

Preparing and Litigating Suppression Motions in School Cases in Delinquency Court

Introduction: Unlike the Criminal Procedure statutes that govern Criminal Court, suppression motions and the details for litigating them are not specifically addressed in the Juvenile Code. However, the Code contemplates them (and we **MUST** keep filing and arguing them) by assuring juveniles due process of law and all rights afforded to adult defendants with the exception of jury trials and bond. Motions to suppress can and should be filed in felony and misdemeanor cases. Even if counsel does not prevail, a vigorous, but not frivolous, motions practice will result in better offers and dispositions for our juvenile clients and ultimately could impact policies and procedures in the schools. Although there is a troubling increase in the involvement of schools and school employees to investigate crimes that occur outside the school, this presentation will focus solely on the investigation of school-related incidents.

- I. Obtaining the information you need for suppressions issues in school cases.
 - A. Interview client and family – circumstances of the search/seizure or taking of the statement; parties involved; details of what said/occurred.
 - B. Investigation – request school records; interview school employees who were present; interview students who may have been present; talk to police/SRO involved.
 - C. Read discovery – and request supplemental discovery that might exist; talk to the DA before court.
 - D. If felony case – have a P/C hearing to obtain information unless there is a sanction in your jurisdiction for having such a hearing.

II. Preparing the Motion to Suppress.

- A. Motions to Suppress should be in writing – Delinquency Court is a court of record, unlike adult district court, so the best practice is to file suppression motions in writing. There is no trial de novo, just right of appeal to the Court of Appeals. Filing written motions alerts the Court and the State that serious constitutional issues exist and need to be considered. However, because the Code is silent, there is nothing to prevent counsel from making an oral motion to suppress if necessary.
- B. Motions should be filed prior to the date of the adjudicatory hearing – No specific timeliness rules in the Juvenile Code, but be aware of Local Rules. Good practice is to file soon after receipt of discovery.
- C. Format – Must cite the specific grounds for relief; must cite U.S. and N.C. Constitutions (for search and seizure issues – 4th and 14th Amendments and for statements – 5th, 6th and 14th Amendments. And Due Process Clause); Cite any relevant case law and statutory authority, particularly 7B – 2101 which contains the additional requirements of parental notification where there is custodial interrogation in juvenile cases; Can prepare it in affidavit format or more general motion format (see samples in handouts); Request an evidentiary hearing in the motion – better practice is to ask for it to occur prior to the adjudicatory hearing as opposed to conducting a voir dire when the State seeks to introduce the evidence.

** Remember – The motion can be denied (or much less likely, granted) without a hearing, so practice should be to be as specific as possible in the motion.
- D. Must be filed with Clerk and then served on the State. You can also leave a courtesy copy with the Judge.

III. Litigating the Motion to Suppress.

- A. Subpoena witnesses you may need.

- B. Prepare your client and any witnesses to testify. In an interrogation case, client may need to be able to articulate the coerciveness of the situation to establish that it was in fact the functional equivalent of custodial interrogation. On the due process issue of voluntariness of the statement or consent or to determine the reasonableness of the actions, the client may have to articulate what the officer, SRO or school official did or said.
** But, don't call client if you don't need to.
- C. Order transcript of P/C Hearing or get tape if needed to impeach a witness.
- D. State has the burden of showing the evidence was obtained by lawful means. This means that they are required to call witnesses and do direct examinations to meet their burden. Counsel will be able to cross-examine these witnesses. Defense does not have any burden to present evidence, but in many cases it may be necessary to rebut the State's case.
- E. Watch for hearsay issues during direct examinations. The Rules of Evidence still apply.
- F. Cross-examination of SRO's, police and school officials is particularly important. In search and seizure and interrogation cases – want to show a state actor is involved such as a police officer or SRO, who is also a police officer. If can do this, then stringent 4th, 5th and 6th Amendment principles apply and where there is questioning and the equivalent of custody, 7B – 2101 applies. To establish this, lay the foundation on cross that SRO is in fact a police officer – trained and paid by police department, wears uniform, performs law enforcement duties, carries weapon, etc, and that he was investigating a crime, not just a disciplinary issue. To establish the equivalent of “custodial interrogation”, cross on the setting of the interrogation, restraint on client's freedom, use of handcuffs, threats to client, etc. To establish the lack of voluntariness of a statement or consent, cross on the details of what was said, the age and level of functioning of child, the coercive and intimidating nature of the scene, etc. To establish that the actions were unreasonable, cross on the particularity of the suspicion, whether client's actions justified the suspicions and actions

taken, whether the actions were narrowly-tailored to the threat or need, etc.

** Remember that each case is fact specific and you should distinguish the facts in your case from any bad case law.

IV. After the Motion.

- A. If you win, may need to seek a recusal of the Judge. But there may be good reason not to seek this. The State may or may not still have a case if you prevail on your motion. If they do, be vigilant about ensuring that the evidence does not come in if a different judge hears the trial or a different DA is present for the trial.
- B. If you lose (and you probably will), preserve the suppression issue for appeal – If your client pleads, put in the plea transcript that your client is reserving the right to appeal the suppression issue; file a motion to put in the file stating this; safest route is to proceed to the adjudicatory hearing and object when the State seeks to introduce the evidence – state grounds; continuing objection will not be sufficient.

