

March 17, 2009 4:30 AM PDT

# Police Blotter: Facebook photo convicts school aide of drinking charge

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*[Police Blotter](#) is a regular CNET report on the intersection of technology and the law.*



**What:** Facebook photograph shows part-time teaching aide at Ohio high school with three cheerleaders holding Smirnoff bottles.

**When:** The Court of Appeals of Ohio, Twelfth District, rules on February 9.

**Outcome:** Conviction for allowing minors to possess alcohol upheld.

**What happened, according to court documents and other sources:**

Most people are merely embarrassed by photos a friend tosses onto Facebook. Mary Ellen Hause went to jail because of them.

Hause, who worked as a part-time teaching aide at Springboro High School, near Dayton, Ohio, was photographed in her basement posing with three cheerleaders holding Smirnoff bottles. The cheerleaders were friends with her son.

That photo, of course, ended up on Facebook. And Springboro High School Resource Officer Sgt. Don Wilson, who regularly poked around students' Facebook accounts, discovered it and turned it over to the local police.

Hause was charged with three counts of violating [Ohio code 4301.69](#), which says no person "shall knowingly allow any underage person to remain in or on the place while possessing or consuming beer or intoxicating liquor," unless a parent or legal guardian is present and approves. (Underage person is defined as someone under 21 years old.)

State prosecutors alleged that Hause allowed the cheerleaders to consume Smirnoff, Sparks, and beer at her home and presented testimony from two of the minors who claimed that Hause participated in drinking games with them.

A second Facebook photo from the same gathering showed another minor holding a can of Sparks, a [caffeinated alcoholic beverage](#).

For her part, Hause said that she didn't know at first that the cheerleaders were drinking, and when she found out, she kicked them out.

"I went downstairs and I saw the kids down there," she said, according to a [report](#) by the local ABC affiliate. "I sat on the couch and the girls -- they know me because of working at the school --they all jumped in my lap. And I did take the picture and I didn't notice anything right away."

Her testimony proved to be less than convincing: a jury convicted her and she was sentenced to 30 days in jail, a \$500 fine, 10 days of trash pickup, and three years of probation that prohibits her from drinking alcohol or having it in her house.

"What should have happened when you discovered that these kids were drinking is that immediate action should have taken place... that all of these parents should have been notified and that your actions should have been very, very different," trial judge Judge Donald Oda II said, according to the transcript.

Hause appealed, saying the no-alcohol-on-probation rule was an abuse of the judge's discretion, that there should have been one charge instead of three, and the law is unconstitutionally overbroad. On February 9, an appeals court upheld her conviction and sentence.

The *Dayton Daily News* [reported](#) last year that the school decided not to punish the cheerleaders.

**Excerpts from the recent opinion from the Court of Appeals of Ohio, Twelfth District, Warren County:**

Appellant argues the trial court abused its discretion in imposing as conditions of community control that she not consume or possess alcohol and that she not have alcohol in her household. Appellant argues these conditions do not relate to the crimes for which she was found guilty.

The trial court has broad discretion in imposing conditions of community control pursuant to R.C. 2929.25(A)(1), which governs the authority of the trial court to impose one or more community control sanctions in misdemeanor violations, including residential, nonresidential, and financial sanctions, and any other conditions the court considers appropriate. We will not reverse such conditions imposed absent an abuse of the trial court's discretion.

A trial court's discretion in imposing community control conditions is not limitless, however. In determining whether a condition reasonably relates to the three probationary goals -- doing justice, rehabilitating the offender, and insuring good behavior -- a court "should consider whether the condition (1) is reasonably related to rehabilitating the offender, (2) has some relationship to the crime convicted, and (3) relates to conduct which is criminal or reasonably

related to future criminality and serves the statutory ends of probation." In addition, the community control conditions "cannot be overly broad so as to unnecessarily impinge upon the probationer's liberty."

After reviewing the entire record, we find the trial court acted within its discretion by concluding the restrictions on alcohol use and possession as conditions of appellant's community control, as applied to appellant only, are reasonably related to rehabilitating the offender, have a reasonable relationship to the crime charged, are reasonably related to future criminality and serve the statutory ends of probation. Appellant was convicted of an alcohol-related offense-allowing juveniles to consume alcohol in her home. If she is not allowed to possess or consume alcohol or have alcohol in her home, it is less likely that juveniles will consume alcohol in her home...

Judgment affirmed.