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NO. 69447-2-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

VLADISLAV SLOBODA,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE WESLEY SAINT CLAIR

BRIEF OF RESPONDENT

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ORIGINAL

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A. ISSUE PRESENTED

1. Evidence is sufficient to support a conviction if, when viewed in the light most favorable to the prosecution, any rational trier of fact could find the essential elements of the crime proven beyond a reasonable doubt. Here, the State presented evidence that Sloboda was sixteen years of age at the time of the offense, that he jumped the fence at the Federal Way Memorial Stadium for the Decatur High School girls' soccer game without paying to enter, that when Officer Stray arrested Sloboda for trespassing he immediately noticed an odor of intoxicants coming from Sloboda's breath, and that Sloboda admitted to consuming alcohol prior to the game. Did the State produce sufficient evidence to support Sloboda's conviction for minor in possession/consumption of alcohol?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

Juvenile respondent, Vladislav Sloboda, was charged by information in King County Juvenile Court with one count of minor in possession of alcohol. CP 18. The Honorable Judge Wesley Saint Clair found Sloboda guilty of minor in possession. CP 22-24;

RP 63. Specifically, the court found that the State proved the following elements beyond a reasonable doubt: (1) that on or about November 9, 2011, Sloboda consumed liquor, (2) that Sloboda was under twenty-one years of age, and (3) that these acts occurred in King County, Washington. CP 24. Sloboda now challenges the sufficiency of the evidence to convict him of minor in possession of alcohol.

2. SUBSTANTIVE FACTS

On November 9, 2011, the Decatur High School girls' soccer team played a game at the Federal Way Memorial Stadium in King County. RP 16. Federal Way Police Officer John Stray was working bicycle patrol that evening at the game. RP 16. The only open entrance to the stadium was on the "home" side of the field. CP 23; RP 18. All spectators were seated on the home side of the field. CP 23; RP 18. The visitor's side entrance was closed. CP 23; RP 18-20. No spectators were allowed on that side of the field. CP 23; RP 18-20.

Sloboda and two other young men jumped over the fence on the visitor's side of the field. CP 23; RP 17. Security officers reported the fence jumping. CP 23. Officer Stray responded to the

location where Sloboda jumped the fence. CP 23; RP 20. He approached Sloboda and immediately arrested him and the other young men for trespassing and not paying to enter the stadium. CP 23; RP 20.

Officer Stray has received training and has years of experience investigating alcohol-related crimes such as driving under the influence cases and minor in possession and/or consumption of alcohol cases. RP 14-15. He has investigated thousands of minors in possession cases throughout his career. RP 14-15.

Officer Stray immediately noticed an odor of intoxicants coming from Sloboda's breath. CP 23; RP 20-21. Officer Stray described the smell of intoxicants on Sloboda's breath as stale beer. RP 41. Officer Stray testified that Sloboda's behavior and demeanor was unusual. RP 31. Officer Stray testified that after jumping the fence, Sloboda appeared as if he was going to show off in front of the crowd. RP 31. Sloboda appeared happy to see the officer and Officer Stray thought it was unusual that the young men would saunter up the way they did with a demeanor that said "you can start the soccer game now, we're here." RP 31. Based on his training and experience, Officer Stray testified that Sloboda's

behavior was consistent with someone who had definitely consumed alcohol. RP 32.

Sloboda was informed of his Miranda warnings and acknowledged that he understood by saying "yes." CP 20; RP 23-24. He was then escorted to Officer Stray's patrol car. CP 20. Sloboda signed a waiver of rights form and gave a written statement which stated "me and my friends decided to jump the fence for the DHS soccer game prior to the game I had a little to drink I drank a Miller Highlight." CP 20; RP 27-29. Sloboda was later released to his father. RP 32.

C. ARGUMENT

1. THE STATE PRESENTED SUFFICIENT EVIDENCE TO SUPPORT SLOBODA'S CONVICTION FOR MINOR IN POSSESSION/CONSUMPTION OF ALCOHOL.

Sloboda maintains that there was insufficient evidence to support his conviction for minor in possession/consumption of alcohol. Specifically, he claims that the State failed to prove that he possessed or consumed alcohol. His claim should be rejected. Sloboda's conviction was predicated on evidence that he was behaving unusually, that he had the odor of intoxicants emanating

from his breath when approached by Officer Stray and that he admitted to consuming alcohol prior to the soccer game, specifically admitting to drinking a Miller beer. RP 21, 30. Accordingly, there was sufficient evidence to support the juvenile court's finding of guilt.

a. Relevant Law.

Evidence is sufficient if, taken in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980) (citing Jackson v. Virginia, 443 U.S. 307, 318, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)). A claim of insufficiency of the evidence admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Circumstantial evidence is considered equally as reliable as direct evidence. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). An appellate court must defer to the trier of fact on issues involving conflicting testimony, credibility of the witnesses, and persuasiveness of the evidence. State v. Hernandez, 85 Wn. App. 672, 675, 935 P.2d 623 (1997).

In determining whether there is sufficient evidence, the reviewing court determines not “whether *it* believes the evidence at trial established guilt beyond a reasonable doubt,” but whether “*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” Green, 94 Wn.2d at 221 (emphasis added); State v. Fiser, 99 Wn. App. 714, 718, 995 P.2d 107, rev. denied, 141 Wn.2d 1023 (2000).

The State charged Sloboda under RCW 66.44.270(2), which includes subsections (a) and (b). Subsection (2)(a) makes it unlawful for “any person under the age of twenty-one years to possess, consume, or otherwise acquire any liquor.” Subsection (2)(b) provides that:

It is unlawful for a person under the age of twenty-one years to be in a public place, or to be in a motor vehicle in a public place, while exhibiting the effects of having consumed liquor. For purposes of this subsection, exhibiting the effects of having consumed liquor means that a person has the odor of liquor on his or her breath and either: (i) Is in possession of or close proximity to a container that has or recently had liquor in it; or (ii) by speech, manner, appearance, behavior, lack of coordination, or otherwise, exhibits that he or she is under the influence of liquor.

Possession can be established “if he or she knows of the substance’s presence, it is immediately accessible or he or she exercises dominion or control over it.” State v. Dalton, 72 Wn. App.

674, 676, 865 P.2d 575 (1994). Evidence of assimilation is circumstantial evidence of prior possession. Id. at 676. When combined with other corroborating evidence, alcohol consumption may support a possession conviction. Id. at 676.

In its findings of facts and conclusions of law, the juvenile court found Sloboda guilty of minor in possession of liquor under subsection (2)(a), specifically the court found that on November 9, 2011, Sloboda consumed liquor, that he was under the age of twenty-one and that this occurred in King County, Washington. CP 24.

b. The State Presented Sufficient Evidence Supporting Sloboda's Conviction For Minor In Possession Of Liquor.

Under the standard set forth above, the evidence presented at trial was more than sufficient to sustain Sloboda's conviction for minor in possession of liquor. The evidence at trial consisted of his age, Officer Stray's testimony that he was behaving unusually, Sloboda's admission that he had consumed beer prior to the game, and Officer Stray's corroborating testimony that he detected the odor of alcohol on Sloboda's breath. In State v. Walton, 67 Wn. App. 127, 131, 834 P.2d 644 (1992), this Court found that

evidence was sufficient to sustain a conviction for minor in possession of alcohol with nearly identical facts. The evidence at trial in Walton's case consisted of Walton's age, his admission that he had consumed beer at a juvenile party and the arresting officer's corroborating testimony that he detected the odor of alcohol on Walton's breath. Id. at 131.

Sloboda attempts to distinguish several cases in which evidence was found to be insufficient. Sloboda cites State v. Francisco, 148 Wn. App. 168, 199 P.3d 478, rev. denied, 166 Wn.2d 1027 (2009). In that Division Three case, the court held that circumstantial evidence that the defendant was lying in a driveway, incoherent, unable to walk and smelled of alcohol was insufficient to support a finding that the defendant exercised dominion or control over alcohol. Id. at 173. Francisco is distinguishable from the present case as there was no confession in Francisco. In fact, in ruling that the State offered no corroborating evidence to prove possession, the court implicitly acknowledges that a confession is powerful corroborating evidence to prove possession or consumption of alcohol. The court specifically states that "no alcohol containers were found on or near Mr. Francisco and he did not *confess* to possessing any liquor." Id. at 176 (emphasis added).

Sloboda cites another Division Three case, State v. A.T.P.-R., 132 Wn. App. 181, 185, 130 P.3d 877. In that case, the defendant had an odor of alcohol emanating from his body and he was also in close proximity to a friend who held an open bottle of beer. The court held that an odor of alcohol on a juvenile, together with his close proximity to another juvenile who was holding an open bottle of beer, was insufficient to establish the defendant's constructive possession or consumption of alcohol. Again, in that case the odor of alcohol was not accompanied by the powerful evidence present in this case – a confession.

As this court has previously held in State v. Walton, 67 Wn. App. 127, the smell of alcohol on a minor's breath, coupled with the minor's admission of drinking alcohol is sufficient to support a finding of guilty under RCW 66.44.270(2)(a). Given the evidence presented at trial, the juvenile court's finding of guilt should be affirmed.

D. CONCLUSION

The State presented sufficient evidence to support the juvenile court's finding of guilt as to the charge of minor in possession of alcohol. Accordingly, for the foregoing reasons, the

State asks this Court to affirm Sloboda's conviction for minor in possession of alcohol.

DATED this 8^m day of May, 2013.

Respectfully submitted,

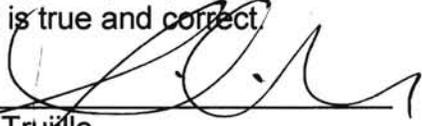
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Eric Nielsen, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the Brief of Respondent, in STATE V. VLADISLAV SLOBODA, Cause No. 69447-2-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Name: Sue Trujillo
Done in Seattle, Washington

5-9-13
Date