University of Richmond Law Review

Volume 10 | Issue 1 Article 9

1975

Constitutional Law-Criminal Law-Criminal Prosecution Subsequent to Juvenile Court Adjudicatory Hearing Constitutes Double Jeopardy

Constitutional Law—Criminal Law—CRIMINAL PROSECUTION SUBSEQUENT TO JUVENILE COURT ADJUDICATORY HEARING CONSTITUTES DOUBLE JEOPARDY—*Breed v. Jones*, 95 S. Ct. 1779 (1975).

In the late nineteenth century, the juvenile court system was established in this country to deal with youths who had committed criminal offenses, were likely to do so, or were otherwise in need of state supervision.[1] Contrary to the criminal system, the juvenile courts began with articulated goals of treatment and rehabilitation.[2] In theory, the state, acting through the juvenile system and under the doctrine of *parens patriae*, would shield the juvenile from the harsh reality of the criminal courts by placing him within a paternalistic judicial framework with a vast spectrum of remedies and a minimum of procedural formalities.[3]

Since juvenile proceedings were conceptualized as civil in nature, the constitutional protection afforded criminal defendants was deemed inappropriate.[4] Moreover, the application of constitutional guarantees to the juvenile courts was viewed as an impediment to the system's goals of maintaining an informal decorum, providing flexibility in approach and remedy, and acting in the child's best interests.[5] So long as the juvenile system was theoretically geared to provide treatment and rehabilitation, there existed a *quid pro quo* for the lack of constitutional protection afforded juveniles.[6]

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1. *See In re* Gault, 387 U.S. 1, 14-17 (1967); Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 107 (1909) [hereinafter cited as Mack]; R. MENNEL, THORNS AND THISTLES 132 (1973).

2. [T]he child who has begun to go wrong, who is incorrigible, who has broken a law or an ordinance, is to be taken in hand by the state, not as an enemy but as a protector, as the ultimate guardian . . . . Mack, *supra* note 1, at 107.

See also Ex parte Sharp, 15 Idaho 120, 96 P. 563 (1908). *Cf. Ex parte* Liddel, 93 Cal. 633, 29 P. 251 (1892).

3. *See* Fox, *Juvenile Justice Reform: An Historical Perspective*, 22 STAN. L. REV. 1187, 1193 (1970) [hereinafter cited as Fox]. *See also* Mack, *supra* note 1, at 109.

4. *See In re* Gault, 387 U.S. 1, 17 (1967); S. DAVIS, RIGHTS OF JUVENILES: THE JUVENILE JUSTICE SYSTEM 3 (1974).

5. The ordinary trappings of the court-room are out of place in such hearings. The judge on a bench, looking down upon the boy at the bar, can never evoke a proper sympathetic spirit. Seated at a desk, with the child at his side, where he can on occasion put his arm around his shoulder and draw the lad to him, the judge, while losing none of his judicial dignity, will gain immensely in the effectiveness of his work. Mack, *supra* note 1, at 120.

6. To save a child from becoming a criminal, or from continuing in a career of crime . . . the Legislature surely may provide for the salvation of such a child . . . by bringing it into one of the courts of the state *without any process at all*, for the purpose of subjecting it to the state's guardianship and protection. Commonwealth v. Fisher, 213 Pa. 48, 62 A. 198, 200 (1905) (emphasis added).

See also In re Gault 387 U.S. 1, 17 (1967); Fox, *supra* note 3, at 1238-39.

In the 1967 landmark decision *In re Gault*,[7] the Supreme Court recognized that the juvenile system was not fulfilling its goals.[8] The Court responded by making certain fundamental due process guarantees applicable to delinquency proceedings.[9] Three years later, the Court in *In re Winship*[10] ruled that the quantum of proof necessary to adjudicate a child "delinquent" must be proof beyond a reasonable doubt. While the Court in both *Gault* and *Winship* made criminal procedural safeguards applicable to juvenile proceedings, it was careful to assert that the imposition of these safeguards would not impair the juvenile system's benevolent aspects.[11]

In determining whether a constitutional right should attach in juvenile proceedings, the Court has developed a two-tiered analytical framework. First, the Court weighs the importance of the right to the juvenile in terms of the protection and benefits its application will afford him and the detrimental effects its denial is precipitating. Second, the Court considers the effect on the system's flexibility and paternalistic goals caused by the application of the constitutional right.

This balancing approach was employed in *McKeiver v. Pennsylvania*[12] where the Court ruled that the due process clause does not assure the right to trial by jury in a delinquency proceeding. The ramifications of injecting juries into the juvenile system were perceived by the Court to outweigh any benefits to be garnered by the juvenile.[13] The Court's conclusion affirmed

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7. 387 U.S. 1 (1967).

8. For example, the Court noted that the "term [delinquent] has come to involve only slightly less stigma than the term 'criminal' applied to adults." *Id.* at 24. The Court stated that "[t]he high rate of juvenile recidivism casts some doubt upon the adequacy of treatment afforded juveniles." *Id.* at 23 n.30. Moreover, the Court discovered that in "about one-half of the States, a juvenile may be transferred to an adult penal institution after a juvenile court has found him 'delinquent'." *Id.* at 20 n.26.

The Court's initial disenchantment with the juvenile system surfaced one year prior to *Gault*. *See* Kent v. United States, 383 U.S. 541, 555 (1966).

9. The juvenile was afforded the right to receive adequate notice of the charges against him and the right to counsel, the privilege against self-incrimination, and the right to confront and cross-examine witnesses at the delinquency hearing.

10. 397 U.S. 358 (1970).

11. In *Gault*, the Court stated that "the features of the juvenile system which its proponents have asserted are of unique benefit will not be impaired by constitutional domestication." *In re* Gault, 387 U.S. 1, 22 (1967). The Court in *Winship* expressed similar sentiments: "Nor do we perceive any merit in the argument that to afford juveniles the protection of proof beyond a reasonable doubt would risk destruction of beneficial aspects of the juvenile process." *In re* Winship, 397 U.S. 358, 366 (1970).

12. 403 U.S. 528 (1971).

13. The Court stated:

> There is a possibility . . . that the jury trial, if required as a matter of constitutional

that it was not willing to destroy the system's separate identity by applying to it all constitutional guarantees.[14]

In *Breed v. Jones*,[15] respondent Jones was the subject of a petition filed on February 9, 1971, in Los Angeles Juvenile Court which alleged that Jones, at the age of 17, had committed acts which if done by an adult would constitute the crime of robbery.[16] The petition was sustained at the adjudicatory hearing. Two weeks later, at a dispositional hearing, the juvenile court found Jones not amenable to its facilities and ordered his prosecution as an adult.

Respondent filed a petition for a writ of habeas corpus in the juvenile court alleging that his prosecution as an adult would violate the double jeopardy clause.[17] The juvenile court as well as the California Court of Appeal denied the petition.[18] Respondent was then tried and convicted of robbery in the first degree and was committed to the California Youth Authority.

In December of 1971 Jones filed a habeas corpus petition in federal district court again alleging that jeopardy had attached to the juvenile court's adjudicatory hearing. The district court[19] denied the petition stat-

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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. *Id.* at 545.

The Court concluded that the injection of juries into the juvenile system "would bring with it into that system the traditional delay, the formality, and the clamor of the adversary system and, possibly, the public trial." *Id.* at 550.

14. 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. *Id.* at 551.

Thus, the Court intimated its intention to continue with its balancing approach in determining the applicability of constitutional guarantees to juvenile proceedings.

15. 95 S. Ct. 1179 (1975).

16. The petition alleged that Jones was a person described by CAL. WELF. & INST'NS CODE § 602 (West 1966):

> Any person under the age of 21 years who violates any law of this State or of the United States or any ordinance of any city or county of this State defining crime . . . is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court.

17. "[N]or shall any person be subject for the same offense to be twice put in jeopardy of life or limb . . . ." U.S. CONST. amend. V. In Benton v. Maryland, 395 U.S. 784 (1969) the Supreme Court ruled that this provision is applicable to the states through the due process clause of the fourteenth amendment.

18. *In re* Gary Steven J., 17 Cal. App. 3d 704, 95 Cal. Rptr. 185 (1971). Jones' petition for hearing before the Supreme Court of California was also denied.

19. Jones v. Breed, 343 F. Supp. 690 (C.D. Cal. 1972).

ing that since the adjudicatory hearing "was but one step in a comprehensive program developed . . . for the handling of delinquent youth" no jeopardy had then attached.[20]

The Ninth Circuit[21] reversed, ruling that "[w]hen the juvenile court can, on the basis of the delinquency hearing, impose severe restrictions upon the juvenile's liberty . . . jeopardy attaches."[22]

The Supreme Court granted certiorari to decide whether the prosecution of respondent in adult court subsequent to his adjudicatory hearing subjected him to double jeopardy in violation of the fifth and fourteenth amendments.[23]

The Court first determined the importance to the juvenile of the double jeopardy prohibition by examining what negative effects were being manifested by the deprivation of the right. The Court noted that "[j]eopardy denotes risk"[24] and risk is inherent in juvenile proceedings since "in terms of potential consequences there is little to distinguish an adjudicatory hearing . . . from a traditional criminal prosecution."[25] The Court reasoned that since respondent "was subjected to the burden of two trials for the same offense . . . he was twice put to the task of marshaling his resources against those of the State, twice subjected to the 'heavy personal strain' which such an experience represents."[26]

The Court found no merit in the "continuing jeopardy" argument ac-

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20. *Id.* at 691. Moreover, the court reasoned that even if jeopardy did attach to the preliminary proceedings in juvenile court, "it is clear that no new jeopardy arose by the juvenile proceeding sending the case to the criminal court." *Id.* at 692. This ruling was based on the assumption that since respondent faced only one punishment for the offense, he was merely subjected to a "continuing jeopardy" until a final disposition of the case was attained.

21. Jones v. Breed, 497 F.2d 1160 (9th Cir. 1974).

22. *Id.* at 1165. The court rejected the "continuing jeopardy" theory since respondent was not the party to initiate the "appeal" of the juvenile court decision:

> [T]he trial in adult court does not follow as a result of an appeal taken by the minor from his juvenile court conviction, but is a retrial for the same offense initiated by the state. Continuing jeopardy allows retrial following an appeal initiated by the defendant claiming error in his first conviction. *Id.* at 1167.

The court concluded that the "juvenile courts are a separate court system from the adult courts . . . ." and although the juvenile faces only one punishment, "double jeopardy protects double risk of conviction, not just double risk of punishment." *Id.*

23. *See* note 17 *supra.*

24. 95 S. Ct. at 1785.

25. *Id.* at 1786. Citing *Gault* and *Winship*, the Court compared the type of incarceration and stigma the juvenile faces to the type a criminal defendant faces and found the two to be virtually identical. *Id. See* note 8 *supra.*

26. *Id.* at 1787. *See also* United States v. Jorn, 400 U.S. 470 (1971); Abbate v. United States, 359 U.S. 187 (1959) (separate opinion).

cepted by the district court,[27] stating that although the proceedings against Jones had not run the entire course contemplated by the California Welfare and Institutions Code, any final disposition in accordance with the statute would deprive respondent "of the constitutional protection against a second trial."[28]

Having determined that the denial of double jeopardy protection placed significant burdens upon the juvenile, the Court, under the second stage of its analysis, considered the impact that the imposition of the guarantee would have on the juvenile system.[29] The Court found that only one procedural change in the California juvenile system would have to be effectuated to comply with the constitutional mandate. That is, the juvenile court would, in most cases, have to conduct its transfer hearing[30] prior to its adjudicatory hearing. Since the transfer hearing is merely dispositional, *i.e.*, the juvenile faces no threat of incarceration as a direct result thereof, no jeopardy then attaches.[31]

In assessing the burden of having the transfer hearing precede the adjudicatory hearing, the Court noted that duplicative proceedings may result where transfer to the criminal system is rejected.[32] This duplicative bur-

27. *See* note 20 *supra*.

28. 95 S. Ct. 1788. Moreover, the Court noted that the Holmesian view of "continuing jeopardy" which would permit another trial has "never been adopted by a majority of this Court." *Id. See* notes 20 and 22 *supra*.

29. In order for the guarantee to be held inapplicable, the burdens it would place on the juvenile system must outweigh the juvenile's hardship of facing two trials. 95 S. Ct. at 1788.

30. The transfer or waiver hearing is the juvenile court proceeding at which it is determined whether the child is amenable to the care and treatment offered by the juvenile system. The finding is necessary when, due to the minor's age, concurrent jurisdiction is vested in the juvenile and adult systems, with primary jurisdiction resting with the former. If the court finds the child not suited to the juvenile system, it will waive jurisdiction to the adult court, as was done with respondent Jones at his dispositional hearing.

Recognizing the critical nature of such transfer hearings, the Court in Kent v. United States, 383 U.S. 541 (1966), mandated the application of certain due process guarantees to such hearings. The Court ruled that a hearing must be held to decide transfer and, upon reaching a decision, the juvenile court must issue a statement of reasons supporting its ruling. The juvenile was also afforded the right to counsel at such hearings and a right of access to any social or probation records compiled concerning him. *Id.* at 557.

31. *See* Brown v. Cox, 481 F.2d 622, 631 (4th Cir. 1973), *cert. denied*, 414 U.S. 1136 (1974) *quoting from* State v. Halverson, 192 N.W.2d 765, 769 (Iowa 1972).

32. 95 S. Ct. 1790. Duplication would come about because similar evidence may be presented at both the transfer and adjudicatory hearings. As a result of this similarity of evidence, the Court noted that "the nature of the evidence considered at a transfer hearing may in some States require that, if transfer is rejected, a different judge preside at the adjudicatory hearing." *Id.* at 1790-91. However, the Court added that "nothing decided today forecloses States from requiring, as a prerequisite to the transfer of a juvenile, substantial evidence that he committed the offense charged, so long as the showing required is not made

den, however, "will tend to be offset somewhat by the cases in which, because of transfer, no further proceedings in Juvenile Court are required."[33] Furthermore, the Court reasoned that once transfer has been rejected, "juveniles may well be more likely to admit the commission of the offense charged, thereby obviating the need for adjudicatory hearings, than if transfer remains a possibility."[34] Finally, the Court found that the new procedural requirement will, in all likelihood, serve to facilitate the implementation of the juvenile system's goals by decreasing the "adversary wariness" manifest at adjudicatory hearings where transfer has yet to be decided.[35]

One important reservation was made by the Court:

> We intimate no views concerning the constitutional validity of transfer following the attachment of jeopardy at an adjudicatory hearing where the information which forms the predicate for the transfer decision could not, by the exercise of due diligence, reasonably have been obtained previously.[36]

The Court, then, envisioned the possibility of new evidence being discovered at the adjudicatory hearing of a nature so as to demand the juvenile's transfer to adult court. In deferring a ruling on such a transfer, the Court implied its potential validity for reasons of "manifest necessity".[37]

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in an adjudicatory proceeding." *Id.* at 1790 n.18.

33. *Id.* at 1790.

34. *Id.* In light of the type of incarceration a juvenile faces within the system, *see* notes 8 and 25 *supra*, it seems unlikely that the rejection of transfer will serve as a major incentive for juvenile confessions.

35. Knowledge of the risk of transfer after an adjudicatory hearing can only undermine the potential for informality and cooperation which was intended to be the hallmark of the juvenile court system. Rather than concerning themselves with the matter at hand, establishing innocence or seeking a disposition best suited to individual correctional needs, the juvenile and his attorney are pressed into a posture of adversary wariness that is conducive to neither. 95 S. Ct. at 1791.

36. *Id.* at 1790 n.20.

37. The Court cited Illinois v. Somerville, 410 U.S. 458 (1973), where respondent was brought to criminal trial under a fatally defective indictment. The trial judge, after the jury were impaneled and sworn but prior to the hearing of any evidence, declared a mistrial over respondent's objection. In affirming respondent's subsequent prosecution and conviction, the Court stated:

> [W]here the declaration of a mistrial implements a reasonable state policy and aborts a proceeding that at best would have produced a verdict that could have been upset at will by one of the parties, the defendant's interest in proceeding to verdict is outweighed by the competing and equally legitimate demand for public justice. *Id.* at 471.

Arguably, the interest of vindicating public justice could forge an exception to the juvenile's double jeopardy protection where previously undiscovered evidence of criminal behavior related to the acts alleged in the delinquency petition surfaces during the adjudicatory hearing. That is, it seems likely that in such a case the juvenile court could halt the adjudicatory

The Court concluded that the prosecution of respondent in adult court after a juvenile adjudicatory hearing "violated the Double Jeopardy Clause of the Fifth Amendment, as applied to the States through the Fourteenth Amendment."[38] At first glance, this ruling seems to be yet another step toward the "ultimate disillusionment" with the juvenile system envisioned in *McKeiver*.[39] A deeper consideration of this decision suggests the opposite. Had the Court desired to sound the death knell of the juvenile system, it would not have so vigorously employed its two-tiered, benefit/burden analysis. Moreover, the findings which resulted from this analysis were so clearly one-sided that the Court unanimously arrived at its decision almost out of necessity.[40]

Since this ruling was almost pre-determined, the import of the decision is demonstrated by the manner in which it was reached. The Court's detailed analysis reaffirms that it is not yet willing to merge the criminal and juvenile systems because it recognizes that youthful offenders need the special care, treatment, and judicial flexibility the juvenile courts can offer. The Court has tenaciously maintained that the juvenile system, through judicially guided reform, can feasibly meet its original goals. This decision is yet one more incentive toward that end.

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hearing, initiate a transfer hearing, and subsequently waive jurisdiction to the adult court without violating the juvenile's constitutional rights. *Cf.* note 29 *supra*.

38. 95 S. Ct. at 1791.

39. 403 U.S. 528, 551 (1971). *See* note 14 *supra*.

40. Previous courts have reached the same result: Lewis v. Howard, 374 F. Supp. 446 (W.D. Va.), *aff'd*, 504 F.2d 426 (4th Cir. 1974); Fain v. Duff, 488 F.2d 218 (5th Cir. 1973); Garrison v. Jennings, 529 P.2d 536 (Okla. Crim. 1974); M. v. Superior Court of Shasta County, 4 Cal. 3d 370, 482 P.2d 664, 93 Cal. Rptr. 752 (1971). Moreover, a growing number of states have enacted statutes requiring that the waiver hearing precede the adjudicatory hearing. *See* Rudstein, *Double Jeopardy in Juvenile Proceedings*, 14 WM. & MARY L. REV. 266, 299 (1972).

Prior to the application of the double jeopardy clause to the states, *see* note 17 *supra*, a few courts held that the prosecution of a juvenile following an adjudicatory hearing violated fundamental fairness and due process: Hultin v. Beto, 396 F.2d 216 (5th Cir. 1968); Sawyer v. Hauck, 245 F. Supp. 55 (W.D. Tex. 1965); Garza v. State, 369 S.W.2d 36 (Tex. Crim. App. 1963).