

THIRD DEGREE COMMUNICATIONS, INC.

TRAINING BULLETIN: LEGAL UPDATE

Parental Consent

By Charles Gillingham

Your investigation reveals that a child at middle school in your beat is using the computer in his room to harass a girl in his seventh grade class. When you get to the home, the parents are completely cooperative and are more than willing to allow you to examine the computer and take it for forensic examination. You respond as every other officer I have taught responds, "Of COURSE a parent can consent to a search of their kid's room!" But is it true?

CONSENT BY PARENTS

You have to fall back on what you know about apparent authority. You can get valid consent to search from someone who has the right to access and control the area or thing you seek to search. The general rule is that either parent may give consent to the search of property or a bedroom of their child who lives in their home unless that child has exclusive control over the area. It is clear that there are no areas that are under the exclusive control of a young child, but that changes as the child gets older.

KID'S PROPERTY

When the child is a minor, the parent can give consent. It is the exceedingly rare case where the parent has given up access or control of an area of their home. The Supreme Court noted that the parent has the ability to give consent even when the child objects. (*Georgia v. Randolph* (2006) 547 U.S. 103.) But does the answer change when the object to be searched is the computer?

OLDER CHILD

Let's change the hypothetical for a moment and consider the case of the older or adult child living in their parent's home.

If you have a case with an older or adult child, the case for apparent authority is less clear. Remember, apparent authority presumes that the parents have the right to access and control the area they are giving consent to search. In the case of the older child or adult child you have to ask questions before you start searching.

You need to ask about the living relationship between the parent and child. If the situation resembles that of a landlord-tenant situation or a hotel/motel type of

arrangement you must proceed as if you were dealing with that type of situation. As you know, a landlord cannot give consent to search her rental property in control of a renter. If the parent, however, has accessed the room to clean it, or deposit laundry or otherwise can enter the area with impunity, that parent can give consent to search. (*People v. Daniels* (1971) 16 Cal.App.3d 36.)

CLOSED CONTAINERS

The computer in our initial example becomes more problematic because we must treat the computer as a closed container. Even though mom may come in the room to clean or deposit laundry; that does not give her the ability to consent to a search of a closed container. The *Daniels* court went on to say that the mother's authority over the room did not extend to a closed container in the room she had never accessed and therefore did not control. Reading *Georgia v. Randolph*, it seems as though a parent cannot give consent over the objection of their adult child if that child is present.

A BIG PROBLEM

Using our initial question of a middle school child and his computer or any closed container of an adult child as an example, we have a big problem. Does the parent have authority to give consent to search?

I can foresee a case where a court might rule that a minor as young as middle school has the exclusive right to access and control a computer or a portion of a hard-drive. In any case, with a computer or closed container of a minor you must ask some follow up questions before determining that mom has the ability to give you consent to search. Do you have access to the computer? Have you ever used the computer? Are there areas on the hard-drive that are password protected? Do you have the password? Have you ever accessed the password protected files or partitions? If the answers to these questions lead you to believe that the adult cannot access areas of the computer, you must go about getting authority to search that computer another way.

Chuck Gillingham is a veteran prosecutor and regular instructor for the California District Attorney's Association and the Federal Internet Crimes Against Children Task Force. Chuck also teaches Multidisciplinary Child Interviewing for Third Degree Communications, Inc.

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