

Court of Appeal Upholds Dram Shop Statute Where Underage Minor  
Purchased Alcohol With A Forged Driver's License But Was Only A  
Passenger In Car Causing Fatality

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In a case with emotional appeal, and also significant potential liability to sellers of alcoholic beverages in California, the California Court of Appeal, First District, ruled in Michael Ruiz, et al. v. Safeway, Inc. (2012) DJDAR 14127 that the seller of alcoholic beverages, in that case, Safeway, Inc. ("Safeway"), was not liable under Business and Professions Code § 25602.1 for damages resulting from a fatal motor vehicle accident following the sale of alcoholic beverages to an obviously intoxicated minor.

The facts of the Ruiz case are this: Dylan Morse, 18 years old, and Ryne Spitzer, then 19 years old, attended a fraternity party at or near Sonoma State University. The party broke up around midnight after police arrived. Thereafter, Morse and Spitzer, who had been consuming various alcoholic beverages, decided to purchase more beer and drove to a nearby Safeway store for that purpose. The two went into the supermarket together, went to the beer aisle and then went to the checkout stand together. The supermarket checker, one Amy Gonzalez, with 12 years of experience, scanned the alcoholic purchases (beer) and requested identification from Mr. Spitzer. Mr. Spitzer provided a driver's license which appeared to be valid but was in fact forged. Spitzer then paid for the beer using his check card. Spitzer and Morse then left the store, with Spitzer carrying the beer in his hand. Spitzer then put the beer in the back of Morse's car and Morse began to drive back to Sonoma State, where Spitzer was a student.

At one point while driving, Spitzer took one of the bottles out of the box and handed it to Morse who estimated he drank about half of it as he drove. Shortly thereafter, Morse allegedly caused a car accident that led to the death of Alexander Ruiz, then 25 years old. According to press accounts, Spitzer suffered brain injuries and paralysis and Morse, the son of Merced County District Attorney Larry D. Morse, plead guilty to felony counts of vehicular manslaughter.

The parents of Alexander Ruiz then filed suit for wrongful death against Morse, Spitzer and Safeway. As for Safeway, the Complaint alleged that Safeway was liable because it violated Business and Professions Code Section 25602.1, which makes it illegal to sell, furnish or give, or cause to be sold, furnished, or given, alcohol to an obviously intoxicated minor (this is the only exception to California's Dram Shop Statute, first enacted in 1978). The parents alleged that Safeway violated the statute by furnishing or causing beer to be furnished to Morse.

Safeway filed a Motion for Summary Judgment arguing it was entitled to prevail as a matter of law because it did not furnish or cause beer to be furnished to Morse and, even if it did, neither Morse nor Spitzer were "obviously intoxicated." The Trial Court found there was a triable issue of fact as to whether Spitzer or Morse were obviously intoxicated but ruled that there was no triable issue of fact as to whether Safeway engaged in selling, furnishing, giving or causing to be sold alcohol to an obviously intoxicated minor, in this case, the driver Dylan Morse.

On appeal, the Court of Appeal went through the history of the Dram Shop Statute, as well as the immunity therein, and the exception under Business and Professions Code § 25602.1 dealing with the furnishing of alcoholic beverages to an obviously intoxicated minor. In its holding, the Court of Appeal ruled that there was no furnishing or causing alcohol to the driver, Dylan Morse. The Court of Appeal specifically concluded that Safeway could not be held liable because the person to whom it sold alcohol was not the person whose negligence allegedly caused the wrongful death. The Court of Appeal also mentioned the fact that Spitzer's license was forged and that Safeway did not violate the Dram Shop Statute, but did not elaborate and its holding does not appear to be based on that fact.

The Ruiz case is certainly a sad one insofar as its facts, but is an important holding involving the exception to the immunity under California's Dram Shop Statute for furnishing alcoholic beverages to obviously intoxicated minors.

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