Taxi & Limousine Comm'n v. Roach

OATH Index No. 1864/23 (Feb. 3, 2023), *adopted*, Comm'r Dec. (Feb. 8, 2023), **appended**

At a summary suspension hearing, petitioner failed to establish that driver, who faces criminal charges for robbery in the second degree, criminal possession of stolen property, and leaving the scene of an incident, poses a continuing direct and substantial threat to public health or safety. Suspension of TLC Driver License should be lifted.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
TAXI AND LIMOUSINE COMMISSION
Petitioner
- against -
DINA ROACH
Respondent

REPORT AND RECOMMENDATION

JONATHAN FOGEL, *Administrative Law Judge*

Petitioner, the Taxi and Limousine Commission ("TLC"), brought this summary suspension proceeding against respondent, Dina Roach, holder of TLC Driver License 5504841. Admin. Code § 19-512.1 (Lexis 2023); 35 RCNY § 68-15(d) (Lexis 2023). On January 4, 2023, petitioner suspended respondent's TLC Driver License after receiving notice that she had been arrested on December 29, 2022, for assault in the second degree, petit larceny, and related charges (Pet. Ex. 3). Petitioner contends that respondent's suspension should be continued pending the outcome of her criminal case because permitting her to drive as a TLC licensee would pose a direct and substantial threat to public health or safety (Pet. Ex. 1). Respondent opposes continued suspension of her license and asserts that she does not pose a direct and substantial danger to the public.

At a post-suspension hearing on January 20, 2023, held remotely by videoconference, petitioner relied solely upon documentary evidence. Respondent testified on her own behalf, called three witnesses, and presented documentary evidence. For the reasons below, I find that petitioner failed to prove that respondent poses a continuing direct and substantial threat to public

health or safety and recommend that respondent's license suspension be lifted.

ANALYSIS

Under New York City's Administrative Code, 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. If a license is suspended based solely on an arrest, the licensee may challenge that suspension at a post-suspension hearing, where the issue is whether "the charges pending against the Respondent, if true, demonstrate that the continuation of the Respondent's License during the pendency of criminal charges would pose a direct and substantial threat to public health or safety." 35 RCNY § 68-15(d)(5). Evidence relevant to this issue includes the circumstances underlying the charges, such as any nexus between the driver's duties and the alleged offense; the licensee's driving record; the licensee's previous criminal record, "or lack thereof;" and the driver's "character and standing in the community." *Id*.

In order to maintain a license suspension, petitioner must establish that the driver poses a continuing threat to the public that is both "direct" and "substantial." *Nnebe v. Daus*, 931 F.3d 66, 82 (2d Cir. 2019). As the Second Circuit has noted, "in the majority of cases, the further removed the crime is from the driver's job, the less 'direct' the threat," and "[d]epending on the surrounding circumstances and the driver's history, the threat may also be more or less 'substantial.'" *Id*. Other considerations include whether the charged crime is the "sole infraction in an otherwise spotless record," whether the underlying conduct, even if it satisfies the elements of a crime, "was technical or mitigated, such that continuation of the driver's license did not pose the kind of threat conjured by the general nature of the crime charged," the respondent's driving record, the respondent's criminal record, and the respondent's character and standing in the community. *Id*.; 35 RCNY § 68-15(d)(5).

This tribunal has applied the *Nnebe* factors in analyzing whether petitioner proved that a driver's continued licensure during the pendency of the criminal case would pose the type of risk to the public that necessitates continuing the suspension. *See, e.g., Taxi & Limousine Comm'n v. Bah*, OATH Index No. 1927/20 at 6-7 (June 1, 2020), *adopted*, Comm'r Dec. (June 9, 2020) (suspension of driver arrested for criminal possession of a weapon and menacing lifted where driver presented "compelling evidence" of his "admirable" work history, good character, favorable driving record, and absence of criminal history, so that allegations in the arrest documents did not

constitute "persuasive proof of an assaultive nature" but rather showed "an isolated circumstance"); *Taxi & Limousine Comm'n v. Frimpong-Manson*, OATH Index No. 1841/20 (May 5, 2020), *adopted*, Comm'r Dec. (May 26, 2020) (continuation of suspension recommended for long-term driver charged with assault, harassment, and attempted criminal obstruction of breathing where the complainant, his wife, alleged injury and was taken to the hospital, and the driver offered no mitigating testimony or explanation); *Taxi & Limousine Comm'n v. Francois*, OATH Index No. 651/20 at 8 (Nov. 25, 2019), *adopted*, Comm'r Dec. (Dec. 24, 2019) (suspension lifted for leaving the scene charge where driver credibly testified he got out of his car after coming in contact with a person filming skateboarders, he spoke to the person, and was unaware of any injuries).

Respondent is a 49-year-old woman who has been a TLC licensee since 2013 (Pet. Ex. 2). On December 29, 2022, at about 2:30 p.m., she was arrested for assault in the second degree, petit larceny, and related charges. Respondent was arraigned on a criminal court complaint charging her with robbery in the second degree (a class C felony), criminal possession of stolen property (a class A misdemeanor), and leaving the scene of an incident causing personal injury (a class A misdemeanor) (Pet. Ex. 6).[1]

According to the police reports and criminal court complaint, at about 12:40 p.m. on December 29, 2022, the complainant was in a cab driven by respondent (Pet. Exs. 4, 6). The complainant did not have money for the fare and had to go into her friend's house to get cash (Pet. Ex. 6). Respondent reportedly told the complainant to "leave your phone in the car so I know that you will come back with the money" (Pet. Ex. 6). The complainant returned and paid the fare, but respondent said, "You're not getting your phone back" (Pet. Ex. 6). As respondent drove away, the complainant held onto the front passenger side window and was "dragged" alongside for "several feet," according to the arrest report, or "200 feet" according to the criminal court complaint (Pet. Exs. 4, 6). The arrest report notes that the complainant was "physically injured"

[1] Relying on *Taxi & Limousine Comm'n v. Bajwa*, OATH Index No. 1603/20 (Mar. 27, 2020), *adopted*, Comm'r Dec. (April 15, 2020), respondent argues her suspension should be lifted because the criminal court complaint alleges different charges from the arrest report (Tr. 16-17, 65-66). This argument is unavailing. In *Bajwa*, a driver's suspension was lifted where the sole basis for the continued suspension was an arrest charge on which respondent was not arraigned. By contrast, here the petition seeks respondent's continued suspension based on the arrest charges and the arraignment charges in the criminal court complaint (Pet. Ex. 1). This tribunal has held that the TLC may seek a continued license suspension based on charges in a criminal court complaint that are different from the arrest charges, where they flow from the same underlying conduct. *See Taxi & Limousine Comm'n v. Jimenez-Revolta*, OATH Index No. 1974/20 at 7-8 (May 19, 2020), *adopted*, Comm'r Dec. (June 12, 2020).

for an "apparent minor injury" consisting of bruising and abrasions, and received treatment at a hospital (Pet. Ex. 4). The criminal court complaint further described the complainant's injuries as "bruising, swelling, abrasions, lacerations, and substantial pain all over her body" (Pet. Ex. 6). It also includes a double hearsay statement attributed to respondent, telling an officer that she did not know whether she hit the complainant (Pet. Ex. 6). Respondent went to the 103rd precinct after the incident and was arrested (Pet. Ex. 4). A police officer recovered the complainant's phone from the back seat of respondent's car (Pet. Ex. 6).

After respondent was arraigned in criminal court on charges of robbery in the second degree and leaving the scene of an incident causing injury, a temporary order of protection was issued, and respondent was released on her own recognizance (Pet. Ex. 5). The case is pending in Queens County Criminal Court (Pet. Ex. 5).

Respondent was represented by counsel, waived her right to remain silent, testified, and subjected herself to cross-examination. Respondent has been working for ten years as a licensed TLC driver for various livery car services (Tr. 46-47). She drives approximately 3900 trips per year (Tr. 48). Respondent has a master's degree in finance and accounting, and previously worked as a comptroller for a theater company (Tr. 46). She loves working as a TLC driver and would not "trade it for anything" (Tr. 50). Her "rider compliments" from 2016-2017 include twenty-five pages of five-star reviews praising her service (Resp. Ex. A). Respondent has never been accused of assaulting or threatening a passenger (Tr. 49). In her more than ten years as licensee, only one formal complaint has been lodged against respondent—for not having the air conditioning cool enough (Tr. 49). This is her first arrest (Tr. 49).

As for the pending charges, respondent testified that the complainant said she did not have money to pay the fare, respondent left to report the nonpayment to the police, and she did not see the complainant holding onto her car when she drove away. On the day of the incident, respondent drove the complainant to 170th Street and Jamaica Avenue in Queens (Tr. 51). The trip took 16 minutes and cost $14 (Tr. 51). The complainant said she had to go in "my house" to get money for respondent (Tr. 51). The complainant then "jumped" out of the car (Tr. 52). Respondent became "disheartened" that the complainant would not return (Tr. 52). After approximately nine minutes, however, the complainant came back and asked respondent if there was "another way we could resolve this" because the complainant's brother had "stolen all of her money" (Tr. 52).

Respondent spoke with the complainant through a partially open side window (Tr. 57).

She told the complainant she needed to be paid (Tr. 52). The complainant wanted to get in the car to "talk about it" and "work something out" (Tr. 52). Respondent said she was not letting the complainant back in her car, and if the complainant did not pay the fare, respondent would go to the police (Tr. 52). The complainant asked respondent not to leave (Tr. 53). Respondent drove away and went to the nearby precinct (Tr. 53). Respondent told the police she was there to file a report about the nonpayment, was instructed to have a seat, and was later arrested (Tr. 54). Respondent said she never asked the complainant for her phone. She did not know that the phone was in her car (Tr. 53, 57). She did not know where the complainant was in relation to her car when she drove away, did not see her holding onto the car, and did not think she had dragged the complainant (Tr. 53, 56).

Respondent called three witnesses, two passengers who respondent drove on several occasions, and a former co-worker at a livery cab service. Sylvia Bennett testified that respondent drove her 50 times to run errands (Tr. 60). The errands included five or six trips to the bank where Ms. Bennett gave respondent her debit card to get money from Ms. Bennett's bank account (Tr. 61-62). Ms. Bennett said respondent was an honest person, she could not imagine her stealing, and has never seen respondent act violently (Tr. 60, 63).

Ethelene Williams, a retired Verizon technician, hired respondent to drive her from Queens to a hospital in Manhattan approximately 14 times over two months, to visit a brother who was sick with cancer (Tr. 39-40). The trips took approximately two to two and a half hours (Tr. 40). Ms. Williams described respondent as a good person who "will help you out if you need help" (Tr. 41). She has never seen her act violently or aggressively or heard of her stealing anything (Tr. 41). Ms. Williams continues to have respondent drive her for errands and to visit her brother (Tr. 40). Respondent's former co-worker, Natalie Hamilton-Davis, a dispatcher at a livery cab service, said respondent was reliable and honest, one of the most levelheaded people she has met, and a person she can count on (Tr. 33-34). She has never seen respondent act violently towards anyone or heard of her stealing anything (Tr. 33, 36). Ms. Hamilton-Davis never received a complaint from a passenger about respondent (Tr. 31-32). Several customers had requested respondent as their driver (Tr. 32).

The issue to be determined is whether, assuming the pending criminal charges against respondent to be true, petitioner has established that respondent's continued licensure would pose a direct and substantial danger to public health or safety. The analysis focuses on "whether the

conduct underlying the arrest and the overall record and character of the driver confirms or disproves the arrest's relation to public health or safety." *Nnebe*, 931 F.3d at 82. *Nnebe* makes clear that in evaluating whether a driver's suspension should be continued, the analysis is "focused not on the threat posed by the *charges*, but rather on the threat posed to the public by the *driver's licensure.*" *Id*. (emphasis in the original).

Respondent is accused of two serious crimes, robbery in the second degree and leaving the scene of an incident causing physical injury. The charge of leaving the scene of an incident requires proof that a motorist was involved in an incident causing personal injury, knew or had reason to know of such injury, and left the scene rather than stopping, identifying himself or herself and reporting the incident to the police. *See* VTL § 600.2(a) (Lexis 2022); *Taxi & Limousine Comm'n v. Pugati*, OATH Index No. 1245/14 at 5 (Dec. 27, 2013) (citing cases), *rejected*, Comm'r Dec. (Feb. 18, 2014) (recommending lifting of suspension where driver of car was removed from the scene handcuffed to a stretcher and transported to a hospital by an ambulance). The leaving the scene charge has a nexus with respondent's TLC Driver License because it is driving-related. *See Pugati*, OATH 1245/14 at 5; *Taxi & Limousine Comm'n v. Basar*, OATH Index No. 874/12 at 7 (Jan. 20, 2012), *adopted*, Comm'r Dec. (Feb. 8, 2012). Moreover, both charges directly relate to respondent's responsibilities as a TLC driver because the incident involved on-duty conduct with a passenger.

For purposes of this inquiry, the pending criminal charges must be considered "true." *See Nnebe*, 931 F.3d at 90 ("[w]e see no constitutional infirmity in a process that allows for context-specific findings but does not open the question of a driver's factual guilt of the criminal charges"). However, even taking the criminal charges as true, respondent offered significant mitigation. Respondent credibly testified that she went to the police to report the complainant for not paying the fare. This is consistent with the arrest report, which noted that respondent was arrested at the 103rd precinct two hours after the incident. There was no explanation for why respondent would have gone to the police other than to report the complainant for nonpayment.

Respondent's prompt actions in reporting the incident to the police undercut some of the allegations in the police reports. Neither *Nnebe* nor petitioner's rules require accepting every detail in a police report or criminal court complaint as true. *See Taxi & Limousine Comm'n v. Perez*, OATH Index No. 2524/22 at 3-4 (July 8, 2022), *adopted*, Comm'r Dec. (July 11, 2022) (suspension lifted where complainant signed statement several weeks after the arrest indicating

she could not "confirm or deny" anything about what happened before respondent's arrest, when she was "under the influence of alcohol"). Here, information that the complainant reported to the police casts doubt on her narrative.

Most notably, the criminal court complaint states the complainant reported that she held onto respondent's car for 200 feet. Crediting this statement would mean the complainant somehow held onto a moving vehicle for two-thirds the length of a football field. The allegation is also inconsistent with the arrest report, which states that the complainant only held onto the car for "several" feet and suffered a "minor injury."

The implausible statements in petitioner's evidence about the complainant holding onto a moving car for 200 feet are significant, and suggest that the complainant exaggerated the incident when reporting it to the police. *See Taxi & Limousine Comm'n v. Bhuyan*, OATH Index No. 969/22 at 5 (Dec. 22, 2021), *adopted*, Comm'r Dec. (Dec. 29, 2021) (noting that there were "significant inconsistencies between the police arrest report and the criminal court complaint" that were "troubling and cast doubt" on the specific allegations of physical force in the reports). Respondent acknowledged speaking with the complainant through an open side window, which is where the complainant alleged she held onto the car. However, the embellishment of details in the criminal court complaint diminished the reliability of the complainant's statements about the leaving the scene charge, including her statements about her injuries, and made it unclear exactly what happened or where the complainant was located when respondent drove away. Without minimizing the seriousness of the charge of leaving the scene of an incident, the exaggerated nature of the allegations in the arrest report and criminal court complaint suggests that the conduct underlying the charge is not as serious as alleged.

Respondent testified she never told the police that she did not know if she hit the complainant or not, as the criminal court complaint alleges (Tr. 50-51). I found respondent's sworn testimony, which was subjected to cross examination, more credible than the criminal court complaint, which is based on multiple levels of hearsay. *See Taxi & Limousine Comm'n v. Singh*, OATH Index No. 984/07 at 6, n.1 (Jan. 26, 2007), *adopted*, Comm'r Dec. (Jan. 30, 2007) (double hearsay statement on critical issues found to be "conclusory and unreliable").

Regarding the phone, the criminal court complaint states that respondent refused to return the complainant's phone even after the complainant paid the fare (Pet. Ex. 6). This strains credulity. Petitioner offered no explanation for why respondent—a long-time driver with an

impeccable record—would have kept the complainant's phone after receiving payment for a $14 fare, as the complainant contended. Moreover, respondent headed directly to the police precinct to report the nonpayment. It would not make sense for respondent to intentionally hold onto the complainant's property while going to the police to report the complainant for nonpayment. Furthermore, respondent made no attempt to conceal the phone, as the criminal court complaint states the phone was found in the back seat of the car. Leaving the phone in the back seat of the car is also inconsistent with allegation that respondent refused to return the phone.

Even assuming that respondent knowingly drove away with the phone and that her conduct satisfies the elements of a robbery, this is the type of case anticipated by the Court in *Nnebe*, where continued licensure does not "pose the kind of threat conjured by the general nature of the crime charged." 931 F.3d at 82. Respondent's actions were substantially less extreme than other cases in which a summary suspension was continued for charges that a TLC driver took a person's phone. *See Taxi & Limousine Comm'n v. Fils*, OATH Index No. 1469/22 at 8 (Feb. 23, 2022), *adopted*, Comm'r Dec. (Mar. 7, 2022) (suspension continued where respondent was charged with robbery for threatening the complainant with a knife and taking her phone); *Taxi & Limousine Comm'n v. Motmaien*, OATH Index No. 645/22 at 3-4 (Nov. 5, 2021), *adopted*, Comm'r Dec. (Nov. 13, 2021) (suspension continued where the complainant left his phone in respondent's vehicle and respondent refused to return it unless the complainant would give him $100).

It also appears any injuries the complainant suffered were minor. The arrest report noted that the complainant sustained an "apparent minor injury." The complainant reported she was treated at a hospital for her injuries, but there were no further details about the diagnosis or treatment. There was also no evidence that a third party, such as a physician or police officer, saw any injury. Given the apparent minor nature of the injury and the embellished details in the criminal court complaint, this incident is much different from other cases where suspensions were continued for leaving the scene of an incident, and is more consistent with leaving the scene cases in which suspensions were lifted. *Compare Taxi & Limousine Comm'n v. Neptune*, OATH Index No. 478/21 (Oct. 21, 2020), *adopted*, Comm'r Dec. (October 26, 2020) (suspension lifted where driver was charged with leaving the scene of an accident, the police report contained implausible information, and the complainant sustained minor injuries); *Francois*, OATH 651/20 at 8 (suspension lifted where driver credibly testified that he got out of his car after coming in contact with a person, spoke to the person, and was unaware of any injuries); *with Basar*, OATH 874/12

(recommending continuing suspension where driver hit pedestrian who fell to the ground, driver stopped, but then left the scene, and criminal court information stated that pedestrian suffered a fractured skull and shoulder and spent a month in the hospital); *Taxi & Limousine Comm'n v. Helmi*, OATH Index No. 447/21 at 3, 5 (Oct. 16, 2020) (recommending continued suspension where evidence showed that driver did not stop and investigate after something cracked his windshield and victim, who sustained head trauma, was in "critical but stable condition" at local hospital).

Consideration of respondent's "overall record and character," as required by *Nnebe*, 931 F.3d at 82, further supports lifting her license suspension. Respondent provided extraordinary character evidence that went far beyond what is typical in other summary suspension cases. *Cf. TLC v. Afriyie*, OATH Index No. 1354/22 (Feb. 11, 2022), *rejected*, Comm'r Dec. (Mar. 1, 2022) (evidence of high Uber ratings and character testimony from family and friends insufficient to lift suspension for charges of assault and endangering the welfare of a child).

Two passengers who rode with respondent on multiple occasions gave compelling testimony about respondent's character. Ms. Bennett showed an astonishing level of trust in giving respondent her debit card several times to obtain money. Ms. Bennett has also hired respondent approximately 50 times. Ms. Williams said she hired respondent to drive her on multiple trips, some of which lasted over two hours, and continues to have respondent drive her on errands. I was deeply impressed that respondent developed ongoing relationships with two passengers who took the time to appear on her behalf at the hearing.

In ten years of driving approximately 3,900 rides per year, totaling about 39,000 trips, the only evidence of any passenger complaint was on one occasion where a passenger felt respondent's air conditioner was not cold enough. There was no evidence to show that respondent ever assaulted a passenger, engaged in improper behavior toward a customer, or had been arrested before. Respondent also presented credible testimony from a former co-worker at a livery cab service who said that several passengers would request respondent as their driver. This reflected favorably on the confidence that respondent's passengers have in her ability to safely interact with them.

In sum, the evidence showed respondent's actions were completely out of character for a TLC driver with 39,000 trips over ten years. Respondent has no prior arrests, there were no significant injuries, and respondent had only one passenger complaint during that time over an air conditioner. In addition, the police reports and criminal court complaint contain information that

cast doubt upon the complainant's reliability, and respondent offered mitigating evidence that she reported the incident to the police after the complainant did not pay the fare. Finally, respondent's witnesses provided atypical and compelling testimony about her interaction with passengers. This incident appears to be an aberration in an otherwise law-abiding life, which does not bear upon respondent's ability to act professionally with passengers in her taxicab and with the general public. *See Taxi & Limousine Comm'n v. Dorcena*, OATH Index No. 1019/22 at 6 (December 30, 2021), *adopted*, Comm'r Dec. (January 3, 2022) (suspension lifted where isolated arrest was outweighed by among other factors, "no evidence that respondent engaged in improper behavior towards a customer"); *see also Taxi & Limousine Comm'n v. Ramirez*, OATH Index No. 167/22 at 6-7 (Aug. 11, 2021), *adopted*, Comm'r Dec. (August 17, 2021) (lifting suspension where driver was charged with punching his housemate multiple times in the face, where driver had no arrest history or prior allegations of harassment or assault of passengers).

Considering all the factors in *Nnebe*, I find that petitioner failed to establish that respondent's continued licensure would pose a direct and substantial threat to public health or safety.

FINDINGS AND CONCLUSIONS

1. Respondent was arrested for robbery in the second degree and leaving the scene of an incident.

2. Petitioner did not establish that respondent's continuing licensure during the pendency of her criminal case poses a direct and substantial threat to public safety.

RECOMMENDATION

Respondent's license suspension should be lifted.

Jonathan Fogel
Administrative Law Judge

February 3, 2023

SUBMITTED TO:

DAVID DO
Commissioner/Chair

APPEARANCES:

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February 8, 2023

Dina Roach
[redacted]

Re: **TLC License No. 5504841**

Licensee Roach:

Pursuant to TLC Rule 68-15, a summary suspension hearing was concluded on January 20, 2023 as a result of your December 29, 2022 arrest for robbery in the second degree, criminal possession of stolen property, and leaving the scene of an incident without reporting/personal injury.

After hearing the evidence presented, the presiding Administrative Law Judge ("ALJ"), Jonathan Fogel, found that your suspension should be lifted.

I accept the ALJ's Recommendation and lift the suspension of your TLC license.

Sincerely,

/s/ Sherryl A. Eluto

Sherryl A. Eluto
General Counsel

cc: Jonathan Fogel, *Administrative Law Judge*
Daniel Williamson, *Supervising Attorney, OATH Trials* (TLC)
Daniel Ackman, *Attorney for Respondent*