

## UPDATES FROM THE FIELD

### Effectiveness of Social Host and Fake Identification Laws on Reducing Underage Drinking Driver Fatal Crashes

The public generally assumes that the minimum legal drinking age of 21 (MLDA-21) legislation in the United States is embodied in a single law and therefore all States have the same law. Actually, the MLDA-21 State laws consist of multiple provisions that support the core MLDA-21 laws and include a family of policies directed at controlling underage drinking and underage drinking and driving. Because social host and fake identification laws have recently garnered interest by policy makers in the States, this study was designed to determine their effectiveness. The research findings from this study were published online in *Traffic Injury Prevention* on October 11, 2014. (Citation: Effectiveness of Social Host and Fake Identification Laws on Reducing Underage Drinking Driver Fatal Crashes; James C. Fell, Michael Scherer, Sue Thomas, Robert B. Voas, *Traffic Injury Prevention*, Vol. 15, Iss. Sup1, 2014.) To learn more, visit <http://www.tandfonline.com/doi/full/10.1080/15389588.2014.928929#.VE5wjNF0xdg>.

## INNOVATIVE APPROACHES TO REDUCING UNDERAGE DRINKING IN STATES

### What Really Happened TABC Video

College students have been drinking alcohol for years, so when Jennifer's parents decide to let her have a pool party with a little alcohol they figured - what could go wrong? It was her 18th birthday, she was getting ready to start college, and her older, responsible brother was going to be home. So they mix up a batch of "weak" margaritas, and remind her to be responsible before leaving. A few posts on social media later and Jennifer is ready to celebrate with her best friend Cindy. A few more bottles of alcohol provided by her brother arrive along with a few more people than planned, thanks to the numerous posts - it is one of the first parties of summer vacation after all. Jennifer and her friends start celebrating and it does not take long for things to spiral out of control. Jennifer and her family are left to face the realization that they are now responsible for damage caused when alcohol is provided to minors - *What Really Happened* impacts the community, friendships, and everyone's planned carefree summer. To view the video produced by the Texas Alcoholic Beverage Commission (TABC), visit:

<http://www.youtube.com/watch?v=o89RRP14vRk&list=UUdzTervzwiKfft1oiuHAr6A>.



## UDETIC WEBINAR

### A Judicial Conversation on Emerging Evidentiary Issues and Alcohol

Date: Thursday, November 13, 2014

Time: 3:00 p.m. – 4:00 p.m. ET

Depending on the State's laws, underage-drinking offenses may be referred to a number of courts; including juvenile court, traffic court, criminal court, or family court. Over time, many States have adopted changes in State law enabling law enforcement to charge minors based on officer observations, and theories of constructive possession. As these underage-drinking cases are brought forward, the courts are also asked to accept the results of fuel cell developed evidence of the offense. Results from electronic identification scanners, portable breath-test devices, and passive alcohol sensing devices may or may not be admissible in some courts. This webinar will discuss some of the evidentiary issues the courts are finding relative to underage drinking, and our panel of judges will offer their perspectives on how their courts address this topic.

To register for this webinar, visit:

<http://www.udetc.org/audioconfregistration.asp>.

## LEGAL CASE

### "Can You Accompany Someone When You Are Sleeping?"

On October 9, 2014, the Court of Appeals of Wisconsin, District IV rendered their opinion in the matter of *City of Monroe v. Koch, Wis: Court of Appeals, 4th Dist. 201*. The issue on appeal was whether the circuit court properly interpreted and applied the term "accompanied" within the meaning of § 125.07(4)(b), Underage persons; prohibitions; penalties.

Connar Steven Koch lived in the City of Monroe. During a late August night in 2003, Koch was hosting a party at his father's house. Two Monroe police officers were dispatched to the residence to investigate a complaint by a neighbor of loud noise coming from a group of individuals in a garage. One of the officers had contact with Koch and smelled the odor of intoxicants emanating from Koch. Koch admitted to consuming alcohol that night; one of the officers observed open containers of alcohol in plain view in the garage. Connar fought the city's decision to issue a citation for underage drinking; and asserted innocence because he was "accompanied" by a parent.

This case offers the reader an opportunity to read how the Court handles this question of statutory language. To learn more visit:

<http://www.udetc.org/documents/ResourceAlerts/November2014case.pdf>

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

[www.udetc.org/documents/ResourceAlerts/ResourceAlert1114.pdf](http://www.udetc.org/documents/ResourceAlerts/ResourceAlert1114.pdf).

Visit [www.udetc.org](http://www.udetc.org) for the latest information on underage drinking.



## REGISTER ONLINE NOW!

To register, please visit <http://www.udetc.org/audioconfregistration.asp>  
and complete the online registration form

THURSDAY, NOVEMBER 13, 2014  
3:00 – 4:00 pm Eastern Time

### A Judicial Conversation on Emerging Evidentiary Issues and Alcohol

Depending on the state's laws, underage drinking offenses may be referred to a number of courts including juvenile court, traffic court, criminal court, or family court, depending on the offense. Over time many states have adopted changes in state law enabling law enforcement to charge minors based on officer observations, and theories of constructive possession. As these underage drinking cases are brought forward, the courts are also asked to accept the results of fuel cell developed evidence of the offense. Results from electronic identification scanners, portable breath test devices, and passive alcohol sensing devices may or may not be admissible in some courts. This program will discuss some of the evidentiary issues the courts are finding on the issue of underage drinking and our panel of judges will offer their perspectives on how their courts look at this topic.

#### PRESENTER:

**Judge Thomas Bianco**

*Indiana County Court  
Indiana County, PA*

**Judge Gerald Williams**

*Maricopa County Justice Court  
Surprise, AZ*

#### MODERATOR:

**Aidan Moore, J.D.**

*UDET Senior Program Manager  
Pacific Institute for Research and Evaluation*

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**CITY OF MONROE, PLAINTIFF-APPELLANT,  
v.  
CONNAR STEVEN KOCH, DEFENDANT-RESPONDENT.**

[Appeal No. 2014AP540.](#)

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

Filed October 9, 2014.

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

1 The City of Monroe issued a citation to Connar Steven Koch for underage possession or consumption of alcohol, contrary to Monroe City Code § 3-4-1, which adopts WIS. STAT. § 125.07(4)(b). Following a trial to the court, the court found Koch not guilty of underage drinking on the ground that Koch was "accompanied" by a parent, his father, within the meaning of a statutory exception to the prohibition to underage drinking. The issue on appeal is whether the circuit court properly interpreted and applied the term "accompanied" within the meaning of § 125.07(4)(b) to the instant facts, in finding Koch not guilty of the charged offense. We conclude that the court erred in interpreting and applying the term "accompanied" found in § 125.07(4)(b) to the instant facts. Accordingly, we reverse and remand with directions to the court to find Connar Steven Koch guilty of violating Monroe City Code § 3-4-1, adopting WIS. STAT. § 125.07(4)(b), and to proceed to sentencing, consistent with this opinion.

## **BACKGROUND**

2 Connar Steven Koch lives in the City of Monroe. During a late August night in 2003, Koch was hosting a party at his father's house. Two Monroe police officers were dispatched to the residence to investigate a complaint by a neighbor of loud noise coming from a group of individuals in a garage. One of the officers had contact with Koch and smelled the odor of intoxicants emanating from Koch. Koch admitted to consuming alcohol that night; one of the officers observed open containers of alcohol in plain view in the garage. One of the officers testified at the trial in this case that he did not see any person around or near the garage over the age of twenty-one. It is undisputed that Koch was not twenty-one years old at the time of this incident.

3 Significant to this case, Koch's father did not come out to the garage until ten to fifteen minutes after the police had arrived there. Mr. Koch appeared to the officers that he had been sleeping.

## **DISCUSSION**

4 This case requires the interpretation and application of a statute to undisputed facts.<sup>[2]</sup> Statutory interpretation is a question of law subject to de novo review. [Harnischfeger Corp. v. LIRC, 196 Wis. 2d 650, 659, 539 N.W.2d 98 \(1995\).](#) When interpreting a statute, we

begin with the statutory language. [State ex rel. Kalal v. Circuit Court for Dane Cnty., 2004 WI 58, ¶145, 271 Wis. 2d 633, 681 N.W.2d 110](#). If the meaning of the statute is plain, we ordinarily stop the inquiry and apply that meaning. *Id.*

5 Before discussing the merits of this appeal, we observe that in his response brief Koch violates our court rules regarding a properly filed appellate brief. In his brief, Koch fails to develop any legal argument supported by citations to legal authority, and with no citations to the record. Nevertheless, because clarifying the meaning of "accompanied" within the meaning of WIS. STAT. § 125.07(4)(b) will assist the bench and the bar in future cases, we choose to address the arguments made by the City.

6 We begin with the statutory language. WISCONSIN STAT. § 125.07(4)(b) provides, "[e]xcept as provided in par. (bm), any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age who knowingly possesses or consumes alcohol beverages is guilty of a violation."

7 After taking evidence in this case, the circuit court found Koch not guilty of the City of Monroe's underage drinking law. In making this finding, the court concluded that, under the facts of this case, Koch's father "accompanied" Koch within the statutory meaning and therefore Koch was in lawful possession and had lawfully consumed alcohol.

8 We conclude that, under the facts of record, the circuit court erred in its construction and application of the term "accompanied" stated in WIS. STAT. § 125.07(4)(b).

9 There are no cases in Wisconsin where a court has interpreted the term "accompanied" within the meaning of WIS. STAT. § 125.07(4)(b). However, this court has construed the same term in the context of § 125.07(1)(a), which, like § 125.07(4)(b), governs and regulates the use and possession of alcoholic beverages by underage persons. See, e.g., [Mueller v. McMillian Warner Ins. Co., 2005 WI App 210, 287 Wis. 2d 154, 704 N.W.2d 613](#). It is proper to consider how a similar or the same term is interpreted and applied in the same statutory scheme for guidance. See [Kalal, 271 Wis. 2d 633, ¶146](#). We interpret statutory language "in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results." *Id.* "If this process of analysis yields a plain, clear statutory meaning, then there is no ambiguity, and the statute is applied according to this ascertainment of its meaning." *Id.* (quoting another source).

10 In *Mueller*, this court considered the meaning of "accompanied" in the context of WIS. STAT. § 125.07(1)(a). Section 125.07(1)(a) states that "[n]o person may procure for, sell, dispense, or give away any alcohol beverages to any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age." As pertinent here, the question in that case was whether the parents of a nineteen-year-old boy, Apollo, had "accompanied" Apollo when he drank alcohol that the parents procured for the son. [Mueller, 287 Wis. 2d 154, ¶11](#). The circuit court concluded that "accompanied" involved individualized supervision, which the court found was not present in that case. On appeal, the parents contended that to meet the statutory meaning of "accompanied," it was unnecessary for the parents to be in the same room with Apollo while he was drinking. *Id.*, ¶12. The parents argued that it was sufficient that Apollo drank "in their proximity" and on

the same premises, with their knowledge. *Id.* We rejected the parents' and Apollo's argument and concluded that "underage drinkers are not accompanied by a parent merely because the parent and child are on the same premises." *Id.*, ¶16. We noted that the parents had told Apollo to not drink where other guests could observe him, and that they did not know how much Apollo drank over a course of eight hours. *Id.* Based on these facts, we concluded that the parents were "neither supervising nor otherwise controlling Apollo when he was drinking," and thus they were not accompanying Apollo for the purposes of § 125.07(1)(a). *Id.*

11 We see no reason why the term "accompanied" found in WIS. STAT. § 125.07(1)(a) could not have the same meaning in § 125.07(4)(b). Considering that both statutes are within the context of the statutory scheme governing underage and intoxicated persons, WIS. STAT. § 125.07, we conclude that the term "accompanied" included in § 125.07(4)(b) has the same meaning as this court concluded in *Mueller*, which entails individualized supervision and control of the underage drinker while the person is drinking. *Mueller* teaches that it is not enough to meet the statutory meaning of "accompanied" by merely being on the same premises as the child. *Id.*

12 Applying our interpretation of "accompanied" in the context of WIS. STAT. § 125.07(4)(b), we conclude that the circuit court erred in concluding that, under the undisputed facts, Koch was accompanied by his father during the period that Koch was consuming alcohol, by merely being on the same premises as Koch. As we noted, one of the police officers testified that he did not observe any person twenty-one years of age or older at the party when the officers had contact with Koch. It was not until approximately ten to fifteen minutes later that Koch's father appeared on the scene and it appeared that the father had been sleeping prior to the officers' arrival. Koch testified that, although his father knew that Koch had invited some friends over to the house, his father did not know that Koch was serving alcoholic beverages on the premises to individuals who were underaged. These facts are similar to *Mueller*. In *Mueller*, the parents were "merely ... on the same premises," and admittedly did not know how many beers Apollo had consumed at the party. *Id.* Here, the father, who was asleep in a different part of the premises, was not even aware that Koch had been drinking. These facts support our conclusion that the father was not "accompanying" Koch within the meaning of WIS. STAT. § 125.07(4)(b) while Koch consumed alcohol on his father's premises.

13 Based on the foregoing reasons, we reverse and remand with directions to the court to find Connor Steven Koch guilty of violating Monroe City Code § 3-4-1, adopting WIS. STAT. § 125.07(4)(b), and to proceed to sentencing, consistent with this opinion.

*By the Court.*—Judgment reversed and cause remanded with directions.

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

<sup>[1]</sup> This appeal is decided on one judge pursuant to WIS. STAT. § 752.31(2)(b) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

<sup>[2]</sup> Neither the State nor Koch challenge the trial court's factual findings.