IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 29963-5-III**
Respondent,	)	
	)	**Division Three**
v.	)	
	)	
S.L.B.,	)	
	)	**UNPUBLISHED OPINION**
Appellant.	)	
	)	

Korsmo, C.J. — S.L.B. challenges the sufficiency of the evidence to support her conviction for minor in possession of alcohol. We believe the evidence allowed the trier of fact to conclude that she possessed alcohol. The conviction is affirmed.

FACTS

This appeal arises from a teenage party in Moses Lake on August 9, 2010. An officer dispatched to a disturbance call late that evening observed male and female juveniles holding beer cans. He was denied entry to the house where the party was being held. He obtained a search warrant and entered the residence with three other officers.

The officers found beer cans and several teenagers. They began interviewing

them. An officer testified that S.L.B., who was born February 22, 1995, had alcohol on her breath. She also exhibited bloodshot and watery eyes. In his opinion, she had consumed alcohol. S.L.B. denied having consumed any alcohol.

S.L.B. was charged in juvenile court with minor in possession of alcohol. The trial judge concluded that she was guilty of the charge. Her sentence of community service was stayed pending appeal to this court. The findings required by JuCR 7.11(d) have not been entered.[1]

ANALYSIS

The sole issue presented is whether S.L.B. "possessed" alcohol. Although precedent makes this a close call, we believe the evidence supports the trial judge's determination.

Well-settled rules govern review of a challenge to the sufficiency of the evidence. The reviewing court does not weigh evidence or sift through competing testimony. Instead, the question presented is whether there is sufficient evidence to support the determination that each element of the crime was proven beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); *State v.*

[1] The record does not reveal why the findings have not yet been entered. An appellate court can review a case in the absence of findings if the record is sufficient for review. *State v. Otis*, 151 Wn. App. 572, 577, 213 P.3d 613 (2009). This record is adequate.

Green, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980). The reviewing court will consider the evidence in a light most favorable to the prosecution. *Green*, 94 Wn.2d at 221. Reviewing courts also must defer to the trier of fact "on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence." *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004). "Credibility determinations are for the trier of fact and are not subject to review." *Id.* at 874.

RCW 66.44.270(2)(a) provides: "It is unlawful for any person under the age of twenty-one years to possess, consume, or otherwise acquire any liquor." The trier of fact determines possession based on the totality of the evidence. *State v. Roth*, 131 Wn. App. 556, 563, 128 P.3d 114 (2006). Possession for purposes of this statute means that the minor exercises dominion and control over the alcohol. *State v. Hornaday*, 105 Wn.2d 120, 125, 713 P.2d 71 (1986). Possession can be actual or constructive. *Id*. Proximity to alcohol plus some other corroborating evidence may prove constructive possession. *State v. A.T.P.-R.*, 132 Wn. App. 181, 186, 130 P.3d 877 (2006).

In *Hornaday*, the court ruled that a minor who showed signs of intoxication was not in current possession of alcohol under the then-existing statute, which provided that a minor who was "in possession of or consumed"[2] alcohol was in violation. 105 Wn.2d at 125-26. Instead, a person who had "assimilated" alcohol by consuming it was not in

[2] *See* Laws of 1955, ch. 70, § 2.

current "possession" because he lacked control of the alcohol. *Id*. at 126.[3] Although *Hornaday* involved an officer's power to arrest a person for a misdemeanor committed in the officer's presence, RCW 10.31.100, subsequent cases have applied it to sufficiency of evidence challenges in minor in possession cases. This court subsequently determined that evidence of consumption, when offered in conjunction with "other corroborating evidence," can establish possession of alcohol. *State v. Dalton*, 72 Wn. App. 674, 676, 865 P.2d 575 (1994).

S.L.B. argues that the evidence only shows assimilation of alcohol, not possession. She relies upon the decisions in *A.T.P.-R.*, 132 Wn. App. 181; *Roth*, 131 Wn. App. 556; and *State v. Francisco*, 148 Wn. App. 168, 199 P.3d 478 (2009). In *A.T.P.-R.*, the defendant smelled of alcohol and was standing next to another minor holding a 40-ounce bottle of beer. 132 Wn. App. at 183-84. In *Roth*, the defendant smelled of alcohol, swayed when he walked, and was in the company of an intoxicated youth who possessed five cans of beer. 131 Wn. App. at 559-60. In *Francisco*, the inebriated defendant was found passed out in a driveway. 148 Wn. App. at 172-73.

In all of those cases, there was no other evidence in conjunction with the previous consumption that would establish possession of alcohol. *Dalton* is a closer case factually

[3] The legislature promptly amended the statute in response to *Hornaday*, adding the current language (which has been renumbered in subsequent amendments). *See* Laws of 1987, ch. 458, § 3.

to this one. There the defendant was seen leaving a house where a keg of beer and many empty glasses were visible. 72 Wn. App. at 675. There was a strong odor of alcohol from his person, he was unsteady, his eyes were bloodshot, and his voice was slurred. In the opinion of a police officer, the defendant was intoxicated. *Id*. This court affirmed the conviction for minor in possession, reasoning that the indicia of intoxication and his proximity to the beer keg supported the trial court's conclusion. *Id*. at 676-77.

The trial court correctly reasoned that this case fell on the *Dalton* side of the line because there was evidence beyond consumption to suggest that S.L.B. had possessed alcohol. She was present at a party where there were many empty beer cans. Unlike the facts in *Roth* and *A.T.P.-R.*, there was no evidence here that the alcohol present in the house was in the sole control of someone other than the defendant. Instead, the evidence allowed the trier of fact to conclude that S.L.B. jointly exercised control over the beer even though she denied having done so. Credibility determinations will not be overturned on appeal. *Thomas*, 150 Wn.2d at 874.

In light of her apparent recent consumption of alcohol and the many empty beer cans, there was sufficient evidence for the trial judge to find that S.L.B., a minor, possessed alcohol. The conviction is affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Korsmo, C.J.

WE CONCUR:

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Kulik, J.

_____
Siddoway, J.