

PROBLEM 1

(Direct and Cross Examination)

NITA LIQUOR COMMISSION v. CUT-RATE LIQUOR AND JONES

(James Bier)

The Liquor Commission has charged the Defendants with a civil violation of Nita Liquor Commission Regulation 3.102 for knowingly selling intoxicating beverages to an intoxicated person. Violation of this regulation carries a maximum penalty of \$1,000 for a business and \$100 for an individual Defendant. The business can also lose its retail sales permit.

The elements of the civil complaint under Regulation 3.102 are:

1. Knowing (defined as knew or should have known)
2. Sale
3. Of intoxicating beverages (beer, wine, fortified wine or spirits)
4. To an intoxicated person (one who is appreciably impaired).

As a civil case, the Plaintiff Liquor Commission has the burden of proving each element of Regulation 3.102 by a preponderance of the evidence. Defendants have requested a jury trial.

The Liquor Commission's complaint alleges that Dan Jones, an employee of Cut-Rate Liquor, knowingly sold a bottle of Thunderbird wine to Walter Watkins, who was at the time intoxicated. Jones and Cut-Rate deny the allegations of the complaint.

The chief witness for the Liquor Commission is Investigator James Bier. Bier is a seven-year veteran of the Liquor Commission. Before serving in this position, he was a police officer for eight years. During his career as a Liquor Commission Investigator, he has investigated the full range of potential violations of the Nita Liquor Commission Regulations.

In answer to discovery requests, the Plaintiff provided to the Defendants the investigative report that Bier filed on the evening of June 5, 2002. The text of that report is as follows:

Undersigned investigator assigned with partner, Donald Smith, to investigate the complaints by citizens that the Cut-Rate Liquor Store at the intersection of Seventh and Jackson in Nita City was selling liquor to intoxicated persons and to minors. Surveillance begins at 7:30 p.m. on

June 5, 2002. Set up surveillance on the east side of Jackson Avenue, across the street and south of the Cut-Rate Liquor Store. From this position could see the entirety of the intersection, and also could see into the subject place of business through a plate glass window that extends most of the frontage of the subject business along Jackson Avenue. View into business somewhat obstructed by advertising in the window.

From 7:45 p.m. until approximately 8:45 p.m., no unusual activity noted. Several customers enter store, make purchases, and exit store. Store clerk, later determined to be Dan Jones, is only one operating the business. At approximately 8:45 p.m., subject, later determined to be Walter Watkins, is observed on the northwest corner of the intersection leaning on lamppost. He appears disheveled, and he is wearing dark pants, white shirt, sneakers, and a wrinkled lightweight tan raincoat. Watkins pushes self off post and proceeds south across the intersection. Watkins staggers badly as he crosses street and in the center of the street he stumbles, but catches self before falling. Watkins proceeds to curb on southwest corner where he stumbles again and trips while stepping up onto the curb in front of subject store, at which time he puts both hands out in front of himself to brace for the fall and he manages to regain his balance without actually hitting the pavement.

After tripping and falling at the curb, Watkins straightens himself up and he walks to the entrance of the Cut-Rate Liquor store where he pauses for a moment in front of glass door to subject business, and then he enters the store. He proceeds to counter where the clerk, Jones, is standing and appears to have a conversation with him. While Watkins is in the store, we can see him and Jones from the shoulders up, due to the obstructing advertising in the window. No other obstructions noted. After brief conversation, Jones turns away from Watkins and goes out of sight for a brief period of time and then returns to the counter in the area of the cash register. After completing his transaction, Watkins exits store holding a brown paper bag that was not in his hand at the time he entered the store.

Partner and I approach Watkins and physically detain him outside the store. From distance of 3 feet, note an odor of alcohol about the person of subject and note that eyes are glassy and bloodshot. Ask for identification, which is provided. Upon questioning, subject provides name and address. Note that speech is somewhat slurred. Take bag from subject. Bag contains unopened and sealed bottle of Thunderbird wine. No receipt found in bag. Subject responds to question as to where he purchased the wine and states that it was from the Cut-Rate Liquor store. Perform field sobriety tests. Subject is unable to walk heel-to-toe in a straight line, pick up coins from sidewalk, or touch finger to nose from arms extended out to the side. Subject Watkins is arrested for public intoxication.

Proceed inside store to issue citation to clerk, Dan Jones, and the Cut-Rate Liquor store for a 3.102 violation of knowingly selling intoxicating beverages to an intoxicated person. Jones makes no statement. Note that the entry door to the store is plate glass with steel security bars and alarm system, only decal on the door lists the store hours of

operation, and that wall of store facing Seventh Street is also plate glass with some advertising. From vantage point of counter can see northwest corner of intersection and both Seventh and Jackson Streets. Note also the width of the counter (approximately 2 1/2 feet), location of the cash register, and that store sells Thunderbird wine which is stored on a shelf, approximately 15 feet behind counter. Return to vehicle and transport Watkins to Nita City police station for processing.

(Diagram attached to report.)

Signed: James Bier, Investigator, NLC

Further investigation of the case revealed that Watkins was found guilty of public intoxication in a bench trial and paid a \$25 fine. Investigator Bier testified at that hearing consistent with his report.

Dan Jones and the Cut-Rate Liquor Store deny all of the allegations in the complaint and assert that Walter Watkins did not appear to be intoxicated on the evening of June 5 when he was in their store.

Dan Jones was deposed by the Plaintiff and gave, in part, the following information:

My name is Dan Jones and I live at 12 Chelsea Court in Nita City. I work as the night manager (4—12) at the Cut-Rate Liquor store at Seventh and Jackson. I am a high school graduate, fifty years old, and have worked for Cut-Rate since getting out of the Navy in 1997.

I was working the 4 to 12 shift on the evening of June 5, 2002. I do not know Walter Watkins. I have been shown his picture and he looks familiar to me. I cannot say that I remember him as ever being a customer on June 5th or any other time. At the same time, I can't say that he never was a customer of mine. He might have been. I did sell a bottle of inexpensive wine to a gentleman within 10 or 15 minutes of the investigator coming into the store that might have been Watkins. I don't remember that it was Thunderbird. The man was a little disheveled, but did not appear intoxicated to me. If he had, I would have turned away his business. Our policy is not to serve people who are visibly intoxicated. Our determination is based on observation, looking for typical signs of intoxication, usually slurred speech, alcohol odor on breath, bloodshot eyes, uneven gait, stumbling or staggering.

The evening of June 5, 2002, was moderately busy from 4p.m. to 10p.m. I made a number of sales during that period of time. At no time on that date did I sell liquor to someone who appeared to be drunk. That is against company policy and I can be fired for doing so. Several years ago I sold some wine to someone who was arrested later for DI

after he hit another car. He wasn't drunk when I sold him the wine. It was handled by the insurance company. I think they settled for what they called nuisance value. That experience made me very careful about who I sold liquor to at the store. I understand that a couple of our other stores had problems, but I've never had any other problems from the Nita Liquor Commission.

On June 5, 2002, I did receive a citation from an Investigator Bier for knowingly selling intoxicating beverages to an intoxicated person, but I deny making such a sale. Bier gave me the citation and asked me if I wanted to make a statement to him. To be honest, he surprised me, and I almost did talk to him, but I remembered our policy at Cut-Rate to make no statements to liquor investigators if ever confronted with an allegation of a violation of liquor regulations. I just accepted your citation and passed it on to my employer.

Signed 
Dan Jones

It has been determined that Walter Watkins is no longer in the jurisdiction and will not be available to testify. Investigator Smith is also unavailable.

The case is now at trial and Investigator Bier is the first witness for the Liquor Commission.

Part A

For the Plaintiff, conduct the direct examination of Investigator Bier.
For the Defendant, conduct the cross examination of Investigator Bier.
For the Plaintiff, conduct any necessary redirect examination.

Part B

For the Defendant, conduct the direct examination of Dan Jones.
For the Plaintiff, conduct the cross examination of Dan Jones
For the Defendant, conduct any necessary redirect examination.