

## **KENT v. UNITED STATES, 383 U.S. 541 (1966)**

**Argued January 19, 1966.**

**Decided March 21, 1966.**

MR. JUSTICE FORTAS delivered the opinion of the Court.

Morris A. Kent, Jr., first came under the authority of the Juvenile Court of the District of Columbia in 1959. He was then aged 14. He was apprehended as a result of several housebreakings and an attempted purse snatching. He was placed on probation, in the custody of his mother who had been separated from her husband since Kent was two years old. Juvenile Court officials interviewed Kent from time to time during the probation period and accumulated a "Social Service" file.

On September 2, 1961, an intruder entered the apartment of a woman in the District of Columbia. He took her wallet. He raped her. The police found in the apartment latent fingerprints. They were developed and processed. They matched the fingerprints of Morris Kent, taken when he was 14 years old and under the jurisdiction of the Juvenile Court. He was still on probation to that court as a result of the 1959 proceedings.

Upon being apprehended, Kent was taken to police headquarters where he was interrogated by police officers. It appears that he admitted his involvement in the offense which led to his apprehension and volunteered information as to similar offenses involving housebreaking, robbery, and rape. His interrogation proceeded from about 3 p. m. to 10 p. m. the same evening.

Some time after 10 p. m. petitioner was taken to the Receiving Home for Children. The next morning he was released to the police for further interrogation at police headquarters, which lasted until 5 p. m.

The record does not show when his mother became aware that the boy was in custody, but shortly after 2 p. m. on September 6, 1961, the day following petitioner's apprehension, she retained counsel.

Counsel, together with petitioner's mother, promptly conferred with the Social Service Director of the Juvenile Court. In a brief interview, they discussed the possibility that the Juvenile Court might waive jurisdiction under D.C. Code 11-914 (1961), now 11-1553 (Supp. IV, 1965) and remit Kent to trial by the District Court. Counsel made known his intention to oppose waiver.

Petitioner was detained at the Receiving Home for almost a week. There was no arraignment during this time, no determination by a judicial officer of probable cause for petitioner's apprehension.

During this period of detention and interrogation, petitioner's counsel arranged for examination of petitioner by two psychiatrists and a psychologist. He thereafter filed with

the Juvenile Court a motion for a hearing on the question of waiver of Juvenile Court jurisdiction, together with an affidavit of a psychiatrist certifying that petitioner "is a victim of severe psychopathology" and recommending hospitalization for psychiatric observation. Petitioner's counsel, in support of his motion to the effect that the Juvenile Court should retain jurisdiction of petitioner, offered to prove that if petitioner were given adequate treatment in a hospital under the aegis of the Juvenile Court, he would be a suitable subject for rehabilitation.

At the same time, petitioner's counsel moved that the Juvenile Court should give him access to the Social Service file relating to petitioner which had been accumulated by the staff of the Juvenile Court during petitioner's probation period, and which would be available to the Juvenile Court judge in considering the question whether it should retain or waive jurisdiction. Petitioner's counsel represented that access to this file was essential to his providing petitioner with effective assistance of counsel.

The Juvenile Court judge did not rule on these motions. He held no hearing. He did not confer with petitioner or petitioner's parents or petitioner's counsel. He entered an order reciting that after "full investigation, I do hereby waive" jurisdiction of petitioner and directing that he be "held for trial for [the alleged] offenses under the regular procedure of the U.S. District Court for the District of Columbia." He made no findings. He did not recite any reason for the waiver. He made no reference to the motions filed by petitioner's counsel. We must assume that he denied, sub silentio, the motions for a hearing, the recommendation for hospitalization for psychiatric observation, the request for access to the Social Service file, and the offer to prove that petitioner was a fit subject for rehabilitation under the Juvenile Court's jurisdiction.

At trial, petitioner's defense was wholly directed toward proving that he was not criminally responsible because "his unlawful act was the product of mental disease or mental defect." *Durham v. United States*, 94 U.S. App. D.C. 228, 241, 214 F.2d 862, 875 (1954). Extensive evidence, including expert testimony, was presented to support this defense. The jury found as to the counts alleging rape that petitioner was "not guilty by reason of insanity." Under District of Columbia law, this made it mandatory that petitioner be transferred to St. Elizabeths Hospital, a mental institution, until his sanity is restored. On the six counts of housebreaking and robbery, the jury found that petitioner was guilty.

Kent was sentenced to serve five to 15 years on each count as to which he was found guilty, or a total of 30 to 90 years in prison.

It is to petitioner's arguments as to the infirmity of the proceedings by which the Juvenile Court waived its otherwise exclusive jurisdiction that we address our attention. Petitioner attacks the waiver of jurisdiction on a number of statutory and constitutional grounds. He contends that the waiver is defective because no hearing was held; because no findings were made by the Juvenile Court; because the Juvenile Court stated no reasons for waiver; and because counsel was denied access to the Social Service file which presumably was considered by the Juvenile Court in determining to waive jurisdiction.

We agree that the order of the Juvenile Court waiving its jurisdiction and transferring petitioner for trial in the United States District Court for the District of Columbia was invalid.

We do not consider whether, on the merits, Kent should have been transferred; but there is no place in our system of law for reaching a result of such tremendous consequences without ceremony - without hearing, without effective assistance of counsel, without a statement of reasons. It is inconceivable that a court of justice dealing with adults, with respect to a similar issue, would proceed in this manner. It would be extraordinary if society's special concern for children, as reflected in the District of Columbia's Juvenile Court Act, permitted this procedure. We hold that it does not.

2. Because the State is supposed to proceed in respect of the child as *parens patriae* and not as adversary, courts have relied on the premise that the proceedings are "civil" in nature and not criminal, and have asserted that the child cannot complain of the deprivation of important rights available in criminal cases. It has been asserted that he can claim only the fundamental due process right to fair treatment.

While there can be no doubt of the original laudable purpose of juvenile courts, studies and critiques in recent years raise serious questions as to whether actual performance measures well enough against theoretical purpose to make tolerable the immunity of the process from the reach of constitutional guaranties applicable to adults. There is much evidence that some juvenile courts, including that of the District of Columbia, lack the personnel, facilities and techniques to perform adequately as representatives of the State in a *parens patriae* capacity, at least with respect to children charged with law violation. **There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.**

Correspondingly, we conclude that an opportunity for a hearing which may be informal, must be given the child prior to entry of a waiver order. The child is entitled to counsel in connection with a waiver proceeding, and counsel is entitled to see the child's social records. These rights are meaningless - an illusion, a mockery - unless counsel is given an opportunity to function.

We do not mean by this to indicate that the hearing to be held must conform with all of the requirements of a criminal trial or even of the usual administrative hearing; but we do hold that the hearing must measure up to the essentials of due process and fair treatment.

Reversed and remanded.

