

DOCKET NO. 583745

IN RE VERNON CRAVEN	§	BEFORE THE
D/B/A PRIDE AND JOY	§	
PERMIT NO. BG306640	§	
LICENSE NO. BL401030	§	TEXAS ALCOHOLIC
	§	
McLENNON COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-00-0198)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 20th day of July, 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Suzan Moon Shinder. The hearing convened on May 5, 2000 and adjourned May 5, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 27, 2000. This Proposal For Decision was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. As of this date no exceptions have been filed.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, Transcripts, and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which are contained in the Proposal For Decision and incorporates those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

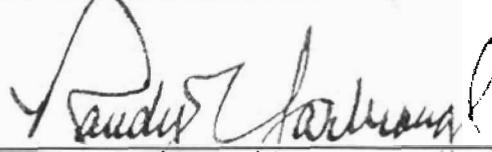
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Permit No. BG306640 and License No. BL401030 are herein **SUSPENDED** for **thirty (30) days beginning at 12:01 a.m. on the 6th day of September, 2000 unless a civil penalty in the amount of \$4,500.00 is paid on or before August 30, 2000.**

This Order will become final and enforceable on August 10, 2000, unless a Motion for Rehearing is filed **before** that date.

By copy of this Order, service shall be made upon all parties by facsimile and by mail as indicated below.

WITNESS MY HAND AND SEAL OF OFFICE on this the 20th day of July, 2000.

On Behalf of the Administrator,

A handwritten signature in black ink, appearing to read "Randy Yarbrough", is written over a light-colored rectangular background.

Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

CB/bc

The Honorable Suzan Moon Shinder, ALJ
State Office of Administrative Hearings
VIA FACSIMILE (254) 750-9380

Holly Wise, Docket Clerk
State Office of Administrative Hearings
VIA FACSIMILE (512) 475-4994

Vernon Craven
d/b/a Pride and Joy
RESPONDENT
1017 Walker Street
Waco, Texas 76704
CERTIFIED MAIL/RRR NO. Z 473 042 836

Christopher Burnett
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Waco District Office

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

June 27, 2000



Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive, Suite 160
Austin, Texas 78731

CERTIFIED MAIL DELIVERY NO. Z207823552

RE: Docket No. 458-00-0198; Texas Alcoholic Beverage Commission vs. Vernon Craven d/b/a Pride and Joy, Permit No. BG-306640, License No. BL-401030, McLennan County, Texas (TABC Case No. 583745)

Dear Mr. Bailey:

Enclosed please find a Proposal for Decision in the above-referenced cause for the consideration of the Texas Alcoholic Beverage Commission. Copies of the proposal are being sent to Christopher Burnett, attorney for Texas Alcoholic Beverage Commission, and to Respondent, Vernon Craven d/b/a Pride and Joy. For reasons discussed in the proposal, I recommend a suspension of thirty days, or \$150.00 per day civil penalty in lieu of suspension.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Commission according to the agency's rules, with a copy to the State Office of Administrative Hearings. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,

A handwritten signature in cursive script that reads "Suzan Moon Shinder".

Suzan Moon Shinder.
Administrative Law Judge

Enclosure

xc: Holly Wise, Docket Clerk, State Office of Administrative Hearing -**FAX**
Christopher Burnett, Staff Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Ste. 160, Austin, Texas 78731 -**CERTIFIED MAIL DELIVERY NO. Z207823553 RETURN RECEIPT REQUESTED**
Vernon Craven d/b/a Pride and Joy, 1017 Walker Street, Waco, Texas 76704 - **CERTIFIED MAIL NO. Z207823554 RETURN RECEIPT REQUESTED**

DOCKET NO. 458-00-0198

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	OF
	§	
	§	
VERNON CRAVEN D/B/A PRIDE AND JOY PERMIT NO. BG-306640 LICENSE NO. BL-401030 MCLENNAN COUNTY, TEXAS (TABC CASE NO. 583745)	§	ADMINISTRATIVE HEARINGS
	§	
	§	

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Commission) initiated this action seeking a sixty day suspension of the permit and license, or \$150.00 per day civil penalty in lieu of suspension, of Vernon Craven d/b/a Pride and Joy (Respondent), based on the Commission's allegation that a breach of the peace occurred on the licensed premises; that said breach was not beyond the control of Respondent, that said breach resulted from Respondent's improper supervision of a person or persons permitted to be on the licensed premises; and that Respondent failed to promptly report to the Commission said breach of the peace in violation of the provisions of the Texas Alcoholic Beverage Code (Code). Respondent contended that failing to report the events, and the injuries suffered, were not serious enough violations to warrant the Commission's recommended suspension (or penalty). This Proposal For Decision recommends a suspension of thirty days, or \$150.00 per day civil penalty in lieu of suspension.

I. Jurisdiction, Notice, and Procedural History

The hearing on the merits convened on May 5, 2000, before Administrative Law Judge Suzan Shinder, in the offices of the State Office of Administrative Hearings (SOAH) in Waco, McLennan County, Texas. Petitioner appeared by and through its staff attorney, Christopher Burnett. Respondent appeared pro se. The hearing was concluded and the record was closed the same day.

The Commission and SOAH have jurisdiction of this matter as reflected in the Conclusions Of Law. The notice of intent to institute the enforcement action and of the hearing met the notice requirements imposed by statute and rule as set forth in the Findings Of Fact and Conclusions Of Law.

II. Suspension Of License For Breach Of Peace Not Beyond Respondent's Control, And For Respondent's Failure To Promptly Report On-Premises Breach Of Peace

It was not disputed that, on February 23, 1999, the Pride and Joy was the site of an altercation involving multiple participants. It was not disputed that this altercation occurred on Respondent's licensed premises and that Respondent did not report this altercation to the Commission. However, as reflected by the following, Respondent did contest the seriousness of the injuries sustained during the altercation, and asserted that he was unaware of any obligation to report a breach of the peace to the Commission at that time.

Agent Doris Board's Testimony: In regard to the Commission's allegations, Agent Doris Board received a copy of a "Complaint" from the Waco Police Department, in reference to their being called to the hospital, concerning a person injured in an incident said to have occurred at the Pride and Joy. As a result of her investigation, she believed that Respondent establishment was at fault, because the altercation could have been avoided if some type of control of the establishment had been exerted, and if the police department had been notified at the first sign of the argument.

Agent Board is familiar with the reputation of Respondent's establishment, the Pride and Joy, and states that it has a "bad" reputation. There is a group of bars in the area of the Pride and Joy, including the Pride and Joy, with problems regarding drug dealers "hanging out," problems with the dealing of drugs, and problems with traffic backed up "bumper to bumper." Officers will not go there without "plenty" of back-up, and will not go to that area at all by themselves. She knows Respondent, Mr. Craven, and states that he is not an "on-site" permittee. Her experience with Respondent is based on speaking with him at his other club, the "Playmate Club." The only person that she dealt with at the Pride and Joy was Jesse White, the bartender.

She interviewed multiple persons during her investigation of the incident described in the above "Complaint," including: Jesse White, the bartender, and Taheeshah (phonetic) Burton, the "victim" in the February 23, 1999 altercation. Ms. Burton gave Ms. Board a statement about this incident, in a sworn affidavit taken March 30, 1999. In this statement, Ms. Burton said that Jesse White was working as the bartender at the Pride and Joy that evening. Ms. Burton was sitting at the bar when an argument over a pool game ensued between two male patrons near her. "Russell," who was sitting by Ms. Burton, told the two men to "drop it." The two men shook hands, and the argument appeared to be over. However, at this time, Donald Hackworth approached the group with an empty beer bottle in his hand. He unsuccessfully attempted to engage "Russell," to continue the dispute. Ms. Burton told Mr. Hackworth that the argument was over, but in response, he threatened her with the beer bottle in his hand. Ms. Burton responded that if he struck her with his bottle, she would hit him with her beer bottle. At this time, Ms. Burton moved to one of the pool tables. Mr. Hackworth again approached Ms. Burton, and told her that he was going to get his sister to "beat (her) ass." Mr. Hackworth threw a chair at her, that missed Ms. Burton, and hit the pool table. In response, Ms. Burton swung the pool cue at him and missed, the pool cue hit the pool table and broke. Although Ms. Burton resisted, Jesse White took the rest of the pool cue from her. Mr. White and another man were holding her arms back, when Mr. Hackworth threw a second chair that hit her in the head. This caused Ms. Burton to fall back, hit her face on the pool table, and fall to the floor. She observed that Mr. Hackworth and his friends were leaving. She told Mr. White not to let them leave, and Mr. White told her that he had already called the Waco Police Department. Ms. Burton followed Mr. Hackworth outside. Because Mr. Hackworth was calling Ms. Burton undesirable names, she threw

empty beer bottles, that she found in the trash can by the door, at Mr. Hackworth. However, Mr. Hackworth jumped in his car, and the bottles hit the car instead of him. Mr. Hackworth drove away from the scene. At that time, Ms. Burton went to the hospital because her head was bleeding badly.

Agent Board asserted that state law requires a licensee to report such on-premises incidents to the police and the commission within a reasonable time, which is within 72 hours of the incident. Additionally, Ms. Board found no evidence that anyone from the Pride and Joy had ever called the Waco Police Department to report the above described altercation involving Ms. Burton. According to Ms. Board's investigation, the only call to the Waco Police Department, regarding the above described altercation involving Ms. Burton, came from a police officer, from the hospital's emergency room, when he was reporting that Ms. Burton had been injured in this altercation.

Respondent's Testimony: Respondent did not deny that he is the holder of a Wine and Beer Retailer's Permit and a Retail Dealer's On Premise Late Hours License, issued by the Commission for the premises known as Pride and Joy, located at 1215 League Street, Waco, McLennan County, Texas. Respondent testified that he has held this permit and license for thirty years. Respondent did not deny that the above described altercation occurred on his licensed premises, on February 23, 1999. Additionally, he did not deny that this altercation had not been reported to the police or to the Commission, by Respondent or any employee of Respondent.

The Pride and Joy and another club, the Playmate Club, are both Respondent's licensed premises. In addition, Respondent is a truck driver, often out of town for a week at a time. He may come to the Pride and Joy twice a week, on the weekends, to check things and to pick up the payroll. He does not have a manager, but relies on the bartender at the Pride and Joy. He acknowledged that it would be difficult to notify him of any breach of the peace while he was on the road, working as a truck driver. Respondent asserted that it is understandable that there will be trouble in a bar, and contended that the police cannot be called every time there is an argument, or they would be at the bar every day. He denied that he was aware of any obligation to report such incidents, when this incident occurred. Although he admitted that Ms. Burton was injured in this incident, he denied that Ms. Burton's injuries were serious. He based this on his observation of Ms. Burton when she returned to the Pride and Joy the next weekend without any bandages.

Jesse White's Testimony: Jesse White testified that, on that evening, two men at the bar were arguing loudly, but he did not know how Ms. Burton got involved. When he first became aware of her involvement, Donald Hackworth was standing by the back door of the Pride and Joy, and Ms. Burton was throwing pool balls at him. When Ms. Burton ran out of pool balls, she grabbed a pool cue, and started toward Mr. Hackworth. At that time, Mr. White tried to stop the altercation, but was unable to do so. Mr. White saw Mr. Hackworth grab a chair, in an apparent effort to keep the pool balls from hitting him. When Mr. Hackworth got to his car, Ms. Burton was throwing beer bottles at him, and dented his car. Mr. White asked her if she wanted him to call the police. Ms. Burton told him that she did not want him to call the police, that she was going home. Although Mr. White admits that he observed blood in Ms. Burton's hair, he denies knowing that she was actually hurt. Because he did not believe that she was hurt, he did not call the police. At that time, Mr. Hackworth had already left; then Ms. Burton left. Ms. Burton was back in the Pride and Joy in two or three days. Mr. White denied that this type of altercation happens on a frequent basis. However,

he stated that, as a general rule, he calls the police for arguments or fights in the Pride and Joy often, sometimes twice a week.

Commission's Exhibit No. 1; Photograph: This photograph, taken by the Waco Police Department, depicts Ms. Burton in a hospital bed, with injuries sustained in the above described altercation. There is blood around the neck and on the left sleeve of her shirt. There is a fresh, bloody abrasion above her left eyebrow, blood running down her left cheek, and a bandage over her left ear.

Commission's Exhibit No. 2; Photograph: This photograph, taken by the Waco Police Department, depicts Ms. Burton in a hospital bed, with injuries sustained in the above described altercation. There is blood around the neck of her shirt. There is a fresh, bloody abrasion above her left eyebrow, blood running down her left cheek, and a bandage over her left ear.

DISCUSSION

Pursuant to Section 25.04(b) of the Code, the provisions of the Code applicable to the cancellation and suspension of a retail dealer's on-premise license also apply to the cancellation and suspension of a wine and beer retailer's permit. Pursuant to Section 6.01(b) of the Code, the Commission may revoke or suspend a permit or license, if the holder violates a provision of the Code or a rule of the Commission. To suspend Respondent's license and permit, Section 69.13 of the Code, requires that the Commission prove that a breach of the peace occurred on the licensed premises or on premises under the licensee's control, and that the breach of the peace was not beyond the control of the licensee and resulted from his improper supervision of persons permitted to be on the licensed premises or on premises under his control. Additionally, pursuant to Section 61.71(a)(31) of the Code, the Commission must prove that Respondent failed to promptly report to the Commission, a breach of the peace occurring on the licensee's licensed premises. Although Respondent, Mr. Craven, was not on the licensed premises at the relevant time, the acts or omissions of Mr. White, Respondent's bartender, are also acts and omissions of the licensee, as contemplated by Section 1.04(16) of the Code; which would include any agent, servant, or employee of the holder of the license, as the "licensee."

On February 23, 1999, an altercation occurred on Respondent's licensed premises, between Taheesha (phonetic) Burton and Donald Hackworth, patrons of the establishment. Jesse White, the bartender, was aware of the of the altercation, and had a number of opportunities to intervene, but failed to do so. Mr. White admits that he was aware of the initial loud argument between two un-named male patrons. Initially, he could have notified those patrons that if the argument continued he would call the police, or he could have told the participants to leave the premises. At minimum, this argument should have heightened his awareness of the potential for violence, and the need for intervention. Although he denied awareness of Ms. Burton's initial involvement while she was still sitting at the bar, this is not credible. The threats between Mr. Hackworth and Ms. Burton regarding use of beer bottles occurred while they were still at the bar, before the fight moved to the pool table area. Mr. White could have notified Ms. Burton and Mr. Hackworth that, if their argument continued, he would call the police. Additionally, he could have told Mr. Hackworth and Ms. Burton to leave the

premises. This intervention might have prevented the altercation from occurring at all. Mr. White could have actually notified the police when these threats were made. He could have notified the police when the altercation started, but before anyone was injured. He had another opportunity to notify the police as the participants were moving into the parking lot of the establishment, and again after one of the participants left the scene. Although the initial opportunities to call the police may have been brief, Mr. White failed to notify the police even when he had a clear opportunity to do so, after Mr. Hackworth left the parking lot. At this point, Mr. White had ample opportunity to call the police. At this point, Mr. White should have been aware that Mr. Hackworth was capable of returning to the scene, and continuing the altercation. Additionally, it was obvious that Mr. Hackworth and Ms. Burton were capable of violence, and that Ms. Burton was already injured, as evidenced by the blood on her head. This failure to notify the police, despite this obvious need, and ample opportunity to do so, confirms Mr. White's lack of intent to call the police earlier, when the opportunity to do so might have been arguably brief. Mr. White's failure to intervene in this manner allowed the argument to escalate into an altercation, and the altercation to result in injuries to at least one patron, and to the personal property (the vehicle) of another patron.

Respondent made no effort to notify the Commission of this breach of the peace at any time, and the Commission only became aware of this incident when it was reported to them by the police department, in response to the hospital's report of Ms. Burton's injuries.

FINDINGS OF FACT

1. There were no contested issues of notice or jurisdiction in this proceeding, and Respondent received proper and timely notice of the hearing on the merits from the Commission in a Notice of Hearing served on Respondent by Certified Mail, No Z 473 040 120, as evidenced by the notice's Certificate of Service, and by Respondent's appearance at, and participation in, the hearing on the merits of May 5, 2000. Respondent also received said notice "in hand," as evidenced by his signature on the first page of the notice.
2. The Notice of Hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
3. The hearing was convened on May 5, 2000 at the Hearings Facility of the State Office of Administrative Hearings, 801 Austin Avenue, Suite 750, Waco, Texas. Respondent appeared pro se. The Commission appeared by and through its Assistant Attorney General, Christopher Burnett. Evidence and argument were heard, and the record was closed the same day.
4. Respondent is the holder of a Wine and Beer Retailer's Permit and a Retail Dealer's On Premise Late Hours License, issued by the Commission for the premises known as Pride and Joy, located at 1215 League Street, Waco, McLennan County, Texas. Respondent has held this permit and license since prior to February 23, 1999.

5. On February 23, 1999, Taheesha (phonetic) Burton and Donald Hackworth, patrons of Respondent's licensed premises, the Pride and Joy, participated in an altercation on the licensed premises, resulting in physical injuries to Ms. Burton, specifically a wound to her head, and damage to Mr. Hackworth's vehicle

6. Respondent's employee, Jesse White, had multiple opportunities to intervene, to prevent and/or terminate the above altercation: by telling the participants to leave the premises; by announcing that he would call the police; and/or by calling the police. Mr. White's failure to intervene in this manner resulted in the escalation of an argument to an altercation, injuries to Ms. Burton, and damage to Mr. Hackworth's vehicle.

7. Respondent made no effort to notify the Commission of this breach of the peace at any time, and the Commission only became aware of this incident when it was reported to them by the police department, in response to the hospital's report of Ms. Burton's injuries.

CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Subchapter B of Chapter 5, of the TEX. ALCO. BEV. CODE (Vernon 1995)(Code).

2. The State Office of Administrative Hearings has jurisdiction over the matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T. CODE ANN. §§2003.021(b) and 2003.042(6) (Vernon 2000).

3. As referenced in Findings of Fact Nos. 1-3, the parties received proper and timely notice of the hearing pursuant to TEX. GOV'T CODE ANN §§2001.051 and 2001.052 (Vernon 2000)

4. The altercation on Respondent's licensed premises, on February 23, 1999, described in Findings of Fact Nos. 5 and 6, constituted a breach of the peace, as contemplated by Section 69.13 of the Code (Vernon 1995).

5. The acts or omissions of Mr. White, Respondent's bartender, are also acts and omissions of the licensee, as contemplated by Section 1.04(16) of the Code (Vernon 1995), which would include any agent, servant, or employee of the holder of the license, as the "licensee."

6. This breach of the peace was not beyond the control of the licensee and resulted from his improper supervision of persons permitted to be on the licensed premises, in violation of Section 69.13 of the Code (Vernon 1995).

7. Pursuant to Section 6.01(b) of the Code (Vernon 1995), the Commission may revoke or suspend a permit or license, if the holder violates a provision of the Code or a rule of the Commission.

8. Based on Finding of Fact No. 7, Respondent failed to promptly report to the Commission the above described breach of the peace occurring on Respondent's licensed premises on February 23, 1999, in violation of Section 61.71(a)(31) of the Code (Vernon Supp. 2000).

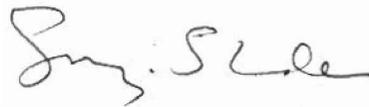
9. Pursuant to Section 25.04(b) of the Code (Vernon 1995), the provisions of the Code applicable to the cancellation and suspension of a retail dealer's on-premise license also apply to the cancellation and suspension of a wine and beer retailer's permit.

10. Section 61.71(a)(31) of the Code (Vernon Supp. 2000) states that, after notice and hearing, if the licensee is found to have failed to promptly report to the Commission a breach of the peace occurring on the licensee's licensed premises, the Commission may suspend for not more than sixty days or cancel an original or renewal retail dealer's on- or off-premises license.

11. Pursuant to Rule Section 37.60(b)(1999), a licensee or permittee penalized by the Commission may pay a civil penalty in lieu of a suspension as provided by Code Section 11.64 (Vernon 1995 & Supp. 2000); which states that when the Commission is authorized to suspend a license, the amount of the civil penalty may not be less than \$150.00 per day, for each day the license was to have been suspended.

12. Based on Findings of Fact Nos. 5-7 and Conclusions of Law Nos. 4-11, a 30 day suspension of Respondent's license and permit is warranted. In the alternative, Respondent should be allowed to pay a civil penalty of \$150.00 per day for 30 days, for a total of \$4,500.00, pursuant to Section 11.64 of the Code (Vernon 1995 & Supp. 2000) and Section 37.60(b) of the Rules (1999).

Signed this 27th day of June, 2000.



Suzan Moon Shinder
Administrative Law Judge