

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

STATE OF SOUTH CAROLINA

VS

JOSEPH MOZONE

DEFENDANT.

IN THE MAGISTRATE COURT

SECOND JUDICIAL CIRCUIT

ORDER

TICKET NO: E392864

This matter came before the Court on April 1, 2010. Present at the hearing was the Defendant who was represented by James B. Huff of the Aiken County Bar and Trooper D.L. Foisy.

The Defendant has been charged with a violation of §61-4-110 of the South Carolina Code of Law as amended which is commonly known as "open container". Mr. Huff made motion for the charge to be dismissed as the State would not be able to prove its case in chief as a matter of law based upon the requirements of the statute.

Trooper Foisy testified to the following:

1. On March 20, 2010, after stopping Mr. Mozone's vehicle for speeding he located a "Bud Light" can in Mr. Mozone's vehicle. Further, that it had a liquid inside the container.
2. Upon removing the can from the motor vehicle he poured the liquid out and thereafter threw the can away.
3. He did not make any analysis of the liquid in the container but that the "Bud Light" can reflected its alcoholic content on the side of the can. However, Mr. Huff provided Trooper Foisy with an unopened "Bud Light" can in court. After reviewing the can Trooper Foisy admitted that the can contained no writing that would reflect the percentage of alcohol by weight of the liquid inside the container.
4. South Carolina Highway Patrol Policy #300-15 relates to the gathering and retention of evidence. Specifically some of the provisions testified to are the following:

II. POLICY

"All evidence and property acquired by Department of Public Safety Officers shall be properly secured, labeled and stored and any change in custody shall be fully documented."

III. DEFINITIONS

Evidence - "Any article or material which is seized, found, obtained, in connection with, or which may be subject to investigation; or which may aid in establishing the identity or the perpetrator of a crime, or identified with any circumstances under which a crime or violation was committed."

V. OFFICER'S RESPONSIBILITIES

B. "The officer who is investigating the accident or crime scene shall be responsible for collecting, recording and labeling all evidence. Other officers shall assist as needed. Proper collection, preservation, handling, and safekeeping of evidence or property will begin immediately when the officer observes or locates the evidence or property."

E. "Evidence and property will be turned in to the evidence technician by the end of the officer's shift. During hours when the evidence technician is unavailable, the evidence and property will be placed in a secured drop box, or other designated storage unit."

IX. ALCOHOL

"Alcohol beverages seized as evidence are to be placed in evidence bags and sealed with evidence tape and stored in an authorized storage area until the time of trial or time of disposal. All alcoholic beverages will be stored at the post, troop or unit level when applicable until time of disposal."

XVIII. CONTROL OF EVIDENCE

C. "The custody chain shall continue without interruption and be recorded until the evidence is presented in court, or disposition has been rendered, and the evidence has been disposed of by return to the rightful owner, or legally destroyed."

XX. DISPOSAL OF EVIDENCE

A. "Department officers shall not destroy or otherwise dispose of any evidence or property. All evidence for disposal will be handled by the Central Evidence Facility."

Section 61-4-110 provides as follows:

It is unlawful for a person to have in his possession, except in the trunk or luggage compartment, beer or wine in an open container in a motor vehicle of any kind while located upon the public highways or highway rights of way of this State. This section must not be construed to prohibit the transporting of beer or wine in a closed container, and this section does not apply to vehicles parked in legal parking places during functions such as sporting events where law enforcement officers are on duty to perform traffic control duties. A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned not more than thirty days.

For purposes of this section, beer or wine means any beer or wine containing one-half of one percent or more of alcohol by volume. (Emphasis Added)

The history of this statute reflects that the last sentence of the statute was added and became effective on July 20, 2000. This added sentence for the first time set a statutory definition of "beer" or "wine" in prosecutions of this statute. As such, in order to prosecute a case under §61-4-110, the State must prove beyond a reasonable doubt that any liquid located in an open container in violation of this statute, meets this statutory definition. That is that the liquid contains one-half of one percent or more of alcohol by volume. Failure to prove the percentage of alcohol in the liquid is a failure of proof by the state.

As such, I find this statute has several prima facie elements which the State must prove in order to submit the case to a trier of fact:

1. A person was located on a public highway or highway rights of way of this State,
2. While they had in their possession an open container,
3. That the container was not in the trunk or luggage compartment of the vehicle, and
4. In the open container was a liquid that contained one-half of one percent or more of alcohol by volume.

Based upon this testimony presented, I make the following Findings of Fact:

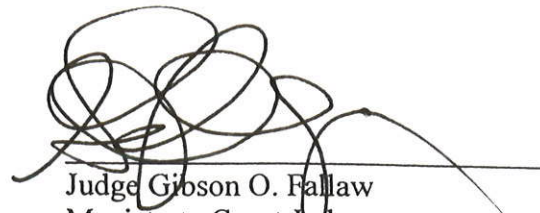
1. Trooper Foisy did not follow South Carolina Highway Patrol Policy #300-15 when he disposed of the can and its contents, which he stated he found in Defendant's car.
2. Trooper Foisy has no evidence as to whether or not the liquid in the container he said he found in the Defendant's car contained one-half of one percent of alcohol by volume.

Based upon these Findings of Fact, I make the following Conclusions of Law:

1. To prove a violation of this statute the State must prove beyond a reasonable doubt that any liquid in an open container alleged to be "beer" or "wine" must be proven to contain one-half of one percent or more of alcohol by volume.
2. The State cannot prove whether any liquid in an alleged container in the Defendant's car in fact met the statutory definition of "beer" pursuant to §61-4-110. As such, the State cannot prove the elements of its case.

Based upon the Findings of Fact and Conclusions of Law the Defendant's motion is granted and I find the Defendant Not Guilty.

AND IT IS SO ORDERED, this 20 day of May, 2010



Judge Gibson O. Fallaw
Magistrate Court Judge
Aiken County

May 20, 2010

THIS IS A COPY OF THE
ORIGINAL DOCUMENT THAT IS
FILED IN MAGISTRATE'S COURT,
AIKEN, SOUTH CAROLINA, ON
THE 20th DAY OF May,
20 10 Kristin Manigault