

STATE OF South Carolina
In The Court of Appeals

Appeal from Administrative Law Judge

John D. McLeod, Administrative Law Judge

Darnell Hunter,

Appellants,

v.

South Carolina Department
of Corrections

Respondent.

Initial Brief of Appellant

Darnell Hunter #260230
Pro-Se

Appellate Case No. 2013-001402

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SC Court of Appeals

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Appellate Case No. 2013-001402

Statement of Issue on Appeal

Were the Administrative Law Judge In Error for Not
overturning this case for lack of Evidence for the Essential
Element of Alcohol?

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Statement of The Case

Appellant, Doanell Hunter, was charged with Op. 27.14 (899) the use, possession, or distilling and/or Brewing of any Alcohol Beverage. (Incident Report 09-12-047) This charge was based on the officers (J. Brock) allegation that on Sept. 3, 2012, F of C. Brock assigned to work with ofc Breeden, when entering the Cell I ofc Brock found between the bed and lockers 2 gallons of a red Fruity liquid in a clear trash bag. I ofc Brock Am charging both I'm listed above with #899 the use, possession/or distilling and/or Brewing of Any Alcoholic Beverage.

DHO ofc. Angela K. Brown presided over Appellant's Hearing in September 2012. The DHO imposed the Sanctions of 90 days Canteen Restrictions, 90 days Phone Restriction, 90 days visit Restriction and 30 days loss of good time.

Statement of Facts

During the DHO Hearing, it was apparent that there was no evidence presented of the essential Element

of Alcohol. The ofc. Never stated he smelled Alcohol
Nor was A Sobriety test administered to corroborate
the fact that there was indeed Alcohol. The ofc. stated
he smelt "a red fruity Liquid" No where in the Narrative
or does the ofc. Himself states anything about Alcohol
the Essential Element of the Charge (899)

Argument

"The Evidence presented in this Case was so devoid
of Evidentiary Support of the Essential Element
"Alcohol" that for this guilty verdict to stand will
be a Fundamental Miscarriage of Justice."

The evidence in Support of my Conviction for
#899, "the use, possession, or distilling and/or Brewing of
any Alcoholic Beverage" Cannot be Fairly Characterized
As Sufficient to have led A Rational Trier of Fact
to find A verdict of guilty beyond A reasonable doubt
of All the Essential Elements of the Charged crime,
which is a provision of the Bill of Rights which is
"fundamental and essential to a fair trial and made
obligatory upon the States by the Fourteenth

Amendment. Jare Winskip, 397 U.S. 358, and Jackson v. Virginia, 99 S.Ct. 2781 (1979)

In this case there was no evidence presented that the "red fruity liquid" was indeed alcohol. #899 states The Use, Possession, or Distilling and/or Brewing of any Alcoholic Beverage: Any Inmate acting under the influence of alcohol, or in possession of alcohol or alcoholic beverage or other brewed substance which, when ingested, creates altered states of physical or mental activity.

There was no evidence presented that I was acting under the influence of alcohol, or any brewed substance which when ingested created altered states of physical or mental activity.

The conviction is against the man's best weight of the evidence and is not supported by sufficient evidence... Hence, without proof of each and every essential element of the charge crime, the state "has not" met its burden of proof. Jare Winskip (supra)

Just as a conviction upon a charge not made would be sheer denial of due process, so is it a violation of due process to convict and punish a man without evidence of his guilt, see also Shuttleworth v. Birmingham, 382 U.S. 87 (1965), Garner v. LA, 368 U.S. 157, Barney v. CA

Columbia, 378 U.S. 146. It is beyond question of course, that a conviction based on a record lacking any relevant evidence as to a crucial element of the offense charge, violates [] Due Process. Harris v. United States, 404 U.S. 1282, 1282 (1971) See also Vachon v. New Hampshire, 414 U.S. 478 (1974) [A] conviction which is totally devoid of evidentiary support as to a crucial element of the offense is unconstitutional under the Due Process clause of the Fourteenth Amendment.

The charge against petitioner is so devoid of evidentiary support as to render the conviction unconstitutional under the Due Process clause of the 14th Amendment. The 14th Amendment requires that the state prove every element of a criminal offense beyond a reasonable doubt. Sandstrom v. Montana, 442 U.S. 510 (1979) The Due Process clause of the 14th Amendment "protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime which he is charged." In re Winship, (supra) This "bedrock, axiomatic and elementary [constitutional] principle," id., at 363, 90 S.Ct. at 1072 prohibits

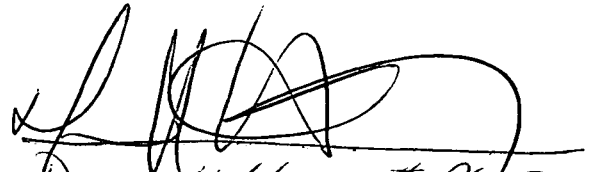
The State and Federal Courts from affirming a charge of a crime in which the State did not prove beyond a reasonable doubt of every essential element of the crime, Sandstrom v. Montana (Supra) Patterson v. New York, 432 U.S. 197 (1977); Mulvey v. Wilbur, 421 U.S. 684 (1975); See also Marquette v. United States, 342 U.S. 246 (1952)

Precisely how much worse a situation must be to cross the line from merely insufficient evidence to a manifest miscarriage of justice. Certainly though a complete lack of any evidence of one of the essential elements of a crime is not only insufficient evidence, but too little evidence to avoid a manifest miscarriage of justice. Beckett v. United States, 379 F.2d 863, 864 (9th Cir, 1967) (Finding a manifest miscarriage of justice where there was no proof of one of the essential elements of the charged crime.).

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Certificate of Counsel

The undersigned certifies that this initial Brief
Complies with Rule 210[6]



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September 18th 2013

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Respondent.

Certificate of Service

I Darrell Hunter, Pro Se hereby certify that a true copy of the initial brief of appellant in the above reference case was served Honorable John Cameron Few this 17th day of September, 2013.

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