McKEIVER v. PENNSYLVANIA, 403 U.S. 528 (1971)

Argued December 10, 1970
Decided June 21, 1971 *

MR. JUSTICE BLACKMUN announced the judgments of the Court and an opinion in which THE CHIEF JUSTICE, MR. JUSTICE STEWART, and MR. JUSTICE WHITE join.

These cases present the narrow but precise issue whether the Due Process Clause of the Fourteenth Amendment assures the right to trial by jury in the adjudicative phase of a state juvenile court delinquency proceeding.

I

From previous cases, it is apparent that:

1. Some of the constitutional requirements attendant upon the state criminal trial have equal application to that part of the state juvenile proceeding that is adjudicative in nature. Among these are the rights to appropriate notice, to counsel, to confrontation and to cross-examination, and the privilege against self-incrimination. Included, also, is the standard of proof beyond a reasonable doubt.

2. The Court, however, has not yet said that all rights constitutionally assured to an adult accused of crime also are to be enforced or made available to the juvenile in his delinquency proceeding. Indeed, the Court specifically has refrained from going that far:

3. The Court, although recognizing the high hopes and aspirations of Judge Julian Mack, the leaders of the Jane Addams School and the other supporters of the juvenile court concept, has also noted the disappointments of the system's performance and experience and the resulting widespread disaffection. There have been, at one and the same time, both an appreciation for the juvenile court judge who is devoted, sympathetic, and conscientious, and a disturbed concern about the judge who is untrained and less than fully imbued with an understanding approach to the complex problems of childhood and adolescence. There has been praise for the system and its purposes, and there has been alarm over its defects.

4. The Court has insisted that these successive decisions do not spell the doom of the juvenile court system or even deprive it of its "informality, flexibility, or speed." On the other hand, a concern precisely to the opposite effect was expressed by two dissenters in Winship.

II

With this substantial background already developed, we turn to the facts of the present cases:

Joseph McKeiver, then age 16, in May 1968 was charged with robbery, larceny, and receiving stolen goods as acts of juvenile delinquency. At the time of the adjudication hearing he was represented by counsel. His request for a jury trial was denied. McKeiver was adjudged a delinquent upon findings that he had violated a law of the Commonwealth. He was placed on probation.

Edward Terry, then age 15, in January 1969 was charged with assault and battery on a police officer and conspiracy as acts of juvenile delinquency. His counsel's request for a jury trial was denied. This followed an adjudication and commitment in the preceding week for an assault on a teacher. He was committed, as he had been on the earlier charge, to the Youth Development Center at Cornwells Heights.

It suffices to say that McKeiver's offense was his participating with 20 or 30 youths who pursued three young teenagers and took 25 cents from them; that McKeiver never before had been arrested and had a record of gainful employment; that the testimony of two of the victims was described by the court as somewhat inconsistent and as "weak"; and that Terry's offense consisted of hitting a police officer with his fists and with a stick when the officer broke up a boys' fight Terry and others were watching.

Barbara Burrus and approximately 45 other black children, ranging in age from 11 to 15 years, were the subjects of juvenile court summonses issued in Hyde County, North Carolina, in January 1969.

The charges arose out of a series of demonstrations in the county in late 1968 by black adults and children protesting school assignments and a school consolidation plan. Petitions were filed by North Carolina state highway patrolmen. The petitions charged the respective juveniles with wilfully impeding traffic. The charge against Howard was that he wilfully made riotous noise and was disorderly in the O. A. Peay School in Swan Quarter; interrupted and disturbed the school during its regular sessions; and defaced school furniture. The acts so charged are misdemeanors under North Carolina law. A request for a jury trial in each case was denied.

The evidence as to the juveniles other than Howard consisted solely of testimony of highway patrolmen. No juvenile took the stand or offered any witness. The testimony was to the effect that on various occasions the juveniles and adults were observed walking along Highway 64 singing, shouting, clapping, and playing basketball. As a result, there was interference with traffic. The marchers were asked to leave the paved portion of the highway and they were warned that they were committing a statutory offense. They either refused or left the roadway and immediately returned. The juveniles and participating adults were taken into custody. Juvenile petitions were then filed with respect to those under the age of 16.

The evidence as to Howard was that on the morning of December 5, he was in the office of the principal of the O. A. Peay School with 15 other persons while school was in session and was moving furniture around; that the office was in disarray; that as a result

the school closed before noon; and that neither he nor any of the others was a student at the school or authorized to enter the principal's office.

In each case the court found that the juvenile had committed "an act for which an adult may be punished by law." A custody order was entered declaring the juvenile a delinquent "in need of more suitable guardianship" and committing him to the custody of the County Department of Public Welfare for placement in a suitable institution "until such time as the Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State." The court, however, suspended these commitments and placed each juvenile on probation for either one or two years conditioned upon his violating none of the State's laws, upon his reporting monthly to the County Department of Welfare, upon his being home by 11 p.m. each evening, and upon his attending a school approved by the Welfare Director. None of the juveniles has been confined on these charges.

IV

The right to an impartial jury "[i]n all criminal prosecutions" under federal law is guaranteed by the Sixth Amendment. Through the Fourteenth Amendment that requirement has now been imposed upon the States "in all criminal cases which - were they to be tried in a federal court - would come within the Sixth Amendment's guarantee." This is because the Court has said it believes "that trial by jury in criminal cases is fundamental to the American scheme of justice."

This, of course, does not automatically provide the answer to the present jury trial issue, if for no other reason than that the juvenile court proceeding has not yet been held to be a "criminal prosecution," within the meaning and reach of the Sixth Amendment, and also has not yet been regarded as devoid of criminal aspects merely because it usually has been given the civil label.

Little, indeed, is to be gained by any attempt simplistically to call the juvenile court proceeding either "civil" or "criminal." The Court carefully has avoided this wooden approach.

Thus, accepting "the proposition that the Due Process Clause has a role to play," our task here with respect to trial by jury, as it was in Gault with respect to other claimed rights, "is to ascertain the precise impact of the due process requirement."

V

The Pennsylvania juveniles' basic argument is that they were tried in proceedings "substantially similar to a criminal trial." They say that a delinquency proceeding in their State is initiated by a petition charging a penal code violation in the conclusory language of an indictment; that a juvenile detained prior to trial is held in a building substantially similar to an adult prison; that in Philadelphia juveniles over 16 are, in fact, held in the cells of a prison; that counsel and the prosecution engage in plea bargaining; that motions

to suppress are routinely heard and decided; that the usual rules of evidence are applied; that the customary common-law defenses are available; that the press is generally admitted in the Philadelphia juvenile courtrooms; that members of the public enter the room; that arrest and prior record may be reported by the press (from police sources, however, rather than from the juvenile court records); that, once adjudged delinquent, a juvenile may be confined until his majority in what amounts to a prison; and that the stigma attached upon delinquency adjudication approximates that resulting from conviction in an adult criminal proceeding.

VI

All the litigants here agree that the applicable due process standard in juvenile proceedings is fundamental fairness. As that standard was applied in those two cases, we have an emphasis on factfinding procedures. The requirements of notice, counsel, confrontation, cross-examination, and standard of proof naturally flowed from this emphasis. But one cannot say that in our legal system the jury is a necessary component of accurate factfinding. There is much to be said for it, to be sure, but we have been content to pursue other ways for determining facts. Juries are not required, and have not been, for example, in equity cases, in workmen's compensation, in probate, or in deportation cases. Neither have they been generally used in military trials

We must recognize, as the Court has recognized before, that the fond and idealistic hopes of the juvenile court proponents and early reformers of three generations ago have not been realized. The devastating commentary upon the system's failures as a whole, contained in the President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime 7-9 (1967), reveals the depth of disappointment in what has been accomplished. 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.

Despite all these disappointments, all these failures, and all these shortcomings, we conclude that trial by jury in the juvenile court's adjudicative stage is not a constitutional requirement. We so conclude for a number of reasons:

1. The Court has refrained, in the cases heretofore decided, from taking the easy way with a flat holding that all rights constitutionally assured for the adult accused are to be imposed upon the state juvenile proceeding.

2. There is a possibility, at least, that the jury trial, if required as a matter of constitutional precept, will remake the juvenile proceeding into a fully adversary process and will put an effective end to what has been the idealistic prospect of an intimate, informal protective proceeding.

4. The Court specifically has recognized by dictum that a jury is not a necessary part even of every criminal process that is fair and equitable.

5. The imposition of the jury trial on the juvenile court system would not strengthen greatly, if at all, the factfinding 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.

6. 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 appellants 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 to experiment further 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.

8. There is, of course, nothing to prevent a juvenile court judge, in a particular case where he feels the need, or when the need is demonstrated, from using an advisory jury.

9. "The fact that a practice is followed by a large number of states is not conclusive in a decision as to whether that practice accords with due process, but it is plainly worth considering in determining whether the practice `offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.' It therefore is of more than passing interest that at least 29 States and the District of Columbia by statute deny the juvenile a right to a jury trial in cases such as these. The same result is achieved in other States by judicial decision. In 10 States statutes provide for a jury trial under certain circumstances.

10. Since Gault and since Duncan the great majority of States, in addition to Pennsylvania and North Carolina, that have faced the issue have concluded that the considerations that led to the result in those two cases do not compel trial by jury in the juvenile court.

12. If the jury trial were to be injected into the juvenile court system as a matter of right, it would bring with it into that system the traditional delay, the formality, and the clamor of the adversary system and, possibly, the public trial.

13. Finally, the arguments advanced by the juveniles here are, of course, the identical arguments that underlie the demand for the jury trial for criminal proceedings. The arguments necessarily equate the juvenile proceeding - or at least the adjudicative phase of it - with the criminal trial. Whether they should be so equated is our issue. Concern about the inapplicability of exclusionary and other rules of evidence, about the juvenile court judge's possible awareness of the juvenile's prior record and of the contents of the social file; about repeated appearances of the same familiar witnesses in the persons of juvenile and probation officers and social workers - all to the effect that this will create the likelihood of pre-judgment - chooses to ignore, it seems to us, every aspect of fairness, of concern, of sympathy, and of paternal attention that the juvenile court system contemplates.

If the formalities of the criminal adjudicative process are to be superimposed upon the juvenile court system, there is little need for its separate existence. Perhaps that ultimate disillusionment will come one day, but for the moment we are disinclined to give impetus to it.

Affirmed.