

**IN THE CITY OF APPLETON,
OUTAGAMIE COUNTY, STATE OF
WISCONSIN, BEFORE THE SAFETY
AND LICENSING COMMITTEE.**

CITY OF APPLETON,
a Wisconsin Municipal Corporation
100 N. Appleton Street
Appleton, WI 54911

Petitioner,

v.

TJS JAPANESE STEAKHOUSE
XI LIN (aka CINDY LIN), Agent
4025 East Lorna Lane
Appleton, WI 54915

Respondent.

The Safety and Licensing Committee for the City of Appleton does hereby make the following findings of fact, conclusions of law and recommendation to the Common Council in the above referenced matter:

FINDINGS OF FACT

1. The City Clerk received a complaint from the City of Appleton Chief of Police, Peter Helein, on November 26, 2013, alleging violations of the Appleton Municipal Code relating to the liquor license held by TJ's Japanese Steakhouse, 4025 East Lorna Lane and requesting revocation of the liquor license.
2. A hearing for the complaint was scheduled for December 12, 2013, at which time the parties requested an adjournment to allow additional time to prepare, and this Committee granted the parties' request.
3. TJ's Japanese Steakhouse holds a combination Class B liquor license issued by the City of Appleton as identified in Exhibit 1 for its restaurant and bar located within the City of Appleton at 4025 East Lorna Lane, and has held such a license on December 17, 2011, July 21, 2012, and November 30, 2012, as well as at all times relevant to the actions described in the Petitioner's complaint.
4. The Agent for TJ's Japanese Steakhouse for the purpose of its liquor license is XI Lin, aka, Cindy Lin.

5. On December 17, 2011, Miranda B. Schuh, was issued a citation by the Appleton Police Department for the sale of a fermented beverage to a person under the age of 21 on that date at TJ's Japanese Steakhouse.

6. Miranda B. Schuh was an employee of TJ's Japanese Steakhouse on December 17, 2011 at the time she was cited for selling a fermented beverage to a person under the age of 21.

7. On April 13, 2012, Miranda B. Schuh, was found guilty of selling a fermented beverage to a person under the age of 21 during the course of her employment at TJ's Japanese Steakhouse when she entered a No Contest plea to this citation.

8. On July 21, 2012, Nathan L. Bovee was issued a citation by the Appleton Police Department for the sale of a fermented beverage to a person under the age of 21 on that date and during the course of his employment.

9. Nathan L. Bovee was an employee of TJ's Japanese Steakhouse on July 21, 2012 at the time he was cited for selling a fermented beverage to a person under the age of 21.

10. On September 19, 2012, Nathan L. Bovee, was found guilty of selling a fermented beverage to a person under the age of 21 during the course of his employment at TJ's Japanese Steakhouse when he failed to appear in Court at the designated time and was adjudged guilty by default.

11. On November 30, 2012, Nathan L. Bovee, was issued a citation by the Appleton Police Department for the sale of a fermented beverage to a person under the age of 21 on that date and during the course of his employment.

12. Nathan L. Bovee was an employee of TJ's Japanese Steakhouse on November 30, 2012 at the time he was cited for selling a fermented beverage to a person under the age of 21.

13. On November 14, 2013, Nathan L. Bovee, was found guilty of selling a fermented beverage to a person under the age of 21 during the course of his employment at TJ's Japanese Steakhouse when he was found guilty of this violation after a trial before the Court.

Motion by Alderperson Garb, seconded by Alderperson Plank, to approve the Findings of Fact as read. Upon vote, motion carried with 4 ayes, 0 nays.

CONCLUSIONS OF LAW

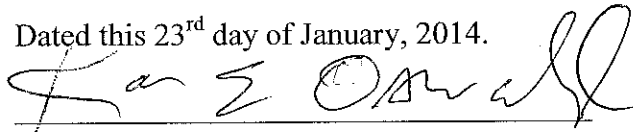
1. The complaint filed in this matter satisfies the requirements necessary to initiate a revocation proceeding to be reviewed by the City, namely Section 125.12(2)(ag), Wisconsin Statutes.
2. At all times relevant to this dispute, TJ's Japanese Steakhouse has held a combination Class B liquor license granted by the City of Appleton and, therefore, is subject to Sections 9-53 through 9-82 of the Appleton Municipal Code.
3. Miranda B. Schuh's conviction in circuit court for the sale of a fermented beverage on December 17, 2011 to a person under the age of 21 during her employment by TJ's Japanese Steakhouse constitutes a violation subject to 80 demerit points against its liquor license pursuant to Appleton Municipal Code Section 9-54.
4. Nathan L. Bovee's conviction in circuit court for the sale of a fermented beverage on July 21, 2012 to a person under the age of 21 during his employment by TJ's Japanese Steakhouse constitutes a violation subject to 80 demerit points against its liquor license pursuant to Appleton Municipal Code Section 9-54.
5. Nathan L. Bovee's conviction in circuit court for the sale of a fermented beverage on November 30, 2012 to a person under the age of 21 during his employment by TJ's Japanese Steakhouse constitutes a violation subject to 80 demerit points against its liquor license pursuant to Appleton Municipal Code Section 9-54.
6. The circuit court convictions of Miranda B. Schuh and Nathan L. Bovee for the sale of a fermented beverage to persons under the age of 21 during their employment by TJ's Japanese Steakhouse may be attributed to the licensee pursuant to Appleton Municipal Code Section 9-52(6).
7. The circuit court convictions of Miranda B. Schuh and Nathan L. Bovee for the sale of a fermented beverage to persons under the age of 21 on December 17, 2011, July 21, 2012, and November 30, 2012 result in a total of 240 demerit points assessed against the Licensee TJ's Japanese Steakhouse within an 18-month period as described and calculated pursuant to Appleton Municipal Code Section 9-54.
8. Section 9-54(d) of the Appleton Municipal Code states that a license shall be revoked if 200 or more demerit points are acquired by a licensee within an 18-month period.

Motion by Alderperson Plank, seconded by Alderperson Trauger, to approve the Conclusions of Law as read. Upon vote, motion carried with 4 ayes, 0 nays.

RECOMMENDATIONS

Alderperson Garb moved, seconded by Alderperson Plank, to recommend that the Common Council revoke the Respondent's combination "Class B" license issued for the premises located at 4025 East Lorna Lane. Upon vote, motion carried with 4 ayes, 0 nays.

Dated this 23rd day of January, 2014.

A handwritten signature in black ink, appearing to read "Kole Oswald". The signature is written in a cursive style with a large initial "K" and "O".

Kole Oswald, Chairperson
Safety and Licensing Committee



"CLASS B" RETAIL LICENSE
for the sale
FERMENTED MALT BEVERAGES AND INTOXICATING LIQUORS

WHEREAS, the local governing body of the CITY OF APPLETON, County of Outagamie, Wisconsin, has, upon application duly made, granted and authorized the issuance of a Retail "Class B" License to TJ THAI JAPANESE STEAKHOUSE INC, XI LIN, AGENT, to sell fermented Malt Beverages as defined by and pursuant to Section 125.26 of the Statutes of the State of Wisconsin and Local Ordinances and the said applicant has paid to the treasurer the sum of \$100.00 for such "Class B" Retailer's Fermented Malt Beverage license as required by local ordinances;

AND WHEREAS, the local governing body has granted and authorized the issuance of a "Class B" Intoxicating Liquor License to said applicant to sell intoxicating liquor as defined in and pursuant to Chapter 125.51(3) of the Statutes of the State of Wisconsin and Local Ordinances and the said applicant has paid to the treasurer the sum of \$325.00 for such "Class B" Intoxicating Liquor License as provided by local ordinances and has complied with all the requirements necessary for obtaining such licenses;

LICENSE IS HEREBY ISSUED to said applicant to sell, deal and traffic in, at retail, Fermented Malt Beverages and Intoxicating Liquors at the following described premises: 4025 EAST LORNA LANE - 6,000 SQ. FT. RESTAURANT WITH BAR, KITCHEN, OFFICE AND COOLERS.

For the period from July 1, 2013 through June 30, 2014.

Given under my hand and the corporate seal of the CITY OF APPLETON, this 14th day of June, 2013.

No. 88-14

Charlene M. Peterson

CHARLENE M. PETERSON, City Clerk

City of Appleton vs. Miranda B Schuh

Judgment of Conviction

and Sentence to the County Jail/Fine/Forfeiture

Date of Birth: 09-07-1983

Case No.: 2011FO002857

The defendant was found guilty of the following offense(s):

Ct.	Description	Violation	Plea	Severity	Date(s) Committed	Trial To	Date(s) Convicted
1	Adult Dispense Alcohol to UAP 1st	125.07(1)(a)1	No Contest	Forf. U	12-17-2011		04-13-2012

The defendant is guilty as convicted and sentenced as follows:

Ct.	Sent. Date	Sentence	Length	Begin date	Begin time	Agency	Comments
1	04-13-2012	Forfeiture / Fine					

Obligation Detail:

Ct.	Schedule	Amount	Days to Pay	Due Date	Failure to Pay Action	Victim
1	Local Forf. Violations	389.50	30	05-14-2012	Standard Enforcement	

Obligation Summary:

Ct.	Fine & Forfeiture	Court Costs	Attorney Fees	<input type="checkbox"/> Joint and Several Restitution	Other	Mandatory Victim/Wit. Surcharge	5% Rest. Surcharge	DNA Anal. Surcharge	Totals
1	262.00	114.50			13.00				389.50

Total Obligations: 389.50

It is adjudged that 0 days sentence credit are due pursuant to §973.155, Wisconsin Statutes.

It is ordered that the Sheriff take the defendant into custody.

THIS IS A FINAL ORDER/JUDGMENT FOR PURPOSES OF APPEAL.

BY THE COURT:

Louise Wolf

Circuit Court Judge Clerk Deputy Clerk

Distribution:

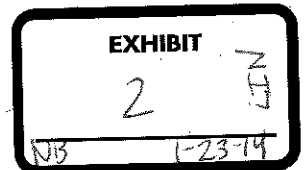
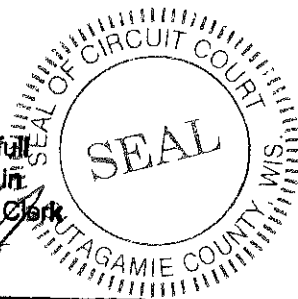
Brian Figy, Court Commissioner
County Sheriff

April 13, 2012
Date

This document (1 pages) is a full and true copy of the original on file in the office of the Outagamie County Clerk of Circuit Court, State of Wisconsin.

3/19/13
Date

Deputy/Clerk of Court



City of Appleton vs. Nathan L Bovee

Judgment of Conviction

and Sentence to the County Jail/Fine/Forfeiture

Date of Birth: 07-22-1982

Case No.: 2012FO002224

The defendant was found guilty of the following offense(s):

Ct.	Description	Violation	Plea	Severity	Date(s) Committed	Trial To	Date(s) Convicted
1	Sell Alcohol to Underage Person (1st)	125.07(1)(a)1	No Contest	Forf. U	07-21-2012		09-19-2012

The defendant is guilty as convicted and sentenced as follows:

Ct.	Sent. Date	Sentence	Length	Begin date	Begin time	Agency	Comments
1	09-19-2012	Forfeiture / Fine					

Obligation Detail:

Ct.	Schedule	Amount	Days to Pay	Due Date	Failure to Pay Action	Victim
1	Local Forf. Violations	389.50	30	10-19-2012	Standard Enforcement	

Obligation Summary:

Ct.	Fine & Forfeiture	Court Costs	Attorney Fees	<input type="checkbox"/> Joint and Several Restitution	Other	Mandatory Victim/Wit. Surcharge	5% Rest. Surcharge	DNA Anal. Surcharge	Totals
1	262.00	114.50			13.00				389.50

Total Obligations: 389.50

It is adjudged that 0 days sentence credit are due pursuant to §973.155, Wisconsin Statutes.

It is ordered that the Sheriff take the defendant into custody.

THIS IS A FINAL ORDER/JUDGMENT FOR PURPOSES OF APPEAL.

BY THE COURT:

Louise Wolf

Circuit Court Judge Clerk Deputy Clerk

Distribution:

Brian Figy, Court Commissioner
County Sheriff

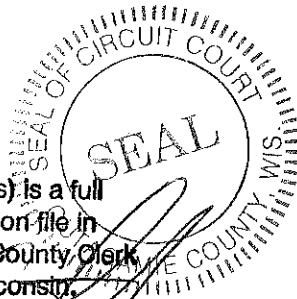
September 19, 2012

Date

This document (1 pages) is a full and true copy of the original on file in the office of the Outagamie County Clerk of Circuit Court, State of Wisconsin.

3/19/13
Date

[Signature]
Deputy/Clerk of Court



City of Appleton vs. Nathan L Bovee

Judgment of Conviction

and Sentence to the County Jail/Fine/Forfeiture

FILED 11-25-2013 Clerk of Circuit Court Outagamie County

Date of Birth: 07-22-1982

Case No. 2012FO002848

The defendant was found guilty of the following offense(s):

Table with 7 columns: Ct., Description, Violation, Plea, Severity, Date(s) Committed, Trial To, Date(s) Convicted. Row 1: Sell Alcohol to Underage Person (1st), 125.07(1)(a)1, No Contest, Forf. U, 11-30-2012, Court, 11-14-2013

The defendant is guilty as convicted and sentenced as follows:

Table with 7 columns: Ct., Sent. Date, Sentence, Length, Begin date, Begin time, Agency, Comments. Row 1: 11-14-2013, Forfeiture / Fine, 60, 01-13-2014, Judgment

Obligation Detail:

Table with 6 columns: Ct., Schedule, Amount, Days to Pay, Due Date, Failure to Pay Action, Victim. Row 1: Local Forf. Violations, 389.50, 60, 01-13-2014, Judgment

Obligation Summary:

Table with 10 columns: Ct., Fine & Forfeiture, Court Costs, Attorney Fees, Joint and Several Restitution, Other, Mandatory Victim/Wit. Surcharge, 5% Rest. Surcharge, DNA Anal. Surcharge, Totals. Row 1: 262.00, 114.50, 13.00, 389.50

Total Obligations: 389.50

It is adjudged that 0 days sentence credit are due pursuant to §973.155, Wisconsin Statutes.

It is ordered that the Sheriff take the defendant into custody.

THIS IS A FINAL ORDER/JUDGMENT FOR PURPOSES OF APPEAL.

BY THE COURT:

Electronically signed by Lonnie Wolf

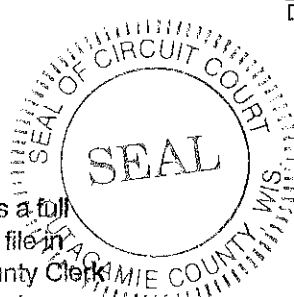
Circuit Court Judge Clerk Deputy Clerk

November 14, 2013

Date

Distribution:

Mitchell J. Metropulos, Judge Daniel R. Clausz, Defense Attorney County Sheriff



This document (1 pages) is a full and true copy of the original on file in the office of the Outagamie County Clerk of Circuit Court, State of Wisconsin.

11-25-13 Date Barb Bouch Deputy/Clerk of Court

You Are Notified to Appear

Date **FEB-08-2012** Time **08:30 AM**

Form No. and Version CTL **0405** CITATION NO. **08290991**

Appearance Required: **NO**

OUTAGAMIE COUNTY CIRCUIT COURT COMMISSIONER
320 S WALNUT STREET
APPLETON, WI 54911

Juvenile **DEPOSIT** Cash - Card
N **\$389.50** N N

Court Use

COPY

Defendant (Last Name, First, Middle), Street Address, P.O. Box, City, State, Zip

Birth Date **9/7/1983** Sex **F** Race **W**

SCHUH, MIRANDA B
2156 REDTAIL DR
NEENAH, WI 549560000

HT **503** WT **145 lbs** Hair **BRO** Eyes **BRO**

Driver License/Identification Card **30005428382704** State **WI** Exp. Yr. **2012**

Name and Address of Parent/Guardian/Legal Custodian (if minor defendant)

Other Identification Number ID Type

License Plate Number Plate Type State Exp. Yr.

Defendant Telephone Number **(920) 427-7004 EXT.**

Telephone Number of Parent/Guardian/Legal Custodian

Plaintiff

CITY OF APPLETON

Ordinance Violated

AC 9-51

Adopting State Statute

125.07(1)(a)1

Violation Description

SELL ALCOHOL TO UNDERAGE PERSON

Ordinance Description

ADULT DISPENSE ALCOHOL TO UAP 1ST

Week Day **SATURDAY** Date **DEC-17-2011** Time **05:25 PM**

At Location

4025 E CALUMET ST

County

CALUMET - 08

City/Village/Town

APPLETON - 57, CITY

Agency Space
11-048763

9179

114 Y

Officer Name **OFCR GREGORY RYAN**

Date Citation Served **DEC-17-2011**

Method **MAILED**

Officer ID **9210** Department **APPLETON POLICE DEPARTMENT**

Residence Contact Name Age

(If left with person at defendant's address)

POLICE RECORD

Police # **11-048763**

ID BY **WI DL**

ON 12-17-11 OFC. NIMKE AND I PERFORMED CAT CHECKS IN THE SOUTHERN DISTRICT OF APPLETON. AT APPROX. 1725 HRS WE HAD 20 YR. OLD SIMONE N. KRAMER 05-29-1991 ENTER TJ THAI AND SUSHI IN AN ATTEMPT TO PURCHASE ALCOHOL. SIMONE WENT TO THE BAR AND PURCHASED A BOTTLE OF BUD LIGHT FOR \$3.00. SHE SAID THAT THE SERVER NEVER ASKED HER FOR HER ID. WHEN WE MADE CONTACT WITH THE DEF. SHE SAID THAT SHE ALWAYS ASKS FOR ID BUT THIS TIME SHE DIDN'T BECAUSE SHE WAS JUST STARTING HER SHIFT AND WAS PRETTY BUSY. OWNER WAS ON SCENE AND NOTIFIED. VIE VU ON.

WISCONSIN NON TRAFFIC CITATION

EXHIBIT
3
NB 1-23-19

12 FO 2224
AD

You Are Notified to Appear

Appearance Required: NO

Date: SEP-19-2012 Time: 08:30 AM

Form No. and Version CIL CITATION NO.
MUNI 0405 08229440
Juvenile DEPOSIT Cash - Card
\$389.50 N N
Court Use

COPY

OUTAGAMIE COUNTY CIRCUIT COURT COMMISSIONER
320 S WALNUT STREET
APPLETON, WI 54911

Defendant (Last Name, First, Middle), Street Address, P.O. Box, City, State, Zip

BOVEE, NATHAN L
426 E COMMERCIAL ST
APPLETON, WI 549110000

Birth Date: 7/22/1982
Sex: M Race: W
HT: 510 WT: 180 lbs Hair: BRO Eyes: HAZ

Driver License/Identification Card State Exp. Yr.
81006328226206 WI 2017
Other Identification Number ID Type

Name and Address of Parent/Guardian/Legal Custodian (if minor defendant)

License Plate Number Plate Type State Exp. Yr.

Defendant Telephone Number (920) 450-5955 EXT.

Telephone Number of Parent/Guardian/Legal Custodian

Plaintiff

CITY OF APPLETON

Ordinance Violated

AC 9-51

Adopting State Statute

125.07 (1) (a) 1

Violation Description

SELL/PROCURE ALCOHOL TO UNDERAGE PERSON

Ordinance Description

ADULT DISPENSE ALCOHOL TO UAP 1ST

Agency Space
12-029714
WI PHOTO DL / NO ICOP

Week Day Date Time
SATURDAY JUL-21-2012 07:45 PM

At Location

4025 E LORNA LN

County

CALUMET - 08

City/Village/Town

APPLETON - 57, CITY

9221

Officer Name

OFCR KRAIG KNAACK

Date Citation Served, JUL-21-2012

Method MAILED

Officer ID

9129

Department

APPLETON POLICE DEPARTMENT

Residence Contact Name

Age

(If left with person at defendant's address)

Police # 12-029714

POLICE RECORD

ON 07/21/12, OFC. KOPESKY AND I CONDUCTED CAT CHECKS IN THE SOUTHERN DISTRICT; CSO ALYSSA A. BLANKENSHIP, 02/20/93, ENTERED LICENSED PREMISES UNDER OUR DIRECTION. SHE ENTERED TJ THAI AND SUSHI AND SAT AT THE BAR. SHE ORDERED A LEINIE'S SUMMER SHANDY, AND THE LONE BARTENDER (DEF) POURED A BOTTLE OF THAT BEER INTO A GLASS IN FRONT OF ALYSSA. DEF CHARGED HER \$3, ACCEPTING A \$10 BILL AND GIVING \$7 CHANGE. SHE LEFT THE BAR AND MET W/US, DESCRIBING THE DEF AND THE TRANSACTION. DEF DID NOT ASK FOR ALYSSA'S ID OR AGE. KOPESKY AND I ENTERED THE BAR AND IDENTIFIED THE DEF, SEEING A FULL GLASS OF BEER ON THE BAR. DEF ADMITTED HE SERVED THAT LEINIE'S BEER TO ALYSSA AND FAILED TO ASK FOR ID. HE ESTIMATED SHE WAS IN HER MID 20'S, BUT DID NOT KNOW WHY HE DIDN'T ASK FOR ID. PHOTO OF ALYSSA RETAINED ON COMPUCAPTURE, COPY ATTACHED TO CITATION.

12 F02848

You Are Notified to Appear

Date Time
JAN-30-2013 08:30 AM

Form No. and Version C.T.L. CITATION NO.
MUNI 0405 082330287

Appearance Required: NO

OUTAGAMIE COUNTY CIRCUIT COURT COMMISSIONER
320 S WALNUT STREET
APPLETON, WI 54911

Juvenile DEPOSIT Cash - Card
N \$389.50 N N
Court Use

COPY

Defendant (Last Name, First, Middle), Street Address, P.O. Box, City, State, Zip

Birth Date Sex Race
7/22/1982 M W

BOVEE, NATHAN L

426 E COMMERCIAL ST
APPLETON, WI 549110000

HT WT Hair Eyes
510 180 lbs BRO HAZ

Driver License/Identification Card State Exp. Yr.
B1006328226206 WI 2017

Name and Address of Parent/Guardian/Legal Custodian
(If minor defendant)

Other Identification Number ID Type

License Plate Number Plate Type State Exp. Yr.

Defendant Telephone Number
(920) 460-5954 EXT.

Telephone Number of Parent/Guardian/Legal Custodian

Plaintiff

CITY OF APPLETON

Ordinance Violated

AC 9-51

Adopting State Statute

125.07 (1) (a) 1

Violation Description

SELL/PROCURE ALCOHOL TO UNDERAGE PERSON

Ordinance Description

ADULT DISPENSE ALCOHOL TO UAP 1ST

Week Day Date Time

FRIDAY NOV-30-2012 07:30 PM

At Location

4025 E CALUMET ST

County

CALUMET - 08

City/Village/Town

APPLETON - 57, CITY

Agency Space
12-048774
LAC 12-048774
#9182

Officer Name

OFCR DUSTIN YULE

Date Citation Served,

DEC-02-2012

Method

MAILED

Officer ID

9168

Department

APPLETON POLICE DEPARTMENT

Residence Contact Name

Age

(if left with person at defendant's address)

POLICE RECORD

Police # 12-048774

ON 11/30/2012 AT APPROX 1930 HOURS I WAS CONDUCTING CONTROLLED ALCOHOL TRANSACTIONS IN THE CITY OF APPLETON. APD EMPLOYEE BRECKEN VANDERVELDEN, A 20 YOA MALE, WAS ATTEMPTING TO BUY INTOXICATING BEVERAGES. VANDERVELDEN DID NOT HAVE AN ID ON HIM, ONLY THE CASH HE WAS GIVEN TO CONDUCT CAT. HE WAS ALSO BRIEFED ON PROCEDURE, INCLUDING NOT LYING WHEN ASKED HIS DATE OF BIRTH. I TOOK A PICTURE OF VANDERVELDEN AT THE APD PRIOR TO STARTING CAT CHECKS. VANDERVELDEN WENT INTO TU THAI AND SUSHI, LOCATED AT 4025 E CALUMET ST, AND SAT AT THE BAR. HE ORDERED A BOTTLE OF BUD LIGHT BEER. THE AR WAS BARTENDING, AND DID NOT ASK HIM FOR ID OR ASK HIS AGE OR DATE OF BIRTH. THE AR SERVED HIM THE BEER. VANDERVELDEN PAID HIM \$3 FOR THE BEER, PHONED OFFICER NEFF (9204), AND CAME OUTSIDE AND DESCRIBED THE AR TO ME. HE SAID THE AR WAS WHITE, W/ BROWN HAIR, WEARING A BRO SHIRT AND DARKER BRO PANTS, WITH A PEA GREEN TIE. I WENT INSIDE AND SPOKE TO THE AR, ID'ED VIA SELF-DESCRIPTION AND PHYSICALS. THE BUD LIGHT WAS STILL SITTING ON THE END OF THE BAR. I ATTEMPTED TO SPEAK TO THE AR REGARDING THE INCIDENT, BUT HE SEEMED SPEECHLESS. I EXPLAINED HE WOULD BE RECEIVING A CITATION IN THE MAIL. NO RECORDING DEVICE AVAILABLE.