

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
OF FLORIDA IN AND FOR THE COUNTY OF MIAMI-DADE

FINAL REPORT
OF THE
MIAMI-DADE COUNTY GRAND JURY

SPRING TERM A.D. 2002

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FILED
February 5, 2003

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GRAND JURY REPORT

Earlier in our term, this Grand Jury issued an Interim Report encouraging the voters in Miami-Dade County to support the creation of a Children's Trust. We issued that report because of our concern for the young children and the benefits we thought they would receive from the creation of such an organization. As our term comes to an end, we issue this Final Report out of a concern for the teenagers in our community. This report will address two issues that we believe are becoming growing problems in our community and the nation: open house parties and underage drinking.

After witnessing years of reduced rates of drug use by school-age youngsters, we are now trying to find ways to deal with "Rave Parties"¹ and "date rape" drugs. Our legislature enacted new legislation to rein in the explosion of Rave parties and to criminalize the possession of several new drugs that have cropped up. Date rape drugs have become such an epidemic that inventors have recently developed test strips that patrons can use to determine whether their drink has been laced with certain drugs. Similarly, there have been recent increases in the number of persons who drink and drive.

According to information provided by Mothers Against Drunk Driving ("MADD"), in 2000, America experienced the largest percentage increase in alcohol related traffic deaths on record. There were 17,380 people killed in alcohol related crashes. In 2001, 17,448 people were killed in crashes involving alcohol. Specifically, in Florida in the year 2001, there were 3,011 total traffic deaths. Of this, 1,264, or 42 percent, were alcohol related. (MADD credits the National Highway Traffic Safety Administration as well as the New Fatality Analysis Reporting System for these statistics). The number of teens who are getting killed in auto accidents is also increasing, with many of them dying in drag racing related crashes.

As a means of protecting their children from these disturbing trends many well-meaning parents are deciding that it is better to allow the children to party at home. Their position is, since the children are going to drink any way, it is better that they do it here, at home. However, what we find is that this effort to protect teenagers on one hand is creating several problems on the other.

Teenagers and other underage persons are attending “open house parties”, drinking alcohol (and sometimes taking other drugs) and then trying to drive themselves home. Many do not make it home safely. Instead, they lose control of their vehicles, crash and die. Their teenage friends are left to ponder these senseless deaths and end up making shrines at the corners and intersections where the accidents occur. In some instances, the drivers do not die. Instead, they kill or maim someone else. We have seen this scenario repeat itself, again and again, all over this country.

During our short term, we read and heard of several cases occurring here and in Broward County. Sometimes, adults were planning, hosting and attending these parties. At other times, the teenagers themselves ran the parties. Each incident had one thing in common, they all ended tragically in death. We focused on such cases, heard testimony and felt compelled to issue this additional report, again for the protection of our youth, in particular. We will start our discussion with a description of some of those cases.

The first case we learned about involved an end-of-school party celebration attended by scores of students, most between the ages of fifteen (15) and eighteen (18) years of age. On the day before the party, several teenagers pooled their money for liquor and a full keg of beer.

Many of the children who attended the party drove to the house. While at the party, most of the kids drank copious amounts of alcohol and many of them became intoxicated. The alcoholic beverages were in plain view and the underage drinking was done openly. Parents were home and witnessed some of the drinking and the revelry. The parents knew several of the teenaged drinkers and even spoke to some of them.

After the party, an intoxicated teenage driver tried to drive an intoxicated friend home. These two boys drank at the party and also prior to their arrival. After the party, the driver was able to get his friend home safely. However, upon arriving at the friend’s house, he noted that the boy’s father was home. Thinking that it would be better if they did not have to explain their drunkenness, he decided to keep driving. The driver eventually lost control of his car, struck a concrete curb in the center median, skidded and hit a tree. The successive impacts tore the car in half. Officers estimate that the vehicle was traveling approximately 90 miles per hour at the time the driver lost control. The

¹ "Raves" are large dance parties often associated with the drug MDMA, commonly called ecstasy.

passenger died on impact and the driver remains unconscious. Test results revealed blood alcohol levels of .142 for the driver and 0.22 for the deceased passenger (almost triple Florida's legal limit of .08).

Those who could be charged with various related crimes, such as contributing to delinquency of minor, open house etc., were so charged.

Another case also involved an end-of-the-school-year celebration. In this incident, a number of 17-year-old students got together at the home of one of the teenagers. No parents or other adults were present. While at the house the underage drinkers consumed numerous shot glasses of alcohol and also smoked marijuana. Afterwards, one of the intoxicated teenagers left in her car with two friends who also attended the party.

The driver, who was under the influence of alcohol and marijuana, was speeding home. Police estimate that she was traveling 60 miles per hour in a 30 miles per hour posted zone when she tried to make a phone call on the cell phone of one of the passengers. She lost control of her car and slammed into a teenage pedestrian. After striking the pedestrian the car struck a tree. Both of the passengers were severely injured, one of them needing to be transported to the JMH Trauma Unit in critical condition.

In this case the driver was charged with one count of DUI/Manslaughter, one count of Vehicular Homicide, and two counts of DUI/Serious Bodily Injury. No one else who attended the party was charged.

Just as we were finishing our term, we read about another tragic alcohol-related death involving teenagers. This incident occurred in Broward County. According to the news reports, a number of teenagers attended a Friday night house party. The underage drinkers appear to have consumed alcohol at the party. A 16-year-old driver decided to give a ride to two 17-year-old acquaintances.

The 16-year old driver lost control of the SUV and crashed into a concrete utility pole. The driver and front seat passenger were ejected from the vehicle as it rolled after the crash. The back seat passenger was wearing his seatbelt and was not thrown from the vehicle. All three were taken to the hospital. The ejected passenger died as a result of his injuries. The driver was initially hospitalized in critical condition. At the time we went to print, it appeared that the driver was still dealing with health related issues.

THE LAW

Needless to say, the house party problem has reached epidemic levels. The questions we Grand Jurors considered are twofold:

- 1) Who should be held accountable for these tragic incidents?
- 2) Were these incidents preventable?

The situations presented above involve at least two different prominent issues; 1) house parties with parental or other adult supervision or attendance, and 2) unsupervised house parties attended by teens and other underage drinkers.² We will address the issues separately.

Adult Supervised or Attended House Parties

The “Open House Party” statute was recently promulgated by our state legislature.³ The statute states that no person 18 years of age or older who has control of any residence shall allow an open house party to take place at said residence if any alcoholic beverage is possessed or consumed at the residence by any minor where the person in control knows that an alcoholic beverage or drug is in the possession of or being consumed by a minor at the residence and where the person in control of the residence “...fails to take reasonable steps to prevent the possession or consumption of the alcoholic beverage or drug.” Where the evidence indicates that someone older than 18 years of age, was in control of a residence, knew that minors at the residence were consuming alcohol and failed to take steps to prevent the consumption of the alcoholic beverages, that person has committed a violation of the statute.

Our task was to consider whether we thought a more severe charge, namely, manslaughter was appropriate for the role the parents or other adults may have played in the events that ultimately led to the death of a young man. This was not an easy decision. In fact, it raised some significant questions. Who was ultimately responsible for these tragedies? What should the appropriate punishment be for that person? We wanted to

² We add the phrase “other underaged drinkers” to remind the public that the legal drinking age in Florida is 21. Although many of the participants may have passed their teen years the law still considers them underage drinkers.

³ This statute was initially enacted in 1988 and subsequently amended by our state legislature.

see what Florida law said on this issue. We also were curious to see how other states have dealt with these issues.

In looking at other states, we noted that several jurisdictions faced with somewhat similar fact patterns chose to file manslaughter charges against the adults⁴ who provided the alcohol and/or hosted the party. We decided that we would take a look at Florida law and consider whether manslaughter charges should/would/could be filed under any of the scenarios set forth above against someone who was **not** driving the vehicle that crashed.

The issue we faced was whether there was probable cause to believe that a parent(s), adult(s) or those aged between 18 –21 would be culpably negligent in their conduct by: first, allowing a party to take place when they knew alcoholic beverages were being consumed by minors, and secondly, allowing those minors who consumed alcohol to drive away from the party. Florida Statute 782.07, Manslaughter, provides:

The killing of a human being by the act, procurement or **culpable negligence** of another, without lawful justification according to the provisions of chapter 776 and in cases in which such killing shall not be excusable homicide or murder, according to the provisions of this chapter, is manslaughter, a felony of the second degree, punishable as provided in s. 775.082, s.775.083, 03 s. 775.084. (emphasis added)

We needed to fully understand the meaning of the statute and we started with the term “culpable negligence”.

“Culpable negligence” is defined in the Florida Standard Jury Instructions as follows:

“I will now define “culpable negligence” for you. Each of us has a duty to act reasonably toward others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence. But culpable negligence is more than a failure to use ordinary care toward others. In order for negligence to be culpable, it must be gross and flagrant. Culpable negligence is a course of conduct showing reckless disregard of human life, or of the safety of persons exposed to its dangerous effects, or such an entire want of care as to raise a presumption of a conscious indifference to

⁴ We are not aware of any cases where an underage person was charged with manslaughter under similar facts.

consequences, or which shows wantonness or recklessness, or a grossly careless disregard of the safety and welfare of the public, or such an indifference to the rights of others as is equivalent to an intentional violation of such rights.

The negligent act or omission must have been committed with an utter disregard for the safety of others. Culpable negligence is consciously doing an act or following a course of conduct that the defendant must have known, or reasonably should have known, was likely to cause death or great bodily injury.”

This is the jury instruction that is read to the jury at the close of a trial where the state charges a defendant with manslaughter due to culpable negligence. We also decided to look at the laws that relate to possible civil liability for this conduct.

Florida has a specific civil statute that applies in these situations. In Florida, a person who sells or furnishes alcoholic beverages to a person of lawful drinking age shall not become liable (under a simple negligence theory) for injury or damage caused by or resulting from the intoxication of such a person. However, a person may become **liable for injury or damage caused by or resulting from the intoxication of such a person if the alcoholic beverages were sold or furnished to a person who is not of lawful drinking age**, Florida Statute 768.125. Again, this liability is of a civil nature and the claim pursued in such an action would be for simple negligence. As previously stated, in order for negligence to be culpable, it must be gross and flagrant, and under manslaughter, the death of the victim **must** be caused by the culpable negligence of the defendant.

In analyzing the civil and criminal laws we raised a number of questions among ourselves. If all of the attendees at the party had been adults and the same result ensued, would there be potential criminal liability for the persons in control of the house? Should there be criminal liability for the householder when the victim is 20 years-old but not when he is 21? If this is not the case, why not? We could not come to a consensus on this issue and we want to share some examples that highlight our concerns. These examples lead us to consideration of the second category of cases, the unsupervised house parties attended by teenagers and other underage drinkers.

Unsupervised House Parties

In addressing this issue, we thought we would again consider the impact (and possible consequences) of Florida's open house party statute on this second scenario. Initially, we noted that an 18 year-old **in control of his parent's (or any other) residence** could be charged with a violation of the open house party statute even if all of the attendees possessing or consuming alcoholic beverages or drugs were "20 year-olds". The first statute enacted only imposed criminal liability on adults who hosted open house parties. The 2002 amendment to the law now says that anyone above the age of 18 will be subject to the same charges already applied to adults. The legislature obviously intended to send the message that it expects 18 year-olds to act responsibly under these circumstances. However, when intoxicated underage drinkers leave the parties and cause someone's death, should there be an enhanced criminal liability or enhanced penalty? If a 20 year-old leaves the party intoxicated and has a fatal accident, should an 18 year-old who was in charge of the residence be charged with manslaughter? That would have been the issue we faced in one of the above cases if the parents had not been home.

A more common scenario probably occurs each week on or near every college campus in this state. Many underage college students drink alcohol on a regular basis in dorm rooms, frat houses and off-campus living facilities. Eighteen year-olds and other underage students who are fortunate enough to have their own apartments may be unfortunate enough to be charged criminally for hosting a keg party for their under 21 year-old friends.

In most instances, the purchase of the keg (or other alcoholic beverages) is probably illegal, having been bought by someone less than 21 years of age. This is a nationwide problem. In fact, a report we reviewed indicates that thirteen states, the District of Columbia and many local jurisdictions now have keg registration laws. Such a law requires retailers to attach a tag, sticker or other identification number to a keg at the time of purchase. When a keg is purchased the retailer requires a refundable deposit and records the buyer's name, address, telephone number, and driver's license or other identifying information. If law enforcement officers obtain a keg from an underage drinker they are able to trace the keg back to the purchaser (in a "fake purchaser" situation) or to the retailer (in an underage purchaser situation) and impose appropriate sanctions.

In Florida, in circumstances where the purchaser was over 21 years old but knew the alcohol was going to be consumed by underage drinkers, that adult purchaser is subject to possible charges of contributing to the delinquency of a minor. Passage and enforcement of this keg registration law can assist in decreasing the availability of alcohol to minors by holding the purchasers and retailers liable. But, should anyone be – and if so who- liable after the alcohol has been consumed at an unsupervised party and a death ensues? Let us review two similar hypothetical situations with what we believe to cause the two different results.

A 19 year-old college student decides to throw an open house party at her apartment. Alcohol and drugs are consumed by the underage and adult attendees. An intoxicated **20** year-old freshman leaves the party, crashes his car and kills himself and someone else on the way home. Later the same night, an intoxicated **22** year-old senior leaves the party, crashes his car and kills himself and someone else on the way home. Should the 19 year-old **in control of her own residence** be charged criminally, (potentially, e.g., manslaughter) for the deaths caused by the traffic accident involving the 20 year-old? Was she culpably negligent to allow **underage** drinking at the party and then to allow the underage drinker to leave the party in an intoxicated state? If the answer is yes, should the 19 year-old also be charged for the deaths caused by the traffic accident involving the 22-year-old? Should she escape criminal liability for those two deaths simply because the partygoer was not underage? We note again that in Florida, one can escape **civil liability** for negligence if she provided or furnished alcohol to someone of lawful drinking age and that person caused death or some other damage. However, civil liability does attach when the alcohol was provided or furnished to a person **not** of lawful drinking age. Is this the result the legislature intended for possible criminal liability also? Should the age of the drunken driver even be considered when the alcohol was provided at an open house party where underage drinking was permitted? We do not feel that we can answer these questions.

We feel we need more direction. It is clear from the passage of the initial open house party law that the legislature wanted to criminalize certain conduct. It is also clear from the amendment that the legislature wanted to expand the category of persons who could be criminally liable under that statute. It is not so clear that under facts, such as we are witnessing today, the legislature intended that persons who violated that statute could

also be subject to manslaughter charges with a possible penalty 100-times more severe than that which could be imposed for a violation of the open house party statute.

OUR FINDINGS

In our first example, several facts posed problems with trying to impose criminal liability for manslaughter against the adults who were “supervising” the house party. First, speed was the most common major contributing factor that led to the accidents, injuries and deaths we described. For instance, one of the drivers was traveling at an estimated 90 mph in a residential area! Second, if the driver had not been afraid of confronting the drunken victim’s father, he would have let the victim out of the car. The parents supervising the party had no control over either of these factors.

Nevertheless, there is no question that parents all over this country are acting both negligently and irresponsibly. Particularly in Florida, parents and other adults who allow these house parties are clearly opening themselves up to major civil liability for damages when underage drinkers leave these parties in intoxicated states and kill and maim themselves and others. In weighing the actions and the possible punishments of the adults in the supervised party scenario, we did not think they were culpably negligent as it relates to the death of the passenger, although we believe they were clearly acting irresponsibly. In other words, we do not believe that the parents consciously did an act or followed a course of conduct that they **must have known** was likely to cause death or great bodily harm to the victim. We do not believe that their conduct rises to the level required by the manslaughter statute. For these reasons we conclude that there was not sufficient evidence to find probable cause that the parents were “culpably negligent” in the victim’s death. In lieu of concluding our report here we thought it would be beneficial to make some additional observations and recommendations.

For starters, although we believe that manslaughter charges were not warranted, we caution parents and guardians that they should be on notice that future conduct of this nature may be charged as manslaughter by others, such as the State Attorneys Office or another Grand Jury. This “notice” is specifically one of goals, as Grand Jurors, for the publication of this report. Many of us are parents and we know that our children are at risk. We want to have them close to home because we feel better about their safety. However, when we allow parties to be held in our homes, we must ensure that there is

proper supervision. We must maintain control of what occurs and take steps to ensure that our children are protected from themselves. Otherwise, we are relinquishing control, and our parental authority, to our children. Only tragedy can result when parents quit being parents.

We recognize that the open house party statute is of recent vintage and we applaud Mothers Against Drunk Driving (MADD) and our state legislators for their efforts in passing such a statute. However, we feel that the law's silence on parties resulting in >> harm or death may or may not have been intended by the legislature. Our job might have been easier if the legislature had passed a criminal statute that specifically dealt with this situation. The civil statute already exists. Alternatively, if the State of Florida enacted a law with punishment somewhere between a misdemeanor of the second degree (open house party - maximum 60 days in jail) and a felony of the second degree (manslaughter - maximum 15 years in prison), it would help when making an appropriate charging decision. Some other states have taken that step. For instance, in 2001, the Minnesota Legislature passed "Kevin's Law" which makes it a felony "for a person other than a licensed retailer of alcoholic beverages to "...furnish or give alcoholic beverages to a person under 21 years of age if that person becomes intoxicated and causes or suffers death or great bodily harm." Minnesota Statute 340A.701(4).

The fact that this report raises more questions than it answers is a clear indication of the present murkiness in this area of Florida law. It also shows that determining the answers or enacting a specific law is itself going to either resolve the questions or prevent these accidents. We hope that the release of this report will educate responsible adults in our community, as well as our legislature, so that we will not have similar occurrences in the future.

RECOMMENDATIONS

1. *We recommend that the Florida Legislature consider promulgating a statute that imposes enhanced criminal penalties when violation of the Open House Party law results in death or great bodily harm.*
2. *In the event that the Florida Legislature is inclined to act on our first recommendation, we recommend that the legislature also consider whether the Open House Party Statute should be changed back to its original language, imposing liability only on those who are 21 years of age or older.*

3. *We recommend that the Florida Legislature consider promulgating a statute that will require alcohol retailers to label and record all beer keg sales, similar to that enacted in Minnesota. This would discourage underage drinkers from attempting to purchase kegs of beer and allow better prosecution of adults who provide beer to those under the legal drinking age.*
4. *We recommend that all law enforcement agencies devote a greater emphasis of enforcement against those retailers who sell alcohol to individuals under the legal drinking age.*
5. *We recommend that a public awareness campaign be established and supplemented through our community that addresses the issue of underage drinking.*
6. *We recommend that such a campaign include presentations to the students and PTAs at all of our middle and senior high schools.*
7. *We recommend that the presentations also include information regarding Florida's Open House Party law and the potential for parental criminal liability for traffic deaths that might ensue for underage persons who leave such parties in an intoxicated condition.*

<u>NAME OF DEFENDANT</u>	<u>CHARGE</u>	<u>INDICTMENT RETURNED</u>
CAZU SOLOMON	Murder First Degree	True Bill
KEITH RYAN KENDRICK	Murder First Degree Firearm / Possession By Convicted Felon	True Bill
DANNY PIERRE-LOUIS (A) and RICHARD RAMBARAN (B)	Accessory After the Fact (A) (Murder) Accessory After the Fact (A) (Burglary) Murder First Degree (B) Burglary / Armed (B) Pretrial Release / Domestic Violence / Violate Conditions (B)	True Bill
NELSON GONZALEZ (A), MIKE GONZALEZ (B) and DANNY PLASENCIA (C)	Murder First Degree (A, B, C) Murder First Degree / With a Deadly Weapon / Attempt (A, B, C) Robbery / Home Invasion / Attempt (A, B, C) Grand Theft Third Degree / Vehicle (A) Trespass / Unoccupied Structure or Conveyance (B,C) Burglary / With Assault or Battery / Armed (A, B, C)	True Bill
DARNEL LAMAR JONES	Murder First Degree Firearm / Possession by Felon	True Bill
AARON STRONG	Murder First Degree Sexual Battery / Physically Incapacitated Kidnapping Sexual Battery / Serious Injury	True Bill
OSVALDO GOMEZ (A) and NOEL JULIAN MARRERO (B)	Murder Second Degree / Attempt (B) Murder First Degree (B) Accessory After the Fact (A) Manslaughter (A) Grand Theft Third Degree (A & B)	True Bill02
JOSEPH PATRICK MANNING	Murder First Degree	True Bill
FELIX SANTANA PEREZ	Murder First Degree	True Bill
JAMES F. McCOY (A) and WILLIE LEE GETER (B)	Murder First Degree Robbery / Home Invasion / Armed Robbery / Home Invasion / Armed Robbery / Home Invasion / Armed	True Bill
PARRISH L. KERNEY	Murder First Degree	

	Robbery / Strongarm	True Bill
MANUEL DE JESUS CASTRO	Murder First Degree Murder First Degree	True Bill
ROBERT TYRONE BATTLE	Murder First Degree Child Abuse/Aggravated/Great Bodily Harm	True Bill
<u>NAME OF DEFENDANT</u>	<u>CHARGE</u>	<u>INDICTMENT RETURNED</u>
JABEL MAJE	Murder First Degree	True Bill
QUENTIN LIONEL WILLIAMS, also known as “DQ”, (A) and DARRYLE RIGGINS, also known as “LITTLE D”, (B)	Murder First Degree Murder First Degree Murder First Degree / With a Deadly Weapon / Attempt	True Bill
JENNIFER IRENE GRAVES	Murder First Degree Kidnapping/With A Weapon Kidnapping/With A Weapon	True Bill
MICHAEL GONZALEZ	Murder First Degree Robbery/Armed/Weapon Burglary/With Assault or Battery/Armed Grand Theft Third Degree	True Bill
DEMETRIUS L. DYER	Murder First Degree Robbery / Armed/ Firearm or Deadly Weapon Burglary / with Assault or Battery / Armed Firearm / Use, Display While Committing a Felony	True Bill
ANTWANN L. ROGERS	Murder First Degree Firearm / Possession by Felon	True Bill
GLORIA FIERRO	Murder First Degree Firearm / Use, Display While Committing A Felony	True Bill
JONATHAN CANO	Murder First Degree	True Bill
NICKULIS GILLIS	Murder First Degree Robbery / Armed / Firearm Resisting Officer Without Violence	True Bill
MICHAEL THOMPSON	Murder First Degree Cocaine / Possession Firearm / Use, Display While Committing A Felony	

ACKNOWLEDGMENTS

Nine months ago we, the Miami-Dade County Grand Jury Spring Term 2002, began a journey that was at times surprising, disturbing, enlightening, frustrating and rewarding. It was an experience none of us will forget. It was an honor to serve our community despite the many sacrifices we made. We are grateful for having the opportunity to be an influential part of the judicial and democratic process.

We would like to acknowledge the following: Honorable Judge Judith L. Kreeger, who selected all of our names out of a fishbowl and who stressed the importance of serving on a grand jury; State Attorney Katherine Fernandez Rundle, for her commitment and many years of service; Chief Assistant State Attorney Don L. Horn, who guided us effectively through the process with exemplary professionalism; and Neo and Rose Anne, for their day to day assistance.

Though randomly chosen, we united as a team and feel strongly that we accomplished what were expected to do.

Respectfully submitted,

Larry Kaplan, Foreperson
Miami-Dade County Grand Jury
Spring Term 2002

ATTEST:

Betty Tucker
Clerk

Date: _____