Underage Drinking Enforcement Training Center

MONTHLY RESOURCE ALERT:

JULY 2012

★ Visit www.udetc.org for the latest information on underage drinking. ★

Recent Study Shows State Laws Cut Teen Drinking and Driving

A recent study conducted by researchers at Washington University School of Medicine in St. Louis, Missouri reviewed the drinking and driving behaviors of more than 220,000 teens ages 16 and 17. The findings suggested that graduated driver licensing laws limit new drivers to less risky driving situations until they can exhibit necessary skills to become fully licensed. Further use-and-lose laws permit the suspension of a teen's driver's license if they are caught using alcohol.

The studies analyzed drinking-and-driving behaviors of more than 111,000 males and more than 110,000 females, aged 16 to 17, from data in the Youth Risk Behavior Surveillance System for 1999 to 2009. Full results were recently published online and will appear in the September issue of the journal *Alcoholism: Clinical & Experimental Research*. The full online abstract can be found by visiting the below link: http://onlinelibrary.wiley.com/doi/10.1111/j.1530-0277.2012.01764.x/abstract

RESOURCE ALERT LEGAL CASE

"Do Campus Law Enforcement Officers Operate Under a Different Constitutional Footing than Municipal Police or Other Law Enforcement Agencies?"

On February 21, 2012, the superior Court of Pennsylvania handed down their opinion in the case of Commonwealth v. Downey. Joseph M. Downey, who was convicted of the summary offense of underage drinking, had appealed his August 13, 2010 sentence and the fines and costs imposed.

This case provides the reader with a great analysis of issues commonly raised by defendants in underage drinking cases as well as a detailed analysis by the Court on the issues raised on appeal. To read about this case in its entirety please visit the following link to access the full legal overview and synopsis: http://www.udetc.org/documents/ResourceAlerts/July2012case.pdf

SUCCESS STORIES: Oklahoma

It's Cody's Law – A Successful Statewide Collaboration for Social Host in Oklahoma

In 2004, Cody Greenhaw died at age 16 from an alcohol and drug overdose while at the house of a friend where adults were present. Survey data from Oklahoma 12th graders who drank alcohol, suggested that approximately 80% consumed it at a friend's house or at a party and that 70% of them were getting it from adults over 21. This tragic incident and these staggering statistics mobilized many in Oklahoma to provide law enforcement with the tools necessary to effectively address this statewide problem. Supported by Oklahoma's EUDL program, an initiative entitled 2Much2Lose, made up of community advocates, law enforcement agencies, and many others worked tirelessly to pass statewide legislation. This law makes it a crime to knowingly or willfully permit a person under the age of 21, who is an invitee of the property owner, to possess or consume any alcoholic beverage, low point beer or any controlled dangerous drugs while on the property. This success story shares some of challenges and collaborations needed to achieve this great success. This Success Story can be read in its entirety by visiting the following link: http://www.udetc.org/documents/success_stories/OK0712.pdf

NATIONAL ELECTRONIC SEMINARS

There will NOT be a webinar in July and August

SEPTEMBER 2012

Managing Alcohol Outlet Density to Reduce Youth Access to Alcohol

Date: Thursday, September 20, 2012
Time: 3:00-4:15 p.m. ET
Speakers: · Michael Sparks, President of Sparks Initiatives and Diane Riibe, Executive Director of Project Extra Mile

Alcohol outlet density regulation is a science-based environmental strategy used to reduce or limit alcohol outlet density through licensing or zoning processes. Research has shown a strong correlational relationship between alcohol and violent crime. Research has also shown that when outlets are close together, more underage drinking occurs. By controlling the location of outlets, sales to minors can be discouraged and youth safety can be improved. Presenters will share information about regulatory strategies utilized in communities to manage alcohol outlet density in order to limit youth access to alcohol and improve public health, safety, and well-being by impacting crime rates, victimization, personal injuries, and fatalities. Presenters will also share information about useful resources to aid implementation of these types of efforts.

Visit www.udetc.org/audioconfregistration.asp to register.

To print a copy of this month's Resource Alert visit: www.udetc.org/documents/ResourceAlerts/ResourceAlert0712.pdf

The UDETC would like to wish you a Safe and Happy 4th of July

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UDETC Resource Alert Descriptor
June 2012

2012 PA Super 39
COMMONWEALTH OF PENNSYLVANIA, Appellee,
v.
JOSEPH M. DOWNEY, Appellant.
No. 2580 EDA 2010.
Superior Court of Pennsylvania.

Filed: February 21, 2012.
BEFORE: FORD ELLIOTT, P.J.E., BOWES, and OLSON, JJ.

OPINION BY BOWES, J.

Joseph M. Downey appeals from the August 13, 2010 judgment of sentence of fines and costs imposed after he was convicted of the summary offense of underage drinking. We affirm.

Following his conviction of the offense in question by the magisterial district justice, Appellant filed an appeal with the Court of Common Pleas of Chester County. His de novo trial was held on August 10, 2010. West Chester University Police Officer Matthew J. Paris, who had participated in approximately 1500 prior incidents involving underage drinking, was the sole witness at the proceeding and testified as follows. At 10:00 p.m. on March 17, 2010, he was on patrol in full uniform with West Chester University Police Sergeant Herzog[1] on the sidewalk next to the Sharpless Street Garage in West Chester. The officers "heard loud screaming coming from the second floor of the parking garage." N.T., 8/10/10, at 6. They went to the second floor to determine "why the screaming was occurring" and saw Appellant and two individuals who were in his company. Officer Paris "stopped those two individuals first, turned them over to Sergeant Herzog, [and] then made contact with [Appellant]," as he was trying to enter the elevator. Id. at 7.

When Officer Paris approached him, Appellant "was unsteady on his feet," so the officer asked him "if he had been drinking." Id. at 8. Officer Paris was approximately five feet away from Appellant at that time. Appellant responded that he had not been drinking, but he appeared intoxicated to the officer. Officer Paris explained that the basis for this conclusion was Appellant's "appearance, unsteady on his feet, wavering. Talking to him, [he] was a little slow to respond to me[.]" Id. Additionally, from "approximately five feet away," Officer Paris detected the odor of what in his "belief was an alcoholic beverage emanating from [Appellant]." Id. at 10-11.

Thus, Officer Paris asked Appellant for identification and to perform field sobriety tests, which Appellant failed. After Appellant refused to take a breathalyzer test, he was arrested since he was underage, in a public place, intoxicated, and disturbing the peace. At the police station, Officer Paris administered a portable breathalyzer test, which was positive for the presence of alcohol.

At the close of the Commonwealth's case, Appellant orally moved to suppress the evidence presented against him on the ground that there was "enough in the record to make argument that

there was not reasonable suspicion to make a stop[.]" Id. at 26. The trial court rejected that position, convicted Appellant of underage drinking, and sentenced him to fines and costs. This appeal followed. Appellant raises two arguments on appeal:

I. Whether the Trial Court committed an error of law in overruling the Appellant's motion to suppress evidence that was a product of the investigatory stop conducted despite a lack of reasonable suspicion that criminal activity was afoot;
II. Whether the Trial Court committed an error of law in holding that the results of a Portable Breathalyzer Test were admissible in the case[.]
Appellant's brief at 4.

Prior to addressing Appellant's issues, we must first resolve the Commonwealth's contention that Appellant waived any suppression issue by failing to file a written motion to suppress. It relies upon Pa.R.Crim.P. 581(B), which provides: "Unless the opportunity did not previously exist, or the interests of justice otherwise require, [a motion for suppression of evidence] shall be made only after a case has been returned to court and shall be contained in the omnibus pretrial motion set forth in Rule 578. If timely motion is not made hereunder, the issue of suppression of such evidence shall be deemed to be waived." The Commonwealth posits that since Appellant did not file a written suppression motion after he filed his appeal from the magisterial district justice's determination of guilt, he has waived his right to contest the constitutionality of his interdiction with Officer Paris.

In Commonwealth v. Long, 753 A.2d 272 (Pa.Super. 2000), we interpreted the predecessor to this Rule, Pa.R.Crim.P. 323, which contained identical terms. Therein, the defendant made an oral motion to suppress evidence during the course of trial. We concluded that despite the fact that a written motion was not filed and that the legal grounds for such a motion would have been apparent from the record, the defendant had not waived his right to move to suppress evidence obtained from a traffic stop. We noted that the rule expressly indicates that a written motion was not required if the opportunity to file it did not previously exist or if the interests of justice otherwise required consideration of the motion. We indicated: "Whether the opportunity did not previously exist or the interests of justice otherwise require is a matter for the discretion of the trial judge." Id. at 279.

Herein, the trial court entertained Appellant's oral motion to suppress and rendered a ruling on the merits. Furthermore, the Commonwealth never objected at the summary trial to the trial court's consideration of the oral suppression request. It is only now, on appeal, that the Commonwealth urges a finding of waiver. Finally, this matter involved a summary conviction, the adjudication of which entails truncated procedures. Hence, we decline to find waiver herein.

Next, we consider Appellant's position that the trial court erred in failing to suppress the results of his interdiction with Officer Paris.

The standard and scope of review for a challenge to the denial of a suppression motion is whether the factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. When reviewing the rulings of a suppression court, this Court considers only the evidence of the prosecution and so much of the evidence for the defense as

remains uncontradicted when read in the context of the record as a whole. When the record supports the findings of the suppression court, we are bound by those facts and may reverse only if the legal conclusions drawn therefrom are in error.
Commonwealth v. Johnson, 33 A.3d 122, 124 (Pa.Super. 2011). (citation and quotation marked omitted).

There are three types of interactions between police and a citizen:

Fourth Amendment jurisprudence has led to the development of three categories of interactions between citizens and the police. The first of these is a "mere encounter" (or request for information) which need not be supported by any level of suspicion, but carries no official compulsion to stop or to respond. The second, an "investigative detention" must be supported by a reasonable suspicion; it subjects a suspect to a stop and a period of detention, but does not involve such coercive conditions as to constitute the functional equivalent of an arrest. Finally, an arrest or "custodial detention" must be supported by probable cause.
Commonwealth v. Au, 986 A.2d 864, 866-67 (Pa.Super. 2009) (en banc), appeal granted on different grounds, 995 A.2d 349 (Pa. 2010).

The issue of whether a detention has occurred is analyzed under the following standard:

To guide the crucial inquiry as to whether or not a seizure has been effected, the United States Supreme Court has devised an objective test entailing a determination of whether, in view of all surrounding circumstances, a reasonable person would have believed that he was free to leave. In evaluating the circumstances, the focus is directed toward whether, by means of physical force or show of authority, the citizensubject's movement has in some way been restrained. In making this determination, courts must apply the totality-of-the-circumstances approach, with no single factor dictating the ultimate conclusion as to whether a seizure has occurred.
Commonwealth v. Coleman, 19 A.3d 1111, 1116 (Pa.Super. 2011).

Herein, we conclude that Appellant had a mere encounter with Officer Paris when Officer Paris was standing five feet away from him. Contrary to Appellant's representations on appeal, the record does not support a finding that his path was blocked by two uniformed police officers and that a seizure occurred at that point. Officer Paris's uncontradicted testimony was that two individuals were detained by his companion, and he alone approached Appellant and then stopped when he was five feet away to ask Appellant some questions. There is no indication that the officer blocked Appellant or restricted his movement. Hence, at that juncture the interdiction was a mere encounter, for which no reasonable suspicion was needed. See Commonwealth v. Moore, 11 A.3d 538, 541 (Pa.Super. 2010) (mere encounter occurred when police approached defendant and began to speak with him).

From five feet away, Officer Paris detected the odor of alcohol emanating from Appellant, who also appeared unsteady on his feet and was slow to answer questions. Thus, Officer Paris, who had extensive experience in underage drinking, began an investigatory detention by conducting field sobriety tests. Therefore, seizure was supported by reasonable suspicion. As we have noted:

Reasonable suspicion is a less stringent standard than probable cause necessary to effectuate a warrantless arrest, and depends on the information possessed by police and its degree of reliability in the totality of the circumstances. In order to justify the seizure, a police officer must be able to point to specific and articulable facts leading him to suspect criminal activity is afoot. In assessing the totality of the circumstances, courts must also afford due weight to the specific, reasonable inferences drawn from the facts in light of the officer's experience and acknowledge that innocent facts, when considered collectively, may permit the investigative detention. Commonwealth v. Brown, 996 A.2d 473, 477 (Pa. 2010) (citations and quotation marks omitted).

In this case, Appellant was screaming from the second floor of a garage and, when he viewed police, started to walk toward the elevator while his companions approached the police. Appellant smelled of alcohol and was unsteady on his feet. Armed with those facts and his prior experience in underage drinking, Officer Paris had reasonable suspicion that Appellant was committing the noted infraction. We therefore conclude that the trial court did not abuse it discretion in denying Appellant's motion to suppress the evidence.

Appellant next claims that the court erred in admitting the results of the portable breathalyzer test into evidence.[2] However, the Commonwealth avers that Appellant waived this allegation of error by failing to object at the de novo trial to the admission of that evidence. We agree with this position. Our review of the transcript establishes that Appellant never raised any objection to Officer Paris's testimony that the results of Appellant's portable breathalyzer test were positive for the presence of alcohol. Hence, he has waived the present contention for purposes of appeal. Commonwealth v. Baumhammers, 960 A.2d 59, 73 (Pa. 2008).

Judgment of sentence affirmed.

[1] Sergeant Herzog's first name does not appear in the record.

[2] In Commonwealth v. Brigidi, 6 A.3d 995 (Pa. 2010), our Supreme Court ruled that the results of a preliminary, portable breath tester, such as the one used herein, are inadmissible in a prosecution under the Crimes Code. Defendant therein was convicted of underage drinking, and the sole evidence of alcohol consumption submitted by the Commonwealth was the results of a pre-arrest breath test. While that decision would warrant the award of a new trial herein, for the reasons set forth in the text, Appellant cannot avail himself of the benefit of Brigidi.

OJJDP

Success Stories

Enforcing the Underage Drinking Laws Program

NEWS FROM THE FIELD

www.udetc.org

July 2012

Cody's Law – A Successful Statewide Collaboration for Social Host in Oklahoma

On June 8, 2011, Governor Mary Fallin signed an amended version of Oklahoma's Social Host Law which includes low-point beer and graduated offenses. Known as "Cody's Law", in memory of Cody Greenhaw who died in 2004 at age 16 from an alcohol and drug overdose at the house of a friend where adults were present, the updated law is an improvement on an earlier law to address social host problems. It is specific and requires proof of wrongdoing. The law, which went into effect November 1, 2011, states:

"No person shall knowingly and willfully permit an individual under the age of 21 years who is an invitee of said person in the person's residence…room owned, occupied, leased…on any land owned, occupied, leased or otherwise procured by the person, to possess or consume any alcoholic beverage , low point beer or any controlled dangerous drugs. Any person who violates this section, shall be guilty of a misdemeanor the first two convictions and a felony upon the third conviction."

Under the bill, anyone who allows underage drinking on their property could be charged with a misdemeanor and face $500 fines.

The new law is the culmination of several years of efforts to address the issue of underage social access to alcohol in Oklahoma. Even as recently as 2010, according to the Oklahoma Prevention Needs Assessment (OPNA), of Oklahoma 12th graders who reported drinking alcohol within the past year approximately 80% consumed it at a friend's house or at a party and 70% of them reported getting it from adults over 21. To address the continuing problem of underage social access to alcohol and the enforcement challenges it poses Oklahoma's EUDL program supported an underage drinking prevention initiative entitled 2Much2Lose which promoted collaboration between communities and the state prevention network to strengthen local and state policies.
Sometimes getting an effective law passed that impacts all jurisdictions happens in degrees and requires both local and state level engagement, collaboration and persistence. Such is the case in Oklahoma. In 2006, the City of Edmond became the first city in Oklahoma to pass a municipal Social Host Ordinance. That same year the first Cody's Law was passed. It was the impetus for getting state level policy change to address Social Host issues. However, the first law had limitations because it required the death or dismemberment of the youth before the host would be charged, seriously limiting its reach. In addition, only a felony charge could be issued, and the law did not include low-point beer. Because of these limitations, the Oklahoma Prevention Network continued to support and pass local ordinances that included misdemeanor charges, would not require death or dismemberment and would address low-point beer. Throughout Oklahoma, from 2006 through 2011, more than 100 communities passed Social Host Ordinances. Even with these local ordinances in place law enforcement complained that local ordinances could only be enforced within the city limits and did not address the unincorporated areas in the counties. A tougher State Law was needed.

To ensure all locations across the state were included, the network advocated for the new inclusions to Cody's Law. The Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS), Oklahoma's EUDL supported 2Much2Lose initiative and Oklahoma Prevention Network, community advocates, law enforcement agencies, and many others worked tirelessly to bring this improved state policy to fruition. While the network is celebrating this success, additional work continues. The ODMHSAS and network have developed and initiated a statewide media advocacy campaign to spread the message that this law exists, educate law enforcement on use of the law, and train law enforcement and community coalitions on ensuring the law's effectiveness. This success story demonstrates the effectiveness of persistence and continued collaborations.

For further information, contact:
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THURSDAY, SEPTEMBER 20, 2012
3:00 – 4:15 pm Eastern

Managing Alcohol Outlet Density to Reduce Youth Access to Alcohol

Alcohol outlet density regulation is a science-based environmental strategy used to reduce or limit alcohol outlet density through licensing or zoning processes. Research has shown that when outlets are close together, more underage drinking occurs. By controlling the location of outlets, sales to minors can be discouraged (Gruenewald et al., 2010; Treno et al., 2003). Presenters will share information about regulatory strategies utilized in communities to manage alcohol outlet density in order to limit youth access to alcohol and improve public health, safety, and well-being; and tools available to aid implementation of these types of efforts.

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