

Case Summary and Issue

Keith Dickert appeals his conviction of consumption of alcohol by a minor as a Class C misdemeanor following a bench trial. Dickert argues that the evidence is insufficient to support his conviction because the State failed to prove that he consumed alcohol. Concluding the circumstantial evidence is sufficient to sustain Dickert's conviction, we affirm.

Facts and Procedural History

At approximately 2:45 a.m. on July 20, 2008, Brownsburg Police Department Officer Joseph Grimes initiated a traffic stop of a Dodge Caravan after he observed both license plate and seatbelt violations. As the officer approached the vehicle, passenger Dickert became belligerent. The officer noticed that Dickert smelled of alcohol, and he has slurred speech and bloodshot eyes. The officer also noticed an open case of beer sitting on the floor directly behind Dickert's seat. The vehicle's driver did not exhibit any signs of alcohol consumption and did not test positive for alcohol in a portable breath test. Based upon information that he received during the course of his investigation, Officer Grimes concluded that the case of beer belonged to Dickert. After learning from the Bureau of Motor Vehicles that Dickert was not twenty-one years old, Officer Grimes arrested him. Dickert was convicted in a bench trial of consumption of alcohol by a minor. He appeals his conviction.

Discussion and Decision

Indiana Code section 7.1-5-7-7 provides that it is a Class C misdemeanor for a minor to knowingly consume an alcoholic beverage. Dickert's sole argument is that there

is insufficient evidence to support his conviction. Specifically, he contends the State failed to prove beyond a reasonable doubt that he consumed alcohol.

When we review the sufficiency of the evidence to support a conviction, we consider only the probative evidence and reasonable inferences supporting the judgment. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). We neither reweigh the evidence nor assess the credibility of the witnesses. Id. We will affirm the conviction if there is probative evidence from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. Id.

We have previously held circumstantial evidence can establish the elements of consumption of an alcoholic beverage. Turner v. State, 749 N.E.2d 1205, 1208 (Ind. Ct. App. 2001). For example, in Turner, a police officer testified that Turner strongly smelled of alcohol, and had bloodshot eyes and slurred speech. Id. at 1209. Turner's breath test was positive and he admitted drinking four beers. Id. Turner challenged the evidence establishing the beverage he drank was an alcoholic beverage, and we held that although any of these factors alone might not have supported the verdict, when considered together they provided sufficient evidence that the beer Turner consumed contained at least .5% alcohol by volume. Id.

Similarly, in Lawson v. State, 803 N.E.2d 237 (Ind. Ct. App. 2004), trans. denied, although Lawson did not have bloodshot eyes or slurred speech, his breath smelled of alcohol and two beer bottles were found within his reach. We held that this evidence was sufficient to sustain the inference that Lawson consumed an alcoholic beverage and therefore support his conviction for illegal consumption of alcohol. Id. at 243.

Here, our review of the evidence reveals Dickert smelled of alcohol, and had slurred speech and bloodshot eyes. In addition, Dickert was belligerent with Officer Grimes when the officer approached the car, and there was nothing in the record to suggest other reasons for Dickert's behavior. See Wells v. State, 848 N.E.2d 1133, 1146 (Ind. Ct. App. 2006), trans. denied, cert. denied, 549 U.S. 1322 (2007) (stating that belligerence is a clear sign of intoxication). Lastly, based upon information Officer Grimes received during the course of his investigation, the officer concluded the open case of beer sitting directly behind Dickert's seat belonged to Dickert. As in Turner and Lawson, this evidence is sufficient to support Dickert's conviction for consumption of alcohol by a minor.

Conclusion

There is sufficient evidence to support Dickert's conviction.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.