

Juvenile Training Immersion Program:

Lesson 18 – Principles of Motion Practice (Washington)

FORENSIC EXERCISE

Identifying Motions and Making Strategic Decisions

Please review the case file below for your client, Mark Mendez. The file contains a police report, a voluntary statement from Mark and a summary of your interview with Mark at the detention center. As you read the materials, think about all the possible motions that could be filed in this case based on the facts provided. Prepare to answer the following questions:

1. What are the potential legal issues/motions to be litigated in this case?
2. When should they be raised and why?
3. Which should be in writing and which should be oral?
4. Should you request an evidentiary hearing?

CASE FILE

Client: Mark Mendez

Charges: Possession with Intent to Distribute Cocaine; Possession of Cocaine

Police Report written by School Resource Officer Jeffrey McHale:

On April 3, 2017, an anonymous tipster reported to Rogers High School's principal through a tip hotline that two males were selling small bags of cocaine from one of the dugouts at the high school baseball field. The principal notified Reporting Officer McHale (RO). RO, the principal and teacher Jack Halder proceeded to the high school baseball diamond after the last period of school. RO viewed a male subject, now known as Mark Mendez, sitting on a bench in the home team dugout. As RO approached, Mendez stood and began walking in the opposite direction. RO announced his office and ordered Mendez to halt. Mendez complied. RO, along with the principal and Halder, approached Mendez and ordered him to empty the contents of the jacket he was holding in his left hand. Mendez complied and produced two small clear plastic bags of suspect cocaine.

RO conducted a protective pat down and then proceeded to question Mendez. Mendez denied knowing where the drugs in his pocket came from and refused to answer any further questions. RO, Mendez, the principal and Halder relocated to the principal's office. RO temporarily left to allow the principal and teacher to question Mendez. RO was summoned by the principal a few minutes later and informed that Mendez had made an admission. Mendez admitted that he had received the drugs from Johnny Lopez, who is known to this RO as someone who has been involved in drug sales in the past.

RO administered *Miranda* warnings to Mendez and then transported him to the Spokane Police Department, where Officer Jones presented him with a written *Miranda* form. Mendez then repeated the statements he provided earlier to RO and provided a written statement, which is attached to this report.

Clear and closed by arrest.

Signed: *Officer Jeffrey McHale*

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Voluntary Statement

Date: April 3, 2017 **Time:** 5:12 p.m. **Place:** Spokane Police Department

I, the undersigned, Mark Mendez am 15 years of age.

WARNING: Before you are asked questions, you must understand your rights.

I, Officer Jones, a person who has identified himself as a Spokane officer, warn you that:

1. You have the right to remain silent.
2. Anything you say can be used against you in either juvenile or adult court.
3. You have the right to the presence of an attorney.
4. If you cannot afford an attorney, one will be appointed before questioning.

WAIVER: I have read this statement of my rights and I understand what they are. I make this statement voluntarily, of my own free will, knowing that such statement could later be used against me in any court of law, and I declare that this statement is made without any threat, coercion, offer of benefit, favor or offer of favor, leniency or offer of leniency by any person or persons whomsoever.

*I was holding the drugs for Johnny, who asked me to sell them.
I wasn't going to sell them. I just wanted to get Johnny off my back.*

I have read this statement consisting of 1 page(s) and I affirm that the facts contained therein are true and correct.

This statement was completed at 5:20 am/pm on the 3rd day of April, 2017.

WITNESSES: Officer Jones, Officer McHale

TIME: 5:20 p.m.

PLACE: Spokane Police Department

Signature of person giving statement: Mark Mendez

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CLIENT INTERVIEW

You have been appointed to represent Mark. You represented Mark at the detention hearing, but the judge, who has been an outspoken champion of the war on drugs at schools, detained him. You interviewed Mark in the detention center. The following is a summary of what he told you:

Mark is co-captain of the high school baseball team. Just after the last period of school, Mark went to the dugout to retrieve his baseball jacket, which he had left there after a game the day before. He sat down on the bench to text his girlfriend that he was on his way to her place. He got up, stretched and began walking away from the field. As he was walking, he heard the School Resource Officer (Officer McHale) yell at him to stop. Mark turned and stopped. He watched as Officer McHale, the school principal and a teacher walked across the outfield toward him. When they reached Mark, Officer McHale told Mark to empty the contents of the jacket he was carrying. Mark complied. He pulled out some blank notebook paper, a lighter and two small bags of cocaine from the interior pocket of a school dugout uniform jacket. After taking the items, the officer told Mark to sit on the bench in the dugout. Tossing the baggies of powder in one hand, the officer stood directly in front of Mark. He told Mark that there had been a lot of complaints about people selling drugs at the baseball diamond, and he wanted to know what Mark knew about it. The following conversation took place between Mark and the officer while the principal and the teacher looked on:

Mark: “I don’t know anything about people selling drugs – I just play ball here.”

Officer McHale: “Well, maybe you can start by telling me about these baggies that were in your jacket.”

Mark: “I don’t know how those got there. I forgot my team jacket after a game and came back to get it. Someone must have thought this was their jacket or something. Anyway, I know I don’t

have to talk to you, so I am not saying anything else.”

The officer asked Mark to come with him to the principal’s office and led him there by the shoulder. The principal’s office is a small office with two chairs and a desk. The officer said something to the principal and teacher and then left the room. The teacher sat next to Mark and said, “Listen Mark, something like this could get you kicked off the baseball team. We don’t want that to happen. Why don’t you tell us who supplied you with the drugs, and we can work with Officer McHale to figure out how to handle this so you can stay in school and on the team.” Mark then said, “A friend of mine asked me to hold onto the bags for him. I didn’t want to. I wasn’t selling anything.” The teacher then opened the door and beckoned the officer into the room. The teacher turned to Mark and said, “OK Mark, tell Officer McHale what you just told us.” Mark did so. Officer McHale then asked Mark who gave him the drugs. Mark said, “Man, I ain’t no narc; if I tell you then I am going to put myself in a dangerous position.” The officer then said, “OK, well then I am going to have to take you into custody.” He then placed handcuffs on Mark and began escorting him out of the room. Mark then said, “OK, OK, it was Johnny Lopez – he has been asking a lot of people to sell. Now take these things off of me.” The officer said, “No can do, buddy. We are going to the station.” He then read Mark his *Miranda* warning and transported him to the station. On the way to the station, Mark asked if he could call his dad. The officer said, “Don’t worry, we will contact him.” Mark then asked, “Is there gonna be a lawyer or something at the station?” The officer said, “Just wait till we get to the station and we can talk to you about everything.”

At the station, Officer McHale sat him down at a desk with a different officer. The officer asked Mark for his address, phone number, date of birth and gang affiliation. Mark answered his questions and then asked if he could call his father, since he was supposed to meet him after school. The

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officer shrugged his shoulders and did not say anything.

After a few minutes, Officer McHale came back with another officer (Jones). McHale told Mark that they just needed to get some things straight with him. They took Mark to a small room and handcuffed him to a metal bench. They closed the door. Officer McHale sat on the other side of a table while Jones remained standing. Jones asked Mark if he could read, and then handed him something that had writing on it. Mark did not read it. Officer Jones did not ask Mark to read the paper out loud, nor did he ask him any questions about it. Officer Jones did not ask him to sign that paper. After a few minutes, Officer Jones held out his hand for the paper and asked Mark, “OK, do you understand your rights?” Mark did not answer. A second later, Officer Jones said, “I’m just going to ask you the same questions – just like you were asked before. All you have to do is tell the truth, just like before.” Mark told the officers that he was tired of talking and he just wanted to go home. Officer Jones said to him, “Well, you’re not gonna leave here until you go through the story one more time.” Mark just shrugged and looked down, at which point

Officer Jones slammed his (officer’s) hand on the table and yelled, “Damn it kid, I’m tired of this, and I wanna go home. My shift ended an hour ago, so stop f---ing around and answer my questions.”

Mark then repeated what he had told Officer McHale at school. The officers then handed him a piece of paper with writing on it. They handed him a pen, pointed to a blank box on the paper and told him to write out what he had just told them. He did and then signed his name as instructed.

He remembers the police telling him something about a lawyer and being quiet, but did not understand that he did not have to talk to the officers. He thought he was supposed to tell them what he had said at school. Mark has never been arrested or questioned by police before. The officers never offered to have his dad in the station and kept putting him off when he asked to call his dad.

Mark was kicked off of the baseball team and expelled from school as a result of these charges.