

The CHEYENNE HERALD

THE LOCAL ADVOCACY JOURNAL

April 28, 2009 – Issue No. 169 – Next Issue, May 12, 2009

est. January 30, 2002

Entrapment at a county bar!

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In the interest of full disclosure, let me say that I am in favor of a legal drinking age of 18. I would accept 19.

The reason is simple: If a soldier 18 can take a bullet for our country, they should be able to take a Silver Bullet for themselves. Take a shot, have a shot.

When an 18 year-old can be sent to Iraq or Afghanistan, can enter into legal and binding contracts, can marry without parental consent, can vote in all local and federal elections, and can purchase and consume deadly tobacco products, it makes no sense to prohibit them from the purchase of alcohol.

That said, it is still the law of the land - having to be 21 to purchase or consume alcohol in places that sell those products (unless with a parent or legal guardian, then the age does not apply) - and compliance must be expected and enforced.

Before I go on, let me say that I grew up in northern Wisconsin, where the legal drinking age was 18 and bars were either beer only or beer and hard liquor. Between the ages of 18 and 21, we could only drink in the beer bars. That beer, though, was the real McCoy - full strength. Not the 3.2 stuff sold in some places and not the sissy Coors drank around here. The nice thing about the distinction was that parents seldom ventured into the beer bars and those under 21 could not go into the bars parents and older people (like teachers) hung out.

Wyoming was the last state to raise the drinking age to 21 and former governor Mike Sullivan had promised residents, basically, that it would be over his dead body that he would sign legislation - forced on states by the federal government by threat of withholding highway funds - raising the drinking age from 19 to 21. Well, Mike didn't die for the youth of Wyoming - he signed the legislation and Wyoming, as all other states have had to do (in spite of the Tenth Amendment to the U.S. Constitution) toed the line. Speed limits, red turn on red, etc.

So, thanks to Mike Sullivan and a weak-kneed Wyoming legislature, who prized federal money over fairness to those who could be sent into combat zones, the legal drinking age in Wyoming is 21.

So be it. It is highly unlikely that any legislative body will stand up and say, "If we

ENTRAPMENT - A person is 'entrapped' when he is induced or persuaded by law enforcement officers or their agents to commit a crime that he had no previous intent to commit; and the law as a matter of policy forbids conviction in such a case.

However, there is no entrapment where a person is ready and willing to break the law and the Government agents merely provide what appears to be a favorable opportunity for the person to commit the crime. For example, it is not entrapment for a Government agent to pretend to be someone else and to offer, either directly or through an informer or other decoy, to engage in an unlawful transaction with the person. So, a person would not be a victim of entrapment if the person was ready, willing and able to commit the crime charged in the indictment whenever opportunity was afforded, and that Government officers or their agents did no more than offer an opportunity.

On the other hand, if the evidence leaves a reasonable doubt whether the person had any intent to commit the crime except for inducement or persuasion on the part of some Government officer or agent, then the person is not guilty.

send our 18, 19 and 20 year olds to fight for our freedoms, the least we can do is stand up for theirs." Never happen - too compliant and too in need of the federal dollars held over their collective heads.

So, the law, however unfair or unwise, must be enforced.

Locally, when there is grant money provided, compliance checks are performed in places that sell or serve alcohol. In the past, these compliance checks were not performed without that grant money. In other words, compliance was only important if it could be enforced free to the local law enforcement folks and their government. If it costs, forget it. Unimportant.

On a recent early afternoon, a young girl entered one of our county's bars, accompanied by her law enforcement "buddy."

She walked to the bar and ordered a beer. The bartender asked her for an ID to prove her age and was presented with a military ID card. The customer's DOB was shown as October 3, 1989. Told she was underage and would not be served, the customer said, "let's try this one," and presented a Wyoming driver's license. The DOB on the driver's license matched the DOB on the girls' military ID card.

So, our military personnel cannot drink but they can be shot and we are using them to try to entice a bartender to serve them alcohol before they reach the age of 21? There's something a little bit creepy about that picture.

The young decoy left the bar and a sheriff's deputy who had sat away from her (the underage customer) and had entered the bar separately from her, approached the bartender and announced

that "this was a sting and you passed." He identified himself as a sheriff's deputy but did not present a badge or identification that confirmed that fact. He had a survey-like form, with just a handful of questions and one of the things he asked the bartender after telling her she "had passed," was what reference she had used to know the girl was underage.

Many would just say, "duh, she wasn't born by this date in 1988, therefore, ergo, she is not old enough to drink legally."

But, this bartender told the deputy sheriff that her "reference" was a sign board near her that provides her the information that a customer has to born by this date (April 13) in 1989 to be old enough to be served. The deputy sheriff said nothing about the wrong year on the board.

The bartender should have known that 1988 is the operative year, not 1989 but she had relied on that board in the past and had no reason to believe it was wrong. Two days earlier, it was not wrong. It said "1988." But, someone, almost certainly a customer, had moved the thumb adjustment knob and set it at 1989 - from 1988. Would law enforcement do that? Probably not. It was undoubtedly a customer over the weekend before who thought that would be clever.

There is a camera that covers that area of the bar and barroom and that person may not think it was so clever in the long run. If film shows who made the change, it seems they may be liable for what happened next.

Within a couple hours of "passing," the bar was visited by another pair trying to "sting" the bar. This time, it was a boy and a man, another sheriff's deputy.

It was a different deputy, of course. The men sat at the bar, the distant part of the bar from the cash register, telephone, etc.

The sole bartender (and cocktail waitress who also serves the tables in the bar area) approached them and asked what she could get them. The boy ordered a Bud Light. She carded both of them upon that request - patrons can sit in the area if they are underage and just eating but they cannot sit at the bar. The boy's date of birth was February 17, 1989 and the deputy was born, the bartender thought in reflection, in 1983.

Because the boy was born at a date earlier than the current day in 1989, she mistakenly thought he was old enough and sat a beer on the bar by him. She took no money and neither the boy nor the deputy touched the bottle of beer. Busted!

The deputy told her she had served a minor and he would write her a citation. The boy, before scurrying out of the bar, pumped his fist and yelled, "Yesssss!" He relished the idea he had gotten someone in trouble - someone who makes little money would now have to pay a fine.

The compliance check team knew the bartender had erroneously thought 1989 was the legal year of birth but did not inform her in the earlier visit debriefing that she should change that board or she would inadvertently serve a minor.

The second visit, my friends, was, in my opinion, entrapment. Court cases on the subject generally provide a defense against entrapment if "the government induced the crime," and "there was a lack of predisposition on the defendant's part to engage in the criminal conduct." (Mathews v. United States, 485 U.S. 58.)

W.S. §12-6-103 (d), reads: "For purposes of this section, the term 'compliance check' shall mean an inspection conducted pursuant to the provisions of this section for purposes of education or enforcement of laws prohibiting the sale of alcohol to minors."

For the purposes of EDUCATION or ...

Why didn't the earlier deputy "educate" the bartender by informing her the sign she relied upon was wrong - that the year was wrong for some reason. They knew she was vulnerable and went back into the bar with someone of an age that they were almost certain could "entrap" her into a violation. That is illegal. (See P. 6)

Entrapment (Continued from page 1)

Wyoming law, as well as federal law, protects against entrapment. In *Swartz v. State* (1998 WY 165, 971 P.2d 137), it reads, in part:

“Wyoming recognizes the common law defense of **entrapment**, which requires a showing that “law enforcement officials, through the use of extraordinary temptation, induce an otherwise innocent person to commit a crime.” *Wright v. State*, 851 P.2d 12, 14 (Wyo. 1993).

“The defense has two related elements: 1) government inducement of the crime, and 2) a lack of predisposition on the part of the defendant to engage in the criminal conduct.” *Mathews v. United States*, 485 U.S. 58, 63, 108 S.Ct. 883, 886, 99 L.Ed.2d 54 (1988).

“The threshold question is whether the police somehow induced the defendant to act illegally or merely provided an opportunity to commit the crime. *Rivera v. State*, 846 P.2d 1, 3 (Wyo. 1993). Once it is determined that inducement is involved, the defendant’s predisposition comes into question.”

It was established in the first attempted sting that this bartender was not “predisposed” to engage in criminal conduct - to violate the law.

And, government did “induce an otherwise innocent person to commit a crime.” The first sheriff’s deputy knew the bartender intended to comply with the law. She “carded” the underage sting agent not once, but twice.

One could also make the case that the government used extraordinary temptation in the first case by having the underage girl show a patriotic bartender a military ID card. And, in the second case, when the bartender “carded” the sheriff’s deputy, he deliberately used a Wyoming driver’s license instead of the official ID under which he was working that day. He intended to deceive her.

Should the bartender have known that 1988 was the operative year of birth for someone to be able to legally drink in that bar - April 13, 1988? Absolutely.

And it is not a defense that someone else, a bar patron or other person, changed the year from 1989 to 1988 just prior to this compliance check.

This bartender has tended bar, on and off, mostly on, for 30 years. She has never had a “sting” attempted on her. She has never been cited for serving underage patrons. The bar in which she works does not cater or solicit young customers. She told the *Cheyenne Herald*, as those of us over 40 or 50 already know, “kids” 16 can look 25 and those 25 can look 16.

The female bartender carded all customers she should have that day. Including an on-duty sheriff’s deputy (who did not order a drink but stalled by looking at a menu while the bartender waited on the underage agents). On the first sting attempt, there weren’t

12-6-103. Compliance.

(a) The department of health, working with local law enforcement agencies and other local individuals and organizations shall be the lead agency in the administration of this article. Nothing contained in this section shall be construed to limit or otherwise alter the authority granted to the department of revenue under any other provision of title 12.

(b) The department of health shall develop strategies to coordinate and support local law enforcement efforts in the enforcement of all state statutes relating to the prohibition of the sale of alcohol products to minors.

(c) The department of health shall have discretion to work with local agencies and individuals in the coordination of local education, prevention and enforcement efforts that appropriately reflect the needs of the community.

(d) For purposes of this section, the term “compliance check” shall mean an inspection conducted pursuant to the provisions of this section for purposes of education or enforcement of laws prohibiting the sale of alcohol to minors. The use of persons age eighteen (18) to twenty-one (21) during compliance checks is authorized subject to the following:

(i) A person participating in a compliance check shall, if questioned, state his true age and that he is less than twenty-one (21) years of age;

(ii) The person’s appearance shall not be altered to make him appear to be twenty-one (21) years of age or older;

(iii) Neither a person age eighteen (18) to twenty-one (21) nor his parents or guardians shall be coerced into participating in such inspections;

(iv) In the event that a citation may result the person conducting the compliance check shall photograph the participant immediately before the compliance check and any photographs taken of the participant shall be retained by the person conducting the compliance check;

(v) Any participant or adult aiding a participant in a compliance check under this section shall be granted immunity from prosecution under W.S. 12-6-101 and 12-5-203.

many customers in the bar area. At the time of the second, there were more. That, also, is not an excuse for being deceived into thinking that the boy who was six months short of his 21st birthday was old enough.

The underage sting agents and accompanying sheriff’s deputies do not have to obey state law. If one over 21 buys alcohol for someone under 21, or even attempts to, they have broken the law. As does the underage one trying to purchase alcohol. But, not in the case of law enforcement trying to catch, by inducement or entrapment even, a bartender selling alcohol to a minor. This is catch (entrap) and fine, not educate and prevent.

W.S. 12-6-101 (c) Any person under the age of twenty-one (21) years who attempts in any manner to purchase alcoholic or malt beverages or who falsifies any identification or uses any false identification in order to obtain alcoholic or malt beverages is guilty of a misdemeanor.

(d) Any person who violates this section, or aids, abets or incites any violation hereof, is guilty of a misdemeanor.

Do we have to resort to trickery to snare real offending bartenders who deliberately sell alcohol to minors? Do we want *Cheyenne* and *Laramie County* to resort to the kind of behavior seen in this case to entrap a bartender who had already proven she intended to obey the law and required each of the patrons to provide ID cards - with one providing a military ID card, perhaps with the expectation that a bartender would serve her because she was serving in the military and another using a driver’s license instead of the ID issued him as a sheriff’s deputy? The bartender made a mistake, no question about it.

The follow-up question should be: Do we want our law enforcement agencies to resort to this sort of deliberate manipulation to entrap a person to whom even a \$100 fine is big money? Do we support using underage agents who shout “Yesssss” like Marv Albert when the entrapment they perhaps discussed outside before entering the bar, worked?

Is that really what “growth” and “progress” has brought to *Cheyenne* and *Laramie County*? And, do we really want to use military personnel to entrap a person who otherwise would not violate the law? How many times did this young gal, described as “attractive” by this bartender, find a way to get served? Remember, these

underage agents do not drink anything - they don’t even touch the bottle of beer. And with behavior like that shown in these stings, what would prevent “nailing” a bartender who set a bottle of beer in front of the patron on the next bar stool? Judges will not rule against law enforcement in these cases. They just won’t.

Because the legal age to drink is 21, the law must be enforced. No one has the guts to propose changing it back to 19. Just as no one has the guts to propose a Constitution amendment to allow 18 year-olds to serve in the Wyoming House.

Laramie County District Court Judge Peter Arnold

Boy, this subject has been like hitting a hornet’s nest with a broom handle.

Few stories on these pages have brought a “I’ve got a story to tell you about Judge Arnold, too” level of input.

I don’t think I’ve ever taken the position that Peter Arnold is a lousy judge in all matters before him. I might have but I don’t think so. I have taken the position that he is not fit to sit on the bench because of the number of refusals and remands he has received from the Wyoming Supreme Court on the primary issue of child custody.

I am getting some input that may help determine why he rules as he does. There is obviously something in his life or in his past that has shaped his opinion on certain subjects. I’ll find it.

My concentration has been, and will continue to be, monitoring Peter Arnold’s ruling on child custody matters. He has made the same mistake repeatedly, only to be reversed by the Supreme Court, and that is what I’m watching. I do read the High Court rulings on cases from *Laramie County District Court* judges - all of them. At least I glance at the subject matter and then drop the review or move through it.

I have recently received a letter from the Rawlins penitentiary on one of the judges. I just do not have the time, and would always choose the subject I’ll review, to take on every case, of every judge, on every decision here in *Cheyenne*.

My interest is in exposing a judge who repeatedly makes the same faulty decisions on matters like shared custody of a child or children in a divorce. In spite of being told by the Supreme Court, and acknowledging that admonition in his own writings, Arnold seems to want to defy the Supreme Court on that matter. He will not award principal physical custody to one (particularly not the mother) and an appeal volleys the case back to him.

Reviewing transcripts of hearings and courtroom testimony or discussions, it is apparent that Peter Arnold wants to be a participant, not an arbiter. He is a “discusser,” not a “decider.” He injects personal observations, offers his own experiences and otherwise involves himself in cases he is to decide, not debate.

For those who have asked me to review Peter Arnold’s decisions in criminal cases, I simply do not have the time. It takes hours to reviews these cases - some have several files. As it gets closer to the vote on his retention as a judge, I may revisit my decision. For now, unless it has to do with a decision (and all do not reach the Supreme Court) concerning divorces and shared custody of a child or children, I’ll have to pass on any review of his decisions.

Arnold has his defenders. I am his critic. I have my defenders. I have my critics. I will continue to provide specifics to my readers. They can make up their own minds.