

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
June 28, 2011

v

MATTHEW ANDRZEJ MALINOWSKI,

Defendant-Appellant.

No. 297938
Macomb Circuit Court
LC No. 2009-004431-FH

Before: BORRELLO, P.J., and JANSEN and SAAD, JJ.

PER CURIAM.

A jury convicted defendant of seven counts of furnishing alcohol to a minor, MCL 436.1701(1) and acquitted him of one count of third-degree criminal sexual conduct, MCL 750.520d(1)(a). The trial court sentenced defendant to two years of probation, and defendant appeals his convictions. For the reasons set forth below, we affirm.

I. FACTS AND PROCEEDINGS

This case arises out of a party that took place at defendant's grandfather's house in Roseville in January 2009. Defendant's grandfather no longer lived in the house, and defendant used it to keep his music equipment and to spend time with friends. On the evening of this incident, defendant, who was 27 years old, picked up four girls ranging in age from 15 to 17 years old from a trailer park in Plymouth. Defendant drove them to the Roseville house and, later, three boys under the age of 18 arrived. It is undisputed that defendant and all of the teenagers consumed alcohol that night and that various sexual activities occurred. One of the girls who attended the party later alleged that defendant sexually assaulted her by digitally penetrating her vagina. As noted, the jury acquitted defendant of the criminal sexual conduct charge, but found him guilty of all seven counts of furnishing alcohol to a minor.

II. DISCUSSION

Defendant argues that the prosecutor presented insufficient evidence to support his convictions of furnishing alcohol to a minor because evidence failed to show that he "furnished" alcohol to his underage guests. As this Court explained in *People v Railer*, 288 Mich App 213, 216-217; 792 NW2d 776 (2010):

In determining the sufficiency of the evidence, this Court reviews the evidence in the light most favorable to the prosecution. *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005) [overruled on other grounds, *People v Nyx*, 479 Mich 112; 734 NW2d 548 (2007)]. We do not consider whether any evidence existed that could support a conviction; rather, we must determine whether a rational trier of fact could find that the evidence proved the essential elements of the crime beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 513–514; 489 NW2d 748 (1992), citing *People v Hampton*, 407 Mich 354, 366; 285 NW2d 284 (1979) (opinion by Coleman, CJ). “[C]ircumstantial evidence and reasonable inferences arising from th[e] evidence can constitute satisfactory proof of the elements of a crime.” *People v Lee*, 243 Mich App 163, 167–168; 622 NW2d 71 (2000).

The jury convicted defendant pursuant to MCL 436.1701(1) which provides, in relevant part:

Alcoholic liquor shall not be sold or furnished to a minor. Except as otherwise provided . . . a person who knowingly sells or furnishes alcoholic liquor to a minor, or who fails to make diligent inquiry as to whether the person is a minor, is guilty of a misdemeanor.

The trial court instructed the jury as follows on the seven charges under the statute:

The Defendant is charged with the crime of selling or furnishing alcohol to a minor. To prove this charge the prosecutor must prove each [of] the following elements beyond a reasonable doubt.

First, that the Defendant either sold or furnished.

Second, an alcoholic beverage.

Third to a person under the age of 21

Later, the jury asked the trial judge for a definition of “furnish.” The judge told the jury that furnish means “to supply, provide, or equip for accomplishment or a particular purpose.” The prosecutor and defense counsel both agreed with the definition given by the trial court and it appears to comport with our case law. In *Bambino v Dunn*, 166 Mich App 723, 727-728; 420 NW2d 866 (1988) this Court quoted with approval from *People v Neumann*, 85 Mich 98, 102; 48 NW 290 (1891), in which our Supreme Court opined:

“[O]ur statute goes further . . . and punishes the ‘furnishing’ of liquor to a minor, and the furnishing of liquor is ‘letting a minor have liquor,’ and is something more than giving. A narrow and technical definition of the word ‘giving’ might restrict its meaning to the handing of the liquor to him direct by the person giving it . . . ; but it is not necessary that a person should hand the liquor to a minor in order to furnish it. If the liquor, belonging to the person and under his control, is, by his consent or connivance, permitted to be taken and drunk by the minor, whether it is passed to him direct or through the hands of another is immaterial;

the liquor in either case is *furnished* to such minor, within the meaning of our statute.” (Emphasis in original.)

At trial, one of the minors, SK, testified that defendant brought the alcohol with him to the house in Roseville. She also testified that defendant said the teenagers could drink the alcohol that was already in the house and that defendant actually offered her a drink himself. Another witness, LT, testified that it was defendant’s usual practice to pick up alcohol before a party at the Roseville house or he would already have it in his van. LT recalled that, on the night in question, defendant had a supply of vodka, Captain Morgan, and Irish cream. She further testified that, when they got to the house, defendant poured “all” of the drinks for the girls. SM also testified that defendant gave her a drink of Irish cream at the party. One of the boys who attended the party, Joseph H, testified that defendant poured him an alcoholic drink when he arrived at the house. When asked where he got his alcoholic drink, another boy, JM, testified that defendant “offered” it to him and had “drinks there” for the guests. Justin H similarly testified that defendant offered him alcohol at the party. The only girl who did not testify that defendant handed her a drink was AM, who testified that she made her own drink from the alcohol at the house that night. She further testified that all of defendant’s parties involved drinking alcohol and that defendant never objected to the kids consuming the alcohol defendant had at the house.

The evidence presented at trial clearly established that defendant “furnished” alcohol to the minors at the party. He either gave the teenagers alcohol directly or supplied it and made it readily available for them to consume. Accordingly, the prosecutor presented more than sufficient evidence to support defendant’s seven convictions of furnishing alcohol to a minor.

Affirmed.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Henry William Saad