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IN THE COURT OF APPEALS OF INDIANA

JOSHUA D. SUTTON,
Appellant-Defendant,
vs.
STATE OF INDIANA,
Appellee-Plaintiff.

No. 29A05-1104-CR-223

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable Daniel J. Pfleging, Judge
Cause No. 29D02-0710-FB-110

November 15, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

In the summer of 2005, twenty-year-old Joshua D. Sutton spent time with three adolescent girls. Among other things, he drove the girls to a liquor store and then to a house where no one else was present. Once there, he drank vodka and smoked marijuana with the girls.

Sutton was subsequently convicted of three counts of contributing to the delinquency of a minor. He now appeals, challenging the sufficiency of the evidence to support the convictions. Concluding that he merely asks us to reweigh evidence and judge witness credibility, we affirm.

Facts and Procedural History

In 2005, twelve-year-old K.M. came to Noblesville to spend the summer with her extended family. She divided her time between her grandmother and her cousins, L.B. and K.D. When she was with her cousins, K.M. would stay overnight either at L.B. and L.B.'s mother's house or at Sutton's apartment. On two occasions while L.B.'s mother was hospitalized, Sutton drove the three girls to L.B.'s otherwise empty house, where they drank vodka and smoked marijuana. On at least one occasion, Sutton stopped by the liquor store while driving the girls to L.B.'s house. L.B. would later testify that the marijuana they smoked had come from Sutton. At trial, Sutton described the girls as "trashed." *Id*. at 423. On at least one occasion, they played a chugging game with the vodka. On both occasions, they got drunk. On one of the nights, Sutton and the other girls laughed at L.B. when she

vomited and then fell down the stairs. Afterwards, Sutton took the girls to his apartment, where L.B. vomited again, and all three girls stayed overnight at Sutton's apartment.

There was evidence that L.B. provided some vodka that she had stolen from a friend's garage, but K.M. testified at trial that she was "pretty sure" that Sutton brought the vodka. *Id*. at 321. K.D. said that Sutton had some marijuana in his pocket, *id*. at 352, and K.M. testified that Sutton gave her the marijuana and that she smoked it using his pipe. *Id*. at 281-83.

On October 11, 2007, the State charged Sutton with two counts of child molesting and three counts of class A misdemeanor contributing to the delinquency of a minor, one count for each girl. The State dismissed one of the child molesting counts prior to trial. Following a March 1, 2011 jury trial, Sutton was acquitted on the remaining child molesting count and convicted of three counts of class A misdemeanor contributing to the delinquency of a minor. He now appeals. Additional facts will be provided as necessary.

Discussion and Decision

Sutton challenges the sufficiency of the evidence to support his convictions. When reviewing a claim of insufficient evidence, we neither reweigh evidence nor judge witness credibility. *Rush v. State*, 881 N.E.2d 46, 53 (Ind. Ct. App. 2008). Rather, we consider only the probative evidence and reasonable inferences most favorable to the verdict and will affirm the conviction if there is probative evidence from which a reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Id*. "It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence." *Drane v.*

State, 867 N.E.2d 144, 147 (Ind. 2007) (citation and internal quotation marks omitted). Instead, the "evidence is sufficient if an inference may reasonably be drawn from it to support the verdict." *Id*. (citation and quotation marks omitted).

To obtain a conviction for class A misdemeanor contributing to the delinquency of a minor, the State was required to prove beyond a reasonable doubt that Sutton, a person over the age of eighteen, "knowingly or intentionally encourage[d], aid[ed], induce[d], or cause[d] a person less than eighteen (18) years of age to commit an act of delinquency[.]" Ind. Code § 35-46-1-8(a). The State's charging information specified as the act of delinquency that K.M., K.D., and L.B. each "consumed alcohol and/or drugs." Appellant's App. at 13.

Here, Sutton essentially argues that the evidence was insufficient to establish that he provided alcohol and that the substance the girls smoked was marijuana. With respect to the former, he cites conflicting testimony among the three girls concerning the source of the alcohol they drank with him, i.e., whether L.B. had stolen the vodka from a friend's garage or whether Sutton had provided it, as K.M. and K.B. asserted on cross-examination. First, we note that the two sources are not mutually exclusive, as some of the alcohol could have come from each. We also note that even if Sutton was not the original source, his other actions support a finding that he aided the girls in committing an act of delinquency by driving them to an empty house to drink alcohol. Essentially, Sutton's argument is an invitation to reweigh evidence and judge witness credibility, which we may not do.

With respect to the marijuana, Sutton argues that no chemical test was ever performed on the substance that he and the girls smoked and that, as such, the State was required to

prove that the girls had the expertise to know what they were smoking. However, the cases he cites involve convictions for dealing and possession of specified drugs, where an essential element of each offense involves the identity of the substance. Here, the identity of a particular substance is not an essential element of the offense for which he was convicted, class A misdemeanor contributing to the delinquency of a minor. Notably, the charging information listed the delinquent act as consumption of "alcohol and/*or* drugs," Appellant's App. at 13 (emphasis added). Moreover, Sutton's lengthy argument on the child molesting count was predicated on his assertion that the girls were too "trashed" to "accurately perceiv[e] reality." Tr. at 423. Finally, we note K.D.'s testimony that she was so "messed up" that she believed the marijuana had been laced with something else. *Id*. at 355. While such testimony does not necessarily indicate expertise, it indicates more than a passing familiarity with the drug.

In sum, we conclude that, regardless of the original source of the alcohol and the girls' lack of expertise regarding marijuana, the evidence most favorable to the verdict supports the jury's conclusion that Sutton aided and encouraged K.M., K.D., and L.B. to consume alcohol and/or drugs by driving them to the empty house, providing vodka and marijuana for them, and facilitating the activities that resulted in their becoming "trashed." As such, there is sufficient evidence to support his convictions for contributing to the delinquency of a minor. Accordingly, we affirm.

Affirmed.

BAILEY, J., and MATHIAS, J., concur.