



Teens Held Accountable For Friend's DUI Death

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To criminal defense lawyers specializing in DUI cases, the news came as quite a surprise: Two teenage boys were charged with reckless endangerment last week in Glastonbury for not preventing their 17-year-old friend from driving drunk. Jane Modlesky died in the early morning hours of July 14, 2013, after crashing a 2008 Honda Pilot into a tree.

"These two juveniles knew that she was intoxicated, knew she shouldn't have been driving and allowed her to drive," Glastonbury Officer James Kennedy said after the arrests. "There are so many things that could have been done. So many things."

Two other teen passengers in Modlesky's vehicle earlier that evening were ticketed for unrelated violations.

Jonathan Sills, of Tomeo Sills in Hartford, a firm that focuses on driving under the influence cases, thinks police and prosecutors may be over-reaching. He said he frequently sees adult DUI cases where the drunken driver had a sober passenger in the vehicle, and the passenger is never charged.

The charges "would be very difficult to prove" in court, said Sills. "When you're charged with reckless endangerment, what you're saying is their conduct created and contributed to the accident. I just think the causality is difficult to connect. The boys knew the accident would've happened? It's almost like they're saying they had a duty to keep her from driving. You just don't see that in criminal law."

It's unclear where the five friends had been partying. But on the way home, they apparently took turns driving the SUV, which belonged to the parents of one of Modlesky's friends. The teenage boy who was initially driving dropped a friend off at a Glastonbury home, police said, then drove to his own house and got out. Another 16-year-old boy got behind the wheel and drove to his own house, where he and another teen got out of the car, police said.

Modlesky then got behind the wheel and was killed when she hit a tree a half mile away, police said. Police said Modlesky had a 0.27 blood alcohol content at the time of the accident, which is about 13 times the legal limit of 0.02 for a driver under 21.

Months later, following an investigation, police charged two of the boys with second-degree reckless endangerment, misdemeanors. Their names were not released, due to their ages, and were charged as juveniles.

In published reports, Kennedy, the Glastonbury officer, lamented that the teens were more concerned with getting caught sneaking out that night by their parents than they were about their friend's well-being.

Jay Ruane of Ruane Attorneys in Shelton, who also specializes in DUI-related offenses, called the girl's death a tragedy.

"But unfortunately the justice system isn't necessarily set up to find a defendant for every victim. It seems like that's what [the police] are looking for," said Ruane.

He compared this set of circumstances to a case from the late 1990s that made its way to the state Supreme Court. In *State v. Miranda*, a man was charged with risk of injury to a child because his live-in girlfriend was abusing her baby daughter. Santos Miranda did not do anything to stop the abuse, so police charged him too. He was not the baby's biological father, but that did not matter to the trial court.

Miranda appealed his initial conviction to the state Appellate Court, which sided with him. But in 1998, the state Supreme Court upheld the trial court's conviction.

"The legislature has specifically recognized that 'family violence crimes' are not confined to family members but may also involve unrelated household members," wrote then-Justice Joette Katz. "Imposing a common-law legal duty on the defendant in this case is consistent with the legislature's creation of a legally cognizable relationship, advances its express public policy to protect children and fosters the notion that ultimate responsibility for a child's safety transcends biology."

Ruane said the recent arrests seem to take this philosophy one step further. "It's almost like they're trying to do the exact same thing with these kids," said Ruane.

Other states also have addressed a similar case. A woman from Washington state was charged after her intoxicated friend got into an accident and killed six other people. Appeals to the conviction ultimately made its way to Washington's Supreme Court, which in 2009 ruled that the woman could not be charged as an accomplice.

Both Sills and Ruane said the age of the teenage defendants in Glastonbury could make the charges even more difficult to prove in court.

Sills said that because the defendants are minors, they are held to a lesser standard of responsibility than an adult.

He added, "These boys presumably they were under the influence as well. How clear was their judgment?"

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