

This Week in DWI, It's ... Vanilla Extract?

Another day, another "person arrested for drunk driving" story. Whatever. Dog bites man. Move on.

Well, here at FindLaw's Legally Weird, we hope you know by now that a person isn't just drunk; we wouldn't be blogging about him unless he ate the Breathalyzer results, or he drunkenly fell down while urinating and sued for workers compensation, or he got drunk and stole an airplane.

So what's the catch in this week's "drunk person" story?

I'll Have a Vanilla Extract and Tonic, Hold the Tonic

Carolyn Kesel of Seneca Falls, New York, was arrested for driving while intoxicated. Her cocktail of choice? Two "hand-sized" bottles of vanilla extract she consumed at a local Walmart, reported the *Times* of Wayne County.

Police suspected something was up when they received reports of a person driving "erratically" around the parking lot of the Walmart in Macedon, located in upstate New York. Kesel was arrested for both felony DWI and aggravated felony DWI, the latter of which is charged for having a BAC of greater than 0.18 percent. Kesel's BAC was a surprising 0.26 percent, over three times the legal limit.

If you've read a bottle of vanilla extract (or seen that episode of "Mama's Family"), you know that it's got *a lot* of alcohol. A bottle of vanilla extract available at Walmart contains 41 percent alcohol, the same amount as any hard liquor. The *Times* article quotes a number of police and probation officials who genuinely didn't know that vanilla extract had such a high alcohol concentration. But in fact, the FDA requires that products labeled as "pure vanilla extract" contain at least 35 percent alcohol.

Here's the science behind that: Alcohol is used as a solvent to dissolve vanilla's essential oils. (Most oils are alcohol-soluble, but not water-soluble.) Because alcohol has a fairly low boiling point (173 degrees Fahrenheit), it usually evaporates when cooked, and indeed, many baked goods and sauces initially contain alcohol -- that's then cooked away.

Is There a Defense?

Could Kesel claim "involuntary intoxication," the defense that a person drank something that he or she didn't know was intoxicating? Probably not. Involuntary intoxication usually applies when someone's drink gets "spiked" without his or her knowledge. It's hard to imagine that someone would voluntarily consume two "hand-sized" bottles of vanilla extract just for the fun of it, not knowing that each bottle was 41 percent alcohol.

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