DRUNK IN PUBLIC

I got a call from a client who couldn’t believe he was arrested for Drunk in Public Charge. He stated that he drank a couple of soju with a friend at his home. Feeling a somewhat tipsy, the client and his friend decided to take a walk outside to shake off the alcohol. As they were walking, a police officer stopped them and started asking them questions. Next thing you know, the officer states that he smelled alcohol from their breath, asked if they had been drinking, and when the client answered “yes”, arrested them for Drunk in Public. “How,” the client fumed, “could they do that when I didn’t anything wrong?”

Unfortunately, I had to tell the client that if you’re drunk and go outside in public, you are at risk for being arrested for Drunk in Public. For example, if you drink at a restaurant, come outside to smoke a cigarette, you can technically be arrested for Drunk in Public. There is one reported Virginia case in which a person was arrested for Drunk in Public when he was caught drinking beer in his own back yard that was exposed to public view.

Of course, before you are questioned by a police officer, the officer has to have some probable cause to stop you. In the above example, the client was walking with his friend at 2:00 AM in a residential area when the street was deserted. That could give probable cause to a police officer who may have been called to patrol the residential community because of a recent round of burglary in the area. In the example with the restaurant, someone coming out of a restaurant known to serve alcoholic beverage to grab a smoke is just asking for trouble.

Drunk in Public is a Misdemeanor Four (4) charge which carries no jail term and only a fine of $250. If this is your first offense, the charge could be dropped or, most likely, your fine will be reduced. However, Drunk in Public is a criminal offense and the fact that you were charged with this crime will remain with you forever. For those of you who are not U.S. citizens, a record of alcohol related charges (Drunk in Public, Drunk Driving, etc.) could raise a flag to the immigration officials that you have a substance abuse problem.

In most instances, the police officers are not chasing after someone solely to charge them with Drunk in Public. Usually, a person is charged with Drunk in Public along with DWI, Trespass, or Assault/Battery, because alcohol is always involved in these types of situation. For example, it is not uncommon to have clients who are charged with DWI and Drunk in Public because they were found in their car sleeping in the middle of the night by the side of the road. In this instance, the defense attorney will attempt to have his client plea guilty to Drunk in Public in exchange for dropping the DWI. Not surprisingly, the prosecutor will want to do the opposite. Depending on the facts of the situation, a defense attorney may get the Drunk in Public.

An example of this is when one of my client was charged with Trespass and Drunk in Public. He was so drunk that he walked into someone’s house thinking that it was his mother’s and
banged the door and shouted out loud to let him in. The homeowner knew my client was drunk but was alarmed and called the police. The officers came and arrested my client with Trespass and Drunk in Public.

Trespass is a Misdemeanor One (1) charge and is punishable by maximum of one year jail time. My client had a prior felony record and if convicted of Trespass he was guarantee to serve some jail time. But in order to prove Trespass, the prosecutor had to prove that the property owner told my client to leave because “notice” to the trespasser that he is not welcomed is an important element of Trespass. Because the owner simply called the police without any warning, we were able to show that the notice was lacking and have the Trespass charge dismissed. Of course, in order for our theory to work we had to admit that my client was drunk. So we did not fight the Drunk in Public and accepted the fine of $250.

That is not to say that you should go around drunk and bang on someone else’s door. Trespass is a serious criminal charge and the owner has a right to use deadly force if he feels that you are about to enter his house and fears for his safety. However, I use the above example to illustrate that Drunk in Public is usually accompanied by other charges.

Remember, there is nothing wrong with a little alcohol to celebrate an event or a glass wine with your dinner. But if you drink to a point of intoxication, think twice before you step out into the public.