

My Son Threw A Party And Was Arrested Because There Was Underage Drinking?

June 6, 2013 | by Einhorn Barbarito

Dear Ask the Attorney:

My 21 year old son, back from college, was arrested over the holiday weekend while my husband and I were out of town. He and a bunch of his old high-school friends threw a party without our knowledge at our house. Apparently, around 10:30 pm the police showed up to the house because neighbors had called in a noise violation. When the police showed up, there were a lot of underage kids drinking and apparently they found a few of the kids with drugs. My son and two of his friends were arrested and taken in and all three charged with possession, providing alcohol to minors and noise violations. We were called and came back from our trip to bail him out. He swears he doesn't do drugs and didn't know any one had brought it to the house. He's a good kid who made a stupid mistake. I don't want his whole future ruined.

S.B.

*Our guest blogger is **Michael R. Ascher, Esq.**, a partner in the law firm of **Einhorn Barbarito**. Mr. Ascher is engaged in a litigation practice handling both **criminal** and complex civil matters. His practice includes all categories of criminal cases including drunk driving offenses, sex offenses, drug and white collar crimes, computer crimes, assault and battery, conspiracy, fraud and theft cases and matters involving the Department of Child Placement and Permanency (DCPP – formerly DYFS).*

Dear S.B

Your son's predicament is not an unusual one. This of time of year, police are routinely called to parties held for graduation or other celebrations such as the 4th of July. When a noise complaint is made, the police do have an obligation to investigate. Therefore, when the police arrived at your home, their

presence was appropriate. However, that does not mean that the police had a right to enter the home or search it. As an occupant of the house, your son had the right to be free from an unreasonable search and seizure. Without a warrant, the police did not have the right to enter the home without your son's consent or in the absence of probable cause that a criminal violation was occurring.

It would appear from your question that the police decided to enter the home based upon the presence of underage drinkers, which could be considered probable cause. The police would be entitled to determine whether or not the underage individuals had consumed alcohol if alcohol was present. If cans, kegs, or other bottles or other evidence of drinking alcohol were present, then the police would have a right to investigate further. During that investigation, they could determine if other illegal substances were present. However, the issue becomes very fact sensitive. It would depend upon where the drugs were located and what efforts were undertaken to pat down or search the underage partygoers.

Unfortunately, due to the presence of underage drinkers, your son faces prosecution under the provisions of N.J.S.A. 2C:33-17 which prohibits making alcohol available to underage persons. The issue revolves around whether or not your son was aware that the drinking was occurring and what role if any, he had in obtaining the alcohol or making it available. This is considered a disorderly persons offense carrying with it jail exposure of six (6) months and a \$1,000.00 fine. The drug charge present different issues. If your son was aware of the presence of the drugs, or exercised any type of dominion or control over them, he could be prosecuted for joint constructive possession, which means that although they may not have had the drugs on his person, he was aware of their presence, knew of the type of drug and at some point intended to exercise control over the drugs. Based upon your son's statement that he was unaware that anyone had brought drugs into the house, he has a defense to that charge. The seriousness of the drug charge depends upon the type and quantity of drugs that were seized. He may be able to obtain the benefit of a diversionary program which would permit him to seek a conditional discharge and be placed on probation for a period of time and have the charge dismissed if he fully completes the probation. However, that depends upon the nature of the drugs seized and the charge filed by the State against him. He may also beat the charge if he was unaware of the drugs.

At this point, the entire matter has to be investigated, which includes interviews of the underage drinkers and other party goers. This would involve hiring an experienced defense lawyer and investigator to take statements from these witnesses. Typically, the case would be decided based upon the matter in which the police conducted their investigation after they arrived on the scene in response to the noise complaint. The noise complaint offense is neither criminal nor serious. It is a local ordinance case.