Chicago-Kent Law Review

Volume 48 | Issue 1 Article 11

April 1971

Constitutional Law - Right to Trial by Jury - Appellants, Adjudged Juveniles in State Courts, Need Not Have Been Granted Trial by Jury Since Juvenile Court Proceedings Is Not a Criminal Trial

George Pappas

DISCUSSION OF RECENT DECISIONS

CONSTITUTIONAL LAW—RIGHT TO TRIAL BY JURY—APPELLANTS, ADJUDGED JUVENILES IN STATE COURTS, NEED NOT HAVE BEEN GRANTED TRIAL BY JURY SINCE JUVENILE COURT PROCEEDING IS NOT A CRIMINAL TRIAL.—In the recent case of *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971), the Supreme Court was confronted solely with the issue of a juvenile's right to trial by jury. The Court held that in the adjudicative phase of a state juvenile court delinquency proceeding a trial by jury is not constitutionally required.

The *McKeiver* decision consolidated the petitions of juveniles from both Pennsylvania and North Carolina. In number 322, the appellants were Joseph McKeiver and Edward Terry. McKeiver, age 16, was accused as a juvenile of larceny, robbery, and receiving stolen property, all felonies under Pennsylvania law. Terry, age 15, was charged as a juvenile with assault and battery of a police officer and conspiracy. The attorneys for both McKeiver and Terry requested jury trials at the adjudication hearing, but these requests were denied by the presiding judge. Both boys were adjudged delinquent on the charges. McKeiver was placed on probation and Terry was committed to a youth correction center. On appeal the superior court affirmed without opinion. The Supreme Court of Pennsylvania granted leave to appeal, consolidated the two cases, and held that the refusal of the juvenile court judges to grant a jury trial was not reversible error.

In number 128, Barbara Burrus and numerous other juveniles under the age of sixteen were charged with willfully impeding traffic. The entire group was represented in juvenile court by one attorney, who requested a jury trial and asked that the general public be allowed to attend the hearings.[1] Both requests were denied. At the conclusion of the hearings, each juvenile was declared delinquent and committed to a correctional institution. The court, however, then suspended the commitments and placed each juvenile on probation. On appeal both the North Carolina Court of Appeals[2] and subsequently the state supreme court[3] affirmed. The United States Supreme Court granted certiorari.

Of the arguments presented to the Court the one by the attorney representing Barabara Burrus seemed the strongest. Counsel for Burrus recognized the supposed benefits of the juvenile court system and asserted that the additional requirement of a jury trial would not hamper proceedings but would merely add a protective factor. If the Court were to find a constitutional need for a jury in cases involving juveniles, it would still be obligated to recognize the judicial distinction presently drawn between juveniles and adults. The age,

[1] According to North Carolina General Statutes, sections 110-24, the presiding judge may either exclude or allow the public to be present at the hearing.

[2] *In re Burrus*, 4 N.C. App. 523, 167 S.E.2d 454 (1969).

[3] *In re Burrus*, 275 N.C. 517, 169 S.E.2d 879 (1969).

maturity, and experience of the accused are relevant factors when determining guilt or innocence and means of correction.

Counsel for McKeiver attempted to show the similarities between procedures in a criminal trial and a juvenile hearing. He apparently wanted the Court to apply the holding in *Duncan v. Louisiana*[4] to the *McKeiver* case. In *Duncan* the sixth amendment right to trial by jury in criminal prosecutions was imposed upon the states through the due process clause of the fourteenth amendment. By likening the two proceedings counsel was probably hoping that the Court would overlook the age factor and strictly apply the right to a jury trial in criminal prosecutions. The Court, however, was not willing to ignore the age factor by equating juvenile proceedings to criminal proceedings.

The majority opinion was delivered by Mr. Justice Blackmun speaking for The Chief Justice, Mr. Justice Stewart, and Mr. Justice White. First, the Court noted the opinion of Justice Roberts of the Pennsylvania Supreme Court.[5] Justice Roberts' opinion dealt mainly with the landmark United States Supreme Court decision in *In re Gault*.[6] In *Gault* the court recognized that the end result of juvenile proceedings could be commitment to a state institution, and held that the individual's rights in judicial proceedings, whether he be an adult or juvenile, must be protected to insure that the essentials of due process and fair treatment are carried out. The court in *Gault* held that the basic constitutional guarantees, right to counsel, right to cross examination and confrontation, right to adequate notice of charges, and the right to be free from self-incrimination were essential in juvenile as well as in criminal proceedings.

As Justice Roberts stated in his opinion, and as was reiterated by the majority opinion here,

> [*Gault*] is somewhat of a paradox, being both broad and narrow at the same time; that it is broad in that it evidences a fundamental and far-reaching disillusionment with the anticipated benefits of the juvenile court system; that it is narrow because the court enumerated four due process rights which it held applicable in juvenile proceedings, but declined to rule on two other claimed rights.[7]

The sweeping reform in the juvenile system brought about by *Gault*, extended somewhat by the holding in *In re Winship*,[8] thus seems to be halted by the Court's holding in *McKeiver*. The juvenile hearing will afford those constitutional protections necessary to insure that fundamental fairness is carried out, but will not be extended further to a point at which it would become nothing more than the criminal prosecution of a juvenile offender.

[4] 391 U.S. 145 (1968).

[5] *In re Terry* and *In re McKeiver*, 438 Pa. 339, 265 A.2d 350 (1970).

[6] 387 U.S. 1 (1967).

[7] 403 U.S. at 537. The two other claimed rights not ruled upon were right to a transcript and the right to appellate review.

[8] 397 U.S. 358 (1970). Here the court held that the determination of guilt in juvenile proceedings was to be beyond a reasonable doubt and not by a preponderance of the evidence.

The Court refused to accept the argument of counsel for petitioner Burrus which called for a jury as a supplementary protective measure. Indeed, the Court even questioned the effectiveness of a jury as the ultimate factfinder. It took special notice of the fact that juries are not required in equity cases, workmen's compensation, probate or deportation cases. Since fundamental fairness, with emphasis on fact-finding procedures, has been assured in juvenile proceedings by the procedural safeguards established in *Gault*, a jury was unnecessary for additional protection. The Court said:

> The imposition of the jury trial on the juvenile court system would not strengthen greatly, if at all, the factfinding [sic] function, and would, contrarily, provide an attrition of the juvenile court's assumed ability to function in a unique manner. It would not remedy the defects of the system. Meager as has been the hoped-for advance in the juvenile field, the alternative would be regressive, would lose what has been gained, and would tend once again to place the juvenile squarely in the routine of the criminal process.[9]

Requiring a jury in juvenile cases probably would not aid greatly the fact-finding process, but one aspect of the jury system which definitely would help to guarantee fundamental fairness is the protection a jury offers against prejudice. In its opinion the Court noted that juvenile judges are in most cases aware of the past record of the offender, including the opinions of various social workers. In addition, since parole and probation officers are often in court, the mere sight of the same familiar faces could prejudge the offender in the minds of all present at the hearing. The Court responded indirectly to this problem of prejudice saying that the likelihood of prejudice "chooses to ignore, it seems to us, every aspect of fairness, of concern, of sympathy, and of parental attention that the juvenile court system contemplates."[10] Most assuredly sympathy and concern exist at many juvenile hearings, but this "parental attention" does not really prevent the juvenile charged from being prejudged. The presence of a jury, impartial in its observations and interested solely in the facts presented at the hearing, would surely seem to eliminate most of the prejudgement which could result from frequent visits to juvenile court.

Aside from the possibility of prejudice, other factors seem to support the growing amount of criticism leveled at the juvenile system. The Court, noting the results of a recent study by the President's Commission on Law Enforcement and the Administration of Justice, said:

> Too often the juvenile court judge falls far short of that stalwart, protective and communicating figure the system envisaged. The community's unwillingness to provide people and facilities and to be concerned, the insufficiency of time devoted, the scarcity of professional help, the inadequacy of dispositional alternatives, and our general lack of knowledge all contribute to dissatisfaction with the experiment.[11]

[9] 39 U.S.L.W. 4777, 4783 (U.S. June 21, 1971).
[10] *Id.* at 4784.
[11] *Id.* at 4782.

These shortcomings present numerous problems which seem to impede the effectiveness of the juvenile system. The question then is, would imposing a jury help in any way to solve this problem? The answer seems to be, no! Additional protection is not really needed. A jury probably would not aid the effectiveness of the juvenile judge or help to provide the facilities and professional help needed so desperately. The Court still envisioned an effective juvenile system and was willing to let the individual states try to improve the procedure:

> The juvenile concept held high promise. We are reluctant to say that, despite disappointments of grave dimensions, it still does not hold promise, and we are particularly reluctant to say, as do the Pennsylvania petitioners here, that the system cannot accomplish its rehabilitative goals. So much depends on the availability of resources, on the interest and commitment of the public, on willingness to learn, and on understanding as to cause and effect and cure. In this field, as in so many others, one perhaps learns best by doing. We are reluctant to disallow the States further to experiment and to seek in new and different ways the elusive answers to the problems of the young, and we feel that we would be impeding that experimentation by imposing the jury trial. The States, indeed, must go forward. If, in its wisdom, any State feels the jury trial is desirable in all cases, or in certain kinds, there appears to be no impediment to its installing a system embracing that feature. That, however, is the State's privilege and not its obligation.[12]

Having in effect rationalized the criticism aimed at the juvenile system, the Court then mentioned two factors which, although not dealt with in great detail, may have weighed heavily on the ultimate outcome of the case. The Court referred to the first factor as the "traditional delay." The majority of the members of the Court probably envisioned longer delays and more backlog on the court's calendar caused by the jury selection process. When fundamental fairness is at stake the problem of delay, although worthy of note, seems of secondary importance. The other factor referred to by the Court was "the formality and the clamor of the adversary system." The Court seemed to feel that the effectiveness of the juvenile judge would be seriously impaired, and his discretion limited, by formalizing the present procedure. Instead of being able to mold the proceedings and guide the juvenile, the judge would have to concern himself more with proper procedure. The formality and order would suggest the atmosphere of a criminal trial. The Court did not seem to want this result.

Mr. Justice Harlan concurred with the majority, but on different grounds. He did not feel that a criminal jury trial was required of the states by the Constitution, and therefore should not be required for juveniles. Mr. Justice Brennan concurred with the holding in number 322, but dissented in the North Carolina case. He felt there was no feature of the state's juvenile proceedings which could effectively protect petitioners against misuse of the judicial process, therefore, a public or jury trial was the only answer.

Mr. Justice Douglas was joined in his dissent by Mr. Justice Black and Mr.

[12] *Id.* at 4783.

Justice Marshall. They felt that since the end result of a juvenile hearing might be incarceration at a state institution, the proceedings were in effect criminal and a trial by jury should be afforded the offender. The dissent does not seem to recognize the main purpose behind the juvenile system and the reasons for distinguishing between an adult and juvenile offender. As Mr. Justice White so aptly stated in his concurring opinion:

> The criminal law proceeds on the theory that defendants have a will and are responsible for their actions. A finding of guilt establishes that they have chosen to engage in conduct so reprehensible and injurious to others and that they must be punished to deter them and others from crime. Guilty defendants are considered blameworthy; they are branded and treated as such, however much the State also pursues rehabilitative ends in the criminal justice system.
>
> For the most part, the juvenile justice system rests on more deterministic assumptions. Reprehensible acts by juveniles are not deemed the consequence of mature and malevolent choice but of environmental pressures (or lack of them) or of other forces beyond their control. Hence the state legislative judgment not to stigmatize the juvenile delinquent by branding him a criminal; his conduct is not deemed so blameworthy that punishment is required to deter him or others.[13]

GEORGE PAPPAS

CONSTITUTIONAL LAW—FIFTH AMENDMENT RIGHTS—DEFENDANT'S STATEMENT, OBTAINED IN VIOLATION OF MIRANDA SAFEGUARDS, CAN BE USED FOR IMPEACHMENT PURPOSES.—In *Harris v. New York*,[1] the United States Supreme Court held that evidence could be used for the purpose of impeaching the credibility of the defendant, even though that same evidence could not be used in the prosecution's case in chief. The information which Harris sought to have excluded had been obtained in violation of the Miranda safeguards.[2]

Harris was charged on a two-count indictment of selling heroin. At trial, an undercover police officer testified that Harris had sold him heroin on two occasions. A second officer verified details of the sale, and finally a third officer offered testimony about the chemical analysis of the heroin. Harris then took the stand and testified that all he sold the officers was baking powder. On cross-

[13] *Id.* at 4785.

---

[1] 39 U.S.L.W. 4281 (U.S. Feb. 23, 1971).

[2] Miranda v. Arizona, 384 U.S. 436 (1966). The Supreme Court set down minimum standards which must be exercised by law enforcement officials during custodial interrogation:

> Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently.