

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF ST. PAUL

In the Matter of the Taxicab License
Held by Carlos Rosillo

License Id. Number 18477

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Steve M. Mihalchick on June 5, 1997, at 9:30 a.m. in Room 41 of the St. Paul City Hall. Virginia D. Palmer, Assistant City Attorney, 400 City Hall, 15 West Kellogg Boulevard, St. Paul, Minnesota 55102, appeared on behalf of the Office of License, Inspections and Environmental Protection of the City of Saint Paul ("the City"). Carlos Rosillo, 7540 Cloman Way, Inver Grove Heights, Minnesota 55076, appeared on his own behalf. The record in this matter closed on June 5, 1997, upon the close of the hearing.

This Report is a recommendation, **not** a final decision. The Saint Paul City Council will make the final decision after a review of the record. The City Council may adopt, reject or modify the Findings of Fact, Conclusions and Recommendations contained herein. Pursuant to Saint Paul Legislative Code section 310.05(c-1), the City Council shall provide an opportunity to present oral or written argument alleging error in this Report and to present argument related to any adverse action recommended in this Report. The parties should contact the City Clerk to ascertain the procedure for filing such argument or appearing before the Council.

STATEMENT OF ISSUE

The issue presented in this matter is whether it has been proven that Carlos Rosillo disobeyed a police officer when ordered to stop in violation of Minn. Stat. § 609.50, subd. 1, and if so, whether adverse action should be taken against the taxicab license held by him.

Based on all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Carlos Rosillo works for City Wide Cab as a driver and holds the taxicab license number 18477. On the evening of March 14, 1997, Mr. Rosillo was driving City Wide cab number 81 in and around St. Paul.

2. Officer Baudette of the St. Paul Police Department was participating in an operation at Lee Lenore's, a massage parlor on Snelling Avenue in the Midway area of St. Paul that operates as a house of prostitution. The operation began on March 14, 1997 (a Friday night) and continued until the early morning of March 15, 1997. As part of the operation, all persons in the massage parlor were arrested, the premises were taken over by undercover officers, and the business operation (to outward appearances) continued unchanged with the intention of arresting all people that entered the parlor. Officer Baudette was in plain clothes, except for a raid jacket, with the word "POLICE" in large bright yellow letters on the front and back and police patches on each shoulder, a holstered gun belt, and his badge on a chain around his neck outside his clothing. The raid jacket snaps up the front, with the lettering being divided evenly between each side of the front. Officer Baudette's primary responsibility was to arrest men soliciting the undercover female officers for prostitution in the back rooms of the massage parlor. He was located in a room beyond the entry area and was able to observe people entering the front door on a television monitor that had been set up.

3. A female officer at the desk took a call from a female employee of the massage parlor, who said that she was running late and would be taking a cab to work. Officer Baudette waited in the back room for the employee to arrive. At approximately 11:30 p.m., the female employee walked in, saw the undercover female officers in the massage parlor and immediately left. Officer Baudette left the back room and pursued the employee, in order to arrest her. Officer Baudette saw the employee entering a City Wide cab approximately thirty feet away on Snelling Avenue. The driver was sitting in the front on the driver side with his head down. Officer Baudette was approximately ten feet from the cab, approaching from the front passenger side when he yelled "Police, you're under arrest, get out of the cab." At some point, the driver looked up and made eye contact with the officer. Officer Baudette again yelled that he was a police officer. The officer reached for the front passenger door so that he could open it to tell the driver he was going to arrest the passenger. He made eye contact with the driver again. But the driver then shifted the cab into drive and accelerated away from the curb. The officer concentrated on avoiding being injured between the cab and a snowbank along Snelling Avenue. As the cab traveled north on Snelling Avenue, Officer Baudette noted the number of the cab was 81. The time elapsed from the driver first looking up and leaving the curb was a few seconds.

4. Officer Baudette called City Wide cab and asked that cab number 81 return to Lee Lenore's. Cab number 81, driven by Mr. Rosillo, returned to Lee Lenore's about twenty minutes later, but without his passenger. Officer Baudette asked Mr. Rosillo why he failed to stop. Mr. Rosillo stated that the passenger had said the man approaching the cab was a jealous ex-boyfriend and that Rosillo should "take off." City's Exhibit No. 1. Mr. Rosillo stated that he didn't know Officer Baudette was a cop. He also maintained that Officer Baudette did not have his raid jacket on when he came out of Lee Lenore's. *Id.*

5. Officer Baudette asked Mr. Rosillo for his driver's license. After a heated exchange, another officer, Sergeant Strickland intervened and persuaded Mr. Rosillo to surrender the license. Officer Baudette issued citation number 97-864240 that charged Mr. Rosillo with failure to obey a police officer in violation of Minn. Stat. § 609.50, subd. 1.

The citation issued by Officer Baudette for failure to obey an officer was not prosecuted by the City Attorney's office.

6. On April 7, 1997, the City issued a notice of violation to Mr. Rosillo on the basis of the March 14, 1997 incident. City's Exhibit No. 4. The notice of violation includes notification of the appeal process. After receiving the notice, Mr. Rosillo orally requested a hearing before an Administrative Law Judge. On April 18, 1997, the City issued a notice of hearing, setting this matter for hearing on June 5, 1997.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Saint Paul City Council and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.55 and 340A.415 and Saint Paul Legislative Code §§ 310.05 and 310.06. The Notice of Hearing issued by the City was proper and all applicable substantive procedural requirements have been fulfilled.

2. The City bears the burden in this matter of proving by a preponderance of the evidence that adverse action is warranted with respect to the taxicab license at issue.

3. The Saint Paul Legislative Code § 310.06(b)(6)(a) authorizes the St. Paul City Council to take adverse action against a licensee where:

The licensee or applicant (or any person whose conduct may by law be imputed to the licensee or applicant) has violated, or performed any act which is a violation of, any of the provisions of these chapters or of any statute, ordinance or regulation reasonably related to the licensed activity, regardless of whether criminal charges have or have not been brought in connection therewith.

4. Minn. Stat. § 609.50, subd. 1 states in pertinent part:

Whoever intentionally does any of the following may be sentenced as provided in subdivision 2:

- (1) obstructs, resists or prevents the . . . apprehension of another on a charge or conviction of a criminal offense;
- (2) obstructs, resists or interferes with a peace officer while the officer is engaged in the performance of official duties

* * * *

5. Minn. Stat. § 609.50, subd. 1, is a statute reasonably related to the licensed activity of driving a taxicab.

6. The evidence presented is insufficient to prove that Mr. Rosillo heard the officer identify himself as an officer, saw the word "POLICE" on the jacket, or in any other manner was aware that the officer was an officer.

7. It has not demonstrated that Mr. Rosillo intentionally obstructed a peace officer when he failed to stop for Officer Baudette on March 14, 1997.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED: that the Saint Paul City Council not take adverse action against the taxicab license of Carlos Rosillo.

Dated this 25th day of June, 1997

STEVE M. MIHALCHICK
Administrative Law Judge

NOTICE

The City is respectfully requested to provide a copy of its final decision to the Administrative Law Judge by first class mail.

Reported: Tape recorded (one tape).

MEMORANDUM

The City relies upon the existence of a violation of Minn. Stat. 609.50, subd. 1 to support the revocation of Mr. Rosillo's license. The statute requires that any obstruction to the duties of a peace officer be done intentionally to constitute a violation. There has been no criminal conviction of the cited conduct by Mr. Rosillo. The City has not elicited any direct evidence from Mr. Rosillo that he intended to obstruct the actions of a police officer. Therefore, the circumstances of the incident cited to support the adverse action must be examined to determine if Mr. Rosillo acted with the required intent.

The incident occurred about 11:30 p.m. on a Friday night outside a massage parlor. Mr. Rosillo had dropped off a female passenger, who entered the massage parlor. The area was lit by several street lamps. Mr. Rosillo was sitting in the driver's seat of his cab with his head down. He did not look up until the passenger reentered the cab, this time in a hurry. The only other person Mr. Rosillo saw was a man running toward the cab, shouting. The passenger told Mr. Rosillo to "take-off." The man was not wearing a uniform that would immediately identify him as a police officer. While the man was shouting, the passenger, already inside the cab, was also talking. When Mr. Rosillo looked up, he was looking only at the man's face.

Mr. Rosillo argued that the danger inherent in the job makes leaving the curb a reasonable reaction to the circumstances he perceived. Driving a cab is a dangerous occupation. The City's inspector noted that a cab driver had been murdered in St. Paul within the past five years. A driver sensing danger may only have a few seconds to react to a situation and a few options with which to respond to it. Mr. Rosillo told the officer that upon looking up all he saw was someone rushing toward the cab. Mr. Rosillo also maintained that Officer Baudette was not wearing his raid jacket when he was approaching the cab. Officer Baudette testified that he assumed that Mr. Rosillo recognized him as an officer. But under the conditions of that night, it is entirely possible that Mr. Rosillo never saw the word "POLICE" on the front of the jacket of the man rushing toward him; the jacket may have been open, it was relatively dark, it happened quickly.

Under different circumstances, a taxicab license could be revoked or suspended for obstructing an officer. If the officer was uniformed, if a squad car was present, if the driver acknowledged the police officer before taking some action to hinder the officer, then adverse action would be warranted. Here, the police went to great lengths to disguise their presence at the massage parlor and give the impression that all was "normal" at that business. Trouble happens at houses of prostitution in the ordinary course of business. When a woman runs out of such a place pursued by a man, a reasonable person could conclude that some danger arises from the pursuer and act accordingly. Where, as here, the driver of a cab lacks the opportunity to ascertain the identify of the pursuer and the identity of the pursuer is not immediately obvious, there has been no showing of an intent to obstruct a police officer in violation of Minn. Stat. § 609.50, subd. 1.

The Administrative Law Judge agrees with the City's position that persons licensed to drive taxicabs must obey the commands of police officers as a condition of retaining that licensure. But, the City has the burden to demonstrate that Mr. Rosillo violated that standard by a preponderance of the evidence, bearing in mind the seriousness of depriving a person of his livelihood. *In Re Wang*, 441 N.W.2d 448, 492 (Minn. 1989). The evidence relied upon by the City is the police officer's assumption of what Mr. Rosillo saw and what Mr. Rosillo understood. Based on Mr. Rosillo's explanation to the officer of what happened and his argument presented at the hearing, the Administrative Law Judge concludes that the City's evidence is insufficient to support taking adverse action against his taxicab license. The Administrative Law Judge recommends that no adverse action be taken against the taxicab license held by Mr. Rosillo.

S.M.M.