

## **You Better Watch Out, You Better Not Drive, You Better Call Uber (for Everyone), I'm Telling You Why...**

### **Santa Clause is Bringing Complicitor Liability to DUI**

By Adrienne Teodorovic, Esq.

That's right folks. Before you spike the eggnog, make sure you have a transportation plan for you, your guests, your loved ones—everyone—that ensures they have a sober ride home. Making the decision to drive drunk, or allowing a friend to drive when you know they are drunk could expose you to serious criminal charges and penalties.

As is custom every year, nearly every law enforcement agency will be participating in the Holiday Party and New Year's Heat Is On campaigns by assigning increased patrol units to DUI enforcement and checkpoints. As expected, these efforts result in soaring numbers of DUI arrests as many will make the unfortunate decision to get behind the wheel after consuming various merry concoctions.

Traditionally, our DUI laws have held responsible only those who make the decision to drive, and who are caught in the driver's seat. As expected, these drunk drivers will be arrested and subjected to what are widely considered to be the most severe penalties for DUIs in the country. Importantly, as of this year, those with three or more prior convictions will be charged with a felony for the same behavior. In any case, drinking and driving carries with it a steep financial and emotional toll that can produce unwanted dividends for months and years to come.

While everyone is aware that choosing to drive while drunk is illegal, most are completely unaware that aiding, encouraging or allowing a friend or colleague to do the same could spell the same type of trouble. As of November 23, 2015, the Colorado Supreme Court declared that persons with knowledge that someone is under the influence, and who aids, abets, advises, or encourages that person to drive, can be held responsible for that person's drunk driving activities. The court did not define exactly what it means to aid, abet, advise, or encourage, but rather held that "in order to be held accountable as a complicitor in this jurisdiction, the defendant must not only be aware [the principal is under the influence of alcohol] but in fact intend that the principal operate a motor vehicle in any event." *People v. Childress*, No. 12SC820 (Colo. Nov. 23, 2015).

In *Childress*, the defendant was convicted of vehicular assault related to an incident in which the evidence showed he had overtly encouraged his underage son to drive after consuming alcohol with the son at a party. Consequently, the defendant's son drove under the influence and caused an accident, which resulted in defendant's other son, a three-year old passenger in the vehicle, sustaining serious injuries. While the facts of this case are egregious, the supreme court did not limit its holding to these facts, but instead broadly held that complicitor liability can apply to strict liability crimes, which includes DUI, DWAI, vehicular homicide, and vehicular assault.

The frightening reality the *Childress* decision presents is that passengers, party hosts, bartenders, friends, family members, and any number of people could fall under the purview of “complicitor” based on the court’s extremely vague rule. Plausibly, someone could be charged with DUI for watching their spouse or partner consume a few cocktails and then handing them the keys to drive home. All that appears to be required for a conviction under this theory is (1) evidence of encouragement, (2) evidence of knowledge that the person encouraged to drive would be driving under the influence of alcohol, and (3) evidence that the accused complicitor intended that the person drive regardless of the person’s intoxicated state.

What can you do to protect yourself from liability this holiday season and beyond? Call a cab, call an Uber, designate a sober driver, rent a limo—leave the keys at home. If you host a party, have a clear no-drive policy in place. Put it in the invitation, and take measures to effectuate the policy. For instance, hire a few sober students to be your designated drivers—one can drive party goers home in their own car, the other can follow in the party goers’ vehicles. If you see a friend engaging in one-too-many of the merriments of holiday cheers-ing, make a point to talk to them about their after-party transportation plans, and discourage them from driving. Text them the number for a cab. Offer them a place to stay.

The policy inherent in the *Childress* decision is to encourage civilian participation in advocating against drunk driving. The best way to protect yourself this holiday season is to drink responsibly, avoid driving with any alcohol in your system, and be an active voice against others doing the same.

If you or someone you know has been cited for drunk driving or encouraging another to do so, the best way to protect yourself is to call the experienced Denver DUI defense lawyers at FGMC.