

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 6, 2008

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See WIS. STAT. § 808.10 and RULE 809.62.*

Appeal No. 2007AP1523

Cir. Ct. No. 2006FO834

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

COLUMBIA COUNTY,

PLAINTIFF-RESPONDENT,

v.

ANDREW J. ARENDT,

DEFENDANT-APPELLANT.

APPEAL from a judgment and order of the circuit court for Columbia County: JAMES MILLER, Judge. *Affirmed.*

¶1 DYKMAN, J.¹ Andrew Arendt appeals from a judgment of conviction for possession of alcohol as an underage person, contrary to WIS. STAT.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(b) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

§ 125.07(4)(b). Arendt contends that the County did not show by clear and convincing evidence that Arendt possessed alcohol. Because Arendt was present when the officer found beer in Arendt's living room, we conclude that there was sufficient evidence to find that Arendt had possession of alcohol. Accordingly, we affirm.

Background

¶2 The following facts are undisputed. On June 15, 2006, Andrew Arendt called the police to have his ex-girlfriend removed from his apartment. Columbia County Deputy Cory Otto arrived at Arendt's apartment and spoke with Arendt. When Otto entered Arendt's apartment, he saw a tapped barrel of beer on ice in the living room and verified that it was partially full. Arendt was under twenty-one years of age at the time of the incident. Arendt's name was on the lease to the apartment.

¶3 Otto issued a citation to Arendt for possession of alcohol as an underage person. The trial court found that Arendt was under the age of twenty-one and was the possessor of the residence in which "there was a partial barrel of beer in a tub with ice that was tapped." It concluded that Arendt was guilty of possession of alcohol as an underage person. Arendt appeals from his judgment of conviction.

Standard of Review

¶4 Under WIS. STAT. § 125.07(4)(b), a person is guilty of underage possession of alcohol if he or she is under twenty-one years of age and knowingly possesses alcoholic beverages while unaccompanied by his or her parent, guardian, or spouse of legal drinking age. The standard of proof for conviction of

any person charged with violating this statute is clear, satisfactory, and convincing evidence. *See City of Madison v. Geier*, 27 Wis. 2d 687, 692, 135 N.W.2d 761 (1965). “The test for determining sufficiency of the evidence is whether a reasonable trier of fact could be convinced of the defendant’s guilt to the required degree of certitude by the evidence which it had a right to believe and accept as true.” *City of Milwaukee v. Wilson*, 96 Wis. 2d 11, 21, 291 N.W.2d 452 (1980). We will reverse only if the evidence, viewed most favorably to the finding of guilt, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found the evidence of guilt to be clear, satisfactory, and convincing. *See State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990).

Discussion

¶5 Arendt argues that the trial court erred in finding possession because it relied solely on alcohol being present in Arendt’s residence. He argues that the mere presence of alcohol in his apartment is not enough to prove possession.² He asserts that the County needed to show his intent to exercise control over the alcohol. The County contends that Arendt’s name on the lease supports a finding of possession because it adds an additional element of control that Arendt had over the premises and thus the objects within those premises. While being a lessee alone is insufficient to support a finding of possession, being a lessee and knowing that alcohol was in the apartment is sufficient.

² Arendt’s argument relies in part on his assertion that there was another resident present in the apartment at the time of the incident. The fact that there may have been another resident with a possessory interest in the apartment and/or alcohol does not negate the sufficiency of the evidence to support a finding of possession. Proof of joint possession can support a conviction. *State v. Dodd*, 28 Wis. 2d 643, 650, 137 N.W.2d 465 (1965) (citations omitted).

¶6 We disagree with Arendt's assertion that the trial court based its decision on the common location of the alcohol and Arendt. To be found guilty of possessing a controlled substance, physical possession is not necessary. *State v. R.B.*, 108 Wis. 2d 494, 496, 322 N.W.2d 502 (Ct. App. 1982). Possession may be imputed when a substance is found in a place immediately accessible to the accused and subject to his exclusive or joint dominion and control, provided that the accused has knowledge of the presence of the substance. *Schmidt v. State*, 77 Wis. 2d 370, 379, 253 N.W.2d 204 (1977) (discussing possession of illicit drugs).

¶7 “[T]he dominion and control necessary to permit conviction based on constructive rather than actual possession requires that the facts permit the inference of an intent to possess.” *R.B.*, 108 Wis. 2d at 497. The dominion and control element is met when the defendant, as resident owner of his home, has control over the common area in which the contraband is found. *State v. Allbaugh*, 148 Wis. 2d 807, 815, 436 N.W.2d 898 (Ct. App. 1989) (citation omitted); *see also Schmidt*, 77 Wis. 2d at 379, 380-381 (using language implying that dominion and control over the area where the controlled substance was found satisfies the dominion and control element). When there is joint occupancy of premises, evidence that would support an inference of knowledge that alcohol was in the premises includes the defendant having access to the area where alcohol was found and the alcohol being in plain view. *See Allbaugh*, 148 Wis. 2d at 813.

¶8 In this case, Arendt called the police to have his ex-girlfriend removed from his apartment. Otto arrived and found a tapped barrel of beer on ice in Arendt's living room. Based on these facts, a reasonable person could infer that Arendt was aware of the presence of alcohol in his apartment and that he had immediate access to it. In addition, Arendt had dominion and control over the living room, a common area in the apartment he leased.

¶9 We conclude that there was sufficient evidence to support a finding that Arendt possessed alcohol. Accordingly, we affirm.

By the Court.— Judgment and order affirmed.

Not recommended for publication in the official reports. *See* WIS. STAT. RULE 809.23(1)(b)4.

