IN THE COURT OF APPEALS OF IOWA

No. 0-247 / 99-0968
Filed July 26, 2000

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CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JASON MICHAEL FINCH,
Defendant-Appellant.

Appeal from the Iowa District Court for Jasper County, Thomas W. Mott, Judge.

Defendant appeals from convictions on sixteen counts of supplying alcohol to minors. He contends the court erred in denying his motion for judgment of acquittal based on the insufficiency of the evidence. **AFFIRMED.**

Ronald L. Wheeler, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Denise A. Timmins, Assistant Attorney General, Steve Johnson, County Attorney, and Scott W. Nicholson, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Mahan and Miller, JJ.

MILLER, J.

Defendant Jason Finch was convicted of seventeen counts of supplying alcohol to persons under legal age[1]. He appeals from sixteen of the convictions. He contends the trial court erred in denying his motion for a directed verdict[2] at the close of the State's case because there was insufficient evidence to support the convictions. We affirm.

Our standard and scope of review in reviewing a denial of a motion for judgment of acquittal is well settled:

> We will uphold the trial court's denial of a motion for judgment of acquittal if there is substantial evidence in the record to support the defendant's conviction. Our review of sufficiency-of-evidence challenges is for correction of errors at law. The jury's findings of guilt are binding on appeal if supported by substantial evidence. Substantial evidence is such evidence as could convince a rational fact finder that the defendant is guilty beyond a reasonable doubt.
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> In deciding whether there is such substantial evidence, we view the record evidence in the light most favorable to the State. Direct and circumstantial evidence are equally probative. A verdict can rest on circumstantial evidence alone. However, the evidence must at least raise a fair inference of guilt as to each essential element of the crime. Evidence which merely raises suspicion, speculation, or conjecture is insufficient.

State v. Kirchner, 600 N.W.2d 330, 333-34 (Iowa App. 1999) (internal citations and quotations omitted). We give consideration to all the evidence, not just the evidence supporting the verdict. *State v. Johnson*, 534 N.W.2d 118, 123 (Iowa App. 1995).

By application of the above standards, we are satisfied the record reveals the following facts. Kris Flora, then twenty years of age, decided to host a

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[1] "Legal age" means twenty-one years of age or more. Iowa Code § 123.3(19) (1997).
[2] The parties both treat this as a motion for judgment of acquittal pursuant to Iowa R. Crim. P 18(8)(a), and we will accordingly treat it as one.

"kegger" at his dad's house in November 1998 while his dad was hunting in South Dakota. Approximately one week prior to the party, Flora began spreading word of the party. Because he was not of age to purchase alcohol, Flora asked Finch the afternoon of the party to purchase a keg. It does not appear Finch knew at this time exactly who would be attending the party. The two went to Newton to buy the keg, and loaded it in Flora's truck. Finch left in a separate vehicle. Finch also loaned Flora his stereo system that afternoon and helped Flora set it up.

The party began at eight o'clock. The keg was made available for self-service, and cups were provided. Many people brought their own alcohol as well. Finch showed up at the party at about nine o'clock that evening, served as the deejay, and also danced and socialized at the party. It does not appear Finch knew whether every guest drank from the keg, knew each of the guests personally, or had actual knowledge of each guest's age.

The keg ran dry at a little after ten-thirty. Flora asked Finch to accompany him to a local bar, and upon arrival, in the presence of the bartender, Flora handed Finch some money and Finch purchased another keg. Shortly after they returned to the party and tapped the second keg it was learned there had been an automobile accident involving some guests who had been at the party. Flora then ended the party and asked everyone to leave, fearing the police would come to his house.

After attending the party, Catherine (Kati) Lint and Macy Martinson, along with another person, were in a car driven by Lint, and were involved in a serious car accident. Lint suffered a severe head injury that caused her to go into a

coma. Martinson suffered several fractured bones and hematoma to her left kidney. Deputy Guthrie of the Jasper County Sheriff's office became involved in the investigation, and determined the accident victims had consumed alcohol at Flora's party. He and several other deputies went to the Flora residence, where they discovered several beer glasses in the front yard. No one answered the door when the deputies knocked, so the deputies went to the back yard, where Guthrie smelled a strong odor of beer coming from a machine shed. Guthrie peered inside and observed a nearly full keg of beer on ice and the same type and color of glasses found at the accident scene. Flora and another young man then approached the officers, and gave them permission to search the shed. Guthrie later discovered Finch at the residence.

After investigation by the Jasper County Attorney pursuant to Iowa R. Crim. P. 5(6), it was discovered Finch had bought both kegs of beer. Finch was then charged by trial information with thirty-four counts of providing alcohol to persons under legal age. The first two counts were aggravated misdemeanors, due to the injuries suffered by Lint and Martinson. *See* Iowa Code §§ 123.47(1), (5) (1997). The remaining thirty-two counts were charged as serious misdemeanors. *See* Iowa Code §§ 123.47(1), (4) (1997). Jury trial was held. At the end of the trial, seventeen counts were submitted to the jury for deliberation. The jury returned guilty verdicts on all fifteen counts of serious misdemeanors. On the two aggravated misdemeanor charges the jury found Finch guilty of lesser-included serious misdemeanor offenses. Finch was sentenced to a suspended sentence of ten days on each count, to be served consecutively. Finch was placed on a one-year probation, fined five hundred dollars on each

count, and ordered to complete forty hours of community service. The remaining seventeen counts originally charged were dismissed at sentencing.

Finch appeals his convictions on sixteen of the seventeen counts, contending there was no evidence he knowingly and affirmatively supplied alcohol to anyone underage except Kris Flora.[3] Specifically, Finch contends the State presented no evidence that he knew the beer he bought for Flora was going to be served to underage persons, or that he affirmatively delivered the beer to underage persons.

A person who is of legal age and is not a licensee or permitee commits a serious misdemeanor if the person "sells, gives or otherwise supplies alcoholic liquor, wine, or beer" to an underaged person. Iowa Code § 123.47(4) (1997). The statutory crime of supplying alcohol to an underage person requires a person to affirmatively deliver or transfer liquor, wine, or beer to the underaged person. *See State v. Rohm*, 609 N.W.2d 504, 512 (Iowa 2000); *DeMore v. Dieters*, 334 N.W.2d 734, 737 (Iowa 1983). The State must prove the defendant knowingly sold, gave, or otherwise supplied alcohol to an underage person, and thus the affirmative delivery element of the crime requires a general criminal intent. *See Bauer v. Cole*, 467 N.W.2d 221, 223 (Iowa 1991). However, one does not have to know the person who is served alcohol is underage; rather, the State can satisfy the *mens rea* requirement by proving the defendant had "reasonable cause to believe that person to be under legal age." Iowa Code § 123.47(1) (1997); *State v. Casey's General Store*, 587 N.W.2d 599, 604 (Iowa 1999) (holding the section 123.49(2)(h) requirement to exercise reasonable care

[3] Finch does not appeal the conviction that relates to his supplying alcohol to Flora.

to ascertain whether the buyer is under legal age is merely "a substitute for the mens rea or knowledge element of the crime.").

DeMore, *Fullmer v. Tague*, 500 N.W.2d 432 (Iowa 1993), and *Rohm* provide us guidance in applying the above enunciated standards to various factual situations. In *DeMore*, the supreme court rejected the argument that permitting a beer party to be held on one's property when he knew or should have known minors would be present constituted "otherwise" supplying beer. *DeMore*, 334 N.W.2d at 737. In *Fullmer*, the supreme court held a parent did not knowingly and affirmatively deliver beer to underage persons when she had no knowledge her son used her check to purchase beer for a party, no knowledge of the party or any underaged drinking, and was not present at the party. *Fullmer*, 500 N.W.2d at 435. However, in the same case, the supreme court held the parent's son, who hosted the party, did affirmatively deliver alcohol to underage persons because he bought the beer, provided the cups, and joined in the party while knowing and observing underage persons were drinking from the keg. *Fullmer*, 500 N.W.2d at 436-37. In *Rohm*, the supreme court held a parent had knowingly and affirmatively delivered alcohol to the victim based on the fact she purchased the grain alcohol a few days earlier, knew it was being consumed by underage persons, including the victim, in her home while she was present but not participating in the party. *Rohm*, 609 N.W.2d at 510-11.

Based on the facts that follow, and the standards set in *Fullmer*, *Rohm*, and *DeMore*, we find sufficient evidence that Finch affirmatively delivered beer to each of the seventeen person he was convicted of delivering alcohol to, and he knew or had reasonable cause to believe they were under legal age.

Finch knew Flora was underage. Ten of the underage persons Finch was charged with supplying alcohol to each testified they had known Finch for some time, most of them from high school.[4] Most were sixteen, seventeen or eighteen years of age. Therefore, the jury could reasonably find Finch knew them to be under legal age. Further, Finch was present during the party and took an active role in it for at least an hour and a half before the first keg ran dry. Therefore, a reasonable jury could find Finch knew these ten persons were consuming beer from the keg.

The remaining seven underage persons testified they did not know Finch. However, the testimony of people who attended the party indicated that "pretty much everybody knew everybody that was there," and many of those people "were pretty little kids . . . some of them were pretty obvious. You could tell they were—weren't that old." Given the jury could find Finch had actual knowledge at least ten underage persons were drinking and the obvious youth of the crowd, it could also find Finch had reasonable cause to believe other persons who were drinking were under legal age.

Although all of these seven persons testified they drank from the keg, this is not sufficient evidence Finch himself "knowingly and affirmatively" delivered beer to them because there is no evidence he knew these seven particular persons were drinking. However, there is sufficient evidence Finch aided and abetted Flora in delivering beer to them.

Finch argues he cannot be found guilty of aiding and abetting Flora's delivery to other persons because "there was no evidence of intent to do so *at*

[4] These ten were Catherine Lint, Kris Flora, Justin Lisk, Janell Hofer, Josh Sampson, Nichole Allen, Nick Backus, Brandi Davis, Andy Simbro, and Jeffrey Fuchs.

the time the keg was provided to Mr. Flora." (Emphasis added). However, to prove Finch guilty as an aider and abettor, the State was required to prove he "assented to or lent countenance and approval to a criminal act either by active participation in it or by in some manner encouraging it prior to *or at the time of its commission*." *State v. Speaks,* 576 N.W.2d 629, 632 (Iowa App. 1989) (emphasis added). There can be no question Flora affirmatively delivered alcohol to these seven persons. He held the party at his home, directly and indirectly invited numerous persons including these seven individuals, provided cups, joined in the party, and observed his underage friends drink from the keg. Most of the persons Finch was charged with supplying beer to knew Flora, and by that association the jury could find Flora knew or had reasonable cause to believe them to be underage. Finch was present during most of the party while the drinking was going on, knew some of the drinkers were underage and had reasonable cause to believe others were, and lent countenance and approval to Flora's actions by continuing to provide the stereo system and deejaying, socializing with the crowd, and helping Flora secure a second keg of beer. There is some evidence to suggest Finch drank from the keg as well. This is sufficient evidence to conclude Finch aided and abetted Flora's delivery of beer to these seven additional underage persons.

AFFIRMED.