

01-1014-CD
BRADY STREET BEER DISTRIBUTER, -vs- PENNSYLVANIA STATE POLICE,
INC. BUREAU OF LIQUOR CONTROL
ENFORCEMENT

01-1014-CD

comm. BARRY STARR

~~STARR~~

Docum FL

MICHAEL

FAX

717-287-9559

~~OK~~

Kathy - mon
paid?

3-28 → pd 3/18

Called Commonwealth Court 2-20-02.
The lady checked with Mr. Hostetler and
said to hold this appeal until the
transcript is produced.

3-14-02 transcript
3-21-02 - order giving appellant 14
days to pay for transcript
(from 18th)

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

FILED

Pennsylvania State Police, Bureau
of Liquor Control Enforcement,
Appellant

v.

No. 235 C.D. 2002
Submitted: June 28, 2002

AUG 09 2002

W/11:00/43 (Kms)
William A. Shaw
Prothonotary

Brady Street Beer Distributor, Inc.
t/a Brady Street Beer Distributor

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION

BY SENIOR JUDGE McCLOSKEY

FILED: August 7, 2002

The Pennsylvania Liquor Control Board (Board) appeals from a final order of the Court of Common Pleas of Clearfield County (trial court), which reversed the Board's decision that Brady Street Beer Distributor, Inc., T/A Brady Street Beer Distributor (Brady's) served a minor in violation of the Liquor Code.¹ We affirm.

Brady's was accused of selling, furnishing and/or giving or permitting the sale, furnishing or giving of alcohol to a minor, in violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1). At the hearing before the Administrative Law Judge (ALJ), Officer Donald Haines testified that on April 8, 2000, at about 2:00 a.m., he came across four individuals in the parking lot of McDonald's and

¹ Act of April 12, 1951, P.L. 90, as amended, 47 P.S. §§ 1-101 – 8-803.

saw cans of Coors Lite beer on the roof of two cars. He later discovered bottles of spiked lemonade. He gave all four individuals a breath test and they all tested positive for alcohol. They were all then arrested for underage possession of alcohol. The officer explained that he told the four minors, if they wanted to come forward with information on who supplied the alcohol, "we would work with them on the Citations." (Reproduced Record at 63a).² A few days later, the minors reported that an adult had purchased the spiked lemonade for them.³ Daryl Hetrick, one of the minors charged, later reported that he was the one who had purchased the Coors-Lite beer at Brady's. The minors' underage drinking citations were then all reduced to disorderly conduct charges.

Mr. Hetrick, age nineteen, reported that on April 7, 2000, at about 1:30 p.m., he pulled up to the drive-through window at Brady's and purchased two 30-packs of Coors Lite beer. He claimed the employee that took his order was a white male, roughly six feet tall with brown hair and a medium build. He guessed that the cost was \$37.00. He further claimed that this was the first time he ever attempted to purchase alcohol and he had only ingested alcohol on two or three other occasions. He also stated that the night he was caught drinking alcohol in the McDonald's parking lot was the first time he had ever driven while drinking alcohol.

Mr. Hetrick stated that Brady's was in DuBois, Pennsylvania, about thirty miles from his home. He testified, "[m]y sole purpose was to meet a friend in DuBois. The idea was to see if I can get some alcohol for later that night."

² Hereinafter R.R.

³ Officer Haines testified that he then charged an identified twenty-three year old male with supplying the spiked lemonade to the minors, and the male plead guilty. (R.R. at 64a).

(R.R. at 84a). The friend he met in DuBois was twenty-four year old Dennis Pierce, who lives near Brady's. Mr. Hetrick testified that he first bought the beer, then went to his friend's house to visit. He claims this friend knew nothing about the beer. He stated he visited with his friend for awhile and then left to go to work. He worked the 4:00 p.m. to midnight shift and then returned home. He explained that he and the three minors involved in this incident had planned, days earlier, to meet in McDonald's that night. He was to bring the beer. He testified that he drank some of the beer while he was driving and arrived at McDonald's about 1:45 a.m.

Mr. Joseph Green, one of the co-owners of Brady's testified. He explained that his employees were required to request identification from anyone that looked thirty years old or younger. If the person did not have identification, the employee was instructed to call either Mr. Green or the other co-owner, Mr. Thomas Frank. One of the co-owners then decided if that individual should be served. If a co-owner was not available, the employee was to refuse service.

On April 7, 2000, Mr. Green testified that he and Mr. Frank were both present at Brady's along with two employees. The employees were Corry Tapper, who Mr. Green described as six foot three inches tall, weighing two-hundred and fifty pounds and having bright red hair and Ron Davis, who was described as six foot seven inches tall, weighing two-hundred and forty pounds and having brown hair. Mr. Green noted that his own hair is black. Mr. Green stated that two cases of Coors Lite beer sell for \$35.00. He agreed that his machine printout lists a sale for two cases of Coors Lite at 1:08 p.m. on the date that Mr. Hetrick claims to have purchased the same.

The ALJ noted that there was a problem with Mr. Hetrick's description of the employee. However, he found Mr. Hetrick's testimony to be credible and decided that Brady's had unfortunately missed identifying Mr. Hetrick as a minor and he slipped by. On appeal to the Board, the Board noted that the ALJ was the sole judge of credibility of the witnesses. Thus, it concluded that since the testimony at the hearing was sufficient to support the findings made by the ALJ, the ALJ's decision was affirmed.

The case was then appealed to the trial court. A *de novo* hearing was held before the trial court. The evidence presented in the hearing before the ALJ was entered into evidence at this hearing. The only additional testimony was from Mr. Frank who testified regarding the description of his employees and the process used to identify minors. This testimony was similar to Mr. Green's testimony at the hearing before the ALJ. Counsel for both parties then presented oral argument to the trial court. The trial court concluded that the ALJ's decision was not supported by substantial evidence and was an abuse of discretion. The trial court thus reversed the decision of the ALJ and found Brady's not guilty.

The Board now appeals to this Court. It is alleged that the trial court abused its discretion in dismissing the citation because the Board provided substantial evidence to support the finding that a violation had occurred. The Board also faults the trial court for not considering that an unnamed and undescribed employee might have satisfied Mr. Hetrick's description of the seller and claims it further erred in considering the ALJ's alleged improper questioning of the witnesses when making its decision.

The trial court is required under Section 471 of the Liquor Code, 47 P.S. §4-471:

to conduct *de novo* review on questions of law, fact, administrative discretion and such other matters as are involved and, in the exercise of its statutory discretion, to make its own findings and conclusions. Based upon its *de novo* review, it may sustain, alter, change, modify or amend the board's action whether or not it makes findings which are materially different from those found by the Board or the Administrative Law Judge.

Pennsylvania State Police, Bureau of Liquor Enforcement v. Kelly's Bar, Inc., t/a Kelly's Bar, 536 Pa. 310, 313-314, 639 A.2d 440, 442 (1994). The Pennsylvania Supreme Court has further noted that:

If anything, *de novo* review by the judicial branch assures litigants that license suspensions based on violations of the Liquor Code will only be enforced when neutral judicial officers, detached from the bureau charged with the task of monitoring and enforcing liquor laws of this Commonwealth are satisfied that violations have, in fact, been established.

Pennsylvania State Police, Bureau of Liquor Control Enforcement v. Cantina Gloria's Lounge, Inc., 536 Pa. 254, 262, 639 A.2d 14, 18 (1994). We have noted that it is the duty of the trial court to receive the evidence admitted in the hearing below, and then to decide its own findings of fact and conclusions of law. Two Sophia's Inc. v. Pennsylvania Liquor Control Board, ___ A.2d ___ (Pa. Cmwlth., No. 1335 C.D. 2001, filed May 30, 2002).

Based upon our review of the evidence of record, we must conclude that the Board's arguments, as stated above, are all without merit. The Board is correct that it presented substantial evidence at the hearing on which to base a conviction. However, the Board fails to consider the fact that the evidence is only substantial if the testimony of Mr. Hetrick is believed. The trial court noted that, "the whole thing boils down to whether we accept the minor's testimony or not...." (R.R. at 31a). The trial court further noted that the minor was promised, and

received, a reduced penalty if he named his supplier. He did not name the supplier for a number of days. Plus, when he did name the supplier, it turned out to be a distributor in an area miles from his home, which also happened to be in the same area where his twenty-four year old friend lived. The trial court wondered whether it was the minor or the friend who purchased the beer. (R.R. at 33a). The trial court also noted that Brady's was not contacted regarding the sale until May 15, 2000. It noted that a distributor could not be expected to remember a single sale a month and a half after the fact and could only defend itself, as was done in this case, by explaining its normal operating procedures for carding customers.

Our scope of review is limited to determining whether the trial court abused its discretion or committed an error of law. Pennsylvania State Police, Bureau of Liquor Control Enforcement v. Capek, 657 A.2d 1352 (Pa. Cmwlth. 1995). Based on the facts stated above, we cannot say that the trial court abused its discretion or committed an error of law in finding the testimony of Mr. Hetrick to be less than substantial.

The Board next argues that the trial court erred in finding that Brady's employees, that were working the day in question, did not remotely fit the description given by Mr. Hetrick. In its opinion, the trial court did find that the two employees on duty the date in question did not even remotely fit the description given by Mr. Hetrick. The Board argues that Mr. Frank testified that he, Mr. Green, Mr. Tapper, Mr. Davis and one part-time person were employed at Brady's. (R.R. 13a). The Board claims that maybe this unknown part-time person might match the description given by Mr. Hetrick. The Board actually argues that the trial court should have considered it relevant that this unknown person wasn't

produced, and that the trial court should have considered that this unknown person might possibly match Mr. Hetrick's description.

At the hearing before the ALJ, Mr. Green presented the time cards of the two employees that were on duty that day. (R.R. at 122a). The two employees with time cards were Corry Tapper and Ron Davis. Mr. Green was asked to describe them and he did. (R.R. at 110a). Mr. Green was never asked by counsel to describe his part-time employee. Nor was any evidence presented by the Board disputing the description Mr. Green gave of his two named employees. No argument was made to the ALJ or the trial court that an unnamed part-time employee should be considered, or was relevant, in any way. The Board's argument, to the trial court, was that Mr. Hetrick might not have identified the employee correctly due to his age and nervousness. (R.R. at 23a).

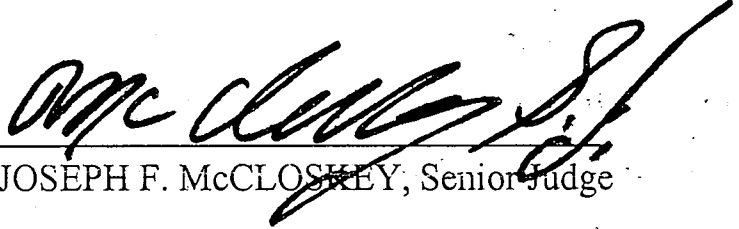
We cannot say that the trial court erred in finding that the description given by Mr. Hetrick did not match the description of the employees on duty that day. In actuality, it was undisputed that the description did not match. Thus, we find the Board's second issue to be without merit.

The Board's final, and notably brief, argument is that the trial court erred in considering the ALJ's questioning of witnesses as a factor in dismissing the citation. Since the hearing before the trial court was *de novo*, the Board argues that any concerns the trial court had regarding the impartiality of the ALJ would be corrected by the *de novo* review.

The trial court found that the ALJ gave the appearance of being less than impartial in his extensive questioning of the witnesses and his voluminous statements. However, the trial court did not find reversal based on its perceptions of the ALJ. The trial court instead did exactly what the Board alleges was not

done. The trial court conducted a *de novo* review. It found its own facts and conclusions of law. Based on the facts it found, it then concluded that the evidence presented was not substantial. It further found that the ALJ appeared less than impartial. The Board has not established any error on the part of the trial court in this area.

Accordingly, the order of the trial court is affirmed.



JOSEPH F. McCLOSKEY, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Pennsylvania State Police, Bureau
of Liquor Control Enforcement,
Appellant

v.

No. 235 C.D. 2002

Brady Street Beer Distributor, Inc.
t/a Brady Street Beer Distributor

ORDER

AND NOW, this 7th day of August, 2002, the order of
the Court of Common Pleas of Clearfield County is affirmed.


JOSEPH F. McCLOSKEY, Senior Judge

Certified from the Record

AUG - 7 2002

and Order Exit

FILED

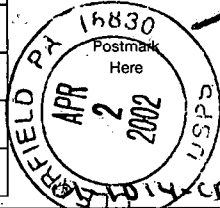
AUG 09 2002

William A. Shaw
Prothonotary

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

Commonwealth Court of Pennsylvania

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 6.47



Recipient's Name (Please Print Clearly) (to be completed by mailer)

Office of the Prothonotary

Street, Apt. No., or PO Box No.

PO Box 11730

City, State, ZIP+4

Harrisburg, PA 17108

PS Form 3800, February 2000

See Reverse for Instructions

01-1014-CD

FILED

APR 02 2002

William A. Shaw
Prothonotary

WILLIAM A. SHAW

**PROTHONOTARY
AND
CLERK OF COURT**

CLEARFIELD COUNTY



DAVID S. AMMERMAN

SOLICITOR

JACQUELINE KENDRICK

DEPUTY PROTHONOTARY

P.O. Box 549
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-2641 Ext. 1330
FAX (814) 765-7659

COPY

April 2, 2002

Commonwealth Court of Pennsylvania
Office of Prothonotary
P.O. Box 11730
Harrisburg, PA 17108

RE: Brady Street Beer Distributor, Inc.
t/d Brady Street Beer Distributor

vs

Pennsylvania State Police, Bureau
of Liquor Control Enforcement

No. 01-1014-CD

Commonwealth Court No. 235 CD 2002

Dear Prothonotary:

Enclosed you will find the above referenced complete record appealed
to your office. Also, please find enclosed one transcript.

Sincerely,

William A. Shaw
Prothonotary

WILLIAM A. SHAW

**PROTHONOTARY
AND
CLERK OF COURT**

CLEARFIELD COUNTY



**P.O. Box 549
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-2641 Ext. 1330
FAX (814)-765-7659**

**DAVID S. AMMERMAN
SOLICITOR**

**JACQUELINE KENDRICK
DEPUTY PROTHONOTARY**

COPY

John K. Reilly, Jr., P.J.
Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

Nadia L. Vargo, Asst. Counsel
PSP, Bureau of Liquor Control Enforcement
One Parkway Center, Suite G-100
875 Greentree Road
Pittsburgh, PA 15220

David J. Hopkins, Esq.
900 Beaver Drive
DuBois, PA 15801

Brady Street Beer Distributor, Inc.
t/d Brady Street Beer Distributor
Vs.

Pennsylvania State Police, Bureau of
Liquor Control Enforcement

Court No. 01-1014-CD; Commonwealth Court No. 235 CD 2002

Dear Counsel:

Please be advised that the above referenced record was forwarded to the
Commonwealth Court of Pennsylvania on April 2, 2002.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM A. SHAW

**PROTHONOTARY
AND
CLERK OF COURT**

CLEARFIELD COUNTY



DAVID S. AMMERMAN

SOLICITOR

JACQUELINE KENDRICK

DEPUTY PROTHONOTARY

**P.O. Box 549
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-2641 Ext. 1330
FAX(814)-765-7659**

COPY

John K. Reilly, Jr., P.J.
Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

Nadia L. Vargo, Asst. Counsel
PSP, Bureau of Liquor Control Enforcement
One Parkway Center, Suite G-100
875 Greentree Road
Pittsburgh, PA 15220

David J. Hopkins, Esq.
900 Beaver Drive
DuBois, PA 15801

Brady Street Beer Distributor, Inc.
t/d Brady Street Beer Distributor
Vs.

Pennsylvania State Police, Bureau of
Liquor Control Enforcement

Court No. 01-1014-CD; Commonwealth Court No. 235 CD 2002

Dear Counsel:

Please be advised that the above referenced record was forwarded to the
Commonwealth Court of Pennsylvania on April 2, 2002.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM A. SHAW

**PROTHONOTARY
AND
CLERK OF COURT**

CLEARFIELD COUNTY



DAVID S. AMMERMAN

SOLICITOR

JACQUELINE KENDRICK

DEPUTY PROTHONOTARY

P.O. Box 549
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-2641 Ext. 1330
FAX(814)-765-7659

COPY

John K. Reilly, Jr., P.J.
Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

Nadia L. Vargo, Asst. Counsel
PSP, Bureau of Liquor Control Enforcement
One Parkway Center, Suite G-100
875 Greentree Road
Pittsburgh, PA 15220

David J. Hopkins, Esq.
900 Beaver Drive
DuBois, PA 15801

Brady Street Beer Distributor, Inc.
t/d Brady Street Beer Distributor
Vs.

Pennsylvania State Police, Bureau of
Liquor Control Enforcement

Court No. 01-1014-CD; Commonwealth Court No. 235 CD 2002

Dear Counsel:

Please be advised that the above referenced record was forwarded to the
Commonwealth Court of Pennsylvania on April 2, 2002.

Sincerely,

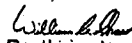
William A. Shaw
Prothonotary/Clerk of Courts

Date		Judge
06/25/2001	Filing: Petition for a De Novo Hearing Paid by: Hopkins, David J. (attorney for Brady Street Beer Distributor, Inc.) Receipt number: 1827321 Dated: 06/25/2001 Amount: \$80.00 (Check) 1 CC Attorney	No Judge
06/27/2001	ORDER, AND NOW, this 26th day of June, 2001, re: Hearing to be held 1st day of August, 2001, at 9:00 a.m. by the Court, s/JKR,J.R.,PJ 2 cc atty Hopkins	John K. Reilly Jr.
12/14/2001	Opinion and Order, filed. BY THE COURT: /s/John K. Reilly, Jr., P.J. One CC Attorney Hopkins One CC State Police One CC Administrative Law Judge	John K. Reilly Jr.
01/14/2002	Filing: Notice of Appeal to High Court Paid by: Vargo, Nadia L. (attorney for Pennsylvania State Police Bureau of Liquor Control) Receipt number: 1836763 Dated: 01/14/2002 Amount: \$45.00 (Check) 1 cc Sup. Crt w/\$55.00 check.	John K. Reilly Jr.
01/24/2002	Notice of Appeal returned from Superior Court and mailed to Commonwealth Court.	John K. Reilly Jr.

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

JAN 28 2002

Attest.


Prothonotary/
Clerk of Courts

PO Box 549
Clearfield, PA 16830
Phone: 814-765-2641, Ext. 1330
Fax: 814-765-7659

Clearfield County
Courthouse

Fax

COMMONWEALTH COURT

To: MICHELLE

From: William A. Shaw

Fax: 717-787-9559

Date: 1-28-02

Phone:

Pages: 2

Re:

CC:

☒ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

•Comments:

COPY OF DOCKET SHEET FOR APPEAL FILED
BY ATTY VARGO

RE: BRADY STREET BEER
VS
PENNA. STATE POLICE

Date		Judge
06/25/2001	Filing: Petition for a De Novo Hearing Paid by: Hopkins, David J. (attorney for Brady Street Beer Distributor, Inc.) Receipt number: 1827321 Dated: 06/25/2001 Amount: \$80.00 (Check) 1 CC Attorney	No Judge
06/27/2001	ORDER, AND NOW, this 26th day of June, 2001, re: Hearing to be held 1st day of August, 2001, at 9:00 a.m. by the Court, s/JKR,J.R.,PJ 2 cc atty Hopkins	John K. Reilly Jr.
12/14/2001	Opinion and Order, filed. BY THE COURT: /s/John K. Reilly, Jr., P.J. One CC Attorney Hopkins One CC State Police One CC Administrative Law Judge	John K. Reilly Jr.
01/14/2002	Filing: Notice of Appeal to High Court Paid by: Vargo, Nadia L. (attorney for Pennsylvania State Police Bureau of Liquor Control) Receipt number: 1836763 Dated: 01/14/2002 Amount: \$45.00 (Check) 1 cc Sup. Crt w/\$55.00 check	John K. Reilly Jr.
01/24/2002	Notice of Appeal returned from Superior Court and mailed to Commonwealth Court.	John K. Reilly Jr.

Date: 01/28/2002

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 02:35 PM

ROA Report

Page 1 of 1

Case: 2001-01014-CD

Current Judge: John K. Reilly Jr.

Brady Street Beer Distributor, Inc. vs. Pennsylvania State Police Bureau of Liquor Control

Civil Other

Date		Judge
06/25/2001	① Filing: Petition for a De Novo Hearing Paid by: Hopkins, David J. (attorney No Judge for Brady Street Beer Distributor, Inc.) Receipt number: 1827321 Dated: 06/25/2001 Amount: \$80.00 (Check) 1 CC Attorney 6	
06/27/2001	② ORDER, AND NOW, this 26th day of June, 2001, re: Hearing to be held 1st day of August, 2001, at 9:00 a.m. by the Court, s/JKR,J.R.,PJ 2 cc atty Hopkins 1	John K. Reilly Jr.
12/14/2001	③ Opinion and Order, filed. BY THE COURT: /s/John K. Reilly, Jr., P.J. One CC Attorney Hopkins One CC State Police One CC Administrative Law Judge 3	John K. Reilly Jr.
01/14/2002	④ Filing: Notice of Appeal to High Court Paid by: Vargo, Nadia L. (attorney for Pennsylvania State Police Bureau of Liquor Control) Receipt number: 1836763 Dated: 01/14/2002 Amount: \$45.00 (Check) 1 cc Sup. Crt w/\$55.00 check 6	John K. Reilly Jr.
01/24/2002	✕ Notice of Appeal returned from Superior Court and mailed to Commonwealth Court.	John K. Reilly Jr.



Commonwealth Court of Pennsylvania

Charles R. Hostutler
Deputy Prothonotary/Chief Clerk

October 4, 2002

Room 624, Sixth Floor
Harrisburg, PA 17120
717-255-1650

TO:

RE: PLCB v. Brady St. Beer Dist., Inc., et al
No.235 CD 2002

Trial Court/Agency Dkt. Number: 01-1014-CD

Trial Court/Agency Name: Clearfield County Court of Common Pleas

Annexed hereto pursuant to Pennsylvania Rules of Appellate Procedure 2571 and 2572
is the entire record for the above matter.

Contents of Original Record:

Original Record Item	Filed Date	Description
trial court record	April 5, 2002	1
Date of Remand of Record:	10/4/2002	
10:51:15AM		

Enclosed is an additional copy of the certificate. Please acknowledge receipt by signing,
dating, and returning the enclosed copy to the Prothonotary Office or the Chief Clerk's office.

Commonwealth Court Filing Office

Signature

10/11/02

Date

William A. Shaw

Printed Name

FILED

m/12:46 PM
OCT 11 2002

William A. Shaw
Prothonotary

01-1014CD

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

FILED

OK m/12:33 PM
OCT 11 2002

Pennsylvania State Police, Bureau
of Liquor Control Enforcement,
Appellant

v.

Brady Street Beer Distributor, Inc.
t/a Brady Street Beer Distributor

No. 235 C.D. 2002

Submitted: June 28, 2002

William A. Shaw
Prothonotary

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE McCLOSKEY

FILED: August 7, 2002

The Pennsylvania Liquor Control Board (Board) appeals from a final order of the Court of Common Pleas of Clearfield County (trial court), which reversed the Board's decision that Brady Street Beer Distributor, Inc., T/A Brady Street Beer Distributor (Brady's) served a minor in violation of the Liquor Code.¹ We affirm.

Brady's was accused of selling, furnishing and/or giving or permitting the sale, furnishing or giving of alcohol to a minor, in violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1). At the hearing before the Administrative Law Judge (ALJ), Officer Donald Haines testified that on April 8, 2000, at about 2:00 a.m., he came across four individuals in the parking lot of McDonald's and

¹ Act of April 12, 1951, P.L. 90, as amended, 47 P.S. §§ 1-101 – 8-803.

saw cans of Coors Lite beer on the roof of two cars. He later discovered bottles of spiked lemonade. He gave all four individuals a breath test and they all tested positive for alcohol. They were all then arrested for underage possession of alcohol. The officer explained that he told the four minors, if they wanted to come forward with information on who supplied the alcohol, "we would work with them on the Citations." (Reproduced Record at 63a).² A few days later, the minors reported that an adult had purchased the spiked lemonade for them.³ Daryl Hetrick, one of the minors charged, later reported that he was the one who had purchased the Coors Lite beer at Brady's. The minors' underage drinking citations were then all reduced to disorderly conduct charges.

Mr. Hetrick, age nineteen, reported that on April 7, 2000, at about 1:30 p.m., he pulled up to the drive-through window at Brady's and purchased two 30-packs of Coors Lite beer. He claimed the employee that took his order was a white male, roughly six feet tall with brown hair and a medium build. He guessed that the cost was \$37.00. He further claimed that this was the first time he ever attempted to purchase alcohol and he had only ingested alcohol on two or three other occasions. He also stated that the night he was caught drinking alcohol in the McDonald's parking lot was the first time he had ever driven while drinking alcohol.

Mr. Hetrick stated that Brady's was in DuBois, Pennsylvania, about thirty miles from his home. He testified, "[m]y sole purpose was to meet a friend in DuBois. The idea was to see if I can get some alcohol for later that night."

² Hereinafter R.R.

³ Officer Haines testified that he then charged an identified twenty-three year old male with supplying the spiked lemonade to the minors, and the male plead guilty. (R.R. at 64a).

(R.R. at 84a). The friend he met in DuBois was twenty-four year old Dennis Pierce, who lives near Brady's. Mr. Hetrick testified that he first bought the beer, then went to his friend's house to visit. He claims this friend knew nothing about the beer. He stated he visited with his friend for awhile and then left to go to work. He worked the 4:00 p.m. to midnight shift and then returned home. He explained that he and the three minors involved in this incident had planned, days earlier, to meet in McDonald's that night. He was to bring the beer. He testified that he drank some of the beer while he was driving and arrived at McDonald's about 1:45 a.m.

Mr. Joseph Green, one of the co-owners of Brady's testified. He explained that his employees were required to request identification from anyone that looked thirty years old or younger. If the person did not have identification, the employee was instructed to call either Mr. Green or the other co-owner, Mr. Thomas Frank. One of the co-owners then decided if that individual should be served. If a co-owner was not available, the employee was to refuse service.

On April 7, 2000, Mr. Green testified that he and Mr. Frank were both present at Brady's along with two employees. The employees were Corry Tapper, who Mr. Green described as six foot three inches tall, weighing two-hundred and fifty pounds and having bright red hair and Ron Davis, who was described as six foot seven inches tall, weighing two-hundred and forty pounds and having brown hair. Mr. Green noted that his own hair is black. Mr. Green stated that two cases of Coors Lite beer sell for \$35.00. He agreed that his machine printout lists a sale for two cases of Coors Lite at 1:08 p.m. on the date that Mr. Hetrick claims to have purchased the same.

The ALJ noted that there was a problem with Mr. Hetrick's description of the employee. However, he found Mr. Hetrick's testimony to be credible and decided that Brady's had unfortunately missed identifying Mr. Hetrick as a minor and he slipped by. On appeal to the Board, the Board noted that the ALJ was the sole judge of credibility of the witnesses. Thus, it concluded that since the testimony at the hearing was sufficient to support the findings made by the ALJ, the ALJ's decision was affirmed.

The case was then appealed to the trial court. A *de novo* hearing was held before the trial court. The evidence presented in the hearing before the ALJ was entered into evidence at this hearing. The only additional testimony was from Mr. Frank who testified regarding the description of his employees and the process used to identify minors. This testimony was similar to Mr. Green's testimony at the hearing before the ALJ. Counsel for both parties then presented oral argument to the trial court. The trial court concluded that the ALJ's decision was not supported by substantial evidence and was an abuse of discretion. The trial court thus reversed the decision of the ALJ and found Brady's not guilty.

The Board now appeals to this Court. It is alleged that the trial court abused its discretion in dismissing the citation because the Board provided substantial evidence to support the finding that a violation had occurred. The Board also faults the trial court for not considering that an unnamed and undescribed employee might have satisfied Mr. Hetrick's description of the seller and claims it further erred in considering the ALJ's alleged improper questioning of the witnesses when making its decision.

The trial court is required under Section 471 of the Liquor Code, 47 P.S. §4-471:

to conduct *de novo* review on questions of law, fact, administrative discretion and such other matters as are involved and, in the exercise of its statutory discretion, to make its own findings and conclusions. Based upon its *de novo* review, it may sustain, alter, change, modify or amend the board's action whether or not it makes findings which are materially different from those found by the Board or the Administrative Law Judge.

Pennsylvania State Police, Bureau of Liquor Enforcement v. Kelly's Bar, Inc., t/a

Kelly's Bar, 536 Pa. 310, 313-314, 639 A.2d 440, 442 (1994). The Pennsylvania

Supreme Court has further noted that:

If anything, *de novo* review by the judicial branch assures litigants that license suspensions based on violations of the Liquor Code will only be enforced when neutral judicial officers, detached from the bureau charged with the task of monitoring and enforcing liquor laws of this Commonwealth are satisfied that violations have, in fact, been established.

Pennsylvania State Police, Bureau of Liquor Control Enforcement v. Cantina

Gloria's Lounge, Inc., 536 Pa. 254, 262, 639 A.2d 14, 18 (1994). We have noted

that it is the duty of the trial court to receive the evidence admitted in the hearing

below, and then to decide its own findings of fact and conclusions of law. Two

Sophia's Inc. v. Pennsylvania Liquor Control Board, ___ A.2d ___ (Pa. Cmwlth.,

No. 1335 C.D. 2001, filed May 30, 2002).

Based upon our review of the evidence of record, we must conclude that the Board's arguments, as stated above, are all without merit. The Board is correct that it presented substantial evidence at the hearing on which to base a conviction. However, the Board fails to consider the fact that the evidence is only substantial if the testimony of Mr. Hetrick is believed. The trial court noted that, "the whole thing boils down to whether we accept the minor's testimony or not...." (R.R. at 31a). The trial court further noted that the minor was promised, and

received, a reduced penalty if he named his supplier. He did not name the supplier for a number of days. Plus, when he did name the supplier, it turned out to be a distributor in an area miles from his home, which also happened to be in the same area where his twenty-four year old friend lived. The trial court wondered whether it was the minor or the friend who purchased the beer. (R.R. at 33a). The trial court also noted that Brady's was not contacted regarding the sale until May 15, 2000. It noted that a distributor could not be expected to remember a single sale a month and a half after the fact and could only defend itself, as was done in this case, by explaining its normal operating procedures for carding customers.

Our scope of review is limited to determining whether the trial court abused its discretion or committed an error of law. Pennsylvania State Police, Bureau of Liquor Control Enforcement v. Capek, 657 A.2d 1352 (Pa. Cmwlth. 1995). Based on the facts stated above, we cannot say that the trial court abused its discretion or committed an error of law in finding the testimony of Mr. Hetrick to be less than substantial.

The Board next argues that the trial court erred in finding that Brady's employees, that were working the day in question, did not remotely fit the description given by Mr. Hetrick. In its opinion, the trial court did find that the two employees on duty the date in question did not even remotely fit the description given by Mr. Hetrick. The Board argues that Mr. Frank testified that he, Mr. Green, Mr. Tapper, Mr. Davis and one part-time person were employed at Brady's. (R.R. 13a). The Board claims that maybe this unknown part-time person might match the description given by Mr. Hetrick. The Board actually argues that the trial court should have considered it relevant that this unknown person wasn't

produced, and that the trial court should have considered that this unknown person might possibly match Mr. Hetrick's description.

At the hearing before the ALJ, Mr. Green presented the time cards of the two employees that were on duty that day. (R.R. at 122a). The two employees with time cards were Corry Tapper and Ron Davis. Mr. Green was asked to describe them and he did. (R.R. at 110a). Mr. Green was never asked by counsel to describe his part-time employee. Nor was any evidence presented by the Board disputing the description Mr. Green gave of his two named employees. No argument was made to the ALJ or the trial court that an unnamed part-time employee should be considered, or was relevant, in any way. The Board's argument, to the trial court, was that Mr. Hetrick might not have identified the employee correctly due to his age and nervousness. (R.R. at 23a).

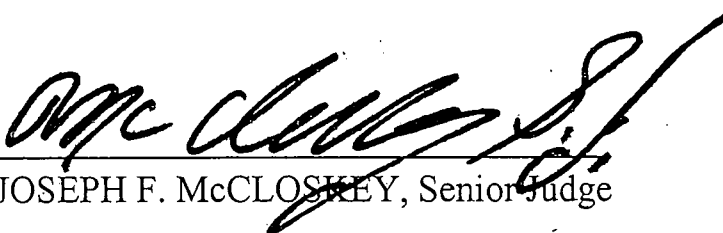
We cannot say that the trial court erred in finding that the description given by Mr. Hetrick did not match the description of the employees on duty that day. In actuality, it was undisputed that the description did not match. Thus, we find the Board's second issue to be without merit.

The Board's final, and notably brief, argument is that the trial court erred in considering the ALJ's questioning of witnesses as a factor in dismissing the citation. Since the hearing before the trial court was *de novo*, the Board argues that any concerns the trial court had regarding the impartiality of the ALJ would be corrected by the *de novo* review.

The trial court found that the ALJ gave the appearance of being less than impartial in his extensive questioning of the witnesses and his voluminous statements. However, the trial court did not find reversal based on its perceptions of the ALJ. The trial court instead did exactly what the Board alleges was not

done. The trial court conducted a *de novo* review. It found its own facts and conclusions of law. Based on the facts it found, it then concluded that the evidence presented was not substantial. It further found that the ALJ appeared less than impartial. The Board has not established any error on the part of the trial court in this area.

Accordingly, the order of the trial court is affirmed.



JOSEPH F. McCLOSKEY, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Pennsylvania State Police, Bureau
of Liquor Control Enforcement,
Appellant

v.

No. 235 C.D. 2002

Brady Street Beer Distributor, Inc.
t/a Brady Street Beer Distributor

ORDER

AND NOW, this 7th day of August, 2002, the order of
the Court of Common Pleas of Clearfield County is affirmed.


JOSEPH F. McCLOSKEY, Senior Judge

Reed

Commonwealth Court of Pennsylvania

January 28, 2002

RE: PLCB v. Brady St. Beer Dist., Inc., et al
 No.: 235 CD 2002
 Agency Docket Number: 01-1014-CD
 Filed Date: January 14, 2002

Notice of Docketing Appeal

A Notice of Appeal, a copy of which is enclosed, from an order of your court has been docketed in the Commonwealth Court of Pennsylvania. The docket number in the Commonwealth Court is endorsed on this notice. The Commonwealth Court docket number must be on all correspondence and documents filed with the court.

Under Chapter 19 of the Pennsylvania Rules of Appellate Procedure, the Notice of Appeal has the effect of directing the Court to transmit the certified record in the matter to the Prothonotary of the Commonwealth Court.

The complete record, including the opinion of the trial judge, should be forwarded to the Commonwealth Court within forty (40) days of the date of filing of the Notice of Appeal. Do not transmit a partial record.

Pa.R.A.P. 1921 to 1933 provides the standards for preparation, certification and transmission of the record.

The address to which the Court is to transmit the record is set forth on Page 2 of this notice.

Notice to Counsel

A copy of this notice is being sent to all parties or their counsel indicated on the proof of service accompanying the Notice of Appeal. The appearance of all counsel has been entered on the record in the Commonwealth Court. Counsel has thirty (30) days from the date of filing of the Notice of Appeal to file a praecipe to withdraw their appearance pursuant to Pa. R.A.P. 907 (b).

Appellant or Appellant's attorney should review the record of the trial court, in order to insure that it is complete, prior to certification to this Court. (Note: A copy of the Zoning Ordinance must accompany records in Zoning Appeal cases).

The addresses to which you are to transmit documents to this Court are set forth on Page 2 of this Notice.

If you have special needs, please contact this court in writing as soon as possible.

Attorney Name	Party Name	Party Type
David J. Hopkins, Esq.	Brady Street Beer Distributor Inc.	Appellee
Nadia Lesia Vargo, Esq.	Pennsylvania Liquor Control Board	Appellant

FILED

JAN 30 2002

William A. Shaw
Prothonotary

#5

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

235 CD 2002

PENNSYLVANIA STATE POLICE,
BUREAU OF LIQUOR CONTROL
ENFORCEMENT,

CIVIL DIVISION

Plaintiff/Appellant

No. 01-1014-CD

vs.

BRADY STREET BEER DISTRIBUTOR, INC.
T/A BRADY STREET BEER DISTRIBUTOR
705 South Brady Street
Dubois, PA 15801-1265

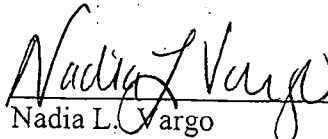
License No. ID-1272

Defendant/Appellee

RECEIVED
(415) 565-5528
JAN 14 2002
BUREAU OF LIQUOR CONTROL
ENFORCEMENT
PITTSBURGH, PA 15220

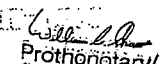
NOTICE OF APPEAL

Notice is hereby given that the Pennsylvania State Police, Bureau of Liquor Control Enforcement, Plaintiff named above, hereby appeals to the Commonwealth Court of Pennsylvania from the Opinion and Order entered in the matter on the 13th day of December 2001. This Opinion and Order has been entered in the docket as evidenced by the attached copy of the docket entry.


Nadia L. Vargo
Assistant Counsel
Pennsylvania State Police
Bureau of Liquor Control Enforcement
One Parkway Center, Suite G-100
875 Greentree Road
Pittsburgh, PA 15220
(412) 565-5528
Attorney I.D. No. 46162

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

JAN 14 2002

Attest: 
Prothonotary/
Clerk of Courts

Address all written communications to:

Office of the Chief Clerk
Commonwealth Court of Pennsylvania
P.O. Box 11730
Harrisburg, PA 17108
(717) 255-1650

Filings may be made in person at the following address (except on Saturdays, Sundays and holidays observed by Pennsylvania Courts) between 9:00 a.m. and 4:00 p.m.

Office of the Chief Clerk
Commonwealth Court of Pennsylvania
Room 624
Sixth Floor
South Office Building
Harrisburg, PA 17120
(717) 255-1650

Pleadings and similar papers (but not paperbooks or certified records) may also be filed in person only at:

Office of the Chief Clerk
Commonwealth Court of Pennsylvania
Filing Office
Suite 990
The Widener Building
One South Penn Square
Philadelphia, PA 19107
(215) 560-5742

The hours of the Philadelphia Filing Office are 9:00 a.m. to 4:00 p.m.

Under Pa.R.A.P. 3702, writs or other process issuing out of the Commonwealth Court shall exit only from the Harrisburg Office.

William A. Shaw
Prothonotary

FILED
M 11:43 AM
JAN 30 2002

no
ce
or
[Signature]

CERTIFICATE AND TRANSMITTAL OF RECORD UNDER PENNSYLVANIA
RULE OF APPELLATE PROCEDURE 1931(C)

To the Prothonotary of the Appellate Court to which the within matter has been appealed:

THE UNDERSIGNED, Clerk (or Prothonotary) of the court of Common Pleas of Clearfield County, the said Court being a court of record, does hereby certify that annexed hereto is a true and correct copy of the whole and entire record, including an opinion of the Court as required by Pa. R.A.P. 1925, the original papers and exhibits, if any, on file, the transcript of the proceeding, if any, and the docket entries in the following matter:

01-1014-CD

**Brady Street Beer Distributor, Inc. t/d Brady
Street Beer Distributor**

VS.

**Pennsylvania State Police, Bureau of
Liquor Control Enforcement**

In compliance with Pa. R.A.P. 1931 (c).

The documents comprising the record have been numbered from **No. 1 to No. 7**, and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages comprising the document.

The date on which the record had been transmitted to the Appellate Court is
April 2, 2022.


Prothonotary/Clerk of Courts

(seal)

Date	Judge
06/25/2001	Filing: Petition for a De Novo Hearing Paid by: Hopkins, David J. (attorney No Judge for Brady Street Beer Distributor, Inc.) Receipt number: 1827321 Dated: 06/25/2001 Amount: \$80.00 (Check) 1 CC Attorney
06/27/2001	ORDER, AND NOW, this 26th day of June, 2001, re: Hearing to be held 1st day of August, 2001, at 9:00 a.m. by the Court, s/JKR, J.R., PJ 2 cc atty Hopkins John K. Reilly Jr.
12/14/2001	Opinion and Order, filed. BY THE COURT: /s/John K. Reilly, Jr., P.J. One CC Attorney Hopkins One CC State Police One CC Administrative Law Judge John K. Reilly Jr.
01/14/2002	Filing: Notice of Appeal to High Court Paid by: Vargo, Nadia L. (attorney for Pennsylvania State Police Bureau of Liquor Control) Receipt number: 1836763 Dated: 01/14/2002 Amount: \$45.00 (Check) 1 cc Sup. Crt w/\$55.00 check John K. Reilly Jr.
01/24/2002	Notice of Appeal returned from Superior Court and mailed to Commonwealth Court. John K. Reilly Jr.
01/30/2002	Notice of Docketing Appeal. Commonwealth Court Number 235 CD 2002. filed. no cc John K. Reilly Jr.
03/14/2002	Transcript of Proceedings, Plaintiff's Petition For De Novo Hearing. Held Sept. 26, 2001. Filed. John K. Reilly Jr.
03/21/2002	ORDER, NOW, March 18, 2002, having been advised by the trial court that appellant has failed to pay for the transcript in the above matter, appellant is hereby ordered to pay for the transcript in this matter and submit to this court a certificate indicating that the transcript has been paid for within 14 days of entry of this order, or the above matter shall be dismissed as of course. The Chief Clerk is directed to forward a copy of this order to President Judge John K. Reilly, Jr., of the Court of Common Pleas of Clearfield County. by the Court, s/DAN PELLEGRINI, J. no cc John K. Reilly Jr.

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

APR 02 2002

Attest:

William H. Hines
Prothonotary

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA
CASE #01-1014-CD**

**Brady Street Beer Distributor, Inc.
t/d Brady Street Beer Distributor**

VS

**Pennsylvania State Police, Bureau of Liquor
Control Enforcement**

ITEM NO.	DATE of FILING	NAME of DOCUMENT	NO of PAGES
01	06/25/01	Petition for a De Novo Hearing	06
02	06/27/01	Order, Re: Hearing scheduled	01
03	12/14/01	Opinion and Order	03
04	01/14/02	Notice of Appeal	06
05	01/30/02	Commonwealth Court Notice of Docketing Appeal, Number 235 CD 2002	03
06	03/14/02	Transcript of Proceedings, Plaintiff's Petition for De Novo Hearing Held Sept. 26, 2001	Separate Cover
07	03/21/02	Order, Re: Payment for Transcript	01

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

I, **William A. Shaw**, Prothonotary/Clerk of Courts of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the whole record of the case therein stated, wherein

Brady Street Beer Distributor, Inc.

t/d Brady Street Beer Distributor

VS

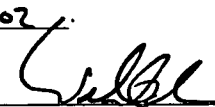
Pennsylvania State Police, Bureau of Liquor

Control Enforcement

01-1014-CD

So full and entire as the same remains of record before the said Court, at No. **01-1014-CD**

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 15th Day of FEBRUARY, 2002.

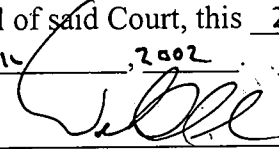

Prothonotary/Clerk of Courts

I, **John K. Reilly, Jr.**, President Judge of the Forty-sixth Judicial District, do certify that **William A. Shaw**, by whom the annexed record, certificate and attestation were made and given, and who in his own proper handwriting, thereunto subscribed his name and affixed the seal of the Court of Common Pleas of said county, was at the time of so doing and now is Prothonotary/Clerk of Courts in and for said County of Clearfield, the Commonwealth of Pennsylvania, duly commissioned and qualified; to all of whose acts as such, full faith and credit are and ought to be given, as well in Courts of Judicature, as elsewhere, and that the said record, certificate and attestation are in due form of law and made by proper officer.


President Judge

I, **William A. Shaw**, Prothonotary/Clerk of Courts of the Court of Common Pleas in and for said county, do certify that the Honorable **John K. Reilly, Jr.**, President Judge by whom the foregoing attestation was made and who has thereunto subscribed his name was at the time of making thereof and still is President Judge, in and for said county, duly commissioned and qualified; to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 2nd day of APRIL, 2002.


Prothonotary/Clerk of Courts

THE HOPKINS LAW FIRM

900 Beaver Drive, DuBois, Pennsylvania 15801
VOICE: (814) 375-0300 FAX: (814) 375-5035

CV

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

BRADY STREET BEER
DISTRIBUTOR, INC. t/d BRADY STREET
BEER DISTRIBUTOR,

Plaintiff

vs.

PENNSYLVANIA STATE POLICE,
BUREAU OF LIQUOR CONTROL
ENFORCEMENT

Defendant

No. 01-1014-CO

Type of Pleading: Petition for a De Novo
Hearing

Filed on behalf of: Brady Street Beer
Distributor, Inc., Plaintiff.

Counsel of record for this party:

DAVID J. HOPKINS, ESQUIRE
Attorney at Law
Supreme Court No. 42519

900 Beaver Drive
DuBois, Pennsylvania 15801
(814) 375-0300

FILED

JUN 25 2001

William A. Shaw
Prothonotary

(#1)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

BRADY STREET BEER	:	
DISTRIBUTOR, INC. t/d BRADY STREET	:	
BEER DISTRIBUTOR,	:	
Plaintiff	:	
	:	
vs.	:	No.
	:	
PENNSYLVANIA STATE POLICE,	:	
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT	:	
Defendant	:	

PETITION FOR DE NOVO HEARING


AND NOW, comes Petitioner, Brady Street Beer Distributor, Inc. t/d/b/a Brady Street Beer Distributor maintaining a principal address at 705 South Brady Street, DuBois, Clearfield County, Pennsylvania and says as follows:

1. The Petitioner is Brady Street Beer Distributor, Inc. t/d/b/a Brady Street Beer Distributor.
2. The Respondent is the Pennsylvania State Police, Bureau of Liquor Control Enforcement.
3. On or about June 26, 2000, The Bureau of Liquor Control Enforcement of the Pennsylvania State Police filed Citation No. 00-0958 against the Petitioner alleging that on April 7, 2000, Petitioner, by its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to a male minor, nineteen (19) years of age, in violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1). A photocopy of the Citation is attached hereto as Exhibit "A".

4. Petitioner denies it, by its servants, agents or employees sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to a minor male in violation of the Statutes of Commonwealth of Pennsylvania.

WHEREFORE, Petitioner respectfully requests this Honorable Court hold a de novo hearing upon notice to the Petitioner and Respondent.

Respectfully submitted,


David J. Hopkins, Esquire

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA STATE POLICE

BUREAU OF LIQUOR CONTROL
ENFORCEMENT

CITATION NO. 00-0958

v.

Incident No. W7-218083

BRADY STREET BEER
DISTRIBUTOR, INC.
T/A BRADY STREET BEER
DISTRIBUTOR
705 S. BRADY ST.
SANDY TWP.
DUBOIS, PA 15801-1265
CLEARFIELD COUNTY

LID - 41571

License No. ID-1272

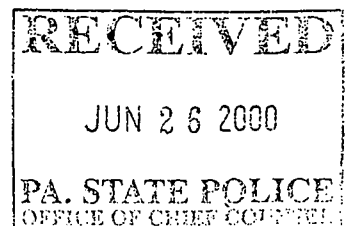
License First Issued: January 8, 1998

CITATION

WHEREAS, the Pennsylvania Liquor Control Board has issued to you the above-referenced license and related permit(s) for the licensed term ending January 31, 2001; and

WHEREAS, the Bureau of Liquor Control Enforcement is in possession of facts which leads it to believe that you have violated the Liquor Code, the Act of April 12, 1951, P.L. 90, as reenacted and amended, 47 P.S. §1-101, et seq, and the rules and regulations adopted pursuant thereto, in the following manner:

1. On April 7, 2000, you, by your servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to a male minor, nineteen (19) years of age, in violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1).



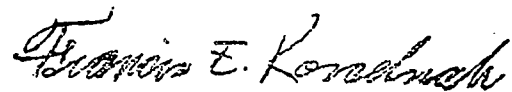
NOW THEREFORE, you are hereby cited to appear before an Administrative Law Judge, on a date to be scheduled by the Office of Administrative Law Judge, to show cause why such license should not be suspended or revoked or a fine imposed.

You have the right to retain legal counsel to represent you. If you do hire an attorney, he or she must file a Notice of Appearance with the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania 17110-9661, and forward a copy to the Assistant Counsel at the address listed below in accordance with 1 Pa. Code Subchapter C. Delay in obtaining counsel is not reason for any continuance.

You have the right to waive your hearing. Such action is an admission to the charges. Should you choose to waive, the proper form is enclosed for your convenience. Upon receipt, the Office of Administrative Law Judge will process the forms and issue an adjudication.

BY ORDER

Bureau of Liquor Control Enforcement



MAJOR FRANCIS E. KOSCELNAK
Director

Date: June 26, 2000

Nadia L. Vargo, Assistant Counsel
Pennsylvania State Police
Bureau of Liquor Control Enforcement
Suite 100, One Parkway Center
875 Greentree Road
Pittsburgh, PA 15220-3603
Telephone: (412) 565-5528

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

BRADY STREET BEER	:	
DISTRIBUTOR, INC. t/d BRADY STREET	:	
BEER DISTRIBUTOR,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No.
	:	
PENNSYLVANIA STATE POLICE,	:	
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT,	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Petition for a De Novo Hearing has been served on the 25th day of June, 2001, by first-class mail, postage prepaid addressed as follows:

Commonwealth of Pennsylvania
Pennsylvania State Police
Bureau of Liquor Control Enforcement
3655 Vartan Way
Harrisburg, PA 17110-9758

Liquor Control Board
Office of Chief Counsel
401 Northwest Office Building
Capital and Forster Streets
Harrisburg, PA 17124-0001

Office of the Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg, PA 17110-9661


David J. Hopkins, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

BRADY STREET BEER :
DISTRIBUTOR, INC. t/d BRADY STREET :
BEER DISTRIBUTOR, :
Plaintiff :

vs. :

No. 01-1014-CO

PENNSYLVANIA STATE POLICE, :
BUREAU OF LIQUOR CONTROL :
ENFORCEMENT :

ORDER

AND NOW, this 26th day of June, 2001 upon consideration of the Foregoing
Petition for a De Novo Hearing, a hearing shall be held on the 1st day of
August, 2001, at 9:00 o'clock A.M. in Courtroom No. 1 of the
Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,

JUDGE

FILED

JUN 27 2001

William A. Shaw
Prothonotary

2

FILED

JUN 27 2001

O/9:23/2cc atty Hopk
William A. Shaw
Prothonotary

WAS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

BRADY STREET BEER DISTRIBUTOR :
INC. t/a BRADY STREET BEER :
DISTRIBUTOR :

-vs-

PENNSYLVANIA STATE POLICE :
BUREAU OF LIQUOR CONTROL :
ENFORCEMENT :

No. 01 - 1014 - CD

FILED

DEC 14 2001

OPINION AND ORDER

William A. Shaw
Prothonotary

Brady Street Beer Distributor, Inc. appeals from the decision of the

Pennsylvania Liquor Control Board affirming the decision of the Administrative Law Judge sustaining the citation filed against the Defendant charging it with a violation of 493(1) of the Liquor Code, 47 P.S. Section 4-493(1). The matter arises out of a citation issued June 26, 2000, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police against Brady Street Beer Distributor, Inc. The citation charged that the licensee through its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to a male minor, nineteen (19) years of age, on April 7, 2000. An evidentiary hearing was held before the Administrative Law Judge on January 21, 2001, following which the Administrative Law Judge sustained the citation and ordered that licensee pay a fine of \$1,000. As stated above, the Liquor Control Bureau sustained the Administrative Law Judge's ruling and the matter is now before this Court of Common Pleas on appeal de novo.

On an appeal de novo, this Court will rely upon the record created before the Administrative Law Judge and notes that nothing further was introduced into evidence. This Court must make its own findings of fact and conclusions of law based on that record and has

the discretion to change, alter, modify, or amend findings, conclusions and penalties imposed by the Administrative Law Judge and Board. See Pennsylvania State Police Bureau of Liquor Control Enforcement v. Kelly's Bar, Inc. t/a Kelly's Bar, 536 Pa. 310, 639 A.2d 440 (1994).

With the above in mind, this Court must determine whether the decision of the Administrative Law Judge was supported by substantial evidence and without error of law or discretion.

This Court has read the record presented before the Administrative Law Judge and after discarding the verbose lecturing and sermonizing of the Judge himself, has concluded that there was not substantial evidence presented to sustain the citation.

The chief witness for the Bureau was one Daryl Hetrick, a 19 year old individual who allegedly purchased beer from Defendant Distributor. Mr. Hetrick initially refused to identify the vendor from whom he purchased the alcohol and only involved the Defendant Distributor after being promised a significant reduction in the charges to be filed against him. Moreover, the Distributor's owner produced all of the employees on duty on the date in question who could even remotely fit the description given by Hetrick of the sales person from whom he allegedly bought the beer. They each categorically denied any such sale or having seen the Defendant on the subject date. Moreover, the Distributor testified in detail as to the precautions taken to prevent sales to minors, which to this Court seemed more than adequate and indeed exhaustive. The Bureau of Liquor Control Enforcement points to the fact that a sale of beer in the amount and kind purchased by Hetrick appears on the computer tape of the Distributor but this Court notes that the sale was made at a different time than that stated by Hetrick and for a different amount of money. Further, this Court is concerned that in his extensive participation in the questioning of witnesses and voluminous statements for the record, the Administrative Law Judge has given the appearance of being less than impartial.

This Court finds, therefore, that the Administrative Law Judge's decision is not supported by substantial evidence and constitutes an abuse of discretion.

WHEREFORE, the Court enters the following:

ORDER

NOW, this 13th day of December, 2001, upon consideration of the record submitted in the above-captioned appeal, it is the ORDER of this Court that the Order of the Pennsylvania Liquor Control Bureau dated May 30, 2000, in the above-captioned matter shall be and is hereby reversed and the Defendant, Brady Street Beer Distributor, Inc. t/a Brady Street Beer Distributor found not guilty.

By the Court,

President Judge

FILED

DEC 14 2001

Box 011:24/1cc
William A. Shaw
Prothonotary

1cc Hopkins

1cc State Police

~~001:24/1cc~~

1cc Administrative Law Judge

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PENNSYLVANIA STATE POLICE,
BUREAU OF LIQUOR CONTROL
ENFORCEMENT,

Plaintiff/Appellant

vs.

BRADY STREET BEER DISTRIBUTOR, INC.
T/A BRADY STREET BEER DISTRIBUTOR
705 South Brady Street
Dubois, PA 15801-1265

License No. ID-1272

Defendant/Appellee

CIVIL DIVISION

No. 01-1014-CD

NOTICE OF APPEAL

Notice is hereby given that the Pennsylvania State Police, Bureau of Liquor Control Enforcement, Plaintiff named above, hereby appeals to the Commonwealth Court of Pennsylvania from the Opinion and Order entered in the matter on the 13th day of December 2001. This Opinion and Order has been entered in the docket as evidenced by the attached copy of the docket entry.

FILED

JAN 14 2002

William A. Shaw
Prothonotary



Nadia L. Vargo
Assistant Counsel
Pennsylvania State Police
Bureau of Liquor Control Enforcement
One Parkway Center, Suite G-100
875 Greentree Road
Pittsburgh, PA 15220
(412) 565-5528
Attorney I.D. No. 46162

#4

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PENNSYLVANIA STATE POLICE,
BUREAU OF LIQUOR CONTROL
ENFORCMENT,

Plaintiff/Appellant

vs.

BRADY STREET BEER DISTRIBUTOR, INC.
T/A BRADY STREET BEER DISTRIBUTOR
705 South Brady Street
Dubois, PA 15801-1265

License No. ID-1272

Defendant/Appellee

CIVIL DIVISION

No. 01-1014-CD

TRANSCRIPT REQUEST

A notice of appeal having been filed in this matter, Cathy Provost, the Official Court Reporter is hereby ordered to produce, certify and file the transcript in this matter in conformity with rule 1920 of the Pennsylvania Rules of Appellate Procedure. (The subject argument was held on September 26, 2001.)

Dated: January 11, 2002


Nadia L. Vargo

00-0958

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

BRADY STREET BEER DISTRIBUTOR :
INC. t/a BRADY STREET BEER :
DISTRIBUTOR :

-vs-

No. 01 - 1014 - CD

PENNSYLVANIA STATE POLICE :
BUREAU OF LIQUOR CONTROL :
ENFORCEMENT :

DEC 26 2001

OPINION AND ORDER

Brady Street Beer Distributor, Inc. appeals from the decision of the Pennsylvania Liquor Control Board affirming the decision of the Administrative Law Judge sustaining the citation filed against the Defendant charging it with a violation of 493(1) of the Liquor Code, 47 P.S. Section 4-493(1). The matter arises out of a citation issued June 26, 2000, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police against Brady Street Beer Distributor, Inc. The citation charged that the licensee through its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to a male minor, nineteen (19) years of age, on April 7, 2000. An evidentiary hearing was held before the Administrative Law Judge on January 21, 2001, following which the Administrative Law Judge sustained the citation and ordered that licensee pay a fine of \$1,000. As stated above, the Liquor Control Bureau sustained the Administrative Law Judge's ruling and the matter is now before this Court of Common Pleas on appeal de novo.

On an appeal de novo, this Court will rely upon the record created before the Administrative Law Judge and notes that nothing further was introduced into evidence. This Court must make its own findings of fact and conclusions of law based on that record and has

REC'D O.A.L.J.

2001 DEC 17 PM 12:10

XC: Judge Thau
Faitz Diehl
Nadia Vasso

the discretion to change, alter, modify, or amend findings, conclusions and penalties imposed by the Administrative Law Judge and Board. See Pennsylvania State Police Bureau of Liquor Control Enforcement v. Kelly's Bar, Inc. t/a Kelly's Bar, 536 Pa. 310, 639 A.2d 440 (1994).

With the above in mind, this Court must determine whether the decision of the Administrative Law Judge was supported by substantial evidence and without error of law or discretion.

This Court has read the record presented before the Administrative Law Judge and after discarding the verbose lecturing and sermonizing of the Judge himself, has concluded that there was not substantial evidence presented to sustain the citation.

The chief witness for the Bureau was one Daryl Hetrick, a 19 year old individual who allegedly purchased beer from Defendant Distributor. Mr. Hetrick initially refused to identify the vendor from whom he purchased the alcohol and only involved the Defendant Distributor after being promised a significant reduction in the charges to be filed against him. Moreover, the Distributor's owner produced all of the employees on duty on the date in question who could even remotely fit the description given by Hetrick of the sales person from whom he allegedly bought the beer. They each categorically denied any such sale or having seen the Defendant on the subject date. Moreover, the Distributor testified in detail as to the precautions taken to prevent sales to minors, which to this Court seemed more than adequate and indeed exhaustive. The Bureau of Liquor Control Enforcement points to the fact that a sale of beer in the amount and kind purchased by Hetrick appears on the computer tape of the Distributor but this Court notes that the sale was made at a different time than that stated by Hetrick and for a different amount of money. Further, this Court is concerned that in his extensive participation in the questioning of witnesses and voluminous statements for the record, the Administrative Law Judge has given the appearance of being less than impartial.

This Court finds, therefore, that the Administrative Law Judge's decision is not supported by substantial evidence and constitutes an abuse of discretion.

WHEREFORE, the Court enters the following:

ORDER

NOW, this 13th day of December, 2001, upon consideration of the record submitted in the above-captioned appeal, it is the ORDER of this Court that the Order of the Pennsylvania Liquor Control Bureau dated May 30, 2000, in the above-captioned matter shall be and is hereby reversed and the Defendant, Brady Street Beer Distributor, Inc. t/a Brady Street Beer Distributor found not guilty.

By the Court,

/s/ JOHN K. REILLY, JR.

President Judge

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

DEC 14 2001

Attest.

[Signature]
Prothonotary/
Clerk of Courts

PROOF OF SERVICE

I hereby certify that I am this day serving the foregoing document upon persons and in the manner indicated below, which service satisfies the requirements of Pa. R. A. P. 121:

Service by first class mail addressed as follows:

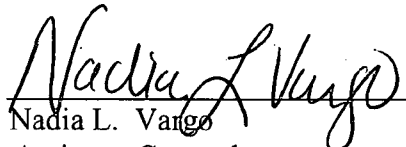
Attorney David J. Hopkins
900 Beaver Drive
DuBois, PA 15801

The Honorable John K. Reilly, Jr
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Cathy Provost, Official Court Reporter
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Mr. William Shaw
Clerk of Courts
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Date: 1-11-02


Nadia L. Vargo
Assistant Counsel

FILED

JAN 14 2002

M1321 / atty Varp pd \$45.00

William A. Shaw
Prothonotary

ICC Sup. Ct w/ \$55.00 check

Est

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Pennsylvania State Police, Bureau :
of Liquor Control Enforcement, :
Appellant :

v. :

Brady Street Beer Distributor, Inc. :
t/a Brady Street Beer Distributor :

No. 01-1014-CD
NO. 235 C.D. 2002

ORDER

NOW, March 18, 2002, having been advised by the trial court that appellant has failed to pay for the transcript in the above matter, appellant is hereby ordered to pay for the transcript in this matter and submit to this court a certificate indicating that the transcript has been paid for within 14 days of entry of this order, or the above matter shall be dismissed as of course.

The Chief Clerk is directed to forward a copy of this order to President Judge John K. Reilly, Jr., of the Court of Common Pleas of Clearfield County.

BY THE COURT:

FILED

MAR 21 2002

m/2031 nccc
William A. Shaw
Prothonotary

Don P. Reilly, Jr.
J.

Certified from the Record

MAR 19 2002
and Order Exit

#7

WILLIAM A. SHAW

**PROTHONOTARY
AND
CLERK OF COURT**

CLEARFIELD COUNTY



DAVID S. AMMERMAN

SOLICITOR

JACQUELINE KENDRICK

DEPUTY PROTHONOTARY

**P.O. Box 549
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-2641 Ext. 1330
FAX(814)-765-7659**

April 2, 2002

Commonwealth Court of Pennsylvania
Office of Prothonotary
P.O. Box 11730
Harrisburg, PA 17108

RE: Brady Street Beer Distributor, Inc.
t/d Brady Street Beer Distributor
vs
Pennsylvania State Police, Bureau
of Liquor Control Enforcement
No. 01-1014-CD
Commonwealth Court No. 235 CD 2002

Dear Prothonotary:

Enclosed you will find the above referenced complete record appealed to your office. Also, please find enclosed one transcript.

Sincerely,

William A. Shaw
Prothonotary

2002 APR -4 P 1:01
RECEIVED & FILED
COMMONWEALTH COURT
OF PENNSYLVANIA