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NIH Release Clinicians Guide to Screen for Underage Drinking

According to a recent news release from the National Institutes of Health (NIH), just two questions from a newly released guide could allow health care professionals to spot youth at risk for alcohol-related problems. The guide is now available from the National Institute on Alcohol Abuse and Alcoholism (NIAAA), part of the NIH.

The new guide developed in collaboration with the American Academy of Pediatrics, clinical researchers, and health practitioners, introduces a brief screening tool and an innovative youth alcohol risk estimator to help clinicians overcome time constraints and other common barriers to youth alcohol screening.

NIAAA acting director, Dr. Kenneth Warren states, "We know that alcohol is by far the drug of choice among youth. Underage drinking is also a marker for other unhealthy behaviors and it often goes undetected. This new tool was designed to allow busy practitioners who manage the health and well-being of children and adolescents to conduct fast, effective alcohol screens and brief interventions". The full guide can be accessed by visiting the link found here: <http://pubs.niaaa.nih.gov/publications/Practitioner/YouthGuide/YouthGuide.pdf>

RESOURCE ALERT LEGAL CASE

"What legal theory can justify the arrest of a person for OWI and selling alcohol to a minor when a campus police officer arrests the person outside of the jurisdiction of the campus?"

On March 31, 2011, the Court of Appeals of Wisconsin, District II, rendered their opinion in the matter of the State v. Davis. The State of Wisconsin appealed a decision of the circuit court dismissing the operating a motor vehicle while intoxicated (OWI) and the operating with a prohibited alcohol concentration (PAC) charges against Blair T. Davis. The circuit court dismissed the charges after it found that the UW-Oshkosh police officers were not in "fresh pursuit" of Davis and thus did not have the authority to arrest Davis outside of campus property.

Davis filed a motion to suppress the evidence and dismiss the charges on the grounds that the sale of alcohol and the subsequent stop of Davis did not occur within the officers' jurisdiction. As the arrest occurred off UW-Oshkosh's campus, Davis argued that the UW-Oshkosh police did not have authority to arrest him, regardless of whether the officers were in "fresh pursuit" or whether they were making a "citizen's arrest."

This case presents an interesting question asking the court to review the legal questions established when this UW-Oshkosh police officer engaged in the enforcement of alcohol laws outside of his traditional area of patrol. The case in its entirety can be found by simply visiting the link found below: <http://www.udetc.org/documents/ResourceAlerts/Nov2011case.pdf>

NATIONAL ELECTRONIC SEMINARS

November 2011

Alcohol and Crime

Date: Thursday, November 17, 2011

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

Speaker: Ernest L. Johnson, Director of Services-Johnson & Associates; Douglas, Wyoming

How many crimes are committed in this country where alcohol is a causal factor? If you are a cop on the street you don't have to be a scientist to figure that out. Cops know the answer based on experience; it's a huge percentage. However, in a world where science is fact how do we really prove it? In the spring of 2005, the Wyoming Association of Sheriffs and Chiefs of Police received grant funding from the Wyoming Department of Transportation – Highway Safety Program to collect and evaluate alcohol-related arrest data in ten counties in Wyoming for a period of six months. Although it had long been suspected that alcohol was a factor in a large number of custodial arrests in Wyoming, reliable data had not been available previously to more accurately determine the scope and impact of alcohol on crime in Wyoming. This pilot project was initiated with the expressed purpose of formulating effective enforcement strategies aimed at reducing the number of alcohol related crimes and traffic crashes in Wyoming. The data collection process has continued since 2005, has been refined and was expanded to include data collection in all twenty-three counties of Wyoming in 2006. The collection of data was then extended to a full twelve-month period in 2008. We've invited a well-respected researcher in the field of criminal justice in to discuss his conclusions of the study and what strategies are underway to inform communities of the results and what can be done to reduce alcohol related crime.

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To print a copy of this month's Resource Alert visit:
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Did you Know? That in response to high demand for presentations from the 13th National EUDL Conference, you can find more than 32 of the presentations, even several in audio forms? These are all easy to download and can be found on the 2011 NLC tab of our www.udetc.org! or just simply visit the below site here to access the direct link: <http://www.udetc.org/conference2011presentations.htm>

UDET Resource Source Alert Descriptor

November 2011

State of Wisconsin, Plaintiff-Appellant,
v.
Blair T. Davis, Defendant-Respondent.
No. 2011AP320.

Court of Appeals of Wisconsin, District II.

Opinion Filed: June 22, 2011.

REILLY, J.^[1]

The State of Wisconsin appeals from a decision of the circuit court dismissing the operating a motor vehicle while intoxicated (OWI) and the operating with a prohibited alcohol concentration (PAC) charges against Blair T. Davis. The circuit court dismissed the charges after it found that the UW-Oshkosh police officers were not in "fresh pursuit" of Davis and thus did not have the authority to arrest Davis outside of campus property. We hold that the campus police did have the authority to arrest Davis off-campus and thus reverse the circuit court.

FACTS

On the evening of September 18, 2010, UW-Oshkosh Police Officer Trent Morgan was on foot patrol on the second floor of the "student success center" when he noticed Davis take a can of beer out of his parked car and apparently sell it to someone who appeared to be between eighteen and twenty-one years old. The sale occurred on a street bordering the UW-Oshkosh campus. The record seems to indicate that Morgan then left the student success center and confronted the individual who purchased the beer. When Morgan identified the buyer as an eighteen year old, Morgan gave him a ticket for underage drinking.

At some point—the record is not clear when—Morgan informed Sergeant Donald Kernler of the UW-Oshkosh police department that Davis had driven away. Kernler pursued Davis and eventually pulled him over. Davis was subsequently arrested for OWI, and eventually charged with OWI, PAC, and providing alcohol to an underage person.

Davis filed a motion to suppress the evidence and dismiss the charges on the grounds that the sale of alcohol and the subsequent stop of Davis did not occur within the officers' jurisdiction. As the arrest occurred off UW-Oshkosh's campus, Davis argued that the UW-Oshkosh police did not have authority to arrest him, regardless of whether the officers were in "fresh pursuit" or whether they were making a "citizen's arrest."

The fresh pursuit doctrine states that any Wisconsin peace officer may pursue and arrest a suspect "anywhere in the state" for a violation of any law or ordinance that the officer is authorized to enforce as long as the officer is in "fresh pursuit." Wis. Stat. § 175.40(2). To determine whether an officer was in fresh pursuit, courts must consider three criteria: (1) the officer must have acted without unnecessary delay; (2) the pursuit must have been continuous and uninterrupted, although there need not have been continuous surveillance of the suspect; and (3) the time between the commission of the crime and the commencement of the pursuit is important; the greater the length of time, the less likely it is that a court will find the officer was in fresh pursuit. *State v. Haynes*, 2001 WI App 266, ¶ 6, 248 Wis. 2d 724, 638 N.W.2d 82. The fresh pursuit doctrine therefore applies when an officer witnesses a crime in his or her jurisdiction and follows a suspect into another jurisdiction.

A citizen's arrest, however, occurs when an officer acts outside of his or her jurisdiction, such as when the officer is in another municipality. *See City of Waukesha v. Gorz*, 166 Wis. 2d 243, 245-46, 479 N.W.2d 221 (Ct. App. 1991). When the officer is outside of his or her jurisdiction and witnesses "a felony or a serious misdemeanor affecting a breach of the peace," the officer is entitled to make a citizen's arrest. *Id.* at 246-47. Misdemeanors that amount to a breach of the peace are "acts which involve, threaten, or incite violence." *Radloff v. National Food Stores, Inc.*, 20 Wis. 2d 224, 237b, 123 N.W.2d 570, *on motion for rehearing* (1963). Drunk driving is considered a breach of the peace but theft is not. *Compare Gorz*, 166 Wis. 2d at 247, with *Radloff*, 20 Wis. 2d at 237b. The Wisconsin Supreme Court has, however, noted that one state's highest court held that the illegal sale of alcohol was a breach of the peace. *See Radloff*, 20 Wis. 2d at 237b (citing *State ex rel. Thompson v. Reichman*, 188 S.W. 225, 229 (Tenn. 1916)).

The circuit court dismissed the OWI and PAC charges after it concluded that the sale of alcohol to a minor did not constitute an "incitement of violence." The State appeals.

STANDARD OF REVIEW

The question of whether the UW-Oshkosh police officers were engaged in fresh pursuit or whether they made a lawful citizen's arrest is a question of law that we review de novo. *See City of Brookfield v. Collar*, 148 Wis. 2d 839, 841-42, 436 N.W.2d 911 (Ct. App. 1989); *Gorz*, 166 Wis. 2d at 245.

DISCUSSION

This case comes down to whether Davis's arrest was the result of fresh pursuit or a citizen's arrest by the UW-Oshkosh police department. If Davis sold the beer within the jurisdiction of the UW-Oshkosh police department, we would apply the fresh pursuit doctrine. If the sale occurred outside of the campus police's jurisdiction, we would apply a citizen's arrest analysis. The circuit court, unfortunately, did not decide whether the sale occurred within the jurisdiction of the campus police.^[2] We therefore must examine whether the arrest was lawful under either the fresh pursuit doctrine or a citizen's arrest analysis. As we hold that the UW-Oshkosh police officers acted appropriately under either test, we reverse the decision of the circuit court.^[3]

Assuming Davis sold the beer within the UW-Oshkosh police department's jurisdiction, we examine three criteria to determine whether his arrest was the result of fresh pursuit by the campus police: (1) did the officers act without unnecessary delay?; (2) was the pursuit continuous and uninterrupted, bearing in mind that there need not have been continuous surveillance of Davis?; and (3) was the time between the sale of beer and the commencement of the pursuit reasonable? *See Haynes*, 248 Wis. 2d 724, ¶ 6. We hold that the officers complied with the fresh pursuit doctrine requirements. Morgan informed Kernler that Davis had driven away. Kernler then pursued Davis and eventually pulled him over. While the record does not provide an exact time line of the events, we see nothing to indicate that Morgan and Kernler acted with "unnecessary delay" or that the time between Davis's sale of the beer and the pursuit by Kernler was "unreasonable." And contrary to Davis's argument, it does not matter that Morgan witnessed the sale but Kernler pursued—*Haynes* specifically states that the fresh pursuit doctrine does not require continuous surveillance of the suspect. *See id.* Furthermore, it is irrelevant that the initial pursuit of Davis was for selling beer to an underage person but that Davis was subsequently arrested for OWI and PAC. An officer can engage in fresh pursuit for one crime and later investigate a separate crime if there are "additional suspicious factors." *Id.*,. As Davis smelled of intoxicants and admitted to Kernler that he was drinking, Kernler was justified in conducting a new investigation for OWI. We hold that Morgan and Kernler were in fresh pursuit.

If the sale of beer occurred outside of the UW-Oshkosh police department's jurisdiction, we hold that the officers had authority to make a citizen's arrest. An officer can make a lawful citizen's arrest when he or she witnesses "a felony or a serious misdemeanor affecting a breach of the peace." *Gorz*, 166 Wis. 2d at 246-47. Any misdemeanor that involves, threatens, or incites violence amounts to a breach of the peace. *Radloff*, 20

Wis. 2d at 237b. We hold that Davis's sale of beer to a minor falls within this category. Providing alcohol to a minor late in the evening on a college campus threatens public order. As our supreme court has noted, another state has held that the illegal sale of alcohol is a breach of the peace. *See id.* (citing Reichman, 188 S.W. 225, 229). A citizen's arrest was appropriate.

CONCLUSION

As we hold that the UW-Oshkosh police department had the authority to arrest Davis, we reverse the circuit court's decision to dismiss the OWI and PAC charges.

By the Court.—Judgments reversed.

This opinion will not be published. *See* Wis. Stat. Rule 809.23(1)(b)4.

[1] This appeal is decided by one judge pursuant to Wis. Stat. § 752.31(2)(f) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

[2] The sale occurred on a street bordering the UW-Oshkosh campus. Wisconsin Stat. § 175.40(4) extends the boundaries of a peace officer's jurisdiction to surrounding highways. As the circuit court did not actually determine where the beer was sold, we cannot ascertain whether the UW-Oshkosh police officers exercised their authority under § 175.40(4).

[3] We note that the circuit court confused the fresh pursuit doctrine with a citizen's arrest analysis. The fresh pursuit doctrine *does not* require "incitement of violence" or threats "involving security." That is the test for a citizen's arrest. *See City of Waukesha v. Gorz*, 166 Wis. 2d 243, 245-46, 479 N.W.2d 221 (Ct. App. 1991).



National Electronic Seminars Enforcing Underage Drinking Laws Program

The OJJDP Audio-TELECONFERENCE Series

2011 National Electronic Seminars Calendar

November 17, 2011

3:00 – 4:15 p.m. Eastern Time

Alcohol and Crime

How many crimes are committed in this country where alcohol is a causal factor? If you are a cop on the street you don't have to be a scientist to figure that out. Cops know the answer based on experience; it's a huge percentage. However, in a world where science is fact how do we really prove it? In the spring of 2005, the Wyoming Association of Sheriffs and Chiefs of Police received grant funding from the Wyoming Department of Transportation – Highway Safety Program to collect and evaluate alcohol-related arrest data in ten counties in Wyoming for a period of six months. Although it had long been suspected that alcohol was a factor in a large number of custodial arrests in Wyoming, reliable data had not been available previously to more accurately determine the scope and impact of alcohol on crime in Wyoming. This pilot project was initiated with the expressed purpose of formulating effective enforcement strategies aimed at reducing the number of alcohol related crimes and traffic crashes in Wyoming. The data collection process has continued since 2005, has been refined and was expanded to include data collection in all twenty-three counties of Wyoming in 2006. The collection of data was then extended to a full twelve-month period in 2008. We've invited a well-respected researcher in the field of criminal justice in Wyoming to discuss his conclusions of the study and what strategies are underway to inform Wyoming communities of the results and what communities can do to reduce alcohol related crime.



December 15, 2011

3:00 – 4:15 p.m. Eastern Time

Adult-supervised Alcohol Use and Harmful Consequences among American and Australian Teens

We've all heard the arguments from parents that "it's safer for kids to drink alcohol at home under adult supervision," and "what's the harm as long as I take their keys?" Is there merit to these arguments? Although harm-minimization perspectives contend that youth drinking in adult-supervised settings is protective against future harmful use, a recent study has found that adult supervised drinking of youth in both Australia and the U.S. resulted in higher levels of harmful alcohol use a year later at age 15. Presenters will provide an overview of how to use "prevention science" findings on risk and protective factors for youth alcohol use, discuss research findings, and share ideas on how the research may be strategically used to advance EUDL work, as well as specific examples of research to practice applications by practitioners.



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AUDIO CONFERENCE

TOPIC

Alcohol and Crime

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DATE

November 17, 2011

TIME

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

PRESENTERS

Presenter: Ernest L. Johnson, Director of Services - Johnson and Associates, Douglas, WY
janda@communicomm.com

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