

CONSTITUTIONAL ISSUES IN JUVENILE CRIMINAL CASES

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I. SEARCH AND SEIZURE ISSUES

A. BASIC LAWS

1. The Fourth Amendment: Prohibits unreasonable searches and seizures and requires warrants to be based upon probable cause.
2. When The Fourth Amendment Applies
 - a. Government action required. Burdeau v. McDowell, 256 U.S. 465 (1921).
 - b. Breach of an expectation of privacy. Katz v. United States, 389 U.S. 347 (1967).
 - c. Standing—Only those whose Fourth Amendment rights have been violated may challenge searches and seizures. Rakas v. Illinois, 439 U.S. 128 (1978).
 - d. Consent
 - i. A police search pursuant to consent does not implicate the Fourth Amendment. Schneckloth v. Bustamonte, 412 U.S. 218 (1973). The consent must be voluntary, and “voluntariness is a question of fact to be determined from all the

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circumstances.” Ohio v. Robinette, 519 U.S. 33 (1996).

ii. Consent will also be considered where police obtain such from a third party who police reasonably, but mistakenly, believe has common authority. Illinois v. Rodriguez, 497 U.S. 177 (1990).

iii. Apparent Authority. U.S. v. Matlock, 415 U.S. 164 (1974); Georgia v. Randolph, 547 U.S. 103 (2006).

3. Investigative Detentions Under Terry v. Ohio, 392 U.S. 1 (1968).

4. Arrests

a. Probable Cause. Atwater v. City of Lago Vista, 532 U.S. 318 (2001).

b. Search Incident to Arrest. United States v. Robinson, 414 U.S. 218 (1973).

5. Search Of Cars

a. No warrant needed. Carroll v. United States, 267 U.S. 132 (1925).

b. Search of car incident to arrest. Arizona v. Gant, 556 U.S. 332 (2009).

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B. LAWS SPECIFIC TO JUVENILES

1. School Athletes—Vernonia School Dist. 47J v. Acton, 515 U.S. 646 (1995): Drug testing without any suspicion is allowed.
2. School Extracurricular Activities—Board of Education v. Earls, 536 U.S. 822 (2002): Requiring drug tests before participation in school activities is allowed.
3. Searches Of Students In General—New Jersey v. T.L.O., 469 U.S. 325 (1985): Students have "legitimate expectations of privacy" but that must be balanced with the school's responsibility for "maintaining an environment in which learning can take place."
4. Strip Searches—Safford Unified School District v. Redding, 557 U.S. 364 (2009): The Supreme Court held that, although school officials had reasonable suspicion that the student had over-the-counter pain medication, the strip search was not justified under the Fourth Amendment. The Court found that the backpack search was appropriate but that the next stage was not because of the object of the search. The Court made it clear that these types of searches are not always illegal. It is just that the school must have a compelling reason to conduct such a search (for example, looking for an object that may cause immediate harm).
5. Searches Of Rooms—U.S. v. Matlock, 415 U.S. 164 (1974); Georgia v. Randolph, 547 U.S. 103 (2006); Glenn v. Commonwealth, 275 Va. 123, 654 S.E.2d 910 (2008).

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C. EXCLUDING THE EVIDENCE

1. The Exclusionary Rule—Wong Sun v. United States, 371 U.S.471 (1963): Fruit of the poisonous tree doctrine.
2. Exceptions To The Exclusionary Rule
 - a. Inevitable Discovery. Nix v. Williams, 467 U.S. 431 (1984).
 - b. Independent Source. United States v. Crews, 445 U.S. 463 (1980).
 - c. Good Faith Exception When Search Warrant Is Involved. Leon v. United States, 468 U.S. 897 (1984).
 - d. Balancing Test. Herring v. United States, 555 U.S. 135 (2009) and Utah v. Strieff, 579 U.S. ____ 136 S.Ct. 2056 (2016).

II. CONFESSION ISSUES

A. BASIC LAWS

1. Confessions And The Due Process Clause
2. Confessions And The Fifth Amendment
 - a. Miranda v. Arizona, 384 U.S. 436 (1966).
 - i. Prior to undergoing custodial interrogation, suspect must be advised of his rights.
 - ii. Two requirements before Miranda applies.

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- b. Custody—The person’s age and inexperience are not factors in determining whether the person is in custody. Yarborough v. Alvarado, 541 U.S. 652 (2004).
- c. Interrogation
- d. When the defendant invokes the right to remain silent, the police must cease questioning but may approach the suspect later if they “scrupulously honored” his “right to cut off questioning.” Michigan v. Mosley, 423 U.S. 96 (1975). The factors that are to be considered when determining whether the police may re-initiate the interrogation are
- e. When the defendant invokes the right to counsel, all questioning must stop and may not resume until counsel is present. Edwards v. Arizona, 451 U.S. 477 (1981); Minnick v. Mississippi, 498 U.S. 146 (1990).
- f. Exceptions To Miranda
 - i. Public Safety. New York v. Quarles, 467 US. 649 (1984).
 - ii. Impeachment. Harris v. New York, 401 U.S. 222 (1971).
- g. Other Issues Involving Custodial Interrogation.
 - i. What the defendant does not know will hurt him. In Moran v. Burbine, 475 U.S. 412 (1986), the Court

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said that it was not a violation of constitutional rights when the police did not tell the defendant that his attorney was trying to reach him and continued interrogating the defendant.

- ii. Miranda rights may be waived but must be done so voluntarily.

3. Confessions and the Sixth Amendment

B. LAWS SPECIFIC TO JUVENILES

1. Voluntariness Factors Set Out In Grogg v. Commonwealth, 6 Va. App. 598, 371 S.E.2d 549 (1988).
 - a. Age
 - b. Experience in dealing with the police
 - c. Education
 - d. Background and Intelligence
 - e. Parent being present helps but not required
2. The Above Factors Apply To Other Issues, Such As Whether In Custody for Miranda Purposes. J.D.B. v. North Carolina, 564 U.S. 261 (2011).
3. Factors That Do Not Necessarily Keep Out Statement But Are Still Relevant To Voluntariness Issues
 - a. Police Ruse
 - b. Police Don't Tell Parent

III. OTHER ISSUES

A. PROCEDURAL ASPECTS OF RAISING CONSTITUTIONAL ISSUES

1. Raising Suppression Of Evidence Issues In The Circuit Court.

The written motion and seven day mandates of §19.2-266.2

2. Raising Suppression Of Evidence Issues In The Juvenile Court

a. § 19.2-266.2 does not apply.

b. But defense counsel may still want to raise issue by written motion to avoid continuance by the Commonwealth.

B. STANDARDS OF PRACTICE FOR JUVENILE DEFENSE COUNSEL

1. Standards of Practice for Indigent Defense Counsel, available at

The Virginia Indigent Defense Commission website

(indigentdefense.virginia.gov), has a special section devoted to representing juveniles.

2. Both the general Standards of Practice and the special section on juvenile representation (pages 37-58) should be reviewed.

3. Of special importance are the following:

a. “Zealous and effective representation” is “the primary and most fundamental obligation” of defense counsel.

b. Counsel must have the requisite training and experience before undertaking the representation of a juvenile.

c. Juvenile clients have the same constitutional rights as adult clients.