

CCUDETf

**Cumberland County Underage
Drinking Enforcement Task Force**

*The CCUDETf is convened by 21 Reasons and MESAP:
Maine's Environmental Substance Abuse Prevention Center
at Medical Care Development, Inc.*

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Minutes

May 27, 2009

1200-1300

Peter J. Feeney Conference Room
Cumberland County Courthouse

State v. Blackburn Discussion Panel

Present:

Officer Linda Barker, South Portland PD
Officer Bob Scarpelli, South Portland PD
Captain Tom Roth, Westbrook PD
Lieutenant Mike Nugent, Westbrook PD
Detective Eric Greenleaf, Scarborough PD
Officer Mike McManus, Freeport PD
Owen Davis, York PD
Jamie Rooney, York PD
Jeffrey A. Upton, South Berwick PD
Maryann Harakall, Prevention Specialist, Maine Office of Substance Abuse
Stephanie Duggan, Coordinator of Diversion and Rehabilitation, DA's Office
Emily Wolff, Assistant Project Director, 21Reasons
Suzanne DiBella, Project Assistant, Maine's Environmental Substance Abuse Prevention
Center
Jo Morrissey, Assistant Project Director, 21Reasons

Panelists:

Assistant District Attorney Julia Sheridan, appeals attorney
Assistant District Attorney William Barry, suppression hearing attorney
Sergeant William Andrews, Windham PD, responding officer
Officer James Burke, Windham PD

The format of this meeting was purely educational in nature. Panelists reviewed the State v. Blackburn case from door knock to final gavel. Officer James Burke and Sergeant William Andrews reviewed their police reports. Assistant District Attorney William Barry reviewed the issue during the Suppression Hearing, which resulted in the judge ruling the warrantless entry was appropriate. Blackburn plead guilty, planning on appealing the outcome of the suppression hearing. Assistant District Attorney Julia Sheridan then reviewed the key elements in her brief

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before the court and reviewed the judge's final decision and its implications for police on the street.

Following this discussion, the panelists took questions from those present.

What follows are the police reports from Officers Burke and Andrews, notes from the panelists' discussion, as well as a summary of the question and answer period. You can find the law court's decision along with ADA Sheridan's brief on our website at www.21reasons.org.

Narrative from Ptlm. Burke's police report: (names have been redacted)

On Thursday, September 14, 2007, I was dispatched to 33 Woldbrook Drive for a report of a loud party. The complainant reported a lot of yelling and noise coming from the residence. Office William Andrew was dispatched with me.

When we arrived at the residence I could see a large group of young people through the large window located in the room above the garage. When the group noticed us pulling into the driveway they immediately started cleaning up bottles off the tables and bar. At the same time several of them ducked below our field of vision, and several others went to the first floor of the house and continued past the front door. Officer Andrew and I both agreed that there was probably underage drinking occurring at the house and that they were more than likely destroying the evidence.

Officer Andrew and I knocked on the locked door and rang the door bell. When a young male subject opened the door Officer Andrew asked the male if there was underage drinking at the residence and the male replied that there was. The male subject tried blocking our entry and protested our entry into the house. Office Andrew explained to him there was a crime occurring in our presence and we were justified in entering the house, we entered the house and Officer Andrew went to the room above the garage. I identified the male who answered the door as Tyler Blackburn (dob 07-25-89). He told me his father was in the hospital for a back injury and his mother was on a date with her boyfriend. Blackburn told me we were in his father's house. While I gathered information from Blackburn and a female that was with him, (~~name of juvenile~~), Officer Andrew was upstairs getting information from the other group. (~~name of juvenile~~) told me she had consumed one beer about an hour prior to our arrival and she had consumed it at Blackburn's house.

When Sgt. Peter Fulton arrived to assist us I asked Sgt. Fulton to keep an eye on Blackburn and (~~name of witness~~) while I went to the basement to look for the other group of people. I found five people in the basement, two were on the floor in front of a couch and three were hiding behind a forced hot water boiler. The two near the couch were (~~name of witness~~), and (~~name of witness~~). The three hiding near the boiler were (~~name of witness~~), (~~name of witness~~), and (~~name of witness~~). All five of them were instructed to go upstairs and sit with Sgt. Fulton, none of them admitted to drinking and I did not get any odors off them to indicate they were lying.

Once I was back upstairs I asked Sgt. Fulton if he was all set and he said he was as he was gathering names and identification from the people sitting on the first floor. I went upstairs to check with Officer Andrew and found that he was talking with (~~name of witness~~), (~~name of witness~~), (~~name of witness~~), (~~name of witness~~), and (~~name of witness~~). Only (~~name of suspect~~) was visibly intoxicated and admitted to me that he had consumed alcohol at the party.

After talking with Officer Andrew I decided to issue an adult criminal summons to Blackburn for furnishing a place for minors to consume alcohol (T28-A §2081-1B) and (~~name of suspect~~) was issued an adult civil summons for possession (by consumption) of liquor by a minor (T28-A§2051).

I seized marijuana 'water bong' off the pool table and destroyed it at the police department, no one was charged with possession of this item.

After making sure that people who were leaving got a sober ride home we left the residence.

--*Ptln. Jason Burke.*

Narrative from Ptln. Andrew's police report:

ON 9-13-07 Officer Burke and I were dispatched to 33 Woldbrook for a loud party complaint. When we arrived I observed a female look out the window from what appeared to be a game room above the garage. I then saw her drop to the floor. At that point others started to look out the window and then people started to scatter, it appeared they were grabbing items from tables as they were rushing to leave/hide.

Officer Burke and I walked to the door and we knocked and rang the door bell. While we were walking to the house, I could see people running by the first floor entry door and disappear. A male came to the door and identified himself as Tyler Blackburn. He said that he lives here. I asked if he had underage drinking going on. He said that he did. I then started to go by him, and he told me that we could not. I advised him that there was a crime occurring and I did not want the evidence to disappear. He then dropped his head. As we were talking I could hear shuffling from above.

As I was walking to the stairs to above the garage, I could detect a strong odor of freshly burned marijuana. As I walked up the stairs, the odor got stronger. I announced my presence and asked people to come down. There was no moment or response. I then went up stairs and did not see anyone. I looked in the bathroom and still did not see anyone, but there was a door. I again announce my presence and again no one made themselves known. I opened the door and immediately saw a blue marijuana water bong that was about 2' tall. When I picked it up, it was still warm and a little smoke was coming from it. There was a blanket that was tacked up to the door frame. I pushed back the blanket and saw 2 people. One of which I recognized as (~~name of witness~~). I asked her who else was in there. She said no one. I told whoever else was in there to

come out. Three more males came out. Two of whom I recognized as (~~name of witness~~), and (~~name of witness~~).

I had them all go sit on the couch. I could not see any alcohol, but could detect a strong odor of intoxicants as they all walked by me. Through our conversation, I asked them; identified as (~~name of witness~~), (~~name of witness~~), (~~name of witness~~), (~~name of witness~~), (~~name of witness~~), and (~~name of witness~~) if they had been drinking. They all admitted to drinking. (~~Name of witness~~) was extremely intoxicated. I asked that anyone that did not have a picture identification to write their correct name and dob on the piece of paper that I gave them.

I made contact with (~~name of witness~~)'s father as she was 17 years of age. He said that (~~name of witness~~) was supposed to be staying at (~~name of witness~~)'s house. I explained to him that she had admitted to drinking some. He said that she could stay with (~~name of witness~~).

I spoke with Officer Burke and it was decided that (~~name of suspect~~) would receive a summons for possession by consumption. (~~Name of suspect~~) could barely write his name and date of birth. Officer Burke issued (~~Name of suspect~~) a summons. Sgt. Fulton made sure that there were sober drivers to take the underage adult drinkers a ride home.

--Ptlm. William Andrews

IN summary, the officers never found any alcohol and suspected there were a number of youth who fled out the back door. They charged the most visibly intoxicated with possession by consumption and the party host with furnishing a place for minors to consume alcohol.

DURING the suppression hearing, the officers testified. The Judge Cantara took it under advisement and ruled there was Probable Cause and potential for destruction of evidence justified the warrantless entry. Whatever constitutional issue may have been raised was addressed by the probable cause and exigent circumstances the officers used to justify their entry into the Blackburn residence. Tyler plead guilty hoping to win on appeal. The State faced the challenge in the warrantless entry and the fact the ultimate charge of a misdemeanor may diminish the need for violating Blackburn's 4th amendment rights. Also, the State did not have a lot of information regarding the other kids at the scene.

ON APPEAL, ADA Sheridan included research on the medical and psychological effects of alcohol on youth in her brief. She contacted the AG's office for background. The brief also included quotes from the US Surgeon General's Call to Action. She also included precedent cases depicting the horrible things that had happened because of underage drinking. In her legislative research she included legislative history on title 28-A. A copy of the brief can be found on our website at www.21reasons.org .

Below is a recap of the QUESTION & ANSWER session:

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Q: What are some of the key elements officers need to include on their reports?

A: Include your observations. As officers, you are the experts in the field on what is not quite right with a situation. Got a gut feeling? Follow your instincts and write it in your report. Smelled something? Someone acting suspicious? Document it.

Q: What should you do with all those juvenile and adult witnesses at a party?

A: Take names, current addresses and dates of birth from as many from the scene as possible. Good addresses are vital to obtain at the scene because they are invaluable for the prosecution process -- courts need to be able to subpoena witnesses and complainants. Prosecution also needs backup witnesses in case someone refuses to testify. It takes a crystal ball to be able to know what might come up during the judicial process, so it's best to have as much information as possible. Ideally, complainants will testify, but with neighbors this is unlikely.

Q: What can justify a warrantless entry?

A: The legal standard governing exceptions to the warrant requirement require Probable Cause with the exception of a consented search. This exception is limited to the boundaries of the consent, however, and should *always* be in writing. Also, **exigency exists in potential destruction of evidence, fresh pursuit, and public health and safety.** Plain view is really not an exigent circumstance allowing for a warrantless search or seizure. Plain view is simply when an officer is where s/he is legally allowed to be, by dint of a warrant, consent, or an exception to the warrant requirement (see above) and he/she sees something that is in "plain view."

IF you do need a warrant, officers can still secure evidence in the house to protect it from destruction.

Q: What are some key pieces of evidence that are often overlooked?

A: Whenever possible, stop and question those who are trying to run away from the scene. Their utterances are important to establishing probable cause. Also, photograph bottles that may have been thrown away from the scene, or dropped out windows. For example, an otherwise clean yard has beer bottles strewn about. Again, include your concerns you have at the scene in your report—you just may be called to testify as to your state of mind at the time and unless it's in the report it may not hold up on the stand.

Q: In the Blackburn case, did the officers get any statements from many of the party goers?

A: No—although this would have been a good idea—this time the prosecution was lucky. In general, collect as much of all kinds of evidence, in as detailed a form as possible. It's never clear up front what kind of legal challenge will be brought in a case and it's best to be as well-prepared as possible. Details make or break a case.

Q: How does the defendant know they are underage and consuming?

A: That is why you always need at least more than one witness with good contact information. Good questioning and a silver tongue help, too. How long has the defendant been at the scene? What relationship does the defendant have with the party goers? Are they classmates? Long time neighbors? Answers to these questions help establish a good case for providing liquor to a minor or a place for minors to consume.

Q: What are some overall tips to getting the kids to open the door? There are plenty of times we approach a house, recognize the cars in the drive, but the shades are drawn and no one is answering the door.

A: Some suggestions included:

- Walk up to the house, don't drive;
- Have a plain clothes officer knock on the door;
- Pose as a pizza delivery person, florist...etc.

Q: What do you do about police forces that do not have the manpower it takes to respond to a large party?

A: In some cases where there are 100 kids and 2 responding officers. This could pose a public safety risk. Ideally departments will have already established mutual aide agreements, or to have officers from neighboring forces deputized so that they have jurisdiction in your town (and you in theirs). This is something each department needs to work out before they are faced with this or other similar circumstances.

Q: What am I accomplishing by breaking up underage drinking parties if my case is not charged by the DA's office?

A: There are many factors that determine whether or not your case reaches the final disposition of a conviction. The path is long and sometimes seems unfair. One of the responsibilities of the district attorney's office is to charge cases they feel will survive legal challenges that could potentially be brought in a case. Sometimes you get the case back for more information. Sometimes there's just not enough meat to justify a re-submit.

Even if they do bring the case forward, there are many potential hurdles. The defense attorney succeeded in getting key pieces of evidence thrown out at a suppression hearing, or a key witness refuses to cooperate with the courts despite being subpoenaed. The list goes on.

What is important to remember is lack of successful prosecution does not diminish the fact that breaking up an underage drinking party is good public safety policy. When officers break up parties they are preventing scores of unknown injuries and tragedies.

Q: Are breathalyzers admissible in court?

A: Breathalyzers are not reliable evidence, but are sometimes allowed in criminal court proceedings. Some judges don't like them, and everyone agrees blood tests are more reliable.