FILED
NOV 01, 2011
Court of Appeals
Division III
State of Washington

NO. 29963-5-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

RESPONDENT,

v.

SARAH BRAUN,

APPELLANT.

RESPONDENT'S BRIEF

D. ANGUS LEE
PROSECUTING ATTORNEY

By: Paul M. Gaffney
WSBA #38109
Deputy Prosecuting Attorney

PO BOX 37
EPHRATA WA 98823
(509)754-2011

TABLE OF CONTENTS

Page

Table of Contents i

Table of Authorities ii

I. IDENTITY OF RESPONDENT 1

II. ISSUES 1

III. STATEMENT OF THE CASE 1

A. Procedural Facts 1

B. Substantive Facts 1-4

IV. ARGUMENT 2-10

A. There is Substantial Evidence to Support the Appellant's Convictions

V. CONCLUSION 10

TABLE OF AUTHORITIES

Page

State Cases:

State v. Dalton, 72 Wn. App. 674, 865 P.2d 575 (1994) 4

State v. Salinas, 119 Wn.2d 192, 829 P.2d 1068 (1992) 4

Statutes and Other Authorities:

RCW 66.44.270 4

I. IDENTITY OF RESPONDENT

The State of Washington, represented by the Grant County Prosecuting Attorney's Office, is the Respondent in this matter.

II. ISSUES PRESENTED

A. Whether there was sufficient evidence to convict?

III. STATEMENT OF THE CASE

A. Procedural Facts.

The Respondent agrees with the procedural facts as outlined in the Appellant's brief, however would add that Findings of Facts and Conclusions of Law were entered by the trial court on October 12, 2011. CP 291-391. Proposed Findings of Fact and Conclusions of Law were filed by the Respondent and the Appellant on October 5, 2011 and October 12, 2011, respectively. CP 33-133; 214-216.

B. Substantive Facts.

At the time of the fact finding hearing, Corporal Loera had been employed as a police officer with the Moses Lake Police Department for the past 21 years. RP 88. He was promoted to corporal four years ago and supervised the graveyard shift. RP 87. Corporal Loera received training in the area of making a determination if a person has been using alcohol. RP 89.

On August 9, 2010 at 11:30PM Corporal Loera responded to a noise disturbance at 618 Harborview in Moses Lake, Washington. RP 92. This residence is on the corner of Harborview and Glenmoor. RP 92.

Corporal Loera could hear loud music coming from the residence and could see and hear numerous subjects that appeared to be under the age of 21 inside the residence, holding beer cans, through an open window. RP 94, 95. The subjects Corporal Loera saw carrying beer cans included male and female individuals. RP 95, 108.

Corporal Loera attempted to contact the owner of the residence through an open window near the front door but a person from inside the home refused to provide information to him. RP 94. This person was later identified as Clinton Leinnewever. RP 94, 95, 97.

Corporal Loera called for assistance on his radio and other law enforcement officers responded to this residence and parked along Glenmoor (the north side of the residence.) RP 96. As these officers were located on the side of the residence near their cars on Glenmoor, Corporal Loera walked through the side yard of the residence. RP 96. As Corporal Loera passed through the side yard, he could see alcohol containers on a table and male and female subjects that appeared to be under the age of 21 through another open window. RP 96, 97.

Corporal Loera again contacted Mr. Leinnewever at the side window and informed him that he needed information from him. RP 97. Mr. Leinnewever told Corporal Loera to leave, that he wanted his badge number and berated him. RP 98.

Corporal Loera applied for and was granted a search warrant for the residence. RP 99. Corporal Loera informed Mr. Leinnewever that he had obtained a search warrant and Mr. Leinnewever refused to open the door. RP 100. A door ram was used to gain entry. RP 100.

Once inside the residence, Corporal Loera saw a number of subjects in the home that appeared to be under the age of 21 and containers of alcohol. RP 102. The scene of this home was photographed and admitted into evidence as Exhibits 1, 2, and 3. RP 103, 106, 107. The photos depicted numerous alcohol containers that were located in the home. RP 103, 106, 107.

Corporal Loera found the Appellant inside the home in the kitchen area. RP 114. Corporal Loera provided Miranda warnings with juvenile admonishments to the Appellant and asked for her name and date of birth. RP 113. The Appellant was born on February 22, 1995. RP 85.

When the Appellant provided these answers to him, he could smell alcohol intoxicants coming from her breath and noticed that she had red and bloodshot watery eyes. RP 114.

Corporal Loera spoke with another female subject by the name of Samantha Nelson and he did not detect the smell of alcohol on her breath. RP 123.

The Appellant was the only female at that party that had alcohol on her breath and she was the only female at the party that showed signs of impairment. RP 128.

IV. ARGUMENT

A. There is Substantial Evidence to Support the Appellant's Conviction.

The Appellant challenges whether there was sufficient evidence that she committed the crime of Minor in Possession of or Consuming

Alcohol. The State argues that there was a considerable amount of evidence to support the Appellant's conviction.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn from it. *Id.*

Revised Code of Washington 66.44.270 provides in part; "It is unlawful for any person under the age of twenty-one years to possess, consume, or otherwise acquire any liquor."

In regards to MIP litigation, there is clear case-law defining what constitutes sufficient evidence.

> The presence of liquor in one's system does not constitute possession per se because the person's power to control, possess, use or dispose of it ends upon assimilation. However, evidence of assimilation is circumstantial evidence of prior possession. Although insufficient by itself to support a conviction, when combined with other corroborating evidence of sufficient probative value, evidence of assimilation can be sufficient to prove possession beyond a reasonable doubt.

State v. Dalton, 72 Wn. App. 674, 865 P.2d 575 (1994).

In *Dalton*, an officer observed Mr. Dalton in a residence in close proximity to a beer keg and plastic cups of beer while a party was in progress. The officer observed Mr. Dalton exit the residence with an

unsteady walk, slurred speech, and bloodshot eyes. He also smelled of alcohol. The officer testified that Mr. Dalton appeared intoxicated based on his training and experience. In this case, the court affirmed the conviction for MIP.

Here, Corporal Loera observed male and female subjects holding beer cans inside a home where a party was in progress. RP 94, 95, 108. After Corporal Loera made entry into the residence, the Appellant was found inside the kitchen area. RP 114. Many containers of alcohol were located in the kitchen and photographed as Exhibits 1, 2, and 3. RP 103, 106, 107. As such, the Appellant was observed in close proximity to alcoholic containers similar to the individual in the *Dalton* case.

When questioned by Corporal Loera, the Appellant's breath smelled of alcohol intoxicants. RP 114. She also displayed red and bloodshot watery eyes. RP 114. Corporal Loera concluded that the Appellant had consumed alcohol. RP 118. Therefore, the Appellant exhibited signs of alcohol use similarly as the individual in the *Dalton* case.

Lastly, the Appellant was the only female at that party that had alcohol on her breath. RP 128. Therefore, it is likely that the female individual that the officer saw holding a beer can prior to his entry into the home was the Appellant. This additional evidence goes beyond what was observed in the *Dalton* case since it includes direct evidence of actual possession.

In considering all of this evidence as true and all inferences that reasonably can be drawn from it, there is ample evidence that the

Appellant had possessed and consumed alcohol while under the age of twenty-one. Appellant's breath smelled of alcohol, her eyes were bloodshot and red, she was attending a party, she was found in close proximity to numerous alcoholic containers and she was seen holding a beer can. The Respondent respectfully requests that the Court affirms the Appellant's conviction.

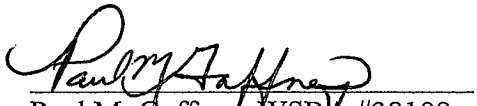
V. CONCLUSION

Based upon the foregoing analysis, the State respectfully requests that the Court uphold the Appellant's conviction.

DATED: November 1, 2011.

Respectfully submitted:

D. ANGUS LEE
Prosecuting Attorney



Paul M. Gaffney, WSBA #38109
Deputy Prosecuting Attorney

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON, Respondent, vs. SARAH BRAUN, Appellant.	))))))))))	No. 29963-5-III DECLARATION OF SERVICE

Under penalty of perjury of the laws of the State of Washington, the undersigned declares:

That on this day I served a copy of the Respondent's Brief in this matter by e-mail on the following party, receipt confirmed, pursuant to the parties' agreement:

Nielsen, Broman & Koch, PLLC
sloanej@nwattorney.net

That on this day I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to Appellant containing a copy of the Respondent's Brief in the above-entitled matter.

Sarah Braun
312 Ridge Rd.
Moses Lake WA 98837

Dated: November 1, 2011.

Kaye Burns