IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FALL TERM, 2014

TOMMY TRUSTING, ] Superior Court Case No. 345686

]

Appellant ]

v. ]

]

PEOPLE OF CALIFORNIA, ]

Respondent ]

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Appeal from a Final Order of the Santa Barbara County

Department of Alcohol, Drug and Mental Health Services,

Hon. Gina L. Genova, Hearing Examiner

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APPELLANT'S OPENING BRIEF

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**ISSUE**

**Under SB Co. Ord. §48-4, is a person liable for a social host violation despite implementing multiple reasonable corrective actions, as defined by §48-4(3)(A), some actions even forward-thinking and preemptive, while others as a firm reaction upon discovering the minor in possession?**

**STATEMENT OF THE CASE**

Tommy Trusting was issued a citation for violating SB. Co. Ord. §48-4 as a result of his brother, Jack Trusting, and his possession of an alcoholic beverage on Tommy Trusting’s property. Pursuant to SB Co. Ord. §48-5(B), the citation was upheld in the presence of a hearing examiner for Mr. Trusting’s initial appeal. Mr. Trusting is now appealing on the premise that the trial court erred in upholding this violation despite Mr. Trusting’s execution of reasonable corrective action when handling Jack Trusting’s possession of alcohol; Mr. Trusting is now appealing for judicial review in pursuant to SB Co. Ord. §48-7.

**STATEMENT OF APPEALABILITY**

This appeal is from a Final Order of the Santa Barbara County Department of Alcohol, Drug and Mental Health Service’s hearing examiner and is authorized by Santa Barbara County Ordinance §48-7.

**STATEMENT OF FACTS**

Tommy Trusting, a responsible twenty-one year old, UC Santa Barbara Honor student, hosted a small party at the apartment that he rents in Isla Vista; the intimate gathering contained only a few close friends, all of whom were at least twenty-one, with the exception of Mr. Trusting’s girlfriend, Haley (20), and Mr. Trusting’s brother, Jack (17). Although Mr. Trusting and Jack would normally reunite in their quaint hometown, the brothers’ parents are currently stationed in Antarctica for the next two years. Upon their departure, the parents begged the brothers to spend their breaks bonding with one another in Isla Vista, where Mr. Trusting, whom they left in charge, would be familiar with the area, able to provide Jack with whatever he may need. Since the remainder of the Trusting family lives in Europe, leaving the brothers with no family to visit, they have created Isla Vista into their temporary home, until their parents return. The brothers happily obliged their parents’ request: Jack visited Mr. Trusting for several days, ecstatic to see Mr. Trusting, who is both his brother and best friend.

Although Mr. Trusting, being a protective and responsible older brother, would normally avoid allowing his brother to attend any event with alcohol, he reasoned that the environment would be with only close friends and that there was no better place for Jack to be. While sending him away to a restaurant was an initial thought, Mr. Trusting dismissed it once he remembered that his parents insisted that when in Isla Vista, Mr. Trusting accompany Jack at all times. Therefore, Mr. Trusting, being the generous sibling that he is, bought Jack his favorite drink (Dr. Pepper) as a suitable beverage for Jack to consume during the finals celebration. Despite the fact that Jack had never previously consumed alcohol and always condemned underage drinking, Mr. Trusting mentally told himself to keep an eye on Jack frequently throughout the night. Being extra cautious, Mr. Trusting spoke with his brother one-on-one prior to the gathering, making him promise to abstain from the consumption of any beer. Mr. Trusting had no reason to distrust his brother’s oath, as the two never lied to one another and Jack was well known as a responsible character.

As the night of the party progressed, Mr. Trusting’s neighbors complained about the noise level. Mr. Trusting, immediately feeling incredibly guilty and not wanting to create any sort of disturbance, instantly rushed to turn down the music and close any window or door that might allow noise permeation. As Mr. Trusting scurried about, he noticed a beer can sneakily disguised in Jack’s Koozie. Upset and disappointed, Mr. Trusting immediately scolded his brother and demanded that he dispose of the beer right away; Jack agreed. Despite Jack’s verbal agreement, Mr. Trusting mentally decided to check back on Jack as soon as he finished closing his apartment. As soon as he finished this task, Mr. Trusting, who suffers from an overactive bladder, had to urinate suddenly. He took less than thirty seconds to relieve himself and began searching for Jack directly after. On his mission to ensure that the beverage had been disposed of, Mr. Trusting encountered an Isla Vista Foot Patrol officer asking Jack for his identification.

**ARGUMENT**

1. **The Standard of Review Mandates Overruling the Summary Judgment**

The trial court erred in upholding the County’s imposition of Mr. Trusting’s fine. According to S.B. Co. Ord. §48-7, “any person aggrieved by a final administrative order or decision imposing a civil penalty may seek review with the superior court in Santa Barbara County pursuant to Government Code section 53069.4.” Mr. Trusting did provide sufficient material facts to allow the hearing examiner to find in his favor, specifically by not only preemptively doing everything within his power to prevent Jack from drinking alcohol, but also acting appropriately upon the discovery of his brother’s possession of the alcoholic beverage (both of which are “reasonable corrective actions”), demonstrating a legitimate defense to the alleged violation of S.B. Co. Ord. §48-4. Therefore, the hearing officer erred in upholding the fine and this court must reverse that wrong.

Because this appeal is from an administrative hearing of the Department Alcohol, Drug and Mental Health Service, this case is subject to de novo review[[1]](#footnote-1). The de novo standard of review allows this Superior Court to find that the material facts in Mr. Trusting’s case do not support the fine imposed by the County because the Court must review Mr. Trusting’s case independently and anew[[2]](#footnote-2). In addition, the Superior Court must also reject any stated reasons or rationale previously rendered by the past hearing officer[[3]](#footnote-3). Following the de novo standard of review as they are bound to do, this court will find that the hearing officer did, in fact, err in upholding Mr. Trusting’s fine.

**II. Under SB Co. Ord. §48-4, a person is not liable for a social host violation when implementing multiple reasonable corrective actions, as defined by §48-4(3)(A), including actions that are forward-thinking and preemptive, while others are a firm reaction upon discovering the minor in possession.**

The material facts set forth in the case against Mr. Trusting in reference to his girlfriend (Haley) and her possession of alcohol is not in dispute. Mr. Trusting takes complete responsibility for hosting the party at his residence, as well as any violation in regards to Haley, proving that he is an individual of moral integrity and accountability. Santa Barbara County Ordinance §48-4 states, “any person(s) who knowingly… hosts a party … at their place of residence … where alcoholic beverages are in the possession of … any minor on such premises, or fails to take reasonable corrective actions upon learning of the possession … of alcoholic beverages by any minor on such premises” shall be eligible for a violation. Mr. Trusting acknowledges that he meets the standards for the elements, with the exception of “knowingly” allowing Jack’s possession of alcohol and failing to take reasonable corrective action. While Mr. Trusting takes full responsibility for Haley, he contests the violation in regards to Jack because of the circumstances, as well as his preemptive actions and reaction upon his discovery of Jack’s possession of alcohol. Mr. Trusting’s case contains prima facie facts that provide sufficient evidence that the decision of the lower courts must be overturned in order for Mr. Trusting to be freed of his unjust social host violation.

**A. Mr. Trusting, because of his brother relationship, did not check the ID of the minor in possession.**

The purpose of checking identification is to identify age and ensure that the individual meets the minimum requirement; given that Mr. Trusting and Jack are brothers, checking identification would have been redundant, as it can be confidently assumed that Mr. Trusting knew Jack’s age with certainty. Given Mr. Trusting’s knowledge of Jack, a minor, and his possession of alcohol, SB Co. Ord. §48-4, in order for liability to attach, requires Mr. Trusting to have failed to take reasonable corrective action. Under SB Co. Ord. §48-3(A)(1), reasonable corrective action may include checking the identification of guests. Despite checking identification being a possible form of reasonable corrective action, this action is inappropriate for Tommy Trusting’s case because of the familial and brotherly relationship of Mr. Trusting and Jack. While sharing genetics may not always suffice as evidence of age awareness, Mr. Trusting and Jack have a clearly close relationship, identifying as not only brothers, but best friends; it is assumed that age would be known to both people in such a close relationship. Additionally, the purpose of checking identification is to permit certain actions (in this instance, consuming alcohol); *however*, it is obvious that Mr. Trusting was strongly opposed to Jack consuming alcohol because of his status as a minor (which he was well aware of). Therefore, since Mr. Trusting did not intend for Jack to drink alcohol, there would have been absolutely no reason for him to check identification regardless. Furthermore, in most cases it would be unreasonable to ask for identification from an immediate family member, but especially in Mr. Trusting’s situation, where he served as a temporary guardian (in the absence or parents) and best friend to Jack, an evidently intimate relationship. Additionally, because Mr. Trusting had no intention of allowing Jack to consume alcohol, it would have been even more absurd to check Jack’s identification. In this particular situation, checking identification would not qualify as a reasonable corrective action; this lack of relevance explains Mr. Trusting’s lack of checking identification.

**B. Mr. Trusting used reasonable corrective action by demanding that Jack dispose of the beer immediately .**

Mr. Trusting demonstrated the proper use of reasonable corrective action by demanding Jack to forfeit his alcoholic beverage, and he neglected to order Jack to leave because, given the foreign location, Jack would have nowhere acceptable or safe to go. Given Mr. Trusting’s knowledge of the minor in possession of alcohol, SB Co. Ord. §48-4 requires that Mr. Trusting failed to take reasonable corrective action in order for liability to attach. The second element, under SB Co. Ord. §48-3(A)(2), states that reasonable corrective action may include “making a prompt demand that such minor either forfeit the alcoholic beverage and refrain from the consumption, or depart from the premises.” By demanding Jack to dump his beer, Mr. Trusting’s actions not only explicitly comply with the “prompt demand” portion of the Ordinance, but also impliedly complies with the “cease drinking” portion because Mr. Trusting’s actions infer that he wanted Jack to cease his consumption by dumping it out. Mr. Trusting, using reasonable sense, did not ask Jack to leave the premises, because Jack, who is not from the area, would have been thrust into a potentially dangerous situation with nowhere to go. Jack’s parents (as well as any relative) would have been unable to host Jack because of their severe distance from Isla Vista; Mr. Trusting, acting as Jack’s guardian, was aware of this lack of proximity when choosing his actions. Mr. Trusting’s well thought-out actions fulfill the element of reasonable corrective action. Although Tommy had to attend to more pressing issues, leaving Jack without confirming his disposal of the beer, he received Jack’s verbal affirmation that he would dump the beer and believed that Jack would obey his authority as host and temporary guardian. Additionally, after tending to his responsibilities as any reasonable neighbor would, Mr. Trusting planned to immediately check on Jack, allowing virtually no time for Jack to consume the beer. Although Mr. Trusting suffered from an instance of overactive bladder, he quickly relieved himself in a mere matter of seconds, adding little time to his check up on Jack. Additionally, Mr. Trusting presumably would have taken the beverage from Jack if it had not been previously disposed. It is also important to note the code’s lack of specificity as to whether the host need physically observe the minor dispose of the beverage; the code merely states that the host demand the minor to forfeit the beverage (or leave). While under other circumstances, Mr. Trusting (who feels strongly that Jack not partake in underage alcohol consumption) may have not invited Jack to attend an event with alcohol present, the alternatives were significantly worse. At Mr. Trusting’s apartment, Mr. Trusting could watch Jack and ensure his safety, while permitting Jack to reside elsewhere in Isla Vista, without supervision, could have been dangerous to Jack’s physical safety. Furthermore, Mr. Trusting strove to follow his parent’s demand that Jack always be in Mr. Trusting’s presence when in Isla Vista. Ultimately, Mr. Trusting would have had the most control if Jack remained in Mr. Trusting’s presence at his residence. Given the circumstances, asking Jack to leave would have been unreasonable, as well as unsafe, and Mr. Trusting fulfilled reasonable corrective action in demanding Jack to dump the beer; topped with Mr. Trusting’s evidently good intentions, it is apparent that Mr. Trusting took reasonable corrective action.

**C. Mr. Trusting, acting as a temporary guardian for Jack, understandably reasoned against contacting higher authorities.**

While Mr. Trusting did not report Jack to higher authority, it would have been unreasonable of him to do so because of their brotherly relationship, their parent’s current Antarctica residence, and Mr. Trusting’s lack of opportunity, as he witnessed Jack still in possession in tandem with law enforcement. SB Co. Ord. §48-4 states that one must take reasonable corrective action in the event that a minor is found in possession of an alcoholic beverage. Under SB Co. Ord. §48-3(A)(3), one of the stated examples of reasonable corrective action is to report the minor to law enforcement or another higher authority, *provided that* the minor fails to comply with previous requests to cease possession of alcohol. As a result of the brother’s parents two year residence in Antarctica, and their other family’s residence in Europe, Mr. Trusting serves as Jack’s highest authority, thus making compliance with this part of the Ordinance illogical and unreasonable. Additionally, since Mr. Trusting and Jack have an intimate, brotherly relationship, the alternative of contacting law enforcement in this non-threatening situation would also have been both extreme and unusual based on societal norms. Regardless of societal norms, Mr. Trusting did not have the opportunity to report Jack to law enforcements, even if he wanted or intended to because an Isla Vista Foot Patrol officer arrived before Mr. Trusting could complete his brief tasks and check on Jack again. Furthermore, to Mr. Trusting’s belief, Jack was in the process of disposing of It would be clearly ridiculous for Mr. Trusting (the highest possible authority at the time for Jack) to have called law enforcement when an officer was already present, therefore, making what would normally be a reasonable corrective action unreasonable.

**D. Mr. Trusting effectively implemented reasonable corrective action in alternative manners.**

Mr. Trusting took reasonable corrective action, particularly in his preemptive and thoughtful efforts to prevent Jack from the possession of alcohol, utilizing the alternative, unstated options provided in the code. SB Co. Ord. §48-4 states that the host of a party must implement reasonable corrective action in the event that a minor is found in possession of an alcoholic beverage. While the code lists three potential suggestions of “reasonable corrective action” it also states that reasonable corrective action “is not limited to” the three elements listed. Mr. Trusting took several preemptive actions to prevent Jack’s possession of alcohol. For example, Mr. Trusting thoughtfully provided Jack with his favorite beverage, providing an enticing alternative to alcohol. Even in thought, Mr. Trusting exemplified reasonable corrective, mentally reminding himself to frequently check on Jack in order to ensure his age-appropriate behavior. Yet another preventative measure taken by Mr. Trusting was his one-on-one stern discussion with Jack about the unacceptability of alcohol consumption; Mr. Trusting went so far as to make Jack promise that he would abstain from alcohol consumption, despite the fact that Jack is known to be a trustworthy character. While these actions are not reactions, as SB Co. Ord. §48-3(A)(3) and SB Co. Ord. §48-3(A)(2) are, preventative actions are clearly acceptable, as indicated in SB Co. Ord. §48-3(A)(1). Although trusting a verbal agreement can be less concrete, Mr. Trusting had no reason to believe that Jack, who shares a close relationship with him, would suddenly change his previous lifelong policy of strictly abstaining from alcohol. In addition, Jack had consistently remained truthful to Mr. Trusting, never lying, rendering any actions beyond their promise very cautious, as a verbal oath should have sufficed. Ultimately, Mr. Trusting’s multiple preventative actions, and even thoughts, prove his high level of responsibility through the use of reasonable corrective action.

**CONCLUSION**

Mr. Trusting use multiple reasonable corrective actions in order to prevent Jack Trusting from possessing alcohol, whether these actions be preventative or reactionary. In this situation, checking identification, SB Co. Ord. §48-3(A)(1), does not qualify as a reasonable corrective action. However, Mr. Trusting did effectively follow SB Co. Ord. §48-3(A)(2) in demanding that Jack dump his beer. In addition, Mr. Trusting, who was acting as a temporary guardian to Jack, used his sensibility in reasoning not to contact legal authorities, but handling the situation himself, as stated in SB Co. Ord. §48-3(A)(3). Furthermore, Mr. Trusting implemented multiple preventative measures to ensure that Jack would not consume alcohol, utilizing the open ended aspect of SB Co. Ord. §48-3(A). As a result, the hearing officer erred in upholding Mr. Trusting’s violation of SB Co. Ord. §48-4; upon review, under the de novo standard, this court will find that Mr. Trusting did utilize multiple forms of corrective action in response to Jack Trusting’s possession of alcohol and must acquit him of this violation.

1. Cal Government Code §53069.4(B)(1) [↑](#footnote-ref-1)
2. Freeman v. DirecTV, Inc., 457 F.3d 1001, 1004 (9th Cir. 2006) [↑](#footnote-ref-2)
3. Ditto v. McCurdy, 510 F.3d1070, 1075 (9th Cir.2007) [↑](#footnote-ref-3)