

# HOMEALONE

Kids throw a wild party while you were gone? Luckily, California law offers a wide range of protections for homeowners if a crime is committed.

By Gary A. Watt

It's every parent's worst nightmare. Your teenager throws a party while you are out for the evening. You come home to music blasting and kids you've never seen before making themselves a little too comfortable in every room of your house. The lights are turned back on, the music is turned off and the guests begin to leave. Cleaning up takes a while but the damage does not seem to be significant — a few spots on the carpet, a couple of broken glasses.

The next morning, except for the teen with a hangover upstairs, things seem no different than any other day. Then the phone rings. It's another parent, calling to tell you her daughter was at "your" party, got drunk and was raped. The caller says it wasn't your son, but that it's all your fault and hangs up. The word "lawsuit" hangs in the morning air. You wonder if you could be hit for damages, maybe even lose your home.

## Personal Liability

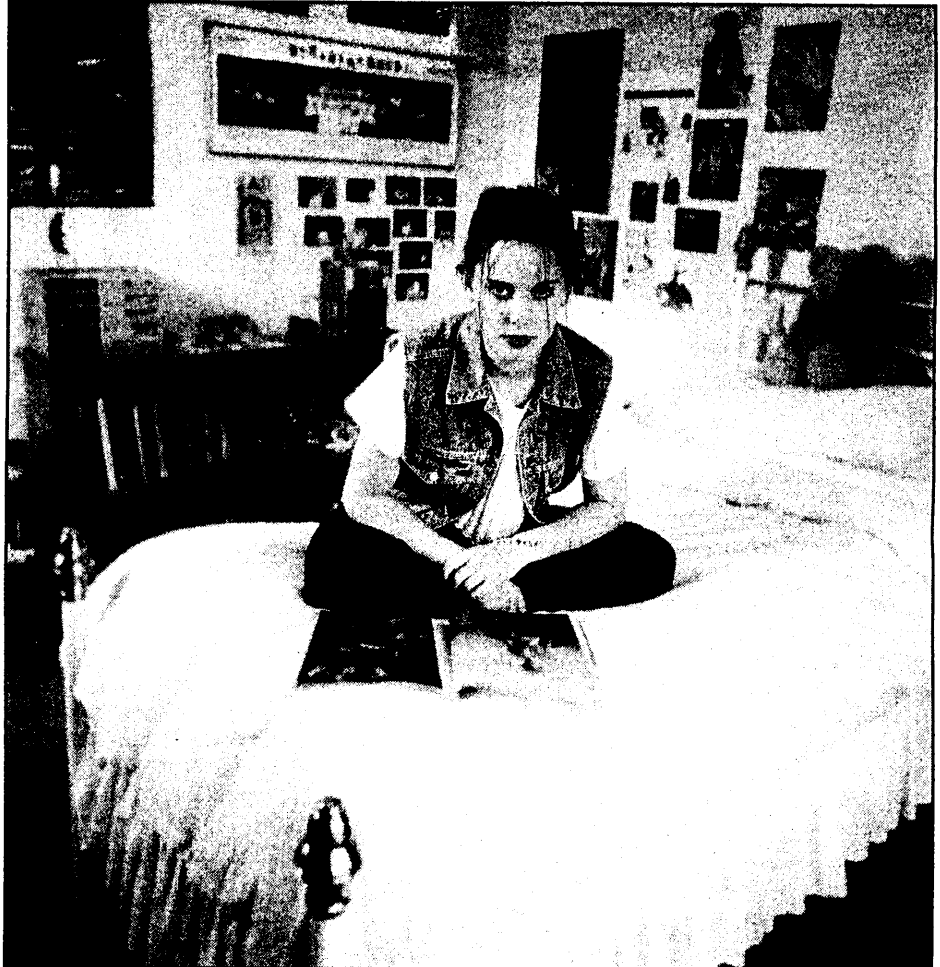
Fortunately, in California, the law provides homeowners with a fair dose of protection from civil liability for the criminal acts of others. It also provides far-reaching immunity from negligence claims arising from consumption of alcohol in the home. With respect to the former, the Supreme Court requires heightened foreseeability before any duty will be found. As for the latter, the Legislature long ago enacted Civil Code §1714, deciding that consumption of alcohol, not serving it or allowing it to be consumed, will be the proximate cause of any resulting injuries.

## HEIGHTENED FORESEEABILITY APPLIES IN THIRD-PARTY CRIME CASES

A recent decision of the First District Court of Appeal illustrates both the horrors of party-turned-tragedy and the protection that the law provides from civil liability for the criminal acts of "guests" in the home. In *Margaret W. v. Kelley R.*, 139 Cal.App.4th 141 (2006), the First District rejected claims that the parent of a teen who threw an unauthorized party should face civil liability for date rape.

The plaintiff, Margaret W. ("Margaret"), was one of several teens present when a sleepover turned into a party. The host parent, defendant Kelley R. ("Kelley"), was out for the evening when the party took place. After drinking heavily, Margaret left the party with girlfriend Lauren and some boys from school.

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Around 11 p.m., Kelley returned home to find her own daughter passed out. She also discovered that Margaret and Lauren, were gone. Another teen, Alexis, told Kelley that Margaret and Lauren left "to party with a bunch of people."

About an hour later, while Kelley was tending to her sick daughter, Margaret called. Margaret spoke to Alexis, not to Kelley. At the time she was making that call, Margaret did not feel threatened by the boys she was partying with. Nevertheless, Alexis talked Margaret into leaving the party. Alexis, holding the phone, turned to Kelley and told her that Margaret and Lauren wanted to return and resume the sleepover. Kelley, upset over the broken ground rules (no drinking, no unauthorized guests) and the fact that the two girls had abandoned her daughter in her drunken condition, told Alexis to tell the girls to go home.

Margaret could have called her mother, father, brother or sister; she knew each of the numbers and any of them would have picked her up. But she did not want them to find out she was drunk. Margaret alleged that later that night, while still with the boys, she was brutally raped.

She sued her assailants, the parents of the boy in whose house the assault took place,

and Kelley. Kelley moved for summary judgment, arguing that she had no duty to protect her guest because the rape was not foreseeable. The trial court agreed, concluding that Kelley owed no duty to Margaret to prevent such criminal conduct.

On appeal, *Margaret W.* argued that Kelley's duty arose because of the "special relationship" between them as homeowner and guest. Margaret noted that the initial question, whether a special relationship existed upon which a duty could be based, was easily answered — all guests stand in a special relationship with those whose homes they are visiting. However, the scope of the resulting duty turns on foreseeability. (See *Delgado v. Trax Bar & Grill*, 36 Cal.4th 224, 237 (2005) (duty is initially a question of law and heightened foreseeability is the crucial factor courts should consider when performing the duty analysis in third-party crime cases).)

In *Delgado*, a bar's bouncer observed patrons near blows and ordered one to leave. However, the bouncer did nothing while the other patron and friends quickly followed the first one into the parking lot, where they savagely beat him. *Delgado* held that while preventing future crime requires heightened foreseeability, a lower threshold may apply

when the property owner (or the owner's agents) observes crime actually occurring on the premises. In such circumstances, the duty imposed upon all landowners includes an affirmative obligation to take reasonable measures to attempt to remove the imminent peril or prevent the harm.

Following *Delgado's* guidance, *Margaret W.* analyzed Kelley's potential liability for third-party criminal assault under two separate standards: foreseeability with respect to preventing future crime and responding to imminent or occurring crime. *Margaret W.* noted that under either type of analysis, "foreseeability must be measured by what the defendant actually knew." And in the case of general prevention of sexual assault in the home setting, *Margaret W.* noted that prior cases required actual notice of the assailant's deviant propensities. (See *Romero v. Superior Court*, 89 Cal.App.4th 1068, 1088-1089 (2001) (scope of duty of care adults owe teens invited into their homes to protect them from sexual assault turns on actual, not constructive knowledge of propensity to commit assault).)

#### FORESEEABILITY AND PREVENTING CRIME

Turning to the issue of crime prevention, *Margaret W.* observed that the undisputed facts established that Kelley did not know any of the assailants; did not know that any of the assailants had propensities to commit sexual assault; and did not know whether any of them had ever been in any kind of trouble. As a result, "the rape was not foreseeable under the heightened foreseeability standard. That means that [Kelley] had no duty to take burdensome steps to prevent a conceivable rape from happening."

#### FORESEEABILITY AND RESPONDING TO CRIME

Taking its cue from *Delgado*, *Margaret W.* further acknowledged, "[T]he question remains whether a sexual assault was sufficiently foreseeable based on what [Kelley] actually knew to impose a duty on [her] to take the less burdensome steps [Margaret] suggests ... such as telephoning [Margaret's] parents, 911 or a taxi company." *Margaret W.* recognized that Kelley knew or could infer that Margaret had been drinking, and was probably drunk. Kelley also knew that Margaret left her home voluntarily and "went to party with a bunch of people" and was at a "big group party." But Kelley also knew that Margaret was with Lauren and that she had access to a phone and was able to use it.

Importantly, "because [Margaret] had chosen to leave [Kelley's] house, [Kelley] could not observe what was happening." Therefore, unlike *Delgado*, the only information Kelley received during the phone call was what Alexis relayed to her, and all

that Alexis relayed to her was that Margaret and Lauren wanted to return. In *Delgado*, "it was far more than merely conceivable that a criminal assault would occur based on what the defendants actually knew and could see." In contrast, Margaret admitted that when she called Alexis, she did not feel physically or sexually threatened by the boys she was with — she and Lauren were enjoying themselves. As a result, there was no duty because "there was nothing suggestive of an imminent assault unfolding in front of [Kelley] to which she could respond." For want of a few phone calls that any number of people could have made, a tragedy might have been averted. But the rape was not foreseeable based on what Kelley knew at the time.

#### PROXIMATE CAUSE AND CIVIL CODE §1714

Homeowners are also protected from ordinary negligence claims by far-reaching immunity from liability arising from furnishing alcohol to guests. Civil Code §1714(b) states, in pertinent part: "It is the intent of the Legislature ... that the furnishing of alcoholic beverages is not the proximate cause of injuries resulting from intoxication, but rather the consumption of alcoholic beverages is the proximate cause of injuries inflicted ..." As the Supreme Court put it, where the "essence of the allegations" is that defendant either caused plaintiff to be drunk or permitted plaintiff to be drunk, the defendant is immune from any harm that follows. (*Cory v. Shierloh*, 29 Cal.3d 430, 436-437 (1981) (emphasis added).) In *Cory*, plaintiff got drunk at a party and later in the evening lost control of his vehicle and was seriously injured. Plaintiff sued the party hosts, but in sustaining demurrers based on the immunity, the high court held that "By legislative mandate the consumption of alcoholic beverages is the proximate cause of injuries resulting from intoxication ..." (emphasis added).

Since *Cory*, appellate courts have rejected creative attempts to plead around the sweeping immunity. (See e.g., *Elizarraras v. L.A. Private Security Services*, 108 Cal.App.4th 237 (2003) (rejecting claim that special relationship between patrons of restaurant and security guards provides independent basis for negligence claims not barred by immunity); *Zieff v. Weinstein*, 191 Cal.App.3d 243,

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246-250 (1987) (rejecting injured passenger's claims that party hosts "negligently supervised" other guest, allowing him to become intoxicated, and thereafter drive away from the premises thereby breaching duty not covered by immunity); *DeBolt v. Kragen Auto Supply*, 182 Cal.App.3d 269, 273-274 (1986) (rejecting claim that negligence was not based on furnishing alcohol or allowing its consumption but by subsequently ordering an obviously drunken guest to leave).) No case has extended the immunity to third-party crimes such as rape, and *Margaret W.* did not reach the issue. However, when drunkenness is involved, such protection appears consistent with the broad grant of immunity the Legislature intended.

In *Margaret W.*, the court observed that teenagers are forever trying to experiment in physical intimacy and that parents are forever trying to prevent such experiments. Alcohol, unfortunately, is often the catalyst. Fortunately, when all else fails, the law in California provides considerable protection from civil liability. Let's hope you won't need it next time you leave your teens home alone.

*Gary A. Watt, of counsel at McNamara, Dodge, Ney, Beatty, Slattery, Pfalzer, Borges & Brothers, handles appellate matters and complex litigation. Gary is also an adjunct professor at Hastings College of the Law, where he teaches appellate advocacy. He can be reached at gary.watt@mcnamaralaw.com.*