Underage Drinking Enforcement Training Center
MONTHLY RESOURCE ALERT:
DECEMBER 2013

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UPDATES FROM THE FIELD

Youth Exposure to Alcohol Advertising on Television — 25 Markets, United States, 2010

Morbidity and Mortality Weekly Report (MMWR), November 8, 2013 / 62(44); 877-880

The Centers for Disease Control and Prevention released study findings that (1) the alcohol industry consistently has not met its 2003 self-regulatory standards to avoid airing alcohol advertising during programs when >30% of the audience is younger than the legal drinking age; and (2) that industry marketing codes would benefit from the use of local as well as National data on the age distribution and television use of viewing audiences.

Strategies recommended by the U.S. Community Preventive Services Task Force to reduce excessive alcohol use include increasing alcohol excise taxes and regulating alcohol outlet density. Continued public health surveillance of youth exposure to alcohol advertising allows for the ongoing monitoring of compliance with marketing standards, and can help inform the planning, implementation, and evaluation of interventions to further reduce youth exposure to alcohol marketing.

To view the entire article
http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6244a3.htm?s_cid=mm6244a3_x

Online Alcohol Marketing Encourages 'Culture of Intoxication' in Young People, Study Suggests

The Telegraph, November 25, 2013

A study, conducted by Professor Christine Griffin of the University of Bath and colleagues at Massey University in New Zealand, examined how 18- to 25-year-olds respond to online advertising of drink brands. The research found that online alcohol marketing aimed at young adults is "widespread, highly dynamic and takes an ever-expanding range of forms" as new digital and mobile technologies develop. According to Professor Griffin, "A wider range of policies and safer drinking initiatives that target the cultural norm of drinking to intoxication are required." ''Current attempts at health promotion are outmoded, and need to employ social media and mobile technologies more effectively to challenge the messages from alcohol marketing."

To view the entire article, visit:
http://www.cmo.com/content/cmo-com/home/articles/2013/11/5/online_alcohol_marke.frame.html

Call for Presentations: Midwest Alcohol Policy Summit

Presentation proposals are being accepted for the Midwest Alcohol Policy Summit. The two-day event, with a one-day pre-conference, will take place April 1-3, 2014 at the Crowne Plaza North in Columbus, Ohio. The submission deadline is December 13, 2013. UDETC staff will be presenting at the Summit and there will be an opportunity for EUDL State Coordinators to meet with UDETC staff on site. To learn more, visit, the host site at:
https://www.drugfreeactionalliance.org/maps

For additional information contact Derek Longmeier at (614)540-9985 ext. 16 or DLongmeier@DrugFreeActionAlliance.org

LEGAL CASE

Should a Court Ignore a Defendant's Prior History of Hosting Underage Drinking Parties When She is Charged with Involuntary Manslaughter in the Death of a 19 Year Old?

On April 16, 2013, the Court of Appeals of North Carolina rendered its opinion in the matter of *State v. Noble, NC: Court of Appeals 2013.* The appeal of the defendant, 56-year-old Julie Ann Noble, was based upon her being found guilty of involuntary manslaughter for her involvement in the death of Joseph Daniel Furr, a 19-year old who died from alcohol poisoning in her home.
The defendant appealed the decision of the trial court because it:

(1) Denied her motion to dismiss the charge of involuntary manslaughter for insufficient evidence; and
(2) Allowed the State to present evidence of her alleged prior bad acts in violation of Rule 403 and Rule 404(b) of the North Carolina Rules of Evidence.

A summary of this case offers readers an opportunity to review the facts, as presented at the defendant's trial, and determine if the State met its burden to convict Ms. Noble for the death of Mr. Furr. Of note is how the defendant's history of allowing underage parties at her home helped set the stage for the prosecution.

The entire case can be read at:
http://www.udetc.org/documents/ResourceAlerts/Dec2013case.pdf

To print a copy of this month's *Resource Alert,* visit
www.udetc.org/documents/ResourceAlerts/ResourceAlert1213.pdf

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STATE OF NORTH CAROLINA,
v.
JULIE ANN NOBLE.

No. COA12-734.

Court of Appeals of North Carolina.

Filed: April 16, 2013.

Attorney General Roy Cooper, by Assistant Attorney General Teresa M. Postell, for the State.

Appellate Defender Staples Hughes, by Assistant Appellate Defenders Jon H. Hunt and Benjamin Dowling-Sendor, for defendant-appellant.

UNPUBLISHED

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

ROBERT C. HUNTER, Judge.

Julie Ann Noble ("defendant") appeals from the judgment entered after a jury found her guilty of involuntary manslaughter for her involvement in the death of Joseph Daniel Furr ("Daniel") who died from alcohol poisoning at defendant's home. On appeal, defendant argues that the trial court erred by: (1) denying her motion to dismiss the charge of involuntary manslaughter for insufficient evidence; and (2) allowing the State to present evidence of defendant's alleged prior bad acts in violation of Rule 403 and Rule 404(b) of the North Carolina Rules of Evidence. After careful review, we find no error.

Background

Before trial, defendant sought to exclude the State's evidence of defendant's alleged prior bad acts relating to underage persons possessing and consuming alcohol at defendant's home. After the trial court conducted a voir dire hearing to listen to the State's evidence, it denied defendant's motion. The evidence presented at trial tended to establish the following.

In 2008, defendant resided in Brevard, North Carolina with her husband, Allen Noble, and two sons, Zachary ("Zach") and Cody. Defendant often hosted parties at her home for Zach, Cody, and their friends during which guests under the age of 21 would consume alcohol. The alcohol at some of these gatherings was provided by defendant and her husband. As attendance at these parties increased, however, underage guests would bring their own alcohol.

Trek Parker, a friend of Daniel, often visited defendant's home and saw defendant drinking with underage guests. At one of these parties, Trek saw Daniel drinking alcohol in the presence of

defendant. Because the alcohol was set out in coolers around the house, Trek believed that the alcohol Daniel was drinking was provided by defendant and her husband. Adam Parker also testified that he attended parties at defendant's home which were often held in the basement of the house and attended mostly by individuals under 21 years old. Adam testified that he would consume alcohol and play drinking games at these parties in the presence of defendant and that defendant knew he was under 21. According to Adam, defendant was conscientious about not allowing anyone who had been drinking to drive home; defendant would collect the car keys of the guests at these parties and insisted that they use designated drivers when leaving.

In October or November of 2008, defendant was seen at the grocery store with Daniel who was pushing a grocery cart containing nine cases of beer. Defendant paid for the beer and left the store with Daniel. Brittany Reece testified that she accompanied Daniel to a 2008 Halloween party at defendant's home during which defendant offered shots of alcohol to Daniel and other underage persons.

Early on the morning of 20 December 2008, the Transylvania Sheriff's Office responded to a complaint of a loud party and underage drinking at defendant's home. When two detectives arrived at defendant's home they found defendant outside with a number of intoxicated underage individuals. The detectives asked to conduct a safety sweep of the house. The detectives explained to defendant that they were concerned there were additional underage people drinking alcohol in the home and that they "needed to check to make sure they're all right because you can die from alcohol poisoning." Although initially uncooperative, defendant allowed the detectives into her home. In the basement level of the house, the detectives noticed empty beer cans and liquor bottles lying around and they found several underage persons who had been drinking alcohol, including Daniel. The officers smelled alcohol on Daniel's breath, determined he was 19 years old, and cited him for underage possession of alcohol. Defendant was cited for resisting, obstructing, and delaying an officer as well as aiding and abetting a person less than 21 years of age to possess or consume alcohol.

On 26 December 2008, defendant purchased two bottles of Kentucky Supreme bourbon at the ABC store in Brevard. That night, defendant ate dinner with her husband, her sons, and three guests, Daniel, Rinski Brouwer, and James McDaniel. At approximately 11:30 p.m., Zack, Cody, Daniel, Rinski, and James went to the basement of the house to play pool and watch television. Zach testified that Daniel retrieved an unopened bottle of Kentucky Supreme bourbon from his backpack and that Zach, James, and Daniel drank mixed drinks made from the bottle of bourbon. When defendant came down to the basement after dinner, Daniel put the bottle of bourbon away but resumed drinking after she left. By the time Zack went to bed at approximately 2:30 a.m., Daniel was "pretty drunk." Later that morning, when Cody was getting ready to go to work he discovered Daniel sitting at a table in the basement slumped over and unresponsive. James attempted to revive Daniel by performing CPR, but was unsuccessful. Rinski testified that defendant and her husband came down to the basement and began cleaning up by throwing away the bottles of alcohol before calling 911. Daniel's autopsy revealed that he died of alcohol poisoning.

Defendant was charged with involuntary manslaughter based on the unlawful act of aiding and abetting a person under the age of 21 to possess or consume alcohol in violation of N.C. Gen.

Stat. § 18B-302. At the conclusion of all of the evidence, defendant moved to dismiss the charge for insufficient evidence. The motion was denied. The jury found defendant guilty of involuntary manslaughter, and the trial court sentenced defendant to a term of 16 to 20 months imprisonment. Defendant appeals.

Discussion

I. Motion to Dismiss

Defendant argues that the trial court erred by denying her motion to dismiss the charge of involuntary manslaughter for insufficient evidence. We disagree.

When a defendant makes a motion to dismiss for insufficient evidence "the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant's being the perpetrator of such offense. If so, the motion is properly denied." *State v. Fritsch,* 351 N.C. 373, 378, 526 S.E.2d 451, 455, *cert. denied,* 531 U.S. 890, 148 L. Ed. 2d 150 (2000). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Smith,* 300 N.C. 71, 78-79, 265 S.E.2d 164, 169 (1980). "In making its determination, the trial court must consider all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor." *State v. Rose,* 339 N.C. 172, 192, 451 S.E.2d 211, 223 (1994), *cert. denied,* 515 U.S. 1135, 132 L. Ed. 2d 818 (1995). When presented with circumstantial evidence, "`the court must consider whether a reasonable inference of defendant's guilt may be drawn from the circumstances.'" *Fritsch,* 351 N.C. at 379, 526 S.E.2d at 455 (quoting *State v. Barnes,* 334 N.C. 67, 75, 430 S.E.2d 914, 919 (1993)). If so, it is the jury's duty to determine if the defendant is actually guilty. *Id.*

"The elements of involuntary manslaughter are: (1) an unintentional killing; (2) proximately caused by either (a) an unlawful act not amounting to a felony and not ordinarily dangerous to human life, or (b) culpable negligence." *State v. Hudson,* 345 N.C. 729, 733, 483 S.E.2d 436, 439 (1997). A proximate cause is an act which "caused or directly contributed to the death." *State v. Cummings,* 301 N.C. 374, 377, 271 S.E.2d 277, 279 (1980). There may be more than one proximate cause of death, and criminal responsibility attaches so long as one of the proximate causes is attributable to a criminal act of the defendant. *See id.* "[T]he question of whether [a] defendant's conduct was the proximate cause of death is a question for the jury." *State v. Bailey,* 184 N.C. App. 746, 749, 646 S.E.2d 837, 839 (2007).

The alleged unlawful act that the State argued supported the charge of involuntary manslaughter was that defendant aided and abetted a person under the age of 21 with the possession or consumption of an alcoholic beverage in violation or N.C. Gen. Stat. § 18B-302.

A person is guilty of a crime by aiding and abetting if (i) the crime was committed by some other person; (ii) the defendant knowingly advised, instigated, encouraged, procured, or aided the other person to commit that crime; and (iii) the defendant's actions or statements caused or contributed to the commission of the crime by that other person.

State v. Goode, 350 N.C. 247, 260, 512 S.E.2d 414, 422 (1999). "An aider or abettor is a person who is actually or constructively present at the scene of the crime and who aids, advises, counsels, instigates or encourages another to commit the offense." *State v. Barnette,* 304 N.C. 447, 458, 284 S.E.2d 298, 305 (1981). Aiding and abetting is not founded upon the defendant's mere presence at the scene of the crime. *See* *Goode,* 350 N.C. at 260, 512 S.E.2d at 422. Rather, "to be guilty [the defendant] must aid or actively encourage the person committing the crime or in some way communicate to this person his intention to assist in its commission." *Id.*

Defendant argues that the State was required to prove that defendant provided Daniel with the alcohol he drank the morning of his death, specifically a bottle of Kentucky Supreme bourbon. Because, defendant contends, the State's evidence created no more than mere suspicion as to whether defendant gave Daniel the bottle of bourbon from which he was drinking the morning of his death, the trial court erred in failing to dismiss the charge against her. Contrary to defendant's argument, the State was not required to prove that defendant provided Daniel with the alcohol that he consumed and which caused his death. Rather, the State had to prove: (1) that Daniel was under the age of 21 and possessed malt beverage, spirituous liquor, or mixed beverage or consumed any alcoholic beverage; (2) that defendant aided or encouraged Daniel to possess or consume that alcohol; (3) that defendant knew or had reason to know that Daniel was under the age of 21 at the time of the crime; and (4) that defendant was over the age of 21. *See* N.C. Gen. Stat. § 18B-302(b), (c)(2) (2011).

The evidence established that at the time of Daniel's death defendant was over the age of 21 and that Daniel was 19 years old. The State also presented evidence that defendant knew that Daniel was under the age of 21 at the time of his death. On 8 December 2008, a few weeks before Daniel's death, defendant assisted Daniel with an employment application for a job at defendant's place of employment. Defendant testified that she completed the application form for Daniel and wrote his date of birth on the form, 16 February 1989. Furthermore, the State presented substantial evidence that Daniel consumed alcohol and that this led to his death as defendant's son testified that Daniel was drinking bourbon on the morning he died from alcohol poisoning.

The State also produced substantial evidence that defendant "knowingly advised, instigated, encouraged, procured, or aided[,]" *Goode,* 350 N.C. at 260, 512 S.E.2d at 422, Daniel in possessing or consuming the alcohol that caused his death. The evidence established that defendant frequently hosted parties at her home during which defendant was aware that underage people, including Daniel, consumed alcohol. On at least one occasion, defendant was seen offering alcohol to Daniel, and defendant knew the Daniel was under the age of 21. The State presented substantial evidence that defendant's actions of allowing Daniel to consume, and providing Daniel with, alcohol were part of a plan, scheme, system, or design that created an environment in which Daniel could possess and consume alcohol and that her actions were done knowingly and were not a result of mistake or accident. Viewed in the light most favorable to the State, we conclude the evidence was sufficient to allow a reasonable juror to conclude that defendant assisted and encouraged Daniel to possess and consume the alcohol that caused his death. Therefore, the trial court did not err in denying defendant's motion to dismiss the charge of involuntary manslaughter.

II. Rule 404(b) Evidence

Defendant also contends that the trial court erred in allowing the State to present evidence of defendant's alleged prior bad acts in violation of Rule 403 and 404(b) of the North Carolina Rules of Evidence in that the only relevance of the evidence was to establish defendant's propensity to commit the crime, was unfairly prejudicial, and was confusing to the jury. We disagree.

The Supreme Court of North Carolina has recently clarified the standard of review for evidentiary rulings under Rules 403 and 404(b) in *State v. Beckelheimer,* ___ N.C. ___, 726 S.E.2d 156 (2012).

When the trial court has made findings of fact and conclusions of law to support its 404(b) ruling, as it did here, we look to whether the evidence supports the findings and whether the findings support the conclusions. We review de novo the legal conclusion that the evidence is, or is not, within the coverage of Rule 404(b). We then review the trial court's Rule 403 determination for abuse of discretion.

Id. at ___, 726 S.E.2d at 159.

Rule 404(b) provides that "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith." N.C. Gen. Stat. § 8C-1, Rule 404(b) (2011). The rule, however, provides for the admission of such evidence if offered "for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident." *Id.* Rule 404(b) is a

general rule of *inclusion* of relevant evidence of other crimes, wrongs or acts by a defendant, subject to but *one exception* requiring its exclusion if its *only* probative value is to show that the defendant has the propensity or disposition to commit an offense of the nature of the crime charged.

Thus, even though evidence may tend to show other crimes, wrongs, or acts by the defendant and his propensity to commit them, it is admissible under Rule 404(b) so long as it also "is relevant for some purpose *other than* to show that defendant has the propensity for the type of conduct for which he is being tried."

State v. Coffey, 326 N.C. 268, 278-79, 389 S.E.2d 48, 54 (1990) (quoting *State v. Bagley,* 321 N.C. 201, 206, 362 S.E.2d 244, 247 (1987) (citation omitted), *cert. denied,* 108 S. Ct. 1598, 99 L. Ed. 2d 912 (1988)). Rule 401 defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." N.C. Gen. Stat. § 8C-1, Rule 401 (2011).

When determining whether evidence of a defendant's other acts is admissible under Rule 404(b), the trial court must also consider the similarity between, and temporal proximity of, the crime charged and the act of which evidence is being offered. *Beckelheimer,* ___ N.C. at ___, 726 S.E.2d at 159. "Prior acts are sufficiently similar `if there are some unusual facts present in both crimes' that would indicate that the same person committed them," *id.* (quoting *State v. Stager,*

329 N.C. 278, 304, 406 S.E.2d 876, 890-91 (1991)), and "go to a purpose other than propensity," *id.* ___ N.C. at ___, 726 S.E.2d at 160. Finally, even if the trial court concludes the evidence is relevant to something other than the defendant's propensity to commit the crime, as well as sufficiently similar and temporally related to the crime charged, the evidence may be excluded under Rule 403 if the trial court determines that admission of the evidence would result in unfair prejudice, confusion of the issues, or would mislead the jury. N.C. Gen. Stat. § 8C-1, Rule 403.

Defendant contends the trial court erred in allowing the State to present evidence: that defendant provided her home as a place for individuals under the legal drinking age, including Daniel, to possess and consume alcohol; that defendant offered Daniel and other underage persons alcohol at these parties; that defendant purchased alcohol at a grocery store while accompanied by Daniel; and the defendant was cited for aiding and abetting Daniel and other persons less than 21 years old to possess or consume alcohol one week before Daniel's death.

In response to defendant's motion to exclude this evidence, the trial court conducted a voir dire hearing after which it concluded that the evidence was admissible as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, the absence of mistake, and the absence of accident. The trial court found that in the events testified to by the witnesses defendant was present when alcohol was purchased in the presence of an underage person or was present and aware that underage persons were offered and/or consumed alcoholic beverages on defendant's property. These findings are supported by the record as detailed above, and the findings support the trial court's conclusion that the testimony was admissible as evidence of a plan, knowledge, and absence of mistake or accident in aiding and abetting possession and consumption of alcohol by persons under 21 years old.

The evidence of parties at defendant's home at which defendant provided alcohol to Daniel and other underage persons, and those parties at which the underage persons brought their own alcohol is probative of defendant's plan to create an environment at her home where Daniel felt comfortable possessing and consuming alcohol. The evidence of defendant purchasing beer while Daniel was pushing defendant's grocery cart was admissible for this same reason. The evidence of the prior charge of aiding and abetting was probative of defendant's knowledge that in the parties often held in her basement underage persons possessed and consumed alcohol, and that her actions of permitting such conduct in her home could result in their deaths.

Defendant contends that the testimony of Trek Parker and Adam Perkins that defendant held parties at her home at which underage persons, including Daniel, consumed alcohol concerned events that occurred two to three years before Daniel's death and were too remote to be admissible. Because this testimony by Parker and Perkins was probative of a plan by defendant to create an environment where Daniel felt comfortable possessing and consuming alcohol, we conclude the events these witnesses described were not too remote in time from the crime charged to be inadmissible. *See State v. Patterson,* 149 N.C. App. 354, 364, 561 S.E.2d 321, 327 (2002) (concluding that evidence of the defendant's prior bad acts of providing alcohol to minors and inviting them to his home for parties where he sexually abused them were not too remote to be relevant evidence of a common scheme or plan even though they occurred ten and fifteen years earlier).

Defendant also argues that testimony that her husband had once encouraged Daniel to consume alcohol in their home was inadmissible and prejudicial. Assuming without deciding that this testimony was inadmissible under Rule 404(b), we conclude that the error was harmless; considering the other substantial evidence of defendant's guilt, there is no reasonable possibility that the jury would have reached a different verdict had this testimony about defendant's husband not been admitted. *State v. Willis,* 332 N.C. 151, 168, 420 S.E.2d 158, 165 (1992) (concluding that although the trial court erred in admitting evidence of prior acts under Rule 404(b) the error was harmless as it is was not likely that the jury would have reached a different conclusion in light of the other evidence of the defendant's guilt); N.C. Gen. Stat. § 15A-1443 (2011).

Lastly defendant contends that even if this evidence was admissible under Rule 404(b), the trial court erred by not excluding the evidence under Rule 403 as it was unfairly prejudicial and confused the jury. Defendant argues these prior acts were not relevant to the charge of involuntary manslaughter and led the jury to believe the prior acts evidence could serve as evidence of the unlawful act that was the basis of the involuntary manslaughter of Daniel. In support of her argument, defendant points to the jury's request for clarification of the trial court's instructions on proximate cause during its deliberations.

As discussed above, we conclude the evidence of defendant's prior acts was relevant to the charge of involuntary manslaughter as it was probative of whether defendant possessed knowledge of Daniel's age, and a plan to make an environment that encouraged Daniel to possess and consume alcohol. The trial court was aware of the potential of prejudice and properly instructed the jury that the evidence was admitted for the limited purpose of showing that defendant had "the knowledge, which is a necessary element of the crime charged in this case and there existed in the mind of the defendant a plan, scheme, system or design involving the crime charged in this case, absence of mistake and the absence of accident." *See* *State v. Hipps,* 348 N.C. 377, 406, 501 S.E.2d 625, 642 (1998) (rejecting argument that the trial court abused its discretion in admitting evidence of prior bad acts where the "court was aware of the potential danger of unfair prejudice to defendant. . . was careful to give a proper limiting instruction to the jury" and the evidence was "highly probative" of the defendant's knowledge that his actions would likely kill the victim). That the jury requested clarification of the meaning of proximate cause and that the trial court provided additional explanation of the term is not sufficient to establish that the trial court abused its discretion in admitting the evidence.

Conclusion

For the reasons stated above, we conclude the trial court did not err in denying defendant's motion to dismiss or in admitting the evidence of defendant's prior bad acts.

NO ERROR.

Judges McCULLOUGH and DAVIS concur.

Report per Rule 30(e).