Taxi & Limousine Comm'n v. Singh

OATH Index No. 701/20 (Nov. 1, 2019), *adopted*, Comm'r Dec. (Nov. 19, 2019)

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-
MANINDER SINGH
Respondent

REPORT AND RECOMMENDATION

KEVIN F. CASEY, *Administrative Law Judge*

Petitioner, the Taxi and Limousine Commission (TLC), brought a summary suspension proceeding against respondent, Maninder Singh, holder of TLC Driver License 5570919. Admin. Code § 19-512.1 (Lexis 2019); 35 RCNY § 68-15(d) (Lexis 2019). On October 2, 2019, after receiving notice of respondent's arrest for assault in the second degree and criminal possession of a weapon in the fourth degree, 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 (ALJ Ex. 1). Respondent opposes continued suspension of his license and contends that, based on mitigating facts related to the incident, his unblemished record as a licensee, and his overall character, he does not pose a "direct and substantial" threat to the public.

At a post-suspension hearing on October 16, 2019, petitioner relied on documentary evidence. Respondent testified, presented two 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

New York City's Administrative Code allows petitioner to suspend a TLC Driver License prior to 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). If a license is suspended based solely on an arrest, the licensee may challenge that 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).

As a preliminary matter, respondent's counsel argued that the notice provided by petitioner was constitutionally insufficient because it did not indicate what standard would be applied at the post-suspension hearing or the critical issue to be decided at the hearing (Tr. 22-23). *See Nnebe v. Daus*, 931 F.3d 66, 88-89 (2d Cir. 2019) (holding that post-2006 notices sent by TLC leave drivers "ill-prepared and poorly-informed as to what evidence would be relevant" at the hearing).[1] In light of *Nnebe*, petitioner would be well-advised to revise its notice. But here, even if petitioner's notice was deficient, there was no prejudice. Respondent, represented by lead counsel for the *Nnebe* plaintiffs, was well-prepared and well-informed about the relevant factual and legal issues at the hearing. Besides his own testimony, respondent offered persuasive witnesses and legal arguments directly addressing the central issue at the hearing: whether lifting the suspension of respondent's license would pose a direct and substantial threat to public safety.

As the Court held in *Nnebe*, 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." Relevant considerations include "the conduct underlying the arrest and the overall record and character of the driver." *Id*. at 82. Even if a driver is charged with an act that endangered public health or safety, that may be "insufficient to demonstrate that the driver would *continue* to pose a threat if allowed to retain his or her license." *Id.* (emphasis in original). For example, the crime may be "a sole infraction in an otherwise spotless record" or the underlying conduct, while satisfying the elements of a crime, may be "technical or mitigated, such that

[1] For a summary of the *Nnebe* litigation, see *Taxi & Limousine Comm'n v. Baig*, OATH Index No. 179/20 at 3-4 (Aug. 15, 2019).

continuation of the driver's license did not pose the kind of threat conjured by the general nature of the crime charged." *Id.*

Consistent with the due process guarantees of the state and federal constitutions, the Administrative Code, and petitioner's rules, 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. Admin Code § 19-512.1; 35 RCNY § 68-15(d)(1). In addition to the severity of the pending criminal charge, consideration has been 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. Bhatti*, OATH Index No. 2364/13 at 5-7 (Aug. 27, 2013), *rejected*, Comm'n Dec. (Sept. 24, 2013) (lifting of suspension recommended for licensee charged with assault, where it appeared that the complainant did not suffer substantial injury and licensee had clean driving record for 25 years); *with Taxi & Limousine Comm'n v. Azad*, OATH Index No. 142/20 at 6 (Aug. 15, 2019) (recommending continued suspension where driver was arrested for assault in the second degree, later amended to assault in the third degree and endangering the welfare of a child, and the criminal complaint, which referred to medical records, showed that the licensee repeatedly struck his 15-year old nephew with a stick and the victim was later diagnosed with a sprained wrist and abrasion to his arm); *Taxi & Limousine Comm'n v. Rahman*, OATH Index No. 1246/14 at 4 (Dec. 31, 2013), *adopted*, Comm'r Dec. (Feb. 7, 2014) (recommending continued suspension where driver, whose license had been suspended twice before, was charged with assault in the third degree and claimed self-defense).

Here, petitioner presented evidence that respondent was arrested at his home on October 1, 2019, and charged with serious crimes: assault in the second degree, a class D felony, and criminal possession of a weapon in the fourth degree, a class A misdemeanor. *See* Penal Law §§ 120.05(2) (intentionally causing physical injury by means of a deadly weapon or dangerous instrument), 265.01(2) (possessing a dangerous or deadly instrument or weapon, with intent to use it unlawfully) (Lexis 2019). Following arraignment, the Nassau County District Court released respondent on his own recognizance (Pet. Ex. 2). There was no evidence of any grand jury action (Pet. Ex. 2).

Petitioner introduced a copy of an unsigned felony complaint summarizing the events leading to respondent's arrest (Pet. Ex. 3). According to that document, on October 1, respondent was at his home in North Valley Stream, where he lives with his cousins, referred to in the report as "Victim 1" and Mandeep Singh (Pet. Ex. 3). There was a dispute about money, it

escalated, and respondent punched Victim 1 in the face, causing a laceration, substantial pain, and bleeding (Pet. Ex. 3). Respondent wore a metal bracelet that he allegedly pulled over his knuckles to punch Victim 1 (Pet. Ex. 3). When a guest, referred to as Victim 2, intervened, respondent allegedly struck him in the face numerous times in the face, head, neck, and chest causing substantial pain and bleeding (Pet. Ex. 3). Both victims reportedly went to a local hospital for treatment (Pet. Ex. 3). The complaint was based on a detective's information and belief, which included observations of injuries, supporting depositions, photographs, and respondent's statement to the detective that he held the bracelet when he hit the alleged victims (Pet. Ex. 3).

Asserting that it had limited access to information regarding the criminal case, petitioner argued that, not only should the criminal charges be presumed true, but the additional details in the complaint should also be accepted as true (Tr. 74-75). Petitioner is mistaken. As respondent's counsel noted, petitioner made no effort to speak to respondent before suspending his license and there was no evidence that petitioner attempted to speak to the complainants, the police, or the prosecutor (Tr. 70). Though a post-suspension hearing is not intended to be a mini-trial on the criminal charges, which petitioner's rules deem to be true, neither petitioner's rules nor the decision in *Nnebe* support the sweeping proposition that every additional detail in a complaint must be accepted as true. On the contrary, the additional details of the complaint, which rely on multiple levels of hearsay, should be weighed against the rest of the evidence.

Respondent offered abundant and relevant evidence regarding "the conduct underlying the arrest," his "overall record," and his "character." *Nnebe*, 931 F.3d at 82. Facing criminal charges, respondent had a right to remain silent. Instead, he elected to testify about the incident and subjected himself to cross-examination, often described as the "greatest legal engine ever invented for discovery of truth." *See California v. Green*, 399 U.S. 149, 158 (1970) (citation omitted). In a candid, clear, and straightforward manner, respondent answered every question posed to him and recalled how he was attacked in his own home by a drunken partygoer, named Gopal (also referred to in the record as Ropal or Gopi) (Tr. 34-36).

Testifying with the aid of a Punjabi interpreter, respondent explained that he lives with two of his cousins (Tr. 34-35). On the night of the incident, one of respondent's cousins was celebrating his birthday with 15 to 20 guests, who were all drinking (Tr. 34-35). Respondent got along well with his cousins, but he was not one of the partygoers and he was not drinking (Tr. 34). After midnight, respondent went to get some food from the party and he was verbally

abused and cursed at by Gopal (Tr. 34-35). When respondent tried to get him to stop, Gopal and respondent's cousins, who were all drunk, physically attacked respondent (Tr. 36).

Gopal struck first (Tr. 37). He held respondent by the neck and punched him in the face and respondent's cousins joined in (Tr. 37). As respondent tried to defend himself, his thin metal wrist bracelet, which he wore for religious reasons, struck Gopal and caused him to bleed a little bit (Tr. 38, 66, 68). Respondent retreated to his room and called the police (Tr. 36, 38).

Respondent's friends Jaswinder and Davinder corroborated his testimony (Tr. 45). Jaswinder testified that he attended the party and left at 11:00 p.m., before the altercation (Tr. 54-54). Later that night, respondent called Jaswinder and reported that three people had attacked him, he defended himself, and he called the police (Tr. 50). Jaswinder immediately returned to respondent's home and saw that his clothes were ripped and his face and neck were scratched (Tr. 51). Respondent told Jaswinder that Gopal was drunk and had started the dispute (Tr. 51-52). When respondent pushed back, Gopal and two other men, including one of respondent's cousins, started beating him up (Tr. 52). Jaswinder noted that he wore a wrist bracelet for religious reasons and respondent regularly wore a similar bracelet for the same reasons (Tr. 54).

Davinder was not present for the fight (Tr. 62). However, she recalled that one of respondent's friends, who attended the party, reported to her that evening that the three men "jumped" respondent and he tried to defend himself (Tr. 59). Respondent called the police and the other three men fled (Tr. 62-63). Thirty minutes later, the three men called the police and claimed that they were injured (Tr. 62-63). After respondent's release from custody, he told Davinder that he acted in self-defense (Tr. 60).

This detailed, credible testimony from the two witnesses supported respondent's assertion that his assailants were drunk, they were the initial aggressors, he defended himself in his home, and he called the police first. Even assuming that respondent committed the crimes charged, it appears that he reacted to extraordinary provocation.

The criminal charges allege that respondent possessed and caused injury with "a deadly weapon or dangerous instrument" (Pet. Exs. 2, 3). Under New York law, "deadly weapon" includes guns, knives, metal knuckles and the like. Penal Law § 10.00 (12). "Dangerous instrument" is a broader category, including any instrument, which "under the circumstances which it is used . . . is readily capable of causing death or other serious physical injury." Penal Law § 10.00 (13). Courts have held that any instrument, "no matter how innocuous it may appear," can become a "dangerous instrument" when used in a manner capable of causing injury.

People v. Carter, 53 N.Y.2d 113, 116 (1981); *see People v. Cwikla*, 46 N.Y.2d 434, 442 (1979) (handkerchief, when used to smother a victim, may be a dangerous instrument). Thus, accepting the criminal charges as true, respondent's use of his wrist bracelet may fit within New York's broad definition of "dangerous instrument."

However, this appears to be the type of situation discussed in *Nnebe*, where underlying conduct meets the technical definition of a crime, but does not show that the driver posed the kind of danger "conjured by the general nature of the crime charged." 931 F.3d at 82; *see People v. Singh*, 135 Misc.2d 701, 707 (Crim. Ct. Queens Co. 1987) (where defendant was charged with possessing an exposed knife on the subway, the court dismissed the charge in the interest of justice even though the item, a kirpan or symbolic sword carried by members of the Sikh faith, met the statutory definition of a knife; court also noted that wearing a kalha, a steel bracelet, is one of five symbols of the Sikh faith).

In addition to presenting mitigating facts about the circumstances of the alleged crime, respondent presented unrefuted evidence that he has an unblemished record as a TLC driver. Respondent testified that he has been a full-time TLC driver for five years (Tr. 30). He has never been accused of threatening or assaulting a passenger (Tr. 31). In the past year alone, he drove approximately 3,000 passengers and did not receive any complaints (Tr. 32). Respondent's Uber rating is 4.88 out of 5 (Tr. 32).

Respondent also presented ample credible evidence of his good character. He has no prior arrests (Tr. 31). With the money that he earns driving passengers six to seven days per week, respondent supports himself and his parents in India (Tr. 30). Respondent's friend Jaswinder, an Uber driver who works with an organization that provides counseling services, has known respondent for nine years (Tr. 47). He sees respondent two or three times a week and has never seen him do anything violent (Tr. 49). And he is not aware of respondent ever hurting or threatening a passenger (Tr. 49). Jaswinder described respondent as "very responsible" and he noted that, not only does respondent support his parents, he also supports his aunts and uncles (Tr. 49). Respondent's friend Davinder, a manager for a life insurance company, testified that she has known respondent for ten years (Tr. 57). They met at their temple and had dated on and off, but now are just friends (Tr. 57). Davinder has never seen respondent do anything violent or threaten anyone with violence (Tr. 58). She described respondent as understanding, helpful, and a good person (Tr. 59).

Based on the evidence presented, respondent does not pose a continuing direct and substantial threat to public health or safety. Even assuming, as petitioner's rules require, that respondent committed an assault and that his bracelet was a dangerous instrument, this appears to have been an aberrational incident resulting from extraordinary provocation. The remaining evidence, including testimony from long-time friends and stellar ratings from many passengers, showed that respondent is a hardworking driver, with a spotless history of law-abiding behavior, who shows proper regard for the safety of his passengers.

FINDINGS AND CONCLUSIONS

1. Respondent was arrested for assault in the second degree and criminal possession of a weapon in the fourth degree.

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

November 1, 2019

SUBMITTED TO:

BILL HEINZEN
Acting Commissioner

APPEARANCES:

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