



Teens Arrested for Letting Friend Drive Drunk in Fatal Crash

December 7, 2013

Could you be held accountable for allowing someone else to drive drunk? Two 17-year-old boys arrested in Glastonbury, CT on Thursday are finding out the hard way that you can. They were charged with misdemeanors, as police say they knew their friend Jane Modlesky, also 17, was too drunk to drive when she got behind the wheel of an SUV in July before crashing into a tree and dying.

"They very well knew that she was intoxicated and should not have been driving," Agent James Kennedy of the Glastonbury Police Department tells NBC Connecticut. (Kennedy did not return calls requesting comment from Yahoo Shine.)

The young men, one of whom was driving and the other of whom was a passenger before getting out of the car and watching Modlesky drive off into the early morning, were charged separately. One was charged with reckless endangerment in the second degree, violation of passenger restrictions and operating a motor vehicle between 11 p.m. and 5 a.m., while the other was charged with violation of passenger restrictions and operating a motor vehicle between 11 p.m. and 5 a.m. Both are due in court later this month.

"This is a highly unusual situation," California attorney Lawrence Taylor, author of the law book "Drunk Driving Defense" and a former law professor, tells Yahoo Shine. "It's basically saying that they had a positive duty to stop her. But you cannot be prosecuted because you didn't stop someone from engaging in criminal conduct: If someone is holding a gun and is about to shoot it, and you don't pull it out of their hand, you cannot be held accountable. So I think the police are kind of overreaching here."

Taylor further explains that DUI is considered a "general intent crime," rather than a "specific intent crime" such as stealing or murder. "If you have a general intent crime, it's pretty hard to be an accomplice," he notes. "But having said that, there are states who have said yes, you can be an accomplice."

In Washington in 2002, for example, a 29-year-old woman was charged with being an accomplice to drunken and reckless driving after she was accused of convincing someone to get behind the wheel; the subsequent accident killed six people, while she was the only survivor. She was later acquitted by the state Supreme Court. While that was a rare case, a more frequent situation is that of bartenders being held liable, under state "dram shop" laws, for continuing to serve drunk patrons who then get behind the wheel of a vehicle.

But in Connecticut, according to criminal defense attorney Jonathan Sills, partner in firm Tomeo Sills LLC, a case like the Modlesky one is indeed very rare. "I've represented thousands of drunk drivers and not

once have I ever seen someone charged criminally for letting someone else drive drunk,” he tells Yahoo Shine. He adds that he was surprised by this latest turn in the case, which he has been following, and is curious to see if it goes anywhere with the district attorney. For it to progress, he explains, “it has to be that [the boys] knew the person was drunk and that they knew the accident would happen, so there’s a standard of proof that is very, very high. It would be very difficult for the state to say one of the boys’ conduct actually caused the accident.”

The accident tore apart the Glastonbury community in July, after Modlesky and a group of four teen boys drove home in the SUV, which belonged to a parent of one of the friends. After two of the boys were dropped at home, Modlesky was left with the other two, and when they got out of the vehicle she drove just a half mile until she struck a tree and was killed. Police determined afterward that Modlesky’s blood alcohol content was 0.27—more than 13 times the legal limit for someone under the age of 21.

This week students at the school where Modlesky would have been a senior say the arrests are reopening collective wounds. “Today brought me, and many others I’m sure, right back to the week you left us,” one Glastonbury High School student writes on the Facebook page RIP Jane Modlesky “This afternoon I went to the crash site in an attempt to make sense of all this and of course it only amplified the sadness, confusion, and many other terrible emotions we were left with just a few months ago.”

Another student, Jonathan Rico, tells NBC Connecticut, “It’s just ruining us.”

<http://shine.yahoo.com/healthy-living/teens-charged-as-accomplices-for-letting-friend-drive-drunk-194849860.html>