



AFFIRMED
NEW JERSEY MOTOR VEHICLE COMMISSION

State of New Jersey, ^{OAL} Date 3-23-17
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT NO MVH 16553-16

**NEW JERSEY MOTOR VEHICLE
COMMISSION,**

Petitioner,

v

TONYA L. HARRIS,

Respondent

The New Jersey Motor Vehicle Commission appearing on the papers pursuant to
N J A C 1 1-5 6

Randy E. Lewis, Esq, for Respondent

Record Closed December 23, 2016

Decided February 6, 2017

BEFORE JOHN P. SCOLLO, ALJ

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On March 17, 2015, the New Jersey Motor Vehicle Commission (MVC) issued a Scheduled Suspension Notice to Petitioner Tonya L Harris (Harris) pursuant to N J S A 3-10 et seq, and 39 5-30 and N J A C 13.21-14 5(a) and (c) The proposed suspension arose out of Harris's entry of guilty pleas on January 4, 2015, to two disorderly persons offenses, which were downgrades of four third-degree charges, one

second-degree charge, and one disorderly persons charge. The guilty pleas were entered to a charge of disorderly conduct under N J S A 2C 33-2 and simple assault under N J S A 2C 12-1(a)(1). The evidence elicited at the December 23, 2016, hearing indicates that the charges arose out of an incident initiated by another actor, the driver of a box truck, who without justification blocked Harris's vehicle from moving and who without justification started an altercation by yelling at Harris and pushing her.

Petitioner has requested a fair hearing for the purpose of opposing the proposed suspension of her commercial driving license passenger endorsement.

The Motor Vehicle Commission transmitted this matter to the Office of Administrative Law (OAL), where it was filed on October 27, 2016, as a contested case pursuant to the provisions of N J S A 52 14B-1 through -15 and N J S A 52 14F-1 through -13. The matter was originally set for a hearing on July 21, 2016, under OAL Docket Number MVH 08649-16 and MVC Reference Number H60772. However, Harris failed to appear because the attorney who represented her at the time failed to notify her of the hearing date. The case was subsequently re-transmitted to the OAL under its present Docket Number MVH 16553-16. The hearing was held on December 23, 2016, and the record closed on that date.

FACTUAL DISCUSSION AND FINDINGS OF FACT

The following **FACTS** are not in dispute:

1. The charges brought against Tonya L. Harris arising out of the March 6, 2015, date of incident were the following:

- Aggravated Assault with a Weapon, 2C 12-1B(2) third-degree crime
- Aggravated Assault with Bodily Injury, 2C. 12-1B(7) third-degree crime
- Improper Behavior, 2C 33-2A(1) disorderly persons offense
- Possession of Weapon for Unlawful Purpose, 2C 39-4D third-degree crime
- Use of Person under 17 to Commit Offense, 2C 24-9A second-degree crime

2 These charges were downgraded to two disorderly persons offenses to which Harris entered pleas of guilty in Bloomfield Municipal Court on January 4, 2015, for which she was sentenced to one year of probation on each plea running concurrently.

3 The charges brought against Essence Harris, daughter of Tonya L Harris, age nineteen on the date of the incident, were the following

-Aggravated Assault, 2C 12-1B(2) third-degree crime

-Simple Assault, 2C 12-1(a)(1) disorderly persons offense

These charges were downgraded to a disorderly persons offenses (unspecified at the hearing), Essence Harris entered Pre-Trial Intervention (PTI) and was placed on two years' probation, which she successfully completed. As a result of her plea of guilty Essence Harris lost her security guard license and her job as a security guard

4 The Bloomfield Police Department did not file any charges against the driver of the box truck (His name was not reported on any records submitted to this Tribunal and it is unknown to the Harrises)

5 Based on the Tribunal's review of the documentary evidence submitted and the testimony presented at the hearing, and the tribunal having asked numerous questions of Tonya L Harris and of Essence Harris to test and confirm their accuracy and veracity, I **FIND** the following **ADDITIONAL FACTS**

-Tonya L Harris of North Brunswick, N J and her three children, Essence age nineteen, Myrie age seventeen, and Quadir age ten went shopping on March 6, 2015, at the Bloomfield Home Depot store and purchased items such as wood, nails, paint, etc with which to engage in a family project of building a closet at home

-After shopping was completed the goods were moved to the vehicle loading area and placed into the family's minivan by Harris and her children

-As Harris started to move her vehicle forward to leave the loading area she had to stop suddenly due to the fact that the driver of a box truck suddenly drove his vehicle in front of and perpendicular to the Harris vehicle blocking Harris's path. Harris alighted from her vehicle and calmly and politely asked the driver of the box truck to please move his vehicle out of her car's way.

-The driver, who was a foreigner and whose primary language was not English, replied to Harris in broken English that she would have to wait for him. As Harris tried to explain that she was trying to leave and that he was blocking her path the box truck driver's female companion tried to calm him down, but the driver of the box truck pushed Harris and caused Harris to fall down to the ground.

-Essence Harris, who had exited from the minivan to inquire about what was going on, saw the driver push and knock her mother down, attempted to defend her fallen mother and pushed the driver so as to allow her mother to get up. The driver chased Essence, who ran away from him consistent with her mother's command to do so.

-The other children, Myrie (female) and Quadir (male), exited the minivan to come to their mother's assistance.

-There was some continued scuffling as the driver of the box truck became increasingly excited and aggressive and as the Harris family members tried to defend each other from the driver. Then the scuffle suddenly stopped as bystanders and someone from the store came to the scene.

-The Bloomfield Police came to the scene. They charged members of the Harris Family with various crimes, one of which alleged the use of a deadly weapon, but did not charge the driver of the box truck with any offense.

-Tonya Harris alighted from her vehicle to politely ask the driver of the box truck to move his vehicle so as to allow her to continue on her way and throughout the course of the aforementioned incident

-The driver of the box truck drove his vehicle swiftly in front of the moving Harris vehicle so as to force Harris to suddenly apply her brakes

-The driver of the box truck refused to let the Harris family proceed on their way as verified by his declaration that they would have to wait for him

-The driver of the box truck assaulted Tonya Harris by pushing her and knocking her down

-Tonya Harris and her daughter Essence Harris tried to defend each other from the box truck driver's aggressive behavior when they scuffled with him.

-The actions of the box truck driver demonstrate that he was the sole aggressor in the aforementioned incident

-The actions of Tonya Harris and her children were not aggressive, but were solely and legitimately in self-defense and in the legitimate defense of others. Indeed, I am convinced that Tonya Harris's instruction to Essence Harris to get away from the box truck driver after he had knocked Tonya down demonstrated Tonya's non-aggressive intentions and concern for her child's safety

-Furthermore, there is no evidence in the record that fulfills the scienter (i.e. criminal intent) component of any of the following charges against Tonya Harris: disorderly conduct, simple assault, aggravated assault with a weapon, aggravated assault resulting in bodily injury, use of a person under age 17 in the commission of a crime, improper behavior, or possession of a weapon for an unlawful purpose

-No weapon was found at the scene

-Tonya Harris derives her living solely from her job as a school bus driver with Montauk Transit Service and that, according to the laudatory letters presented on her behalf by officials of that company, she has performed her duties in a completely satisfactory manner and is well regarded by her employer

-Without her employment Tonya Harris would be completely unable to pay for her family's necessities (food, clothing, shelter [\$1,950 rent], school costs, etc. which total about \$3,000 per month) and that she and her children will likely have to apply for welfare benefits

-The December 20, 2016, report of Probation Officer Yesenia Melendez that Tonya Harris has been compliant with the terms and conditions of her probation.

LEGAL ANALYSIS AND CONCLUSION

N J A C 13 21-14 5 set forth the requirements for Passenger Endorsements for Commercial Drivers Licenses. Under N J A.C 13 21-14.5(c) the Chief Administrator of the Motor Vehicle Commission may revoke or suspend the passenger endorsement of the endorsement holder when it is determined that said person has been adjudicated to be in violation of certain offense, to have accumulated excessive points, to have been involved in three or more motor vehicle accidents within a year of his application for the endorsement, to be physically unfit, morally unfit for driving passengers, to have failed requisites driving knowledge and driving skills tests, or to have acquired a record of criminal offenses or to have been charged with criminal offenses which the Chief Administrator determines present a danger to passengers Under N J A.C. 13. 21-14 5(c)(12)(i)(3), a conviction of an offense involving the use of force upon a person, such as assault, the Chief Administrator may revoke or suspend the holder's passenger endorsement

In the case at bar, the MVC seeks to indefinitely suspend the passenger endorsement of the CDL held by Harris. The Tribunal understands that the passenger endorsement held by Harris allows her to drive a school bus and that without it she

would be unable to drive a school bus, and the Tribunal further understands that Harris's CDL does not allow her to drive any other type of commercial vehicle

The Tribunal is cognizant of the Legislature's desire, as expressed in N J S A 39 3-10, et seq and 39.5-30, that every holder of a special license, such as a CDL, and especially those entrusted with the driving of our schoolchildren, should be of good character To this end, reasonable regulations, like the one cited above, have been put into effect to safeguard the transportation of passengers.

The language of N J A C 13 21-14 5(c)(12)(i)(3) is decidedly permissive (as evidenced by the use of the word "may"), rather than mandatory (as would be the case if the word "shall" had been used) Thus the intent of the regulation is to give the Chief Administrator the discretion to suspend or revoke the passenger endorsement if the circumstances of the criminal offense warrant it.

This Tribunal has examined the documentary evidence submitted, has listened carefully to the testimony, and has conducted its own inquiry by questioning the witnesses to test for inconsistencies and to test for veracity. It appears to this Tribunal that the box truck driver was unavailable or was unwilling to testify

The issue presented to the Tribunal is whether the entry of the two guilty pleas to downgraded disorderly persons offenses presents sufficient justification—under the circumstance of the underlying event—to indefinitely suspend the passenger endorsement of Tonya L Harris Such a suspension, or even a lesser, time-limited suspension, would necessarily disable Harris from earning a living from a job that she has held for a substantial period of time and which she has performed in a manner that her employer considers praiseworthy

Giving due consideration to the nature of the charges, the entry of pleas to the downgraded charges, the circumstances of the incident itself including the absence of any charges filed against the driver who instigated the incident and who initiated the violence, the very strong inferences of the Harris family members acting in self-defense

and defense of others, I **CONCLUDE** that Tonya L Harris did not do anything that brought about the incident, she merely loaded her vehicle and attempted to exit the loading area when another vehicle, the box truck, suddenly blocked her path

I **CONCLUDE** that Harris's account of politely asking the other driver to move his vehicle so as to allow her and her children to drive away is believable and does not demonstrate any degree of improper conduct I **CONCLUDE** that the actions of the box truck driver—blocking Harris's vehicle, refusing to allow Harris to proceed, and assaulting Harris—was conduct that was inconsistent with the safe and proper use of New Jersey's roads and highways I **CONCLUDE** that Harris's approach to the box truck driver was not improper and that her request that he move his vehicle to let her proceed was entirely proper I **CONCLUDE** that Harris's action following the box truck driver's assault upon her was consistent with her right to self-defense and defense of others (her children) and did not exhibit aggression, but merely defensive action, which soon subsided

Other than the fact that Harris, in the face of four third-degree charges and one second-degree charge each carrying the potential for several years of imprisonment, pled guilty to two disorderly persons offenses (knowing that she would not face imprisonment by entering such pleas) I **CONCLUDE** that there is no evidence of Harris initiating disruptive or assaultive conduct, none Therefore, I **CONCLUDE** from the record before this Tribunal that there is insufficient evidence from the incident of March 6, 2015, to conclude by any stretch of reasoning that Tonya Harris lacks sufficient good character and is otherwise unfit to drive a school bus and otherwise care for the schoolchildren who will ride as passengers on her bus

From the documentary evidence submitted and from the testimony elicited, I **CONCLUDE** that there should be no suspension of Tonya L Harris's passenger endorsement of her CDL

ORDER

Based upon the foregoing, it is **ORDERED** that the proposed suspension of Harris's passenger endorsement should not be put into effect.

I hereby **FILE** my Initial Decision with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION** for consideration

This recommended decision may be adopted, modified or rejected by the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION**, who by law is authorized to make a final decision in this matter. If the Chief Administrator of the Motor Vehicle Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N J S A 52 14B-10

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION, 225 East State Street, P.O. Box 160, Trenton, New Jersey 08666-0160**, marked "Attention. Exceptions." A copy of any exceptions must be sent to the judge and to the other parties

February 6, 2017
DATE

John P. Scollo
JOHN P. SCOLLO, ALJ

Date Received at Agency

February 6, 2017

Date Mailed to Parties
db

February 6, 2017

APPENDIX

List of Witnesses

For Petitioner

None

For Respondent

Tonya L Harris

Essence Harris

List of Exhibits

For Petitioner

- P-1 October 24, 2016, MVC letter mailing copies of documents to Harris
- P-2 October 24, 2016, Re-Transmittal of OAL Case
- P-3 Failure to Appear
- P-4 Certified Abstract of Driver History
- P-5 NJSP Arrest Notification
- P-6 NJSP Conviction Notification
- P-7 N J Promis/Gavel
- P-8 Judgment of Conviction, Superior Court
- P-9 6/26/15 Supplemental Specifications
- P-10 Mitigating Factors
- P-11 11/11/15 Employer Letter
- P-12 Report to Court Notice
- P-13 Scheduled Suspicion Notice dated 3/17/15
- P-14 Attorney Policastro's letter dated March 30, 2015
- P-15 ATS/ACS Code tables
- P-16 12/15/15 MVC Conference Report

For Respondent

R-1A 11/11/15 and 12/7/16 Employer's Letters

R-1B Tonya Harris's 12/20/16 Statement

R-1C Harris's Lease

R-1D MVC Mitigating Factors and Evidence of Rehabilitation

R-1E 12/20/16 Letter of Probation Office Yesenia Melendez

R-1F 12/20/16 note from Harris