

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

State of South Carolina

Plaintiff

vs.

Scott Douglas

Defendant

IN THE MAGISTRATE'S COURT

FOURTH JUDICIAL CIRCUIT

Ticket No.: 69529FU

ORDER
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This matter came before the Court on March 11, 2013. Present at the hearing was the Defendant who was represented by Franklin Joyner of the Chesterfield County Bar. Present for the State was Detective Keith Thomas and Officer Clay Anderson, both of the Cheraw Police Department.

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

FACTS

On July 14, 2012, at approximately 2:10 a.m., Cheraw Police Officer Clay Anderson initiated his blue lights and conducted a traffic stop of Defendant. The traffic stop occurred in the parking lot of McDonald's restaurant on Chesterfield Highway in Cheraw, South Carolina. Officer Anderson's in car video camera recorded the entire roadside stop. At 5:15 of the roadside video, Officer Anderson places Defendant under arrest and secures Defendant in the

back of his patrol car. Immediately after placing Defendant in the back of his patrol car, Officer Anderson conducts a search of Defendant's truck. At 5:58 of the roadside video, Officer Anderson removes an unidentified *empty* can from Defendant's truck. He places the empty can on the top of the tail gate of Defendant's truck. As Officer Anderson sets down the can, a distinct "clinking" noise can be heard. This noise is consistent with an empty aluminum can. Further in the video at 13:03, Officer Anderson picks up the can, looks into it, and turns it upside down. The video clearly shows there is nothing in the can. As a result, Officer Anderson did not analyze any liquid.

LAW

S.C. Code § 61-4-110 provides:

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.

The history of this statute reflects that the statutory definition of "beer" or "wine" was added and became effective on July 20, 2000. As such, in order to prosecute a case under S.C. Code § 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 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 four 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 truck 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.

ANALYSIS

Failure to prove the percentage of alcohol in the liquid is a failure of proof by the State. Because Officer Anderson procured an empty container, the State cannot prove whether any liquid in an alleged container in the Defendant's truck in fact met the statutory definition of "beer" pursuant to S.C. Code § 61-4-110. Therefore, the State cannot prove the elements of its case.

CONCLUSION

Based upon the findings of fact and conclusion of law, the Defendant's motion is granted and his charge of Open Container of Beer/Wine, S.C. Code § 61-4-110 is dismissed.

AND IT IS SO ORDERED, this ____ day of March, 2013.



Judge John Davis

Chesterfield, South Carolina

Date: 3/11/13