

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

WAYNE SEALS,

Defendant-Appellant.

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UNPUBLISHED

November 29, 2007

No. 271337

Wayne Circuit Court

LC No. 06-000230-01

Before: Markey, P.J., and Saad and Wilder, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of furnishing unlicensed premises upon which another may engage in the consumption of liquor for consideration, MCL 436.1913(1). The trial court sentenced defendant to pay a fine of \$1,000, along with costs. Defendant appeals as of right. We affirm. We decide this case without oral argument pursuant to MCR 7.214(E).

A Hamtramck police reservist testified that he was on patrol in the early hours of July 10, 2005, when a pedestrian flagged him down with a “parking complaint.” The officer observed numerous cars parked in front of 2120 Caniff. The officer described meeting defendant, who said that he would take care of the parking complaint, and then entered the building. The officer continued that several persons then came from the building and began moving their cars.

Another police witness testified that he appeared at the scene, in uniform, in response to an individual’s complaint that persons were parking on his empty lot. This officer observed people going into and coming out of 2120 Caniff. The door to 2120 Caniff was open, and the officer entered the open door and observed inside a bar, couches, and “lots of people” holding plastic cups. The officer testified that he observed a young woman holding money over the bar, and another woman behind the bar pouring alcohol into a plastic cup. However, according to the officer, when the participants noticed the police presence, the “female at the bar trying to hand money across . . . took the money back and started walking away and everybody started putting their alcohol or their drinks down.” The officer described seeing “alcohol all through the back behind the bar,” including beer and coolers, along with cups and ice. The witness identified a photograph as from the scene and depicting containers holding multiple bottles of alcohol, some open and some closed. The officer added that he discovered behind the bar a pistol with a bag near it, and that defendant admitted ownership of both.

The owner of the building testified that he had rented it on a month-to-month basis to a person other than defendant, but that during the summer in question he observed defendant and another person painting the building. According to the owner, on the latter occasion defendant expressed concern over some toilets in the building, and then met the owner at a nearby warehouse where some replacements were obtained.

Defendant argues that the trial court erred in denying his motion for a directed verdict, on the grounds that the evidence was insufficient to show that defendant had control over the premises, that any alleged transaction actually involved beverage alcohol, or that any alleged alcohol was provided in exchange for consideration. We disagree.

When reviewing a trial court's decision on a motion for a directed verdict, we review the record de novo to determine whether the evidence presented by the prosecutor, viewed in the light most favorable to the prosecutor, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt. *People v Mayhew*, 236 Mich App 112, 124-125; 600 NW2d 370 (1999).

Concerning defendant's control of the property, the trial court concluded as follows:

[T]he defendant appears to have participated in this in certain ways. . . . [T]here hadn't been any evidence that he was the main driving force behind the events. I concede that point. We don't know that he is the lessee of the premises. We don't know that he was the investor or if he was the person who bought the liquor and hired the help that worked behind the bar . . . .

But what we have, at a very minimum, is clear evidence that he aided and abetted in the crime by managing traffic out of, in front of the building by being a presence or perhaps in the form of a bouncer on the premises. There's also evidence from his admitted ownership of a gun that was behind the bar that he provided some additional protection in that fashion. [Tr II, 80.]

We agree with the trial court. The evidence that defendant responded to the complaint about the parking situation, owned the firearm discovered on the premises, and took the initiative to arrange with the landlord for new toilets, well supported the conclusion that defendant exercised enough control over the premises as to be responsible for furnishing them for liquor sales.

Concerning the presence of alcohol on the premises, and the alcohol on the premises being provided to others for money, the trial court concluded as follows:

All indications are that this was an after hours event for consideration. That alcohol was being sold; there's direct and circumstantial evidence of that on this record.

. . . [D]isputing that it was alcohol that was being poured or consumed on the premises or disputing that it being sold are defenses that really hardly pass the giggle test. [A police witness] testified he saw money being held by someone that sort of looked like she was performing waitressing duties and he also said he saw this individual that starts to hand one of the occupants or participants in this event

some money and quickly withdraw it when she saw him entering the premises and of course it's possible to imagine why somebody would be giving away all this liquor for nothing on a premises like this in what after all was a commercial establishment. [Tr II, 79-80.]

Defendant protests that no liquid on the premises was tested to verify that it was alcoholic in nature. But the testimony concerning containers labeled as alcoholic beverages was strong circumstantial evidence that alcohol is what was being served. That, plus the obvious party atmosphere that the police witnesses described, well supported the conclusion that the occasion in question involved the serving of beverage alcohol.

Defendant insists that the trial court misrepresented the evidence in stating that a police officer "said he saw one of the ladies behind the bar holding money over her head and handing money to a customer—I mean a patron, an occupant, a person, and then quickly pull it back once she saw him." However, this characterization is consistent with the officer's testimony and was evidence that well supported the conclusion that what the police discovered was an enterprise in progress, commercial nature of which the participants attempted to conceal.

For these reasons, we conclude that the trial court properly denied the motion for a directed verdict.

In light of our disposition of this issue, we need not address defendant's argument that the trial court erred in denying his motion to quash. Issues concerning whether a defendant should have been brought to trial in the first instance become moot once the defendant has been fairly convicted at trial. See *People v Wilson*, 469 Mich 1018; 677 NW2d 29 (2004); *People v Meadows*, 175 Mich App 355, 359; 437 NW2d 405 (1989).

Affirmed.

/s/ Jane E. Markey  
/s/ Henry William Saad  
/s/ Kurtis T. Wilder