

Underage Drinking Enforcement Training Center

Monthly Resource Alert

March 2008



11720 Beltsville Drive ■ Suite 900 ■ Calverton, MD 20705 ■ Toll Free 877-335-1287

Please visit our enhanced website at www.udetc.org for the latest information on underage drinking.

10th Annual National Leadership Conference Call for Presentations!

The Call for Presentations for the 2008 conference, to be held in Nashville, Tennessee at the Gaylord Opryland Hotel and Convention Center is now available online! Simply visit our website: www.udetc.org and click on the Conference icon. There you can find the Call for Papers along with a wealth of other information regarding this year's Conference. The deadline for submission is April 4, 2008, so don't delay!

Indiana, PA Law Enforcement Officers Halt Train and Save Intoxicated Teenage Driver's Life

Late last year Indiana Borough police officers stopped a train before it struck a car that had driven onto the railroad tracks. Police said the car's driver, a nineteen year old woman, was intoxicated. At 1:15 a.m. police spotted a black Nissan about 10 feet down the tracks from a crossing. Patrolman Thomas Dessell said the car was wedged onto the tracks and wouldn't move. Dessell and another officer heard and saw a train approaching. The second officer flagged down the engineer and got the train stopped in time. A tow truck was brought in to pull the car from the rails, according to reports. Police said the woman was later arrested for driving under the influence and subsequently released by the Indiana Borough Police. Source: *Indiana Gazette*

Court of Appeals of Indiana Upholds a Parents Conviction for Contributing to the Delinquency of a Minor When Police Respond to an Underage Drinking Party

In February of 2008 the Court of Appeals of Indiana rendered their opinion in an appeal taken by Appellant-Defendant Karen Rush in *Rush v. State* --- N.E.2d ----, 2008 WL 427794 Ind.App.,2008.

Defendant - Appellant, Karen Rush appealed her conviction in the Huntington County Superior Court Superior Court, on charges of contributing to delinquency of a minor. The issues on appeal to the Court of Appeals included:

1. Whether exigent circumstances existed as to authorize police officers to conduct warrantless search of curtilage of defendant's home;

2. Whether police officers exceeded the scope of defendant's consent to search home;
3. Whether the warrantless search violated state constitutional right of protection against unreasonable searches; and
4. Whether there was sufficient evidence to support the conviction.

To learn more about this case and read how Indiana law enforcement officers handled this all too frequent occurrence please click on the link below:

www.udetc.org/documents/ResourceAlerts/March2008Case.pdf

March National Electronic Seminar:

Preventing Underage Drinking during Graduation Events: Effective Strategies

Date: Thursday, March 20, 2008

Time: 3:00-4:15 p.m. EDT

Speakers: Carol Burkett, Orange County Drug Free Coalition; Captain Mark Bong, Florida Division of Alcoholic Beverages and Tobacco and Sergeant Regis Thimons, St. Joseph County, Indiana Police Department

Graduation should be a special and positive experience. Graduations and proms are often the highlight of young lives and can produce lifelong memories. Yet there are risks involved when proms and/or graduations are mixed with alcohol - whether it is the prom after-party or "senior week" events. This audio-call will focus on graduation and/or prom events strategies which can be implemented in an effort to make these events safer. We encourage adults and youth to participate in this National Electronic Seminar. Participants will develop an understanding of the importance of prevention by implementing consistent and inclusive strategies to prevent underage drinking during these events.

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

To print a hard-copy of this month's Resource Alert visit:

www.udetc.org/documents/ResourceAlerts/ResourceAlert0308.pdf

The views expressed in this publication do not necessarily represent the views of the Office of Juvenile Justice for Delinquency Prevention (OJJDP) or the Underage Drinking Enforcement Training Center (UDET) and are solely of the author/source.

Quick Fact:

13 percent of 8th-graders, 23 percent of 10th-graders and 30 percent of 12th-graders had consumed alcopops during the 30 days prior to being interviewed for the [Monitoring the Future Study](#).

Did you Know....?

That First Lady of Nevada, Mrs. Dawn Gibbons and Mrs. Jane Beshear of Kentucky have joined the membership of *Leadership to Keep Children Alcohol Free? Leadership* is a unique coalition, whose initiative is to prevent the use of alcohol by children ages 9 to 15.

March 2008

Underage Drinking Enforcement Training Center's Legal Case Summary

In February of 2008 the Court of Appeals of Indiana rendered their opinion in an appeal taken by Appellant-Defendant Karen Rush in *Rush v. State* --- N.E.2d ----, 2008 WL 427794 Ind.App.,2008.

Appellant, Karen Rush appealed her conviction in the Huntington County Superior Court Superior Court, on charges of contributing to delinquency of a minor.

Issues on Appeal

1. Whether exigent circumstances existed as to authorize police officers to conduct warrantless search of curtilage of defendant's home;
2. Whether police officers exceeded the scope of defendant's consent to search home;
3. Whether the warrantless search violated state constitutional right of protection against unreasonable searches; and
4. Whether there was sufficient evidence to support the conviction.

The Facts of the Case

On March 25, 2007, at approximately 12:15 a.m., Huntington County Sheriff's Deputy Chad Hammel and Indiana State Trooper Jamie Hotchkiss received a report of an underage drinking party at Rush's residence. As a result, Trooper Hotchkiss contacted other officers for assistance, requesting that they meet him in the identified neighborhood. When the officers arrived in Rush's subdivision, they parked their police vehicles and began walking toward Rush's house. At some point, the officers noticed a "young male" approach them. However, the individual subsequently turned

around and started to run. Deputy Hammel stopped the individual and asked whether "there was an underage drinking party going on at Rush's house." After the suspected juvenile responded affirmatively, Trooper Matt Teusch continued walking toward Rush's house and approached a teenage boy who was leaning against a vehicle in Rush's driveway. As the teen ran toward Rush's backyard, Trooper Teusch chased him. Trooper Teusch detected the smell of alcohol on the youth's breath after stopping him.

At that point, some of the officers saw several empty beer cans in Rush's front yard. Trooper Teusch then heard some commotion in Rush's backyard and saw someone crawling out of Rush's basement window. The individual stopped after Trooper Teusch ordered him to do so. As the officers stood in the backyard, they looked through the basement window and noticed other suspected juveniles in Rush's house and beer and liquor containers. Trooper Hotchkiss then saw other juveniles run into Rush's house through the front door. As a result, he went around the house to intercept anyone who was attempting to flee.

Thereafter, several troopers knocked on Rush's back door. When Rush opened the door, she acknowledged to Trooper Hotchkiss that she was the homeowner. Rush then told the officers that they could come inside. Trooper Hotchkiss asked Rush if she knew what was going on, and she responded that she "saw a few beer cans but ... didn't think anything of it." The officers then summoned the occupants from the basement for a "head count." Trooper Hotchkiss then walked through the house and found three teenage girls

hiding in the basement closet. Trooper Hotchkiss also saw an empty case of Keystone Light beer, empty beer cans, and a number of liquor bottles in the basement.

While Trooper Teusch was in the living room, he noticed that some of the individuals from the initial “head count” were missing. Trooper Teusch then heard a noise upstairs and found one of the missing juveniles hiding in a closet. The officers subsequently administered portable breath tests to all of the individuals, which revealed that thirteen of them had consumed alcohol. Rush's seventeen-year-old daughter was one of those individuals.

As a result of the incident Rush was charged with contributing to the delinquency of a minor, a class A misdemeanor. Thereafter, Rush filed a motion to suppress, claiming that the officers lacked the authority to enter Rush's “curtilage, exceeding the areas upon which visitors would be expected to be invited.” Rush also claimed that the police officers' warrantless entry and subsequent search of the premises violated her right to be free from unreasonable search and seizure pursuant to the Fourth Amendment to the United States Constitution and Article I, Section 11 of the Indiana Constitution. Therefore, Rush alleged that the police officers improperly obtained the evidence during the investigation and subsequent search of her residence and that as a result, the evidence must be suppressed. The trial court denied the motion to suppress, and following a bench trial that concluded on August 14, 2007, Rush was found guilty as charged.

Analysis of the Appellate Court

I. Entry Onto the Premises

The Appellant-Defendant Rush argued that the trial court erred in admitting “all evidence obtained after the officers entered the back of her property.” Rush argued that all of the evidence the police officers obtained during their investigation was inadmissible because the police officers improperly entered her yard and the curtilage of her home. More specifically, Rush maintained that the officers' entry into “the curtilage of her home without probable cause and without being in hot pursuit of a felon, and peering through Defendant's windows while in the rear of the home were all in violation of her rights under the Fourth Amendment to the United States Constitution.

The Court began its analysis of the case by noting that the appellate court will affirm the decision of the trial court if it is supported by substantial evidence of probative value. Moreover, the trial court's ruling will be upheld if it is sustainable on any legal theory supported by the record, even if the trial court did not use that theory. *Gonser v. State*, 843 N.E.2d 947, 950 (Ind.Ct.App.2006).

“This court has determined that the protection afforded to curtilage is justified on the basis of familial and personal privacy in an area intimately linked to the home, both physically and psychologically, where privacy expectations are most high. *Rook v. State*, 679 N.E.2d 997, 999-1000 (Ind.Ct.App.1997). However, the mere fact that a legitimate police investigation allows items within the curtilage to be

seen does not automatically transform a warrantless observation or inspection into an unconstitutional search. *Trimble v. State*, 842 N.E.2d 798, 801 (Ind.2006).”

“Moreover, our Supreme Court has determined that the existence of exigent circumstances falls within the exception to the warrant requirement. *Snellgrove v. State*, 569 N.E.2d 337 (Ind.1991). Such circumstances are present when: 1) a suspect is fleeing or likely to take flight in order to avoid arrest; 2) incriminating evidence is in jeopardy of being destroyed or removed unless an immediate arrest is made; and 3) hot pursuit or movable vehicles are involved. *Id.* at 340. In essence, the warrant requirement becomes inapplicable when the ‘exigencies of the situation’ make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.” *Holder v. State*, 847 N.E.2d 930, 936-37 (Ind.2006) (quoting *Mincey v. Arizona*, 437 U.S. 385, 393-94, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978)).”

The appeals court noted that the police officers responded to a report that an underage drinking party was occurring at Rush's residence. When the officers walked toward Rush's house, an individual-suspected to be underage-saw the officers and began to run away. Once the suspected juvenile stopped in front of Rush's home, he told the officers that an underage drinking party was occurring inside. Shortly after that encounter, Trooper Teusch questioned another teenager, who had been leaning against a vehicle in Rush's driveway. Trooper Teusch testified that the youth smelled of alcohol.

The appeals courts noted that Indiana Code section 7.1-5-7-7 defines a minor in possession of alcohol as a class C misdemeanor. “After receiving the dispatch regarding the suspected drinking party, the officers reasonably believed that the teens were running from them because they had been drinking at Rush's house. Additionally, Trooper Hotchkiss entered Rush's yard to intercept the juveniles who were running from the house because he thought they may have been drinking at the party. When Trooper Teusch heard a commotion in Rush's backyard, he saw a juvenile climbing out of Rush's basement window. When apprehending that individual, the officers looked in the basement window and noticed several juveniles, “open beer cans, beer containers,” and a portable bar with several liquor bottles on it.”

The appeals court held in light of these circumstances, the trial court reasonably concluded that the police officers were lawfully on Rush's premises to investigate the suspected underage drinking party. As a result, neither the police officers' warrantless entry into Rush's yard or their subsequent observation of the beer and liquor containers through the basement window violated Rush's Fourth Amendment rights.

II. Search of the Residence

In a related argument, Rush argued that her conviction must be reversed because the police officers' search of her home was improper. More specifically, Rush argues that “based on the totality of the circumstances, the warrantless search of [her] home without her consent was unreasonable under the Fourth Amendment to the United States

Constitution and Article I, Section 11 of the Indiana Constitution.”

A. Fourth Amendment Claim Analysis

The appeals court began their analysis of this issue by restating the law. “We acknowledge that while a search extending beyond the exigencies presented violates the Fourth Amendment, *Bryant v. State*, 660 N.E.2d 290, 301 (Ind.1995), another well-recognized exception to the warrant requirement is a voluntary and knowing consent to search. *Krise v. State*, 746 N.E.2d 957, 961 (Ind.2001). The scope of a consensual search is measured by its objective reasonableness. *Id.* at 964.”

The court noted that Rush told the police officers that she was the homeowner. Rush then specifically told the officers that “it was fine” for them to come inside. The officers then asked the individuals in the house to “gather so they could get a head count.” Although Rush correctly maintains that she may not have given her express consent to search her residence, she did not indicate that she was limiting the scope of the officers' entry. In fact, Rush accompanied one of the troopers as he walked through the house, thereby assenting to their actions. As a result, there is no indication that the police officers exceeded any purported scope of Rush's consent to enter the residence.

Finally, we note that the police officers' actions may well have been justified under the protective sweep exception to the warrant requirement. This exception applies in circumstances that “include risk of bodily harm or death, aiding a person in need of assistance, protecting private property, or actual or imminent destruction or removal of evidence

before a search warrant may be obtained.” *Harless v. State*, 577 N.E.2d 245, 248 (Ind.Ct.App.1991). Here, it is apparent that the officers entered the premises to assess the situation and gather the suspected teenagers who had been drinking. Moreover, as discussed above, several of the suspected underage drinkers attempted to hide or flee the premises. “...Thus, we reject Rush's contention that the trial court abused its discretion in admitting the evidence that the officers seized during the search and protective sweep of the residence.”

B. Indiana Constitutional Analysis

Rush also argued that the search of her house violated Article I, section 11 of the Indiana Constitution. The court noted that analysis under that provision requires examination of the specific facts of each case and whether police conduct is reasonable in light of the totality of the circumstances.

“[I]t has been recognized “that the totality of the circumstances requires consideration of both the degree of intrusion into the subject's ordinary activities and the basis upon which the officer selected the subject of the search or seizure.” *Litchfield v. State*, 824 N.E.2d 356, 360 (Ind.2005). Our determination of the reasonableness of a search or seizure under Section 11 often “turn[s] on a balance of: 1) the degree of concern, suspicion, or knowledge that a violation has occurred, 2) the degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities, and 3) the extent of law enforcement needs. *Id.* at 361.”

Restating the facts of the case the appeals court held “...the officers' intrusion was minimal and their search

of the residence did not exceed the scope necessary to assess the situation and determine who was present in Rush's home. Thus, Rush's contention that the officers' actions were unreasonable and violated her rights under Article I, Section 11 of the Indiana Constitution fails.”

III. Sufficiency of the Evidence

The Appellant-Defendant Rush claimed that the evidence was insufficient to support her conviction. Specifically, Rush argued that her conviction must be reversed because the uncontradicted evidence showed that the defendant did not regularly keep alcohol in her home, did not provide any alcohol to minors, and the minors brought their own alcohol to her house and concealed it ... in her basement.

The court restated the evidentiary record created at the trial court. “In this case the evidence showed that there were approximately twenty-five people at Rush's house on the night of the party and Rush knew that people were coming into her house to visit her seventeen-year-old daughter.

When some of the guests brought alcohol into the house through the front door, Rush was in the living room. At least one individual talked with Rush after he had been drinking in the basement. Contrary to Rush's claim that “there was no indication that anything unusual was taking place in the home,” she admitted to police officers that she had seen beer cans in the house. Indeed, the police officers discovered a number of empty beer cans and liquor bottles scattered in the basement.

Moreover the court noted that Rush's daughter was one of the juveniles who had been drinking that evening, and the evidence showed that she had talked with Rush during the course of the evening. “Although the evidence may not have established that Rush actually supplied the juveniles with alcohol, the trial court could have reasonably inferred that Rush knew that the minors were drinking in her basement when considering the amount of alcohol that was in the house and the number of individuals who were coming and going from the residence. Moreover, it was reasonable for the trial court to conclude that Rush aided the minors in permitting them to consume alcohol in her home.” As a result, The Court of Appeals affirmed Rush's conviction for contributing to the delinquency of a minor.



National Electronic Seminars Enforcing Underage Drinking Laws Program

The OJJDP Audio-TELECONFERENCE Series



March 20, 2008 3:00 – 4:15 p.m. Eastern Time

Preventing Underage Drinking During Graduation Events: Effective Strategies

Graduation should be a special and positive experience. Graduations and proms are often the highlight of young lives and can produce lifelong memories. Yet there are risks involved when proms and/or graduations are mixed with alcohol - whether it is the prom after-party or "senior week" events. This audio-call will focus on graduation and/or prom events strategies which can be implemented in an effort to make these events safer. We encourage adults and youth to participate in this National Electronic Seminar. Participants will develop an understanding of the importance of prevention by implementing consistent and inclusive strategies to prevent underage drinking during these events.

April 17, 2008 3:00 – 4:15 p.m. Eastern Time

Prosecutors: Their Role, Limitations and Challenges

The justice system is one component in a comprehensive effort to reduce underage drinking and DUI. Prosecutors play a crucial role within the system in the administration of justice, and rules concerning the performance of their important responsibilities. Generally a prosecutor's responsibilities include determining appropriate charges, discussions with defense counsel, preparing witnesses for court, examination, and cross-examination of witnesses and presenting arguments respecting conviction and sentence.

What role does the prosecutor hold in addressing the harms that are part of underage alcohol problems? How can a prosecutor assume a leadership role within their community on the complex issues? Our panel of experienced prosecutors will discuss these issues and listeners will be provided a valuable insight into the world of the prosecutor. Participants will be able to ask questions of our panelists to help them establish strategies and how to build relationships with prosecutors from their own community.

May 22, 2008 3:00 – 4:15 p.m. Eastern Time

"Rite" of What? Alcohol Enforcement Successes of "Busting the Binge" in College Environments

Underage and hazardous drinking on/off college campuses are often viewed as normal "rites of passage," yet present serious public health and safety issues. Learn how local enforcement agencies can partner with campus and community leaders to change community norms, and adapt traditional enforcement strategies to successfully "bust the binge."



June 19, 2008 3:00 – 4:15 p.m. Eastern Time

On-Premise Enforcement and Retailer Training Opportunities

When people think of underage alcohol problems they often think about the role of the licensed retailer and most frequently the convenience store or liquor store. The on-premise retail licensees make up nearly half of all the licensed businesses throughout the country. Depending on the laws of each jurisdiction people under the age of 21 may be lawfully allowed inside these businesses to socialize, but not consume alcohol. Retailer promotions and popular music make the on premise licensee a popular destination for those under the age of 21.

How does law enforcement police the on-premise licensee? What role does the licensee assume in responsibility for underage alcohol problems in a community? What initiatives are available to the on-premise retailer to assist them in responsible sales, service, and safety to their customers and the community? Our panel will discuss the role of the retailer in this process, what tools are being used by law enforcement to improve safety and what makes up a retailer training program that can demonstrate measurable success. Listeners will gain information on innovative law enforcement strategies in the community and hear how one community created a very successful training program for retailers.

For audio-conference registration information, please visit www.udetc.org

All programs provide opportunities for presentation, discussion, and sharing information. Telephone dial-in instructions and accompanying materials will be mailed to registrants two weeks before the audio conference.

To register for any of these free electronic seminars by phone, call toll-free 1-877-335-1287 extension 230



Enforcing Underage Drinking Laws Program

AUDIO CONFERENCE

TOPIC

Preventing Underage Drinking during Graduation Events: Effective Strategies

Graduation should be a special and positive experience. Graduations and proms are often the highlight of young lives and can produce lifelong memories. Yet there are risks involved when proms and/or graduations are mixed with alcohol – whether it is the prom after-party or "senior week" events. This audio-call will focus on graduation and/or prom events strategies which can be implemented in an effort to make these events safer. We encourage adults and youth to participate in this National Electronic Seminar. Participants will develop an understanding of the importance of prevention by implementing consistent and inclusive strategies to prevent underage drinking during these events.



DATE

March 20, 2008

TIME

3:00–4:15 p.m. EST

PRESENTERS

Presenter 1:

Carol Burkett, Orange County Drug Free Coalition

Presenter 2:

Captain Mark Bong, Florida Division of Alcoholic Beverage and Tobacco

Presenter 3:

Sergeant Regis Thimons, St. Joseph County, Indiana Police Department

WEB ENHANCED



Internet users will be able to log on to our conference web page to view presentation slides and interact with other participants.

REGISTER

Please register by using one of our automated options:

- **To register on our website**, please visit www.udetc.org and complete the online registration form, or
- **To register by phone**, please call our toll-free number, 1-877-335-1287, extension 230, and follow the prompts.

Telephone dial-in instructions and accompanying materials for the audio conference will be mailed one (1) week before the call.