

Taxi & Limousine Comm'n v. Anonymous

OATH Index No. 1081/20 (Dec. 27, 2019), *adopted*, Comm'r Dec. (Jan. 29, 2020), **appended**

Petitioner suspended respondent's TLC Driver License following his arrest for an off-duty incident. However, at a post-suspension hearing, petitioner failed to prove that respondent poses a continuing "direct and substantial threat" to the public's health or safety. Lifting of suspension recommended.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of

TAXI AND LIMOUSINE COMMISSION

Petitioner

-against-

ANONYMOUS¹

Respondent

REPORT AND RECOMMENDATION

KEVIN F. CASEY, *Administrative Law Judge*

Petitioner, the Taxi and Limousine Commission (TLC), brought a summary suspension proceeding against respondent, holder of a TLC Driver License. Admin. Code § 19-512.1 (Lexis 2019); 35 RCNY § 68-15(d) (Lexis 2019). After receiving notice of respondent's arrest on November 6, 2019, for assault in the third degree and related charges, petitioner suspended respondent's TLC Driver License (Pet. Ex. 1). Petitioner now seeks a finding that continued suspension of respondent's license is necessary, pending the outcome of the criminal case, because respondent poses a "direct and substantial" threat to the public (Pet. Ex. 1). Respondent contends that, based on his unblemished record as a licensee, mitigating facts related to the incident, and his overall character, he does not pose a "direct and substantial" threat to the public.

¹ On March 17, 2021, the criminal charges against respondent were dismissed and the record of that proceeding was sealed. Respondent's November 23, 2021, request to redact his name from this case, not opposed by petitioner, has been granted to afford the protection from public disclosure under applicable law. *See* 48 RCNY § 1-49 (d); Crim. Proc. Law § 160.50; *see also Taxi & Limousine Comm'n v. N.S.*, OATH Index No. 395/15 at 1, n. 1 (Sept. 9, 2014).

At a post-suspension hearing on December 12, 2019, petitioner relied on documentary evidence. Respondent testified, presented three other witnesses, and offered documentary evidence. For the reasons below, I find that, even if the charges underlying respondent's arrest were true, petitioner failed to prove that respondent poses a continuing "direct and substantial threat" to the public's health or safety.

ANALYSIS

Petitioner may suspend a TLC Driver License before a hearing "for good cause shown relating to a direct and substantial threat to the public health or safety." Admin. Code § 19-512.1 (Lexis 2019). The licensee may challenge that suspension at a post-suspension hearing, where the issue is "whether the charges underlying the Licensee's arrest, if true, demonstrate that the continuation of the License while awaiting a decision on the criminal charges would pose a direct and substantial threat to public health or safety." 35 RCNY § 68-15(d)(3) (Lexis 2019). To satisfy due process, "a meaningful hearing . . . must give the driver an opportunity to show that his or her particular licensure does not cause a threat to public safety." *Nnebe v. Daus*, 931 F.3d 66, 83 (2d Cir. 2019). Relevant considerations include "the conduct underlying the arrest and the overall record and character of the driver." *Id.* at 82.

Applying *Nnebe*, this tribunal has determined, on a case-by-case basis, whether a licensee's suspension should continue because of a direct and substantial threat to public health or safety. *See* Admin Code § 19-512.1; 35 RCNY § 68-15(d)(1). Besides the seriousness of the pending criminal charge, consideration is given to the nexus between the charge and licensed activity, the driver's character, and the likelihood of recurrence. *Compare Taxi & Limousine Comm'n v. Singh*, OATH Index No. 701/20 at 7 (Nov. 1, 2019), *adopted*, Comm'r Dec. (Nov. 19, 2019) (suspension lifted for licensee charged with assault where it appeared that licensee, who had a spotless history of law-abiding behavior and showed substantial regard for passenger safety, reacted to extraordinary provocation); *with Taxi & Limousine Comm'n v. Azad*, OATH Index No. 142/20 at 6 (Aug. 15, 2019), *adopted*, Comm'r Dec. (Oct. 15, 2019) (suspension continued where driver was arrested for assault in the second degree, amended to assault in the third degree and endangering the welfare of a child, and the criminal complaint referred to medical records showing that the licensee repeatedly struck his 15-year old nephew with a stick, causing a sprained wrist and abrasion to his arm).

On November 6, 2019, the police arrested respondent and charged him with three counts each of assault in the third degree, a class A misdemeanor, and harassment in the second degree, a violation (Pet. Ex. 1). An additional charge of criminal obstruction of breathing or blood circulation was later withdrawn (Pet. Ex. 1; Tr. 5). At the post-suspension hearing, petitioner relied on the Police Department's on-line complaint forms, an on-line arrest form, and the Criminal Court complaint, for details of events leading to respondent's arrest (Pet. Exs. 4, 5).

According to the Police Department forms, the incident occurred on a sidewalk in front of a residence on East 58th Street, in Brooklyn, at about 7:40 p.m. on November 6 (Pet. Ex. 4). The police arrested respondent at the scene after receiving reports that he had a verbal dispute with his ex-wife and pushed her in the chest, causing her pain (Pet. Ex. 4). When her sisters tried to break up the fight, respondent allegedly pushed one sister in the chest, causing her pain, and placed his arm around another sister's neck area, causing redness; she was reportedly unable to breath but did not lose consciousness (Pet. Ex. 4). Though EMS responded to the scene, respondent's ex-wife did not report any injuries and her two sisters refused medical attention (Pet. Ex. 4).

A criminal complaint, dated November 18 and signed by an assistant district attorney, differed from the police reports (Pet. Ex. 5). The criminal complaint, based on information from respondent's ex-wife and her sisters, omitted the obstruction of breathing charge and charged respondent with one count of assault in the third degree and three counts of attempted assault in the third degree, a class B misdemeanor (Pet. Ex. 5). *See* Penal Law §§ 110.00 (attempt); 120.00(1) (intentionally causing physical injury) (Lexis 2019). The criminal complaint also included the harassment violations, three counts of menacing in the third degree, a class B misdemeanor, and two counts of endangering the welfare of a child, a class A misdemeanor. *See* Penal Law §§ 240.26(1) (striking, kicking, shoving or otherwise subjecting another person to physical contact, or attempting or threatening to do so, with intent to harass, annoy, or alarm); 120.15 (intentionally placing or attempting to place another person in fear of death, imminent serious physical injury or physical injury); 260.10(1) (knowingly acting in a manner likely to be injurious to the physical, mental or moral welfare of a child less than seventeen years old).

The criminal complaint alleged that respondent repeatedly pushed his ex-wife, and "an unapprehended other," acting in concert with respondent, kicked respondent's ex-wife in the leg, causing her to suffer pain, fear injury, and become alarmed and annoyed. Respondent allegedly

pushed one of her sisters in the chest and placed his arm around the neck of another sister and pulled her neck, causing redness about the neck. Two children saw the incident (Pet. Ex. 5).

Respondent waived his right to silence, testified, subjected himself to cross-examination, and provided more details about his background and the incident. His testimony was credible, consistent, and convincing. For nearly two years, respondent has been a TLC licensee and a full-time Uber driver (Tr. 34). He has served over 3,200 passengers without receiving any complaints, his Uber passengers rated his work as 4.92 out of 5, and he has no prior arrests (Tr. 35; Resp. Ex. A).

On November 6, respondent, his fiancé Laquasha, and their child, went to pick up respondent's two other children from his ex-wife Kimberly. Respondent recalled that, after his children entered the backseat and he fastened their seat belts, Kimberly confronted him and demanded to speak with him (Tr. 42). When respondent told Kimberly that he could not speak with her at that moment and told her to call him, she stepped between him and the car door and prevented him from closing it (Tr. 42). At that point, Laquasha got out of the passenger side of the car and told Kimberly, "You can't do this in front of the children" (Tr. 42). Kimberly replied, "What are you gonna do?" and headed towards Laquasha (Tr. 42-43).

Meanwhile, Kimberly's sisters ran out of the house, screaming and cursing (Tr. 43). Respondent got out of the car and went to the passenger side to protect Laquasha, who got back into the car and called the police (Tr. 43). A neighbor crossed the street and intervened (Tr. 44). The neighbor spread his arms out wide, stood in front of Kimberly, who was pounding on Laquasha's window (Tr. 44, 48-49, 52-53). He told Kimberly, "You can't do this" and "That's not right" (Tr. 44, 48-49, 52-53).

Respondent denied that he punched, grabbed, injured, or intentionally struck anyone (Tr. 50). And he did not recall having any physical contact with anyone (Tr. 51). When the police arrived respondent told them what happened and signed a statement (Tr. 55). The police arrested respondent, who was released on his own recognizance the next day (Tr. 55). His next court appearance is scheduled for January 23, 2020 (Tr. 56).

Three witnesses corroborated respondent's testimony. Laquasha testified that she went with him and their child to pick up respondent's other two children (Tr. 15-16). When respondent's two children got into the car, Kimberly angrily confronted respondent and demanded to speak with him (Tr. 16). As respondent sat in the driver's seat of

his car, Kimberly yanked the door open and tried to enter the car (Tr. 16). Laquasha got out of the front passenger side of the car and told Kimberly, “What are you doing? Don’t do this in front of the kids” (Tr. 16). Kimberly replied, “What are you gonna do about it?” and went around the car as if she was going to attack Laquasha (Tr. 16). Meanwhile, Kimberly’s sisters ran out of the house and hit respondent’s car with their hands (Tr. 16-17, 22-23). A neighbor came from across the street (Tr. 16-17, 22-23). The neighbor stopped Kimberly by standing in front of her with his arms wide open, holding her back, and preventing her from getting to Laquasha, who re-entered the car and called the police (Tr. 17).

When the police arrived, Laquasha told them what happened (Tr. 18). One of the police officers told Laquasha that Kimberly was trying to get her arrested (Tr. 18, 24). But Kimberly had changed her story three or four times (Tr. 18). The police told Laquasha that they had to arrest respondent because the incident involved allegations of domestic violence (Tr. 18). Laquasha insisted that she did not see him use any force or engage in any violence (Tr. 20).

Kimberly’s neighbor testified by telephone.² He saw a verbal dispute and tried to hold Kimberly back, because it looked like she was upset, aggressive, and ready to fight (Tr. 59, 61). Respondent put his hands up to prevent Kimberly or her sisters from entering the car and striking anyone; however, respondent did not swing or strike at anyone (Tr. 62-63, 65-66). According to the neighbor, respondent showed remarkable restraint and displayed no aggression (Tr. 62-63, 65). Respondent also presented testimony from an investigator who spoke to the neighbor shortly after the incident. The investigator’s testimony was consistent with the neighbor’s testimony (Tr. 28-29, 31-32).

Under petitioner’s rules, it is assumed that respondent committed the crimes charged. Even so, there was no reliable evidence that any of the complainants sustained any significant injuries. Kimberly reported no injuries and her sisters refused medical attention, which indicates that any injuries were minor.

² At the end of the hearing, the record was left open to allow petitioner to produce emails to establish the chain of custody for the police reports (Tr. 11, 69). The next day, petitioner forwarded those emails along with an email from another ALJ who declined to take testimony from the neighbor by telephone due to an inability to assess credibility. Based on that email, petitioner moved to strike the neighbor’s testimony. That motion is denied. Petitioner never objected or mentioned the other ALJ’s email when respondent asked to call the witness at the hearing. Moreover, petitioner routinely relies solely on documents at post-suspension hearings and has also relied on testimony via telephone from complainants at other proceedings. *See, e.g., Taxi & Limousine Comm’n v. Cadet*, OATH Index No. 1390/12 at 2, 8 (May 16, 2012) (allowing unavailable complainant to testify via telephone).

Though respondent may have had some minor, incidental physical contact with the complainants, he presented compelling testimony to show that they were the aggressors and that he tried to avoid the dispute. Respondent's testimony was corroborated by credible testimony from Kimberly's neighbor and Laquasha.

Petitioner argued that respondent's witnesses should not be credited because they were biased in respondent's favor. In assessing credibility, relevant factors include demeanor, consistency of a witness's testimony, supporting evidence, witness motivation, bias or prejudice, and the degree to which a witness's testimony comports with common sense and human experience. *Dep't of Sanitation v. Menzies*, OATH Index No. 678/98 at 2-3 (Feb. 5, 1998), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 98-101-A (Sept. 9, 1998). The witnesses' relationship to respondent was a factor to be considered. However, I did not find it sufficient reason to reject their testimony.

Laquasha testified in a clear, straightforward manner and withstood cross-examination. Moreover, Kimberly's neighbor impressed me as an impartial, credible witness. He was unsure of respondent's name and had limited prior contact with him (Tr. 58). They exchanged pleasantries when respondent regularly picked up his children (Tr. 63). Though the neighbor acknowledged that he had become friendlier with respondent and they had engaged in "man talk" in the months before this incident, they were, at most, casual acquaintances (Tr. 67). The neighbor had no motive to lie, his testimony was consistent with the statements that he made to respondent's investigator, and he credibly recalled that respondent showed restraint.

In sum, respondent has an unblemished record as a TLC licensee and Uber driver. He has driven thousands of passengers, received high ratings for his work, and never been accused of harming or threatening a passenger. Even assuming, as petitioner's rules require, that respondent committed the crimes charged, this appears to have been an aberrational incident in an otherwise law-abiding life. Based on respondent's sterling driving record, the degree of provocation, and the absence of significant injury, respondent does not pose a continuing direct and substantial threat to public health or safety

FINDINGS AND CONCLUSIONS

1. Respondent was arrested for assault in the third degree and related charges.

2. Petitioner did not prove that, even assuming the truth of the pending criminal charges, respondent poses “a direct and substantial threat” to public safety.

RECOMMENDATION

I recommend lifting the suspension of respondent’s TLC Driver License.

Kevin F. Casey
Administrative Law Judge

December 27, 2019

SUBMITTED TO:

BILL HEINZEN
Acting Commissioner

APPEARANCES:

ASH HORN, ESQ.
Attorney for Petitioner

BROOKLYN DEFENDER SERVICES
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NYC
Taxi & Limousine
Commission

January 29, 2020

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Dear Licensee [REDACTED]:

Pursuant to TLC Rule 68-15, a summary suspension hearing was held on December 12, 2019, as a result of your November 6, 2019 arrest for assault in the third degree and related charges.

I accept the ALJ's recommendation and lift the suspension of your TLC Driver License.

Sincerely,



Christopher C. Wilson
General Counsel

cc: Wanda Rivera, *Executive Assistant, Licensing and Standards*
Kevin F. Casey, *Administrative Law Judge*