

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of Hearing: July 11, 2019

Panel: Daphne Simon, Panel Chair;
Melina Laverty and Edgar Montigny, Panel Members

Re: Abdulsalam Shahmeh (Report No. 7128)
Applicant for Renewal of Vehicle-For-Hire Driver's Licence No. D01-4701250
AND
Applicant for Renewal of Toronto Taxicab Owner's Licence No. V00-4426695, Plate No. 4210

Counsel for Municipal Licensing and Standards: David Gourlay

Abdulsalam Shahmeh: Self Represented

English-Farsi Interpreter: Elham Yaesubi

SUMMARY OF DECISION

Municipal Licensing and Standards (MLS) sought a revocation of Mr. Shahmeh's Vehicle-For-Hire Driver's Licence primarily on the grounds that there is a risk to public safety arising from a criminal charge of sexual assault of a female passenger for which Mr. Shahmeh was acquitted. After hearing the evidence and submissions, the Tribunal declined to revoke his Vehicle-For-Hire Driver's Licence and ordered that it be renewed without conditions.

PRELIMINARY MATTER

On the request of counsel for MLS, the Tribunal ordered that the complainant in the sexual assault matter be referred to as Ms T during the hearing and that her name be redacted from any documentation to protect her identity. A publication ban was also issued in the criminal proceeding to protect the privacy of the complainant.

BACKGROUND

Mr. Shahmeh was first licensed as a Toronto Taxicab Driver in 1994, and aside from a three year hiatus has held a licence since then.

On June 10, 2018, Mr. Shahmeh was charged with sexual assault arising from an incident that allegedly occurred on June 7, 2018 with Ms T, a female passenger in his taxicab.

On November 29, 2018, the Tribunal placed driving conditions on Mr. Shahmeh's Vehicle-For-Hire Driver's Licence pending the disposition of the criminal proceedings.

July 11, 2019

The conditions were:

- a. Mr. Shahmeh shall not accept fares from any unaccompanied female passenger;
- b. No female passenger is allowed in the front seat of the Taxicab;
- c. Mr. Shahmeh shall not accept any passenger fares between the hours of 9:00 pm and 7:00 am.

On April 24, 2019, Mr. Shahmeh was acquitted of sexual assault.

A hearing was held on July 11, 2019 to determine whether or not Mr. Shahmeh's licence should be revoked.

ISSUES

The issue before the Tribunal is whether the conduct of Mr. Shahmeh affords reasonable grounds to believe that he will be a risk to public safety or endanger members of the public if he carries on his business as a taxicab driver.

EVIDENCE AND SUBMISSIONS

The relevant evidence and submissions of the parties is summarized briefly below.

MLS

MLS presented two witnesses. Ms T and Ms Olga Kuztelska, MLS Supervisor.

Ms T was affirmed and testified as follows:

On June 7, 2018, Ms T, a 33 year old woman, was a passenger in Mr. Shahmeh's taxi cab van. She had left work early, around 4:15 pm, because she wasn't feeling well and decided to take a taxi home. She picked up Mr. Shahmeh's cab at a taxi stand at Yonge and Bishop. She testified that she entered his van and sat behind the driver's seat in the middle row. She said that Mr. Shahmeh invited her to take off her shoes and put her feet up on the console (between the driver's seat and front passenger's seat). She did so. She testified that he reached over, patted her feet, gave them a light squeeze and said she was a "good girl". She said this made her very uncomfortable and she froze. She did not move her feet. She testified that he told her to relax and fall asleep. She said that she closed her eyes for most of the ride on the highway as she becomes motion sick. There was no conversation during most of the 45 minute ride to her home.

She gave him directions to her house, once they got off the highway, and he pulled in to her driveway. She stated that she paid by credit card and asked for a written receipt as she would be reimbursed for by her employer. She could not recall the exact amount of the fare but she gave him a tip and the total came to \$55. She testified that he stated that he "hoped to see her again".

July 11, 2019

Ms T stated that Mr. Shahmeh helped to carry her backpack and coat to the side door of her house. She opened the storm door for him so he could place them in the hallway. As he did so, Ms T testified that he leaned in and gave her a kiss on the cheek. She held her hands up, and said, "No, No". He then put one hand on her shoulder and dragged his right arm across her left breast. He walked out to his car and left. She described his demeanour when he kissed her as friendly and happy; he was not hostile, aggressive, or angry, including when she said "no" to his advance.

She testified that she was very upset by this incident. She described feeling numb, feeling uncertain about what to do. She felt nervous about reporting the incident to police and she stated that she felt stupid. She testified that she called her dad and her sister. She resides with her parents and her sister but no one was home. She called the police at 10:00 pm that evening to report the incident. Her family was home by that time.

Ms Olga Kuztelska, MLS Supervisor was affirmed and testified as follow:

Ms Kuztelska provided a history of Mr. Shahmeh's taxi licence, relying on MLS documentation and Report 7128 produced by MLS. Mr. Shahmeh was first licensed as a taxi driver in 1994, and has driven a taxi in Toronto for about 20 years. He obtained a taxi owner's licence in 2015. He has previously appeared before the Tribunal in 2006 and 2017. Both of these Tribunal matters resulted in joint proposed resolutions.

Ms Kuztelska provided an overview of Mr. Shahmeh's Highway Traffic Act and Toronto Municipal Code by-law charges and convictions. A recent 3-year Driver's Abstract, which contained one conviction for "Unsafe Move" from an offence on October 31, 2015, was also referred to in Ms Kuztelska's evidence.

Ms Kuztelska referred the panel to a By-Law Enforcement Officer's notes of an incident in April 2018 outside of the Air Canada Centre where it is alleged that Mr. Shahmeh refused a passenger, refused to hand over his licence to the by-law officer and sped off. In March 2019, he was convicted to two by-law offences as a result of this incident: obstruct authorized inspection and fail to record reason for refusing passenger.

Evidence was also presented in regard to Mr. Shahmeh's criminal charge, trial and acquittal of sexual assault. Ms Kuztelska referred to the reasons for judgment, dated April 24, 2019. In the reasons, the Honourable Justice Robertson found Mr. Shahmeh not guilty of sexual assault, as on the whole of the evidence, there was reasonable doubt and thus he must acquit.

In submissions for MLS, Mr. Gourlay stated that the Tribunal, in considering Mr. Shahmeh's conduct, was not required to apply the same standard as a criminal court of 'beyond a reasonable doubt' that a sexual assault was committed. The Tribunal, rather, has to consider whether there is reasonable cause for concern about whether Mr. Shahmeh's future conduct is a threat to public safety. He submitted that a taxi driver provides a safe haven for vulnerable people, young people or people who had been drinking late at night and customers should feel safe in a taxi cab. Essentially, there is a trust relationship between taxi drivers and their customers. He submitted that sexual assault offences are amongst the most serious offences. In the case against Mr. Shahmeh, there was ample evidence to support the Crown laying a criminal charge of sexual assault despite there having been an acquittal in the matter.

July 11, 2019

In regard to Ms T's testimony, he submitted that she had no reason, no motivation to come to this Tribunal and lie. She was visibly uncomfortable during her evidence. Mr. Gourlay submitted that Ms T called the police, gave a video statement, testified in criminal court and came to the Tribunal to provide her testimony. He suggested that she wouldn't have put herself through all this if her account of what took place on June 7, 2018 was not true.

In regard to Mr. Shahmehr's testimony, Mr. Gourlay submitted that he was angry, made several offensive comments about Ms T and minimized certain details when giving his evidence. Mr. Gourlay stated that Mr. Shahmehr could not remember certain parts of an interaction with a By-Law Enforcement Officer even though they occurred just over a year ago. As such, his testimony cannot be believed. Further, he failed to comply with one of the three conditions that the Tribunal imposed in November 2018- that being taking unaccompanied female passengers in his taxi. He had an interpreter and a paralegal with him at the time that the conditions were imposed and therefore his explanation that he did not understand the conditions was also not believable.

MR. SHAHMEHR

Mr. Shahmehr testified that he was at the taxi stand at Yonge and Bishop around 4:00 pm on June 7, 2018. He was the first in line. He was sitting in the driver's seat reading a newspaper when he heard a knock on his window. It was another taxi driver letting him know that he had a potential passenger. It was Ms T. Mr. Shahmehr opened the automated van door without leaving the driver's seat. The other taxi driver helped Ms T into the van since it was elevated and she had some difficulty. She had two plastic bags and a backpack and a jacket. The other taxi driver placed all of Ms T's belongings into the van. Mr. Shahmehr never left the driver's seat.

Mr. Shahmehr stated that soon after he started to drive her to her destination, he noticed that she had stretched out her legs and put her feet, with shoes on, up on the console between the front driver's seat and passenger seat. He stated he puts his food and newspaper there and immediately asked her to remove her feet. He stated that she did remove them but became angry.

The rest of the ride was uneventful, according to Mr. Shahmehr. When he got off the highway, Ms T gave him directions to her house. He stated that she asked him to pull into the driveway of her house. She paid by credit card using the handheld payment device and gave him a \$7 tip, totalling \$55. He also gave her a written receipt, on her request, which she said she needed for her employer. He opened the automatic van door for her and asked if she needed help to disembark. She said, according to Mr. Shahmehr, she would appreciate it if he could help her. He walked around the van to the side door and offered his arm to assist Ms T in disembarking. He then took her two plastic bags and carried them to her house. She carried her backpack and jacket, and went to the side of the house. She held the storm door open for him and he placed the bags in the hallway. Mr. Shahmehr testified that he then said goodbye and walked back to his van and drove away.

He disputed kissing her on the cheek, touching her breast with his arm and touching or squeezing her feet. He said those things never happened. He stated that his daughter is older than her. When pressed, he stated that why would he do such a thing when his wife

July 11, 2019

is more beautiful than her. He also denied ever calling her a 'good girl'. He did admit that he may have said 'hope to see you again' but that this is something he says typically to all his customers.

Mr. Shahmehr testified that he went to court several times for the sexual assault matter, including a trial in which a judge found he was not guilty. He has been driving under the conditions imposed and has found that not driving at night has impacted his income. He did admit that he has been taking unaccompanied female passengers in his van. When asked about this and whether he was aware that this was in contravention of the Tribunal conditions on his licence, he stated that he was not aware that this was a condition. He understood that he was prohibited from taking unaccompanied female passengers in the front seat and no customers after 9:00 pm. He did not understand that one of the conditions was an outright ban on him taking fares from unaccompanied female passengers. This was not at all his understanding.

In his submissions, Mr. Shahmehr stated that he earns \$1500 a month driving a taxi cab and receives \$1050 a month from government pension. He is 79 years old and supports his wife and son. He submitted that he tries to be a good taxi driver and helps people when he can.

ANALYSIS

The Municipal Code provides in part:

§ 546-4. Grounds and administrative thresholds for denial of licence.

A. An applicant for a licence or for the renewal of a licence, is, subject to the provisions of this chapter, entitled to the licence or renewal, except where:

(1) The conduct of the applicant affords reasonable grounds to believe that the applicant has not carried on, or will not carry on, the business in accordance with law and with integrity and honesty; or

(2) There are reasonable grounds to belief [sic] that the carrying on of the business by the applicant has resulted, or will result, in a breach of this chapter or any law;

or

[...]

(5) The conduct of the applicant or other circumstances afford reasonable grounds to believe that the carrying on of the business by the applicant has infringed, or would infringe, the rights of other members of the public, or has endangered, or would endanger, their health or safety.

[...]

The issue for the Tribunal to decide is whether the conduct of Mr. Shahmehr would endanger members of the public or put the public safety at risk. The Tribunal does not need to determine whether a sexual assault took place. Following a criminal trial, the judge determined there was reasonable doubt as to whether Mr. Shahmehr sexually assaulted Ms T, and so he was acquitted. Nevertheless, the events that took place on

July 11, 2019

June 7, 2018 were very much the focus of the hearing in order to determine whether there are reasonable grounds to believe, given those charges that Mr. Shahmehr would be a threat to public safety.

The Tribunal heard two very different accounts of what occurred on that day. Only Mr. Shahmehr and Ms T know for sure what really happened.

We considered Ms T's evidence that Mr. Shahmehr offered her to remove her shoes and put her feet up on his console. Yet Mr. Shahmehr said he asked her to do no such thing. Quite the opposite, as his evidence was that she stretched out her legs and put her shoes where he keeps his food and newspaper and he asked her to remove them. We know that Ms T felt unwell and left work early that day. It may be that she did wish to stretch out her legs on the taxi ride home. Ms T stated that Mr. Shahmehr squeezed her feet and called her a good girl. This made her very uncomfortable and she froze, not removing her feet and remaining motionless for a time.

The Tribunal found it implausible that Mr. Shahmehr would invite Ms T to remove her shoes and put her bare feet up on his console. This is typically an area where drivers keep their personal belongings and it would be unusual for a driver to invite a customer to place his or her feet in that area. The Tribunal is not discrediting Ms T's evidence as this may well be how she interpreted the situation. We preferred Mr. Shahmehr's account over hers, however.

Once Mr. Shahmehr reached Ms T's house, the accounts of what occurred differ on certain points. Ms T stated that she had only a backpack and a coat with her. Her evidence was that she paid using her credit card and placed her wallet back in her backpack. She stated that Mr. Shahmehr came around to the van door, took her backpack and carried it to the house. Mr. Shahmehr's evidence was that she had a backpack, a jacket and two heavy plastic bags. He stated that he asked her if she needed help. She said she would appreciate the help. He stated that he went to the side van door and held out his arm for her to grasp as she stepped out of the van. His evidence was that he then carried her two plastic bags to the house and she carried her own backpack.

The Tribunal wondered why, if Ms T felt uncomfortable with Mr. Shahmehr when he said she was a good girl and squeezed her feet, would she accept that he carry her backpack to her door, according to her account? Why would she not carry her backpack out of the van and be on her way, once she completed payment? Did Ms T also have two plastic bags with her? If so, why did she omit this from her testimony? The Tribunal had difficulty accepting Ms T's account here. In the normal course, a customer with a backpack can usually disembark a taxi without the driver's assistance. Mr. Shahmehr's evidence made more sense in that there were two additional plastic bags that he helped her carry while she carried her own backpack. We accepted Mr. Shahmehr's account as it seemed a more characteristic form of assistance for a taxi driver and a more reasonable explanation of what occurred when disembarking the van.

Once Mr. Shahmehr deposited the bag(s) in the hallway at the side door of Ms T's house, the Tribunal heard conflicting accounts of the events that occurred next. Did Mr. Shahmehr lean in and kiss Ms T on the cheek? Did he then brush his arm across her breast? Mr. Shahmehr denies that this ever happened. Ms T asserted it to be absolutely

July 11, 2019

true. When we reviewed the evidence of Ms T and Mr. Shahmehr, we found Mr. Shahmehr's account to be more consistent and more plausible. We found that it was more probable than not that Mr. Shahmehr dropped the bags off and returned to his van.

In considering the evidence and whether Mr. Shahmehr would be a danger to public safety, we looked at several other factors. We considered Mr. Shahmehr's mostly unblemished driving record over the last 25 years. He has a few Highway Traffic Act charges and convictions over a long period. He was charged with careless driving in October 2015 but only convicted of "unsafe turn/lane change – fail to signal" in October 2016, a less serious offence. Since April 2017, when he was placed on probation as a result of the joint proposed resolution, he has had two by-law convictions and one "red light fail to stop" conviction. This is not a driving record which causes sufficient concern to the Tribunal or that indicates Mr. Shahmehr's driving poses a danger to the public. In our view, Mr. Shahmehr's driving and bylaw charges and convictions does not show a concerning pattern. Further, there were no other customer complaints to indicate that Mr. Shahmehr has a history of inappropriate behavior with other female passengers or any passengers, nor has Mr. Shahmehr been charged with any similar criminal offences.

We also considered Mr. Shahmehr's evidence in his forthright admission that he took fares from unaccompanied female passengers even though it was explained to him, during the hearing, that this contravened the conditions the Tribunal placed on his licence in November 2018. It is reasonable to believe that he did not understand that the conditions were mutually exclusive instead of taken together. In other words, he was prohibited from taking fares from unaccompanied female passengers and could not take any female passengers in the front seat and could not drive a taxi after 9:00 pm. It could well be that the conditions were explained to him in error by his legal representative or interpreter or that he misunderstood and thought that he could not take any unaccompanied female passengers in the front seat. In any event, he was driving unaccompanied female passengers while the criminal matter was pending. The Tribunal noted that there were no new charges or complaints from female passengers or any passengers in the eight months since conditions were put on his licence, despite the fact that he continued to take fares from unaccompanied female passengers.

In considering all the evidence, the Tribunal considered that even if we preferred Ms T's version of events over Mr. Shahmehr's, we found this to be an isolated incident with little risk to public safety going forward. We considered all the evidence as a whole. We considered Mr. Shahmehr's past conduct, free of other complaints, and his driving record. We found Ms T's evidence to be at times inconsistent and ambiguous.

We also balanced Mr. Shahmehr's right to earn a livelihood against the protection of the public interest. We noted that at 79 years of age, Mr. Shahmehr would be unlikely to find another line of work, and that though he received some income from Canada Pension Plan, this was not enough to support himself, his wife and son, both of whom depend on him. The Tribunal was also persuaded that Mr. Shahmehr would have difficulty renting his taxi out or earning a sufficient livelihood in this manner. In our view, his livelihood needs further tipped the balance in favour of continuing his licence. We did not find the evidence weighed in favour of revoking Mr. Shahmehr's licence.

The Tribunal was entirely satisfied on the evidence at the hearing that it did not have reasonable grounds to believe that the licensee has not carried on and will not carry on

July 11, 2019

his business in accordance with the law and with honesty and integrity, that his carrying on the business has resulted and will result in a breach of this chapter or any law, and that his carrying on the business has infringed or would infringe the rights of members of the public and has endangered or would endanger their health or safety.

DECISION

For the reasons set out above:

The Tribunal orders that Mr. Shahmehr's Vehicle-For-Hire Driver's Licence be renewed without conditions.

Originally Signed

Daphne Simon, Panel Chair
Panel Members, Melina Laverty and Edgar Montigny concurring

Reference: Minute No. 124/19

Date Signed: July 17, 2019