

Consent Searches of Minors: Building your best argument

Juvenile Defender Training

August 15, 2014

Session: Defending Against Consent Searches of Minors

I. Applicable Test for Consent Searches under Totality of the Circumstances

Brief review of standard under *Schneckloth v. Bustamonte* 412 U.S. 218, 223-224 (1973) and ensuing case law.

II. Treatment of Youth Factor by Courts and Useful Case law

A. Trend by Courts for Treatment of Youth in Consent Search Context

B. Return of the Youth Factor: Incorporating current discussion of Youth based upon *J.D.B.*

C. Key helpful case examples in demonstrating a Fourth Amendment violation for a consent search of a minor:

In re J.M., 619 A.2d 497, 501–02 (D.C.1992) (en banc) (remanding and requiring discussion about the role of age in a fourteen year old's ability to voluntarily consent to a search).

Washington v. K.C.S. O'Meara, 144 Wash. App. 1035 (2008) (suppressing consent to search a minor's backpack that occurred apart from the school setting). Officer coercion present probably even absent youth but good example for backpack off school premises.

E.J. v. State, 40 So.3d 922, 924 (Fla. Dist. Ct. App. 2010) (reversing trial court which failed to discuss age, prior experience with the law, and the fact that the child did not know that she could refuse a search in considering constitutionality of a search and whether child consented).

In re Daijah D., 2011 WL 3189331 (N.Y. App. Div. 1st Dept.), 2011 Slip Op. 06085 (unanimously reversing on the law, granting motion to suppress, and dismissing petition; held that fourteen-year-old girl did not legally consent to search of her purse and noted the lower court's failure to consider age and other relevant subjective factors);

Post *JDB*:

State v. Butler, 302 P.3d 609, 612-613 (Ariz. 2013) (en banc) (discussing *J.D.B.* and using it in support of the importance of age in the consent context and finding involuntary consent by sixteen-year-old).

In re J.G., 2014 WL 3686362 (Cal. App. Ct. 2014) (finding a seizure related to subsequent consent search and providing useful discussion of *JDB*).

On Related Seizure Question:

In re I.R.T., 184 N.C. App. 579, 584, 647 S.E.2d 129, 134 (2007). “Thus, we hold that the age of a juvenile is a relevant factor in determining whether a seizure has occurred within the meaning of the Fourth Amendment.”

III. Relevant Questions and Current Case Examples Discussion

Note: Many of these are questions are also relevant to seizure and to our discussion of consent. This non exhaustive list provides examples of factors that have been discussed or highlighted in various cases applying to juveniles and otherwise.

1. Was the child seized or detained at the time of the consent/request? Was there a legal basis for the seizure? *See In re J.G.*, 2014 WL 3686362 (Cal. App. Ct. 2014).
2. Could the child have left the area with ease or were there any obstacles to departure? (Example: at school? passenger in car?).
3. How many officers were present? Likewise, how many vehicles? Police dogs?
4. How many of those officers approached the child?
5. Any weapons drawn or visible during the encounter?
6. Who else was present? Was the child with another adult or child? Did the other person respond in any manner to the police command/request? (Example: teacher present?).
7. What time of day or night was it?
8. Where was the physical location and precise physical location of the child relative to the officer/s?
9. Was the child asked more than once for consent to search? Did more than one officer speak to the child?
10. What other kinds of questions did the officer ask the child at the time? For example, were questions expressing suspicion of criminal activity during the encounter and prior to the request?
11. Did the officer inquire about immigration status?
12. What was the precisely statement or question by the officer and what was the tone of voice? (i.e., was it in the form of a question or a statement).

13. Did the child provide a verbal answer to the officer?

14. Has the child ever been arrested before?

IV. Note:

For a more in depth discussion of any of these points or cases, please see Megan Annitto, *Consent Searches of Minors*, 38 N.Y.U. REV. OF LAW & SOC. CHANGE 1 (2014). Please also feel free to contact me at: mannitto@charlottelaw.edu