

# Underage Drinking Enforcement Training Center

## Monthly Resource Alert

### September 2010



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

Please visit our enhanced website at [www.udetc.org](http://www.udetc.org) for the latest information on preventing underage drinking.

#### **12<sup>th</sup> Annual National Leadership Conference – A Success!**

The 12th Anniversary National Leadership Conference (NLC) was held on August 18-20, 2010, at the Anaheim Marriott in Anaheim, California. This year's NLC theme was "Building Community Futures with Blueprints for Success". Nearly 1,800 energized and motivated participants attended the conference. We would like to thank all who attended and participated in this year's Conference!

#### **Resource Alert Legal Case**

#### **"The Court of Appeals of Wisconsin Examines the Entrapment Defense for a Sale of Alcohol Made During a Compliance Check"**

On June 24, 2010, the Court of Appeals of Wisconsin, District IV, handed down their opinion in the case of *Jefferson County v. Gromowski*, 2009AP2464 (WICA)

In January 2009, the Jefferson County sheriff's department ran a compliance check using a nineteen-year-old woman as their underage buyer. The young woman entered the tavern alone, sat down at the bar, and, after being approached by a bartender Jodi Gromowski, ordered an alcoholic drink. The bartender did not ask for identification or otherwise ask the agent her age. After the transaction was complete, Gromowski was issued a citation for violating Wisconsin Statute 125.07(1)(a)1.

Gromowski pled not guilty and, at a bench trial, advanced an entrapment defense and a statutory defense under Wisconsin Statute 125.07(6). The circuit court found that Gromowski violated § 125.07(1)(a) and did not qualify for a defense, and it issued a judgment fining her a total of \$249, including costs. Gromowski appealed, contending that her two defenses were valid.

To read more about this interesting case and determine whether her arguments prevailed, please click on the link below.

<http://www.udetc.org/documents/judicial/0910case.pdf>

#### **Strict Enforcement Reduces Underage and Binge Drinking on Campuses**

A new study by the Center for Adolescent Substance Abuse Research (CeASAR) at Children's Hospital Boston finds that strict college alcohol policies can actually decrease underage and binge drinking on campus without causing a compensatory rise in marijuana use.

The CeASAR study staff asked students and administrators at 11 Massachusetts colleges and universities about more

restrictive alcohol use enforcement policies that were put forth by the Mass. Board of Higher Education.

The results showed decreases in past 30-day rates of any drinking, binge drinking, and regular heavy drinking. The declines in binge drinking were greatest in schools that adhered to the new enforcement policies from the very beginning.

Sion Kim Harris, PhD, CPH, lead author of the study stated, "Policies can only work if they are sufficiently enforced," "Our study adds to a growing body of evidence that alcohol control policies and strong policy enforcement can, over time, reduce underage high-risk drinking behaviors. We found that an aggressive enforcement stance by college leaders is particularly important to the success of these efforts." The study was published in the journal, Substance Abuse Treatment, Prevention, and Policy and can be seen here: <http://www.substanceabusepolicy.com/content/5/1/18>

#### **National Electronic Seminars**

#### **Sustaining Success! Steps to Maintain Compliance Check Operations**

Date: Thursday, September 23, 2010

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

Speakers: Kathy Bartosz, Nevada EUDL Coordinator; Officer John Schutt, Las Vegas Metropolitan Police Dept; Michael George, South Carolina AET; Deputy Danny Blackwell, Spartanburg County Sheriff's Office and Mary Lynn Tollison, Spartanburg Alcohol & Drug Abuse Commission

It's one thing to design and implement a new compliance check operation but it's a greater challenge to sustain the program at a time when budgets and staffing are being reduced. What steps can you take to minimize the impact of diminishing resources? Where do you turn to get assistance?

This dialogue will take a look at examples of successful compliance check operations and discuss the creative means by which the programs have continued in communities in such challenging times. We will also take a look at what makes the difference between a successful compliance check operation and one that doesn't survive. Join us in this conversation as we collectively share ideas to keep your compliance checks alive and successful!

To register, go to [www.udetc.org/audioconfregistration.asp](http://www.udetc.org/audioconfregistration.asp)

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

[www.udetc.org/documents/ResourceAlerts/ResourceAlert0910.pdf](http://www.udetc.org/documents/ResourceAlerts/ResourceAlert0910.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 (UDETC) and are solely of the author/source.*

## Resource Alert Descriptor

September 2010

### **“The Court of Appeals of Wisconsin Examines the Entrapment Defense for a Sale of Alcohol to a Made During a Compliance Check”**

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In January 2009, the Jefferson County sheriff's department ran a compliance check using a nineteen-year-old woman as their underage buyer. The young woman entered the tavern alone, sat down at the bar, and, after being approached by a bartender Jodi Gromowski, ordered an alcoholic drink. The bartender did not ask for identification or otherwise ask the agent her age. After the transaction was complete, Gromowski was issued a citation for violating WIS. STAT. § 125.07(1)(a)1.

Gromowski pled not guilty and, at a bench trial, advanced an entrapment defense and a statutory defense under WIS. STAT. § 125.07(6). The circuit court found that Gromowski violated § 125.07(1)(a) and did not qualify for a defense, and it issued a judgment fining her a total of \$249, including costs. Gromowski appealed, contending that her two defenses were valid.

**COUNTY OF JEFFERSON, PLAINTIFF-RESPONDENT,**

**v.**

**JODI L. GROMOWSKI, DEFENDANT-APPELLANT.**

**No. 2009AP2464**

**Court of Appeals of Wisconsin, District IV**

**June 24, 2010**

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)4.

APPEAL from a judgment of the circuit court for Jefferson County: Cir. Ct. No. 2009FO354 ARNOLD SCHUMANN, Judge.

LUNDSTEN, J. <sup>[1]</sup>

Jodi Gromowski appeals a judgment of conviction under WIS. STAT. § 125.07(1)(a) for selling an alcoholic drink to an immature person. I affirm.

*Background*

In January 2009, a nineteen-year-old woman, working as an agent for the Jefferson County sheriff's department, entered a tavern alone, sat down at the bar, and, after being approached by a bartender, ordered an alcoholic drink. The bartender, Jodi Gromowski, did not ask for identification or otherwise ask the agent her age. After the transaction was complete, Gromowski was issued a citation for violating WIS. STAT. § 125.07(1)(a)1., which states that "[n]o person may sell any alcohol beverages to any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age."

Gromowski pled not guilty and, at a bench trial, advanced an entrapment defense and a statutory defense under WIS. STAT. § 125.07(6). The circuit court found that Gromowski violated § 125.07(1)(a) and did not qualify for a defense, and it issued a judgment fining her a total of \$249, including costs. Gromowski appeals, contending that her two defenses were valid.

*Discussion*

Gromowski argues, first, that the defense of entrapment applies to her civil forfeiture offense and, second, that the circuit court erred when finding no entrapment. I need not reach the first issue because I conclude that, even if the entrapment defense applies to the civil forfeiture here, the circuit court did not err in finding no entrapment.

Gromowski concedes that, to succeed on entrapment, she must show that she was induced, which requires more than a mere opportunity to commit an offense. <sup>[2]</sup> *See, e.g., State v. Hilleshiem*, 172 Wis.2d 1, 9, 492 N.W.2d 381 (Ct. App. 1992) (stating that "an opportunity to commit the crime does not by itself constitute entrapment").

The facts that Gromowski points to, however, fail to show more than an opportunity to commit the offense. For example, Gromowski finds it significant that the underage agent was in the tavern illegally, but the fact remains that the agent's presence merely created an opportunity for Gromowski. Gromowski also points to the police control over their selection of an agent and, therefore, over their agent's appearance. However, this apparent assertion that the agent's older appearance induced Gromowski to sell alcohol to her is not supported by the court's finding about the agent's appearance.<sup>[3]</sup> In sum, I agree with the circuit court that there was no entrapment.

Gromowski next argues that the circuit court failed to properly apply the statutory defense under WIS. STAT. § 125.07(6). Specifically, Gromowski argues that the court failed to adequately address certain circumstances that she contends are relevant to her defense, such as the appearance of the underage agent as described by Gromowski and her fellow bartenders and the notion that the agent's mere presence in the tavern misled Gromowski into thinking the agent was of legal age. I disagree.

As relevant here, WIS. STAT. § 125.07(6) states:

DEFENSES. In determining whether or not a licensee or permittee has violated sub[[]]. (1)(a), all relevant circumstances surrounding the presence of the underage person or the procuring, selling, dispensing or giving away of alcohol beverages *may* be considered, including any circumstance under pars. (a) to (d).

(Emphasis added.)<sup>[4]</sup> Plainly, this provision's use of the word "may" grants the circuit court discretion whether to consider relevant surrounding circumstances when applying § 125.07(1)(a). Further, the statute grants the court discretion to consider these relevant circumstances and "still find guilt." *City of Oshkosh v. Abitz*, 187 Wis.2d 202, 206, 522 N.W.2d 258 (Ct. App. 1994).

In reaching its conclusion, the circuit court considered the circumstance that nothing prevented Gromowski from asking the agent her age and that the agent did not falsely represent her age to Gromowski. In addition, the court found that the agent did not look older than nineteen. I agree with the circuit court that these are the relevant surrounding circumstances and that they do not demonstrate that Gromowski is entitled to the statutory defense. I therefore affirm.

Judgment affirmed.

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Notes:

<sup>[1]</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(g) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

<sup>[2]</sup> Elsewhere, Gromowski also suggests that a lower showing of inducement should apply to her violation because bartenders are "very susceptible to innocent inducement to commit the offense based on unlawful acts by the underage purchaser." I do not find this argument persuasive.

<sup>[3]</sup> During the agent's testimony at trial, a photograph of the agent taken the night of Gromowski's citation was offered and received into evidence. The court found that the agent did not look older than her age of nineteen years, and Gromowski fails to show that this finding was clearly erroneous.

<sup>[4]</sup> Paragraphs (a) to (d) refer to the following:

- (a) That the purchaser falsely represented that he or she had attained the legal drinking age.
- (b) That the appearance of the purchaser was such that an ordinary and prudent person would believe that the purchaser had attained the legal drinking age.
- (c) That the sale was made in good faith and in reliance on the representation and appearance of the purchaser in the belief that the purchaser had attained the legal drinking age.
- (d) That the underage person supported the representation under par. (a) with documentation that he or she had attained the legal drinking age.

WIS. STAT. § 125.07(6). The statute also provides that satisfaction of *all* of these elements is an absolute defense, but Gromowski does not argue on appeal that she qualifies for this absolute defense. *See City of Oshkosh v. Abitz*, 187 Wis.2d 202, 206, 522 N.W.2d 258 (Ct. App. 1994) (recognizing "two lines of defense" in § 125.07(6)).



# National Electronic Seminars Enforcing Underage Drinking Laws Program

The OJJDP Audio-TELECONFERENCE Series

## 2010 National Electronic Seminars Calendar

**September 23, 2010 3:00 – 4:15 p.m. Eastern Time**

### **Sustaining Success! Steps to Maintain Compliance Check Operations**

It's one thing to design and implement a new compliance check operation. It's a greater challenge to sustain the program at a time when budgets and staffing are being reduced. What steps can you take to minimize the impact of diminishing resources? Where do you turn to get assistance?

This dialogue will take a look at examples of successful compliance check operations and discuss the creative means by which the programs have continued in communities in such challenging times. We will also take a look at what makes the difference between a successful compliance check operation and one that doesn't survive. Join us in this conversation as we collectively share ideas to keep your compliance checks alive and successful!

**October 21, 2010 3:00 – 4:15 p.m. Eastern Time**

### **Mapping the UAD Issue: Using Data Visuals, GIS and Community Mapping Activities to Enhance Environmental Strategies**

Coalitions and prevention professionals who would like to educate and inform decision makers about the impact of underage drinking often find themselves with only three to five minutes at a public forum to advocate for social host laws, change advertising policies or ask for more UAD enforcement funding. Using visual depictions of data (graphs, tables, pie charts), incidence mapping using GIS, and/or reporting on community mapping activities of alcohol outlets and advertising by youth and community members, all serve to profile the face of the underage drinking issue in ways that can communicate efficiently and effectively to decision makers. Sometimes a "picture", truly is, worth a thousand words. Join us to hear how some of these strategies are being implemented.

**November 18, 2010 3:00 – 4:15 p.m. Eastern Time**

### **2010 National Leadership Conference Highlights**

Because this year's National Leadership Conference was yet another successful event, we are excited to highlight a sampling of a few of the great presentations that were on hand this year in Anaheim, California. Each presenter will give an overview of their presentation and share follow-up information and resources. This is an ideal opportunity for those who were unable or for those who would like to gather more information directly from presenters that were at this year's Conference.



## We want to hear from you!

Do you have an Underage Drinking Topic that would make a great National Electronic Seminar? Send us your suggestions at [udetc@udetc.org](mailto:udetc@udetc.org) and put 'NES Topic Suggestion' in the subject line!

**For audio-conference registration information, please visit [www.udetc.org](http://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

#### Sustaining Success! Steps to Maintain Compliance Check Operations

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#### DATE

September 23, 2010

#### TIME

3:00-4:15 p.m. ET

#### PRESENTERS

**Presenter 1:**

**Kathy Bartosz**, NV Juvenile Justice Programs Office, Carson City, NV  
[bartosz4@sbcglobal.net](mailto:bartosz4@sbcglobal.net)

**Presenter 2:**

**Officer John Schutt**, Las Vegas Metropolitan Police Department, Las Vegas, NV  
[j6267s@lvmpd.com](mailto:j6267s@lvmpd.com)

**Presenter 3:**

**Michael George**, South Carolina AET, Chapin, South Carolina  
[mgeorge@state.daodas.sc.us](mailto:mgeorge@state.daodas.sc.us)

**Presenter 4:**

**Deputy Danny Blackwell**, Spartanburg County Sheriff's Office, Spartanburg, South Carolina  
[dblackwell@spartanburgcounty.org](mailto:dblackwell@spartanburgcounty.org)

**Presenter 5:**

**Mary Lynn Tollison**, Spartanburg Alcohol & Drug Abuse Commission, Spartanburg, South Carolina  
[marylynn@sadac.org](mailto:marylynn@sadac.org)

#### 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](http://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.**