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*A Compendium of Essential Legal Principles
From His Opinions as a Justice on the West
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Juvenile Delinquency Law

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In order to permit tacking of successive adverse possession claims, the ultimate fact to be established is the intended and actual transfer or delivery of possession to the grantee as successor in ownership of such area not within the premises, as described in the calls of a deed, but contiguous thereto. Privity means privity of possession. It is the transfer of possession, not title, which is the essential element.²⁸⁰

VIII. JUVENILE DELINQUENCY LAW

A. *Questioning a Juvenile*

Interrogation of a juvenile was the subject of *State v. Sugg*.²⁸¹ *Sugg* stated, “[t]he absence of a parent or counsel when a juvenile waives his rights is not necessarily a bar to a voluntary Miranda waiver and ultimately a confession.”²⁸² Justice Cleckley held,

[w]here neither legal counsel nor the parents are present during interrogation, the greatest care must be taken by the trial court to assure that the statement of the juvenile is voluntary, in the sense not only that it was not coerced or suggested, but that it was not the product of ignorance of rights or of adolescent fantasy, fright, or despair.²⁸³

Moreover, “[t]he validity of a juvenile’s waiver of his or her rights should be evaluated in light of the totality of the circumstances surrounding the waiver, and the presence or absence of the parents is but one factor to be considered in reaching this determination.”²⁸⁴ Finally, it was said that

[t]he appropriate inquiry in regard to parental notification is whether, after a careful review of the record in its entirety, the reasons underlying the delay in notifying the parents, as agreed to

²⁸⁰ *Id.* at Syl. Pt. 3.

²⁸¹ 456 S.E.2d 469 (W. Va. 1995).

²⁸² *Id.* at Syl. Pt. 3.

²⁸³ *Id.* at Syl. Pt. 2.

²⁸⁴ *Id.* at Syl. Pt. 1.

by the juvenile, set forth a sufficient factual basis which support a finding that the delay was initiated or suggested by the juvenile and the police did nothing during the period of the delay to take advantage of the juvenile's youth and inexperience. If a juvenile affirmatively requests that his parents not be notified until after he talks to the police and this request is not coerced or suggested by the police, a juvenile cannot take advantage of that discrete period of time it takes to conduct the interview.²⁸⁵

B. Transferring Juveniles to Prison

The case of *State v. Harris*²⁸⁶ presented the issue of transferring a defendant from a juvenile facility to the state penitentiary without holding a pretransfer hearing as required by statute and prior case precedent. The initial question Justice Cleckley had to determine was whether a plea agreement entered into by the juvenile under the adult jurisdiction of the court rendered the statutory and case law transfer rights inapplicable. *Harris* responded to that question as follows:

The test for determining whether a departure from *State v. Highland*, 174 W.Va. 525, 327 S.E.2d 703 (1985), and W.Va. Code, 49-5-16(b) (1982), is permitted is two-fold: (1) Was the particular circumstance (the basis for the proposed departure) adequately taken into consideration at the time the plea agreement was accepted by the circuit court; and (2) If it was, were the plea and the plea agreement a knowing and intelligent waiver of the rights provided by *Highland* and W.Va. Code, 49-5-16(b). Thus, the most important inquiry is whether there is evidence of a knowing and intelligent waiver.²⁸⁷

Justice Cleckley reached the ultimate issue by holding that “[e]xcept in specific, well-defined circumstances, a pretransfer hearing pursuant to W. Va. Code, 49-5-16(b) (1982), is not necessary when all the significant information is already in the breast of the circuit court and there is no significant dispute between the

²⁸⁵ *Id.* at Syl. Pt. 4.

²⁸⁶ 464 S.E.2d 363 (W. Va. 1995).

²⁸⁷ *Id.* at Syl. Pt. 1.

parties as to the accuracy and relevancy of the information.”²⁸⁸

C. *Taking Juveniles into Custody*

The case of *State v. Todd Andrew H.*²⁸⁹ required that Justice Cleckley clarify the statutory procedure for taking a juvenile into custody without a warrant or court order:

Under W. Va. Code, 49-5-8(b)(3) (1994), a juvenile may be taken into “custody” without a warrant or court order if the law enforcement official has reasonable grounds to believe the child is a runaway without just cause from the child’s parents and the health, safety, and welfare of the child is endangered. Thus, the mere fact that a juvenile is a runaway is insufficient to take a child into custody without a warrant or court order. The arresting officer also reasonably must believe the runaway’s health, safety, and welfare are also in jeopardy. To satisfy this latter requirement, there must be objective evidence that the juvenile: (1) was behaving in a self-destructive way; (2) was exposed to imminent physical harm; (3) was under the influence of drugs or alcohol; or (4) was incoherent and confused. In the absence of these types of circumstances, an officer should either obtain an arrest warrant or court order or deliver the juvenile to his or her parents.²⁹⁰

IX. LAWYER DISCIPLINARY LAW

The case of *Lawyer Disciplinary Board v. Vieweg*²⁹¹ required creating a middle ground when a recommendation conflict exists between the Office of Disciplinary Counsel and the Hearing Panel Subcommittee:

Where a conflict exists between Disciplinary Counsel and the Hearing Panel Subcommittee of the Lawyer Disciplinary Board with regard to the recommendations concerning a petition for

288 *Id.* at Syl. Pt. 2.

289 474 S.E.2d 545 (W. Va. 1996).

290 *Id.* at Syl.

291 461 S.E.2d 60 (W. Va. 1995).