July 5, 2022

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON

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REPORT AND DECISION

SUBJECT: King County For-Hire Licensing file no. **12258**

AAMAR KHAN
For-Hire Driver Enforcement Appeal

License: 12258

Appellant: **Aamar Khan**
[redacted]
SeaTac, WA 98188
Telephone: [redacted]
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King County: King County For-Hire Licensing
represented by **Tyson Taylor**
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FINDINGS AND CONCLUSIONS:

Overview

1. Aamar Khan appeals a King County Records and Licensing Services (RALS) for-hire license denial. After hearing the witnesses' testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we deny his appeal. However, we sync our decision to the ultimate outcome of Mr. Khan's parallel and pending appeal with Seattle's hearing examiner.

Background

2. In December 2018, Mr. Khan was arrested for assault against his then-wife; the officers each filed an investigation report. Ex. D2 at 001 to 003. Renton's prosecuting attorney then filed an amended complaint, accusing Mr. Khan of fourth degree domestic violence assault. Ex. D2 at 007. In August 2019, Renton's municipal court issued a stipulated order of continuance agreement (Renton order). Ex. D3. Mr. Khan eventually pled guilty, in March 2022, to the charge of fourth degree assault, domestic violence. Ex. D7.

3. However, back in May 2020, Seattle police had been dispatched to Lincoln Park, after Ms. Khan reported that Mr. Khan sexually assaulted her in the park. Ex. D5 at 004-08. In August 2020, the Seattle's city attorney issued a criminal complaint against Mr. Khan for assault with sexual motivation against Ms. Khan. Ex. D4. In August 2021, the Seattle municipal court issued a stipulated order of continuance and waiver of rights (Seattle order). Ex. D5 at 001-03.

4. Most seriously, in December 2021 the state filed an information in King County Superior Court, accusing Mr. Khan of first-degree rape of a child and first-degree child molestation (of his daughter), between January 2018 and March 2020.

5. In March 2022, RALS issued Mr. Khan a notice and order, denying his dual Seattle/King County for-hire license. Ex. D8. Mr. Khan timely appealed. Ex. D9. We held a pre-hearing conference on May 13. We went to hearing on June 23.

6. And in our prehearing order, we announced that, having no experience in criminal proceedings, plus Superior Court's role to render decisions on the pending charges, and given concerns over the right against self-incrimination if we accepted testimony related to pending criminal charges, we would *not* be taking testimony about what happened on the days of the alleged criminal acts, and instead would confine our review to the exhibits.

7. Thus, while we typically include a separate section in our decision summarizing the factual testimony, most of what was orally presented on June 23 was essentially argument. We thus weave the minimal factual testimony and the argument into our analysis section.

Applicable Standards

8. RALS's first, and most straightforward, denial ground is KCC 6.64.600.B.1, which allows ("may deny") denial of a license renewal where the applicant has had, within the previous five years "a criminal conviction…involving a crime pertaining to…physical violence."

9. The other denial ground is more involved, with RALS seeking denial under KCC 6.64.620, which states that:

> In addition to the application requirements in this chapter, the director may obtain other information concerning the applicant's character, integrity, personal habits, past conduct and general qualifications that

> shows the applicant's ability and skill as a for-hire driver and the applicant's honesty, integrity and character for the purposes of determining whether the applicant is a suitable person to drive as a for-hire driver. If the director is satisfied that the applicant possesses the qualifications and is a suitable person to drive as a for-hire driver under this chapter, the director shall issue the applicant a for-hire driver's license.

And where the Applicant fails to meet any qualification for a for-hire driver, KCC 6.64.600.A.2 requires ("shall deny") denial of a license renewal.

10. We do not grant substantial weight or otherwise accord deference to agency determinations. Exam. R. XV.F.3. For those matters or issues raised in an appeal statement, RALS bears the burden of proving by a preponderance of the evidence both the violation and the appropriateness of the remedy it has imposed. KCC 20.22.080.G; .210.B.

11. In addition, there is the backdrop of the far from ideal Seattle/King County for-hire drivers' license appeal procedure. Pursuant to a 1995 cooperative agreement, the County's RALS reviews and decides for-hire applications for a dual County/City driver's license, issuing a single letter approving or denying both City and County licenses, as it did here. Government at its cooperative, streamlined best.

12. However, those benefits evaporate once the County issues a license denial, because the agreement provides that the City and County each handle their own appeals. Thus, RALS's single denial document must be appealed twice—to us to decide the County portion of the letter and to Seattle to decide the City portion of the same letter. This is problematic on at least three levels.

13. Two of those shortcomings are beyond our control:

- Drivers must file two separate appeals, due at different times (10 days and 24 days) regarding the same underlying facts and typically the same controlling legal standard, navigate two administrative ladders and rules of procedure, and attend parallel hearings—a problematic scheme for any licensee but especially for the large percentage of applicants with limited English proficiency and no attorney, raising significant equity and social justice concerns.

- RALS must prepare for and participate in parallel administrative hearings. Two hearing offices—three, if the Seattle Administrative Hearing Officer's (AHO's) decision is appealed to Seattle's Hearing Examiner—have to arrange, prepare for hold, and then consider and rule on the same set of underlying events and often similar legal standards; a wasteful toll.

14. However, we can do something about the third harm, the specter of inconsistent results. Where the controlling legal standard is similar, absent some materially different evidence produced in one of the hearings, a split result (i.e., one hearing officer affirms a license denial while the other officer overturns it) creates an inconsistency that undercuts

confidence in the fairness of the process. And the appearance of fairness doctrine is a hallmark of the examiner system.[1] Absent a materially different substantive legal standard or evidentiary record, an applicant fit to drive in one place should be fit to drive in the other, and an applicant not fit to drive in one place should not be driving in either.

15. That does not mean we lockstep follow a Seattle decision, simply to achieve uniformity. In *Ahmed*, for example, the AHO denied Mr. Ahmed's appeal. However, seven of the nine items ostensibly supporting the proposition that Mr. Ahmed was a habitual traffic offender were camera tickets. State law mandated that infractions detected through the use of automated traffic safety cameras were *not* deemed part of the registered owner's driving record. Appellate court decisions had confirmed that camera tickets were essentially treated like parking tickets, not driver infractions. We granted Mr. Ahmed's appeal despite the split it created.[2]

16. Yet in general, we try to avoid inconsistent decisions and the poor reflection those make on the quasi-judicial hearing process. There is also the logistical impediment that a split decision means that a driver can drop off passengers in one jurisdiction, then have to deadhead out to pick up the next fare.

Analysis

17. Mr. Khan's only conviction to date, his March 2022 Renton fourth degree assault—domestic violence plea is, as a matter of law, a crime pertaining to physical violence. Ex. D7. But that qualifying conviction only gets Mr. Khan into the KCC 6.64.600.B.1 box, where denial is discretionary ("may deny"). Unlike other types of convictions where denial is mandatory ("shall deny") his particular conviction mandates a balancing of factors. *Compare* KCC 6.64.600.A.3 & B.1.

18. Any assault, especially in the domestic context, is serious. The Renton judgment does not specify the crime classification, but as we read RCW 9A.36.041, his assault, with no prior convictions qualifies as a gross misdemeanor, not a felony. The police narrative from the December 2018 incident is disturbing, but according to the police's interview with the son, the altercation stemmed from Ms. Khan using foul language in bad-mouthing Mr. Khan's family, with Mr. Khan attempting to cover her mouth; this resulted in scratches to her face. Ex. D2 at 002-03. That is consistent with the video Mr. Khan took seconds after that altercation. Ex. A1.[3] And the context makes it less atrocious than the alleged Seattle assault that followed, even if the actual charge is similar.

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[1] The doctrine comes from RCW 42.36.010 and the land use context, but examiners typically apply the concept to all quasi-judicial activities.

[2] *See* https://kingcounty.gov/~/media/independent/hearing-examiner/documents/case-digest/appeals/for-hire%20enforcement/2018/65547_Ahmed.ashx?la=en.

[3] RALS did not object to admission of Mr. Khan's video. The AHO excluded a video as not meeting the two-party consent rule. We are not entirely sure if that is the same video, because the AHO mentions video of Mr. Khan's son swearing at him, while exhibit A1 shows the son only arguing with *Ms.* Khan, while Mr. Khan films it. RCW 9.73.030 states that "consent [to recording] shall be considered obtained whenever one party has announced to all other parties engaged in the communication or conversation, in any reasonably effective manner, that such communication or conversation is about to be recorded." Ms. Khan notes at the beginning that, "Oh, you want to video tape it" (:07) then says, "You can record it" (:36). Exhibit A1 is not terribly probative, but we do not *sua sponte* exclude it.

19. Balancing that Renton conviction against an unblemished driving record, the absence of even a for-hire complaint against Mr. Khan, and the elimination of Mr. Khan's current livelihood license denial would create, we would not find that single Renton event, standing alone, sufficient for RALS to meet its burden of proving that denial was warranted. And while we do not give an agency deference, in its staff report discussion and hearing arguments, RALS did not focus on the Renton conviction in isolation, but as part of a larger whole that followed the December 2018 assault. We agree and turn to that next.

20. In August 2020, while still on a stipulated order of continuance for the Renton charge, Mr. Khan was charged with having assaulted Ms. Khan, with sexual motivation, in Seattle in May 2020. Exs. D3 & D4. He entered another stipulated order of continuance in August 2021. Ex. D5.

21. The AHO found that Mr. Khan had twice violated the no-contact terms of the order. If Mr. Khan contacted Ms. Khan after August 2021, that was a blatant violation of the Seattle order that Mr. Khan "shall not contact or attempt to contact" Ms. Khan, with no carveouts. Ex. D5 at 002. However, the only order in place at the time Mr. Khan met with Ms. Khan in May 2020—the August 2019 Renton order—required only that he have "no hostile contact with" Ms. Khan. Ex. D3 at 002.

22. Now, if Mr. Khan did anything approaching what he is alleged to have done in Seattle in May 2020, he had much more than "hostile contact"—he committed another crime, the context of which made it significantly worse than his December 2018 assault. Ex. D5 at 006. Mr. Khan denies the accusations, and asserts his ex-wife has fabricated this as part of their divorce proceedings. Per the text of the Seattle order, no findings have been made; if Mr. Khan successfully complies with the conditions of the Seattle order and there are no new allegations, the prosecutor will dismiss the charges with prejudice. Ex. D5 at 003. So, there is no fixed finding in the record of whether, in May 2020, Mr. Khan committed a crime or even "hostile contact." (Again, we announced before the hearing that we would *not* be taking testimony about the days of the alleged criminal acts.)

23. And that brings us to the most grievous portion of this case. In December 2021 Mr. Khan was charged in King County with rape of a child in the first degree—domestic violence and child molestation in the first degree, both against his daughter, and over a 14-month period. Ex. D6 at 001-02. The events laid out in the certification of a determination of probable cause are stomach-churning. Ex. D6 at 003-05. If Mr. Khan performed any of those alleged acts, he should be behind bars, not behind the wheel of a for-hire vehicle. Mr. Khan denies this on the same ground—that his wife concocted this to frame him as part of their divorce proceedings. The criminal case is apparently set for trial in August, meaning there is no fixed finding for us to review during our 10-business-day window for issuing a decision. And, as noted above, we did not take testimony about the alleged criminal acts.

24. So, what do we do in the interim, while the charges are still pending?

25. RALS began its presentation by noting that there were two "heinous" crimes charged. Recognizing that the charges are outstanding, RALS pointed to the code's purpose to protect the public, and asserted that the drafters of KCC 6.64.620—with the inquiry into character, integrity, past conduct, honesty, integrity and character—envisioned that in certain instances there would be something that did not fit into another category (such as a conviction), yet which puts the public at too great a risk to allow the person to pick up passengers. And we add that because KCC 6.64.600.B.1's discretionary ("may deny") analysis requires a balancing of factors, in the same way that we factor in his unblemished driving record, absence of even any driving-related complaints, and Mr. Khan's livelihood, we consider that probable cause has been found that Mr. Khan has committed some of the most monstrous crimes imaginable.

26. Mr. Khan vigorously denies that he committed any of the pending offenses. And there is a presumption of innocence that applies to pending criminal matters. Plus, as described above, having not allowed testimony as to what happened on the days of the alleged criminal acts, we are in no position to independently assess the veracity of the pending charges. Often our hearing acts as an appellant's full, due process "day in court," but, given the procedural posture here, that is not so true.

27. Allowing pending criminal charges to support a license denial could easily lead itself to abuse, if RALS routinely denied, suspended, or revoked licenses based on such charges and RALS's subjective finding that the person was not "a suitable person to drive as a for-hire driver." And yet that is not how things have played out. We can only recall one other case in our approximately 100 for-hire driver's license appeals where RALS attempted to stop someone from driving based on pending charges, rather than waiting for the criminal process(es) to play out.[4] Given the gravity of the King County charges, and the obvious connection between those alleged acts and passenger safety, we understand why this case was the sequel.

28. In the end, we face a dilemma. We could grant Mr. Khan's appeal, despite probable cause being found not only that he committed a second assault, but also that he repeatedly raped and molested his daughter. Or we could deny his appeal and eliminate Mr. Khan's current livelihood, despite Mr. Khan having only definitively committed a 2018 gross misdemeanor, the presumption that he is innocent until proven guilty of his remaining charges, his unblemished driving record, and the absence of any for-hire complaints. We conclude that RALS has met its burden of showing license denial is warranted, but we write that with less confidence than we do in other scenarios where we deal with a complete record, or where we can fully probe events at hearing and make our own complete findings.

29. We thus return to our starting point of avoiding split Seattle/County decisions and the poor reflection those make on the fairness of the quasi-judicial hearing process. If Mr. Khan is fit to drive in Seattle, he should be fit to drive in the County, and if Mr. Khan is not fit to drive in Seattle, he should not be driving in the County either.

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[4] In that previous case, the appellant failed to appear, and we dismissed his case on that ground, meaning we yet to tackle the substance of an adverse RALS action based on a pending charge(s).

30. The AHO denied Mr. Khan's appeal; we do the same. However, Mr. Khan has appealed the AHO's decision to *Seattle's* hearing examiner. *See* SMC 6.310.635.D. We explicitly link our decision to the outcome of the Seattle examiner's process. If the Seattle examiner eventually grants Mr. Khan's Seattle appeal, we reverse our denial and grant Mr. Khan's County appeal to the same extent Seattle does. This has two impacts.

31. First, enforcement of a notice and order under KCC chapter 6.64 is stayed only during the pendency of an examiner appeal. KCC 20.22.210.A. Thus, because we are denying Mr. Khan's appeal today, he would typically be barred now from picking up passengers outside Seattle immediately, at least until a court said otherwise. However, as we understand it, Mr. Khan is allowed to continue picking up passengers in Seattle while his appeal is pending with Seattle's examiner. We will match that. Mr. Khan may continue to pick up passengers elsewhere in the County so long as he is eligible to pick up passengers in Seattle.[5]

32. Second, KCC 20.22.040 directs us to make the County's final decision for this type of case. Our decision is typically conclusive unless either party appeals to superior court within 30 days. So, Mr. Khan would be appealing our denial while working through the Seattle administrative process. And if the Seattle examiner reverses Mr. Khan's license denial, our decision will sync with that; it would then be *RALS's* choice whether or not to appeal our, and the Seattle examiner's, grant of Mr. Khan's appeal. Thus, our decision is not actually "final" today. Either party is certainly free now to seek some sort of court intervention if it so desires, but we clarify that the deadline to appeal our decision to superior court is 30 days after the Seattle examiner issues a final determination on the City portion of the dual license.

DECISION:

1. We DENY Mr. Khan's appeal as to the County portion of his dual, County/City license.

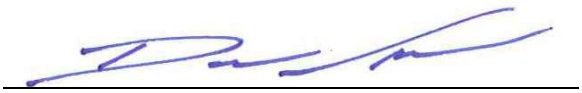
2. However, if the ultimate outcome of the Seattle hearing examiner process is to grant, in whole or in part, Mr. Khan's appeal of the City portion of that license, then we reverse, in whole or in part, our decision so as to synch our outcome with the Seattle examiner's outcome.

3. As long as Mr. Khan is eligible to continue picking up passengers in Seattle, he may continue picking up passengers in King County. If or when he is no longer eligible to pick up passengers in Seattle, he may no longer pick up passengers in King County.

4. Our decision becomes final and conclusive unless, within 30 days of the Seattle examiner disposing of Mr. Khan's City appeal, either party applies for a writ of review in superior court, in accordance with chapter 7.16 RCW.

[5]If we have misunderstood the situation, and Mr. Khan is currently barred from picking up passengers in Seattle, then he is also now barred from picking up passengers elsewhere in the County.

ORDERED July 5, 2022.



David Spohr
Hearing Examiner

MINUTES OF THE JUNE 23, 2022, HEARING IN THE APPEAL OF AAMAR KHAN, KING COUNTY FOR-HIRE LICENSING FILE NO. 12258

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Aamar Khan and Tyson Taylor. A verbatim recording of the hearing is available in the Hearing Examiner's Office.

The following exhibits were offered and entered into the record by the Department:

Exhibit no. D1	King County For-Hire Licensing staff report to the Hearing Examiner
Exhibit no. D2	City of Renton Police Report and Municipal Court Amended Complaint – 8Z1186192, dated December 29, 2018
Exhibit no. D3	Renton Municipal Court Stipulated Order of Continuance, dated August 26, 2019
Exhibit no. D4	Seattle Municipal Court Criminal Complaint, dated August 19, 2020
Exhibit no. D5	Seattle Police Report and Municipal Court Stipulated Order of Continuance, filed August 11, 2021
Exhibit no. D6	King County Superior Court Information – 21-1-05714-7, filed December 2, 2021
Exhibit no. D7	Renton Municipal Court Judgment and Sentence – 8Z1186192, dated March 7, 2022
Exhibit no. D8	Notice and order of for-hire driver's license denial, issued March 30, 2022
Exhibit no. D9	Appeal

The following exhibits were offered and entered into the record by the Appellant:

Exhibit no. A1	Video of Renton Municipal criminal matter

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CERTIFICATE OF SERVICE

SUBJECT: King County For-Hire Licensing file no. **12258**

AAMAR KHAN
For-Hire Driver Enforcement Appeal

I, Jessica Oscoy, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **REPORT AND DECISION** to those listed on the attached page as follows:

☒ EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.

☒ placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED July 5, 2022.

Jessica Oscoy
Office Manager

Cantu, Eddie
King County For-Hire Licensing

Isaacson, Mari
Prosecuting Attorney's Office

Khan, Aamar
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