Underage Drinking Enforcement Training Center

RESOURCE ALERT

FEBRUARY 2015

UPDATES FROM THE FIELD

Making the Case for Greater Investment in Prevention

By Pamela Erickson

It should be clear that preventing addiction and the many social problems related to alcohol abuse is more cost-effective than treating these problems after the fact. Our prisons are populated with inmates who committed crimes under the influence of alcohol and/or drugs. Our families are devastated by the 10,000 annual drunk-driving deaths. While we have made great strides in addiction treatment, it is an expensive process and relapse is common. So I am challenging all of us to make the case for greater investment in prevention. To learn more visit: http://www.healthyalcoholmarket.com/pdf/NewsletterJanuary2015.pdf

Traffic Safety Facts: Alcohol-Impaired Driving/2013 Data

In 2013, 10,076 people were killed in alcohol-impaired driving crashes, an average of one alcohol-impaired-driving fatality occurred every 52 minutes. These alcohol-impaired-driving fatalities accounted for 31 percent of the total motor vehicle traffic fatalities in the United States. Of the 10,076 people who died in alcohol-impaired-driving crashes in 2013, 3,883 involved drivers between the ages of 16 and 20 (38.5%). Of those fatalities involving drivers between the ages of 16 and 20, 666 drivers (17%) had a BAC of .08 or higher. To read the press release and access the 2013 Alcohol-Impaired Driving Traffic Safety Facts, visit: http://www.nhtsa.gov/About+NHTSA/Press+Releases/2014/traffic-deaths-decline-in-2013.

INNOVATIVE APPROACHES TO REDUCING UNDERAGE DRINKING IN STATES

Board of Supervisors to Place Stricter Limitations on "Alcopops" in Contra Costa

The county Board of Supervisors voted unanimously Tuesday to approve recommendations to place greater restrictions on how liquor stores can advertise sugary alcoholic beverages known as "alcopops" and where store owners can display them in stores. The board also called for the California Legislature to ban the sale of alcopops across the state because the state Department of Alcoholic Beverage Control is responsible for regulating the kinds of booze products that businesses may sell.

The ordinance only affects unincorporated areas of Contra Costa County, said Ed Diokno, a policy analyst for Supervisor Federal Glover. Each individual city council will have to pass and adopt the ordinance to impact its stores. "Supervisor Glover intends to introduce the new ordinance to the Mayor's Conference next quarter," Diokno said. "To my knowledge, this is the strongest stance any California county has taken against these new alcohol-laden drinks." The new ordinance will be in effect starting Jan. 1, he said. Notices will outline the new requirements and will be sent to stores that sell alcopops. To learn more visit: http://www.contracostatimes.com/east-county-times/ci_27151979/board-supervisors-place-stricter-limitations-alcopops-contra-costa

DISTANCE LEARNING COURSES!

UDETC Distance Learning Courses: Six NO-COST Resources

The Office of Juvenile Justice and Delinquency Prevention's Underage Drinking Enforcement Training Center (UDETC) offers distance learning courses on strategies for enforcement of underage drinking laws and preventing youth access to alcohol. UDETC currently has six courses available. These online courses are available at no-cost and include *Conducting Compliance Check Operations*, *Environmental Strategies*, *Party Prevention and Controlled Party Dispersal*, *Techniques for Managing Special Events*, *Source Investigations*, and our newest course on *Using Community Volunteers to Support Prevention and Enforcement of Underage Drinking*. Participants can receive a certificate upon completion of each course. In the coming months, look for our seventh course titled, *Developing Data-Driven Strategies to Reduce Underage Drinking*. To learn more about our current distance learning opportunities, click here: http://www.udetc.org/documents/distancelearningflyer.pdf

LEGAL CASE

"Police Need to Prove the Elements of the Offense to Gain a Conviction?"

In February 2014, the Court of Appeals of Georgia rendered their opinion in the matter of State v. Vaughn, Ga: Court of Appeals 2014. The State appeals the suppression of evidence introduced as part of underage alcohol charges filed against Meagan Vaughn. Ms. Vaughn contends she was "randomly and without probable cause stopped and detained and required to take an alco-sensor test."

The State contended that the trial court erred by: (1) concluding that it could not consider information provided to the arresting officer by another police officer when determining whether articulable suspicion supported Vaughn's detention; and (2) failing to conclude that testimony about the odor of alcohol coming from the defendant and the results of an alco-sensor test provided articulable suspicion for her detention.

Meagan Vaughn was under 21 and visiting a bar as part of a "college night" event. Those who were under 21 had their hands marked and their licenses surrendered until they left the club. When the underage persons returned to collect their licenses or cards, the officers working the front door would investigate if they detected an "odor of alcoholic beverage coming from them." Officer Wood testified that he typically pulled them aside, asked them how much they had to drink, and then for an alco-sensor test if they admitted to drinking.

Should the court have admitted the evidence? Do you agree with the Court's analysis? To learn more visit: http://www.udetc.org/documents/ResourceAlerts/February2015case.pdf

To print a copy of this month's *Resource Alert,* visit: www.udetc.org/documents/ResourceAlerts/ResourceAlert0215.pdf.

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

11720 Beltsville Drive, Suite 900
Calverton, MD 20705-3111
Toll Free 877-335-1287
To subscribe or unsubscribe from the UDETC ListServ, email udetc@udetc.org or call 1-877-335-1287 ext. 2756.

This project was supported by Grant No. 2009-AH-FX-K001 awarded by the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

Underage Drinking Enforcement Training Center

DISTANCE LEARNING COURSES

http://www.udetc.org/distancelearning.htm

Best Practices to Reduce Underage Drinking

The UDETC offers no-cost distance learning opportunities featuring courses that present best practices and strategies for enforcement of underage drinking laws and efforts to reduce underage drinking. Funded by an OJJDP grant, these web-based, on-line courses allow flexible scheduling, reduce travel costs and offer the ability to learn at your own pace in an online environment. Participants can receive a certificate upon completion of one of these courses.

Conducting Compliance Check Operations

Four hour course provides guidelines and operational information on reducing alcohol sales to minors through compliance check operations.

Environmental Strategies

Two hour course provides information on effective environmental prevention strategies to address underage drinking.

Party Prevention & ControlledParty Dispersal

Six hour course discusses the role of enforcement and the community in preventing and safely dispersing underage drinking parties.

Techniques for Managing Special Events

Two hour course identifies the complexity of planning a special event. The course provides information on the role of enforcement, effective planning, proper management and policy application.

Source Investigations

Two hour course discusses the importance of conducting source investigations for underage drinking events, methodology and the benefits of effective enforcement and environmental strategies.

NEW!

Using Community Volunteers to Support Prevention & Enforcement of Underage Drinking

Two hour course explores the recruitment, selection, training, utilization, and management of community volunteers that support the prevention and enforcement strategies focused on underage drinking.

This project was supported by Grant No. 2009-AH-FX-K001 awarded by the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

Underage Drinking Enforcement Training Center

PIRE

Fox Valley Technical College
Knowledge That Works

THE STATE,
v.
VAUGHN

A13A2179

Court of Appeals of Georgia

Decided: February 4, 2014

BOGGS, Judge.

The State appeals from the trial court's grant of a motion to suppress filed by Meagan Vaughn, who was charged with violating OCGA § 3-3-23 (a) (2) (minor in possession of alcohol). The State contends that the trial court erred by: (1) concluding that it could not consider information provided to the arresting officer by another police officer when determining whether articulable suspicion supported Vaughn's detention; and (2) failing to conclude that testimony about the odor of alcohol coming from the defendant and the results of an alco-sensor test provided articulable suspicion for her detention.

Three fundamental principles . . . must be followed when conducting an appellate review of a motion to suppress. First, when a motion to suppress is heard by the trial judge, that judge sits as the trier of facts. The trial judge hears the evidence, and his findings based upon conflicting evidence are analogous to the verdict of a jury and should not be disturbed by a reviewing court if there is any evidence to support [them]. Second, the trial court's decision with regard to questions of fact and credibility must be accepted unless clearly erroneous. Third, the reviewing court must construe the evidence most favorably to the upholding of the trial court's findings and judgment. On numerous occasions the appellate courts of this state have invoked these three principles to affirm trial court rulings that upheld the validity of seizures. These same principles of law apply equally to trial court rulings that are in favor of the defendant. . . .

(Citations, punctuation and footnotes omitted.) Miller v. State, 288 Ga. 286 (1) (702 SE2d 888) (2010). "Where . . . the issue turns on the question of whether a trial court committed an error of law in granting a motion to suppress, we apply a de novo standard of review. [Cit.]" State v. Bethel, 307 Ga. App. 508, 509 (705 SE2d 860) (2010).

The record shows that Vaughn moved to suppress the results of an alco-sensor test of her breath based upon an allegation that she was "randomly and without probable cause stopped and detained [and] requir[ed] to take an alco-sensor test." The transcript of the motion to suppress hearing reveals that Officer Wood testified that he worked part-time at the nightclub where Vaughn was arrested and was familiar with the procedures on "college night" when persons between 18 and 21 years were also permitted to enter the club. When adults under the age of 21 entered the club, they were required to give their driver's license or identification card to "front door security." The officers placed an X on one hand and a number on the other hand corresponding to a location where the license or card was stored. When the under-age persons

returned to collect their license or card, the officers working the front door would investigate if they detected an "odor of alcoholic beverage coming from them." Officer Wood testified that he typically pulled them aside, asked them how much they had to drink, and then for an alco-sensor test if they admitted to drinking.

Officer Wood explained that on the evening in question, he was not working at the nightclub, but was instead on duty when he was called to the club "by Officer Ferree, who was working there part time, off duty at that incident location. She said she had several subjects that were intoxicated under age." When Officer Wood arrived at the nightclub, he testified that he met with the six subjects who had been detained by Officer Ferree, and all of them appeared to be under the influence of alcohol. Officer Wood could not recall whether he performed the alco-sensor tests recorded in his report. Officer Wood acknowledged that he did not have any first-hand knowledge of the details concerning Officer Ferrer's observations before he detained Vaughn. He also testified that he did not have any particularized information about the grounds used by Officer Ferree to detain Vaughn and ask her to submit to an alco-sensor test. While Officer Wood testified that he recalled the smell of alcoholic beverage about Vaughn's person when he arrived, his report did not reflect this observation, and he initially misidentified Vaughn as someone else at the beginning of the motion to suppress hearing. The State explained that it did not ask Officer Ferree to testify at the hearing because "she just had a baby."

In a written order issued after the motion to suppress hearing, the trial court made the following findings and conclusions:

Officer Wood of the City of Kennesaw Police Department testified that he was called to a nightclub by a security officer. He testified that when he arrived at the scene he found 6 persons who were being detained for alcohol related charges.

From the stand, Wood initially misidentified the Defendant as the young woman seated with the defense attorney at counsel table. After an objection by the defense and Wood having refreshed his recollection by viewing the arrest photo, the Defendant was identified by Wood as being seated in the gallery. Wood testified that when he arrived at the nightclub all 6 persons, including the Defendant, had been detained, with their identification confiscated but probably not in handcuffs.

The State did not present testimony from the detaining officer, Officer Ferree, who was working as a security officer that evening. As a result, the State could not present any competent testimony as to the basis for the Defendant's detention or the result of the Alco-Sensor test. Officer Wood could merely testify that the Defendant had an odor of alcohol after he arrived and after Defendant ha[d] been detained and was no longer free to leave. Thus Officer Wood could offer no articulable suspicion as to the basis for Defendant's detention. The evidence was not clear as to whether Wood actually detected an odor of alcohol coming from the Defendant. Finally, no evidence was set forth by the State to show that the Defendant was under 21 years of age or that such a determination was made prior to her detention.

The State sought to have Officer Wood testify as to what he was told by Ferree, who did not appear to testify. This information, the State contended, was necessary to provide articulable

suspicion for Defendant's detention, and the elements necessary to support an arrest (Defendant's age, consumption of alcohol). The Court ruled that the State could not present such evidence through a witness who did not have any first-hand knowledge. See Moore v. State, 281 Ga. App. 141 [(635 SE2d 408)] (2006). Hopkins v. State, 283 Ga. App. 654 [(642 SE2d 356)] (2007). White v. State, 273 Ga. 787 [(546 SE2d 514)] (2001).

Based on the foregoing, Defendant's Motion to Suppress is GRANTED. Any inculpatory evidence gained after Defendant's detention and before Officer Wood's arrival is suppressed.

We agree with the State's assertion that hearsay is admissible during a suppression hearing when determining the existence of probable cause for an arrest or articulable suspicion for an investigatory stop. See Daniel v. State, 298 Ga. App. 245, 248 (3) (679 SE2d 811) (2009); Duke v. State, 257 Ga. App. 609, 610-611 (571 SE2d 414) (2002).

Reasonable suspicion need not be based on an arresting officer's knowledge alone, but may exist based on the "collective knowledge" of the police when there is reliable communication between an officer supplying the information and an officer acting on that information. Officers are entitled to rely on information provided by other officers or by their dispatcher when asked to be on the lookout for a certain vehicle or suspects. There is no requirement that the officer or officers providing the information testify at the motion to suppress.

(Citations and punctuation omitted.) Edmond v. State, 297 Ga. App. 238, 239 (676 SE2d 877) (2009).

In this case, however, the arresting officer acknowledged that he did not have any particularized information about the grounds used by Officer Ferree to detain Vaughn and to ask her to submit to an alco-sensor test — the subject of Vaughn's motion to suppress. Therefore, even if the trial court had considered the hearsay information provided to Officer Wood by Officer Ferree, there would still be an absence of evidence on the critical issue of the motion to suppress: What were the specific and particularized facts justifying Officer Ferree's detention of Vaughn? See Duke, supra, 257 Ga. App. at 610-611. While such evidence may exist, it was not presented to the trial court, and the State bears the burden of proving that Officer Ferrer's detention of Vaughn was lawful. See Kazeem v. State, 241 Ga. App. 175, 177-178 (525 SE2d 437) (1999) (reversing trial court's denial of motion to suppress when State failed to present testimony of officers who initiated stop and detained defendants). We therefore affirm the trial court's order suppressing "[a]ny inculpatory evidence gained after Defendant's detention and before Officer Wood's arrival."

Judgment affirmed. Doyle, P. J., and McFadden, J., concur.