

FORENSIC EXERCISE

Role of Youth Defense Counsel

FACT PATTERN

You have been appointed to represent Charles, a 15-year-old Black boy who has been charged with Possession with Intent to Distribute cocaine. Charles was stopped, searched, and arrested at the intersection of 1st and Main Streets after trying to run away from police. This is Charles's first contact with the delinquency system, and on the day of his arraignment, Charles identifies his father as his guardian. Charles is released to the custody of his father with the condition that the young man not engage in any criminal activity, abide by curfew, stay away from a one-block radius of 1st and Main Streets, attend school regularly, and not associate with anyone who has a criminal record or engages in bad acts.

During your first post-arraignment interview with Charles – which he insisted be done at a McDonalds – you see that Charles has a black eye. Charles tells you that his mother died in childbirth and that Charles was actually raised by his aunt and his older sister. He admits to you that he lied about his father being his legal guardian because he did not want to tell his aunt about the arrest. Charles insists that you not contact his aunt or his sister and tells you that he will be living with his father. Charles has been in increasing conflict with his aunt and sister who recently discovered that he has been skipping school to hang out with his father. Charles loves his aunt and sister very much, and this is the first time he has had any conflict with either of them. He admits that he is very sad about that.

With a release signed by Charles and his father that they gave you at the arraignment, you also obtain a copy of Charles's school records and begin to review Charles's social history. You learn that up until the start of the prior academic year Charles was an A-B student, had almost perfect attendance and was clearly college-bound. Teachers described him as

obedient, polite and respectful at school and reported that he was a star on the track team. This academic year, Charles has missed many days of school, never showed up for the first day of track practice despite repeated calls from the coach and is failing all classes due to mandatory attendance policies.

Your client gives you permission to meet with his father. You make an appointment with the father who is very nice on the phone. When you arrive, Charles's father is not home but the father's girlfriend is there, and she is obviously drunk. The girlfriend tells you that she knows you are Charles's lawyer and that his father will be back in a little while. As you sit down to wait for the father to return, the girlfriend begins telling you that Charles's father is at his "other house up on Main Street." During the conversation, you come to strongly suspect that father runs a house from which drugs are sold. When you ask the girlfriend how Charles and his father get along, you learn that the father has recently coerced Charles into selling drugs. The night after Charles got arrested, his father punched him "for getting caught by the police." The girlfriend says that the father "likes to beat up on Charles to make him a man, but it's all in love." She tells you that the father calls Charles a "punk" for running track and describes the father as Dr. Jekyll in one minute and Mr. Hyde the next.

When Charles's father gets home, he tells the girlfriend to go to the bedroom. He is very nice to you, but he tells you that you really don't need to meet with Charles anymore because he will be telling you how to handle Charles' case. Charles' father is adamant that he knows what is best for his son and knows how to navigate the system because he has been through it a few times himself. He then

instructs you that his son will be pleading guilty and will be living with him.

Despite the father's admonition, you go out and find your client again: on the corner of 1st and Main Streets. You remind him about the stay-away and non-association orders and carefully ask him about his relationship with his father. He tells you everything is great. You also ask him if his father has ever hit him. He very calmly tells you "no," his father has never hit him. When you ask him about the black eye, he tells you he got into a fight with a kid at school. It is clear that Charles loves his father, strives for his attention, and is intensely loyal to him. He also tells you that you should call his father if you want any more information about the case and that you don't need to investigate the allegations or file any motions in this case because he will be pleading guilty.

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1. *Have you violated any ethical rules by going out to find your client despite the father's instruction not to?*

2. *What if you had been hired by Charles's father, rather than having been appointed by the court? Have you now violated any ethical duties in talking to Charles over the father's objection?*

3. *Can you talk to Charles's aunt/sister?*

4. *Suppose that Charles's aunt and sister call Charles's school in an effort to locate him and find out if he is okay. The school tells them that you have visited the school to meet with Charles, and they give out your phone number. What do you do/say when the aunt calls and wants to know who you are and why you have been visiting her nephew at school?*

5. *Can you (must you) tell the court that Charles lied about his father being his legal guardian?*

6. *Can you report the abuse to a child abuse hotline? Can you have your intern place an anonymous call to the child abuse hotline? Does it matter that Charles denies any abuse by his father and insists that he wants to live with him?*

7. *It is clear that Charles will have difficulty complying with conditions of release if he continues to reside with his father, because his father is interfering with school attendance, insisting that he continue to sell drugs around 1st and Main Streets, and likely engages in "bad acts" himself. You know that Charles loves and misses his aunt and sister and believe that it would be "best" for him to live there. What can you do about it?*

8. *It is also clear that Charles would benefit from counseling and therapy, but he tells you he doesn't want to go, because he knows that his father will call him a "punk" again. Can you ask the court to order it?*

9. *Can you investigate the factual allegations in this case? What do you say when Charles tells you that his father told him to plead guilty?*

10. *Suppose you conduct some preliminary investigation and come to believe that the officers' bases for stopping Charles were an anonymous tip that someone was selling drugs near 1st and Main Street coupled with Charles' flight from police. Do you discuss the motion to suppress with Charles even though Charles has told you he wants to plead guilty? If you file the motion, should you argue that Charles' race is relevant to the court's determination of reasonable articulable suspicion?*

11. *Charles is adamant that he wants to live with his dad. Given his father's history and current employment, the non-association condition of release might impede Charles' ability to live with his father. What do you do about it?*