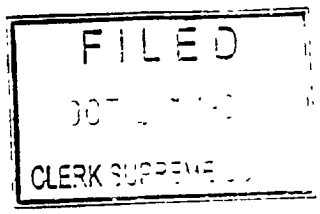
IN THE COURT OF APPEALS OF IOWA

No. 1999-189 (9-413) / 98-1546
Filed October 27, 1999



STATE OF IOWA,
Plaintiff-Appellee,

vs.

FREDDIE THOMAS DURAN,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Mark J. Smith, Judge.

Defendant appeals following his conviction for involuntary manslaughter.

AFFIRMED.

Linda Del Gallo, State Appellate Defender, and David Arthur Adams, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, William E. Davis, County Attorney, and Julie Walton, Assistant County Attorney, for appellee.

Heard by Huitink, P.J., and Mahan and Hecht, JJ.

HUITINK, P.J.

I. Background Facts and Proceedings.

Freddie Duran was charged with manslaughter in violation of Iowa Code section 707.5(1)[1] following fourteen-year-old Justin Flowers's death from alcohol poisoning. The State originally alleged Duran committed this offense under either of two theories: (1) "by knowingly encouraging a person under the age of eighteen to go to an unlicensed premise where alcoholic liquor, wine, or beer was unlawfully sold or kept for sale"; or (2) by "encourag[ing] a child under eighteen years of age to commit a delinquent act, i.e. consumption of beer, wine, or liquor" in violation of Iowa Code sections 707.5(1), 709A(1)(2)(b) and 123.3(19). Duran was also charged with selling, giving, or supplying alcohol to a minor in violation of Iowa Code section 123.47(6).

The record includes evidence indicating Duran took Flowers to the Katherine Rohm residence on December 22, 1997. The Rohm residence was the scene of Kevin Rohm's birthday party the night before. The party was organized by Kevin's brother, Jeffrey Rohm, and Kevin's mother, Katherine Rohm, purchased the alcohol consumed at the party.

According to witnesses, Flowers was disappointed because he was not included in the December 21 party. Both Flowers and Duran expressed Flowers's

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[1] Iowa Code section 707.5(1) provides a person commits a class "D" felony when the person unintentionally causes the death of another person by the commission of a public offense.

sentiments to others present at the Rohm residence on December 22. Flowers also told the others he wanted "to get drunk." Jeffrey and Kevin Rohms gave Flowers a drink containing gin, Everclear, and vodka. Kevin Rohm bet Flowers he could not finish drinking a partially full bottle of Everclear. After drinking the remaining Everclear and finishing the drink made by Jeffrey and Kevin Rohm, Flowers began shaking, then vomited and collapsed.

There is also evidence that while Flowers lay unconscious, Jeffrey Rohm placed dog feces in Flowers's pants, a cigarette in his ear, and a sign on Flowers referring to him as an ashtray. Duran removed Flowers's shirt, poured water on him, and kicked him in the ribs. Duran also took money from Flowers.

Flowers never regained consciousness and died the following day. An autopsy showed Flowers's blood alcohol level was .412 and the cause of his death was acute alcoholic intoxication or alcohol poisoning.

Duran's motion for judgment of acquittal was granted as to the State's theory that Duran encouraged Flowers to go to an unlicensed premise where alcohol was served. The district court denied Duran's motion concerning allegations he encouraged Flowers to commit a delinquent act. The jury found Duran not guilty of supplying alcohol to a minor. Duran was, however, convicted of voluntary manslaughter and subsequently sentenced to an indeterminate five-year term of incarceration.

On appeal Duran challenges the sufficiency of the evidence supporting his manslaughter conviction. Duran also contends he was denied effective assistance of counsel.

II. Sufficiency of the Evidence.

Our standard of review on this issue is well settled. A verdict will be upheld where there is substantial evidence to support the charge. *State v. LeGear*, 346 N.W.2d 21, 23 (Iowa 1984). Substantial evidence means such evidence as could convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt. *Id.* The evidence is viewed in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the record. *State v. Blair*, 347 N.W.2d 416, 418 (Iowa 1984). We consider all the evidence at trial, not just the evidence that supports the verdict. *State v. Robinson*, 288 N.W.2d 337, 340 (Iowa 1980).

The State's manslaughter case was premised on Duran's commission of a public offense, contributing to the delinquency of a minor, causing Flowers's death. *See* Iowa Code § 707.5(1). Iowa Code section 709A.1 provides:

> It shall be unlawful
>
> 1. To encourage any child under eighteen years of age to commit any delinquent act of delinquency defined in 232.
>
> * * *
>
> 3. To knowingly encourage, contribute, or in any manner cause such child to violate any law of this state or any ordinance of any city.

Duran claims the State failed to prove the underlying public offense of contributing to Flowers's delinquency. He argues proof that he took Flowers to the Rohm

residence is insufficient to establish that he encouraged, contributed, or caused Flowers's delinquent acts or violation of State laws prohibiting possession or consumption of alcohol. We disagree.

As noted earlier, Duran knew Flowers wanted to go to Rohm's to obtain and consume alcohol left over from the party the night before. Additionally, Duran's statements to others conveying Flowers's sentiments and intentions can fairly be interpreted as an invitation to furnish Flowers the alcohol necessary to accommodate Flowers's desire to "get drunk." This evidence is sufficient to support the jury's implicit finding that Duran contributed to Flowers's delinquency under either statutory alternative. We affirm on this issue.

III. Ineffective Assistance of Counsel.

Duran advances several theories supporting his ineffective assistance of counsel claims. He cites counsel's failure to include insufficient proof of recklessness or causation as grounds supporting his motion for judgment of acquittal. Duran also cites counsel's failure to object to evidence describing Duran's behavior while Flowers was unconscious.

Generally, ineffective assistance of counsel claims are preserved for postconviction proceedings to allow trial counsel an opportunity to defend the charges. *State v. Mulder*, 313 N.W.2d 885, 890 (Iowa 1981); *State v. Nebinger*, 412 N.W.2d 180, 191-92 (Iowa App. 1987). We find the record insufficient to resolve

Duran's ineffective assistance of counsel claims on direct appeal, and they are accordingly preserved for postconviction proceedings.

We have carefully considered all of Duran's remaining claims of reversible error and find them to be without merit or otherwise addressed by the foregoing. The judgment of the district court is affirmed.

AFFIRMED.