issues: (1) there was no substantial evidence to support the findings that Urbina lied to the police, arguing that the investigating police officer was not a credible witness; and (2) that the removal of the victim's body and cleaning of the premises in the area where the victim had fallen were acts which were not contrary to public welfare and morals, arguing that no crime was charged; Urbina was in a state of shock; and, no community standards as to what was contrary to public welfare and morals were placed into evidence.

DISCUSSION

I

Appellants contend that there was no substantial evidence to support the findings that Urbina lied to the police, arguing that the investigating police officer was not a credible witness.

"Substantial evidence" is relevant evidence which reasonable minds would accept as reasonable support for a conclusion. (Universal Camera Corporation v. National Labor Relations Board (1950) 340 US 474, 477 [71 S.Ct. 456]; 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 are attacked on the ground there is a lack of substantial evidence, the Appeals Board, after considering the entire record, must 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].)

The credibility of a witness's testimony is determined within the reasonable discretion accorded to the trier of fact. (Brice v. Department of Alcoholic Beverage Control (1957) 153 Cal.2d 315 [314 P.2d 807, 812] and Lorimore v. State Personnel Board (1965) 232 Cal.App.2d 183 [42 Cal.Rptr. 640, 644].) The findings do not expressly find that detective Arragon's testimony was credible, but apparently the Administrative Law Judge (ALJ) believed the detective when Arragon testified as to what Urbina had told him, as finding V states: "When questioned by the police, Urbina replied that there had not been a shooting at his premises, and that he did not know any thing about a body in the alley behind his premises."²

Determination of Issues III, which is essentially conclusions of law based upon the findings, stated that Urbina had lied to the police. The basis of this determination were findings II and IV, supported by finding V. The ALJ found that Urbina and an employee had dragged the body from the premises, Urbina watched while employees cleaned the blood from the floor of the premises, and Urbina told the police he did not know of the circumstances of the body behind his premises.

The finding that Urbina lied to the police during the investigation of the

²The testimony of the detective [RT I, 38] which supported the finding was not hearsay. It was not given to prove the truth of that offered, but merely to state that is what Urbina had told the officer. (See Evidence Code §1200 -- hearsay definition, and also Evidence Code §1220 - admissions by a party in an action.)

murder, was a reasonable conclusion for the ALJ to draw, particularly after comparing Urbina's employee Cardinas' testimony, that she assisted Urbina in dragging the body of the murdered man from the premises and cleaned up the blood where the body had fallen, all in Urbina's presence, to Urbina's statement to the police that he had no knowledge of the matter.

II

Appellants contend that the removal of the victim's body and the cleaning the premises in the area where the victim had fallen were acts which were not contrary to public welfare and morals, arguing that no crime was charged (the violation of Penal Code §135), Urbina was in a state of shock, and no community standards as to what was contrary to public welfare and morals were placed into evidence.

Penal Code §135 states in pertinent part:

"Every person who, knowing that any ... matter or thing, is about to be produced in evidence upon any trial, inquiry, or investigation whatever, authorized by law, willfully destroys ... the same, with intent thereby to prevent it from being produced, is guilty of a misdemeanor."

Destruction of evidence violates Penal Code §135. (People v. Fields (1980)

105 Cal.App.3d 341 [164 Cal.Rptr. 336].)

"In California, there is no rule of strict construction of penal statutes. Such statutes are to be construed '... according to the fair import of their terms, with a view to effect [their] objectives and to promote justice'... A statute is to be given reasonable and common sense construction in accordance with its apparent purpose and the intent of the Legislature -- one that is practical rather than technical and that

will lead to a wise policy rather than to mischief or an absurdity."
(People v. Fields, 105 Cal.App.3d at 343.)

The evidence shows, and appellants concede in their brief, that Urbina moved the body to the alley. While appellants argue that the body was not destroyed, the record shows that the body was moved, thus thwarting any police analysis of the trajectory of the bullet and analysis of all the blood that flowed from the body. While it is convenient for appellants to argue that "no harm" was done by Urbina's "mistake," it is for the police to decide what evidence is necessary to complete an investigation, not witnesses to a crime or passers-by.

While no crime was charged, such action is not required before a licensee is subject to sanctions for on-premises conduct that is proven to be contrary to law and public welfare and morals. The issue is not whether Urbina was criminally charged and convicted, but whether his conduct was such that it would reasonably be deemed contrary to the public welfare and morals.

Additionally, the argument that appellant was in a state of shock, thereby excusing Urbina's conduct, is without merit. While Urbina did not witness the shooting [RT I, 84, and Finding II], he heard the shots, ordered and assisted the removal of the body to the alley, and watched while employees cleaned up the blood from the floor. Afterwards, Urbina delivered the keys of the premises to the police [RT II, 35], talked to the police for four hours [RT II, 39], and denied any knowledge of the shooting. Other than mere argument, the raising of "shock" on the part of Urbina is without basis in the record.

Passing to the ultimate question whether such a violation of law is contrary to public welfare and morals, the court in Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal.3d 85, 99 [84 Cal.Rptr. 113], defined the concept of public welfare and morals in a manner that adapts the definition to almost all factual matters and circumstances:

"It seems apparent that the 'public welfare' is not a single, platonic archetypal idea, as it were, but a construct of political philosophy embracing a wide range of goals including the enhancement of majority interest in safety, health, education, the economy, and the political process, to name a few. In order intelligently to conclude that a course of conduct is 'contrary to the public welfare' its effects must be canvassed, considered and evaluated as being harmful or undesirable. Ordinarily it is delusive to speak in terms of conduct which is per se contrary to public welfare."

The Boreta court, in footnote 22 at 2 Cal.3d 99, states:

"We do not mean to intimate that the Department [of Alcoholic Beverage Control] is confined to considering violations of criminal statutes or departmental directives as grounds for suspension or revocation under section 24200, subdivision (a). It is not disputed that while the Department may properly look to and consider a licensee's violation of the Alcoholic Beverage Control Act, the Penal Code, other state and federal statutes, or Department rules, as constituting activities contrary to public welfare or morals, it may also act on situations contrary to public welfare or morals in the sale or serving of alcoholic beverages regardless of legislative expressions of policy on the subject or prior departmental announcements."

In the case of H. D. Wallace & Associates v. Department of Alcoholic Beverage Control (1969) 271 Cal.App.2d 589 [76 Cal.Rptr. 749, 751-752], it states:

"The California decisions reviewing the public welfare or morals disqualification describe two general kinds of misbehavior or breach: first, that which occurs on the licensed premises or affects the business conducted there; second, that which reveals lack of personal fitness of the person controlling the license."

CONCLUSION-

The acts of Urbina and his employees in removing the body and cleaning the blood shows a lack of fitness to hold a license -- the conduct is reprehensible as direct interference with the orderly process of a criminal investigation, hence, such conduct is contrary to public welfare and morals.

The decision of the Department is affirmed.

BEN DAVIDIAN, CHAIRMAN
RAY T. BLAIR, MEMBER
JOHN B. TSU, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD