Supreme Court of the United States

OCTOBER TERM - 1970

In the Matter of:

IN RE : BARBARA BURRUS, ET AL.,

Petitioners

Docket No. 128

pt. 1

Place Washington, D. C.

Date December 9, 1970

ALDERSON REPORTING COMPANY, INC.

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IN THE SUPREME COURT OF THE UNITED STATES

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IN RE BARBARA BURRUS, ET AL.,)
)
Petitioners) No. 128
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The above-entitled matter came on for argument at 2:30 o'clock p.m. on Wednesday, December 9, 1970.

BEFORE:

WARREN E. BURGER, Chief Justice
HUGO L. BLACK, Associate Justice
WILLIAM O. DOUGLAS, Associate Justice
JOHN M. HARLAN, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice

APPEARANCES:

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amicus curiae

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will now hear argument in Number 128: in re Barbara Burrus.

ORAL ARGUMENT BY MICHAEL MELTSNER, ESQ.

ON BEHALF OF PETITIONERS

MR. CHIEF JUSTICE BURGER: Mr. Meltsner, you may proceed, I think, now if you are ready.

MR. MELTSNER: Mr. Chief Justice and may it please the Court: This case is here on writ of certiorari to the Supreme Court of North Carolina to review the court's judgment that Petitioners, over 40 Black youths between the ages of 11 and 15, were not entitled by the Sixth and Fourteenth Amendments to trial by jury in juvenile court proceedings held to determine whether they had violated state criminal laws.

The cases arose out of a conflict between Blacks and whites in Hyde County, North Carolina, over the manner in which the county school board chose to implement this Court's decision in Brown versus Board of Education. As a result, almost the entire Black population boycotted the public schools in 1968.

During the months of September to December the Petitioners were taken into custody by state police and charged with willfully, intentionally and unlawfully impeding highway traffic in violation of the state criminal statute which, at the time of trial, provided a two-year maximum

penalty for adults.

One juvenile was charged with willfully becoming disorderly and defacing school property, in violation of two other state criminal statutes which at the time of trial imposed a maximum penalty of two years in prison for adults.

Petitioners were tried in several groups in the District Court of Hyde County, a court of general, civil and criminal jurisdiction, sitting as a juvenile court. In each case, with the exception of one juvenile charged with disorderly conduct and defacement of property, the police officer testified to observing groups of Black youths marching, singing, carrying signs, playing catch with a basketball, all in such a manner as to stop cars on a public road.

According to police testimony, Petitioners were warned that they were violating criminal law and ordered to disperse. When they did not do so, they were arrested.

The trial judge found that each Petitioner had committed an act for which an adult may be punished by North Carolina law, was in need of care, protection and discipline from the state and was thereby a delinquent. Immediately after finding the petitioners delinquent, the court sentenced each to a state institution for an indefinite term until release by the state board of juvenile corrections or until reaching majority.

Thus, Petitioners could have been incarcerated for

from six to ten years, respectively. Then the court suspended this sentence to probation. On appeal both the Court of Appeals and the Supreme Court of North Carolina held that the 14th Amendment does not give a juvenile a right to trial by jury in a juvenile delinquency proceeding even though he may be incarcerated many years as a result of an adverse decision.

Q Now, was there any commitment to incarceration of these Petitioners?

A The commitment was suspended by the trial court and later excised from the judgment on the Supreme Court of North Carolina, in a technical modification of the terms of the judgment.

Q So that they have never been confined?

A No. All the Petitioners were placed on probation.

And it is Petitioners' submission that under Gault, Winship and Duncan, a juvenile tried for violation of state criminal law and subjected to incarceration for years, is entitled to a jury trial unless the state shows, as the state has not shown here, that provision of trial by jury will compel the state to displace or abandon substantial benefits conferred on the juvenile by the juvenile court system.

This is a question which we believe is seen more clearly if we first put to one side certain matters which the Court is not being asked to decide.

This case does not involve a jury trial where a juvenile does not want one. No claim is made in this case that due process requires any change in the discretion of juvenile authorities to divert cases from court prior to trial for probation, counseling, action by private or public social agencies or physicians.

No claim is made which restricts the juvenile court's freedom to structure treatment or rehabilitation to the needs of the juvenile after he has been adjudicated a delinquent. No issue is present of the right to trial by jury if a juvenile is not charged with criminal conduct, faced with the stigma of the delinquency adjudication and subjected to what amounts to punitive incarceration.

And finally, no claim is made that Petitioners are entitled to trial in a courtroom open to the public other than by reason of the presence of a jury. In short, the discretion of the trial court to exclude the public, which North Carolina law now confers, is not affected.

Now, Petitioners contend that, far from harming the juvenile, a jury trial enhances the liability and fairness and protects against erroneous conviction by ensuring compliance with the reasonable doubt standard.

Q Mr. Meltsner, perhaps at that point this is not a fair question, but would you hazard a guess as to what would have happened had there been a jury trial at that time in

North Carolina?

A In this case?

Q Yes.

A WEll, that is, as Your Honor suggests, quite a guess, but all I can say is that this is peculiarly a good case for a jury because the events from which the criminal conduct arose are the sort of events which Blacks and whites are likely to perceive in a very different manner. This case arose out of a racial clash in this community.

So, while I can't, for the moment predict what the jury would have decided, I do think that the Petitioners here would have felt that they had received the judgment of the community and found that judgment more acceptable for that reason, if it was adverse to them.

Q I was going to say you would also hazard a guess that had a jury trial been available that opportunity would have been taken in this case?

A Petitioners made timely motions for a jury trial --

Q I ask this because of the statements in the brief that if a jury -- a right to a jury trial were present, nevertheless the exercise of that right has been rather sparse in practice.

A That is the experience of the juvenile courts in ten or eleven or so states which provide trial by jury as

amply documented in an amicus brief of the District of Columbia Public Defender Service, which surveyed the operation of those courts in 26 cities and towns in the United States.

Q And you make this argument to buttress the provision that imposing a right to a jury trial will not overwhelm the juvenile process?

A That is correct; that is correct.

Q Under state law could these Petitioners have been tried in criminal court under criminal penalties and --

A No; they could not; they could not. The juvenile court in North Carolina has exclusive original jurisdiction of all minors up to the age of 16 and these juveniles were between the ages of 11 and 15.

When a juvenile is charged with a felony, Mr. Chief Justice, and he is over the age of 14, the juvenile court may hold a hearing and waive jurisdiction to an adult court.

Q Then these Petitioners could have been waived?

A No, because the offenses were classified as misdemeanors under state law, although they were subject to two year penalties at the time of trial.

Now, the benefits which we claim flow to juveniles from the availability of a jury trial, I will somewhat arbitrarily describe as benefits flowing first from the Duncan case, second from which the third class of special juvenile court advantages --

Q Mr. Meltsner, could I ask you first, before you go on, would you anticipate that the jury trial you requested would involve submitting to the jury only the question of whether the acts charged were committed or whether you would want the jury to decide the ultimate issue of delinquency, or is there, in North Carolina, any difference between the two?

A At the time of trial, Mr. Justice White, there may have been a difference, but the state law has been amended while this case was on appeal, to make an issue of delinquency, as I read the state statutes, identical to the question of whether a youth violated the state criminal laws.

Q Under the current law there if the act is found to have been committed it is -- there is an automatic conclusion of delinquency?

A That is correct.

Q In some places that isn't so?

A That is my impression; yes, that in some places the law was as it was in North Carolina; that there is a vague and ill-defined class of offenses which a judge can determine to be delinquency.

Q So that right now there is no room for a judge saying he may have committed this act but he is not a delinquent child?

A That is my impression -- it's the way I read the statute.

Q If there was room for that under the North Carolina law, would you insist that the jury be given the task of deciding on delinquency as well as the task of deciding whether the act was committed?

A Well, I think that the jury would have to be charged as to the kind of conduct which it was finding the facts to determine a violation, and certainly the jury could find specific facts and the judge could draw the legal --

Q So you would be content if the jury only had the task of deciding whether the act was committed?

A Let me take it back, because I, quite honestly, Mr. Justice White, hadn't thought about this before, but my conclusion is not that. My conclusion is that the judge will have to define in advance of such situations, such a state, what delinquency means and if the jury will find the facts and also findthe law as charged to the --

Q Yes, but delinquency in that situation may depend on a whole series of other facts that may depend on the whole juvenile file.

A I am not certain how that would operate because I don't really know --

Q But you know that the development in North Carolina under the present law, but not under the law at the time of trial.

A I'm even unclear about the law previously,

A I'm even unclear about the law previously, because I have not been able to find any state court decisions dealing with the issue for construing the statute.

Now, it seems to me quite clear that the youth is as likely, as in Gault, to profit from the protections enunciated by theCourt in Duncan against an arbitrary, biased, corrupt, or overzealous judge or prosecutor. Or a case-hardened judge or a compliant judge; one who, perhaps seems to credit police testimony because he has seen police officers testify so often against convicted defendants.

And likewise, that the youth is also as likely as an adult to benefit from the common sense and community viewpoint of a jury. In short, the jury is a check on the vast powers of the trial judge and no judge, no trial judge has more power than the judge of the juvenile court. The judge who the youth gets, in exchange for his right to jury trial is a judge who is not a miracle worker of juvenile court theory. He is not a specialist.

In North Carolina he is elected; he serves the court of general, criminal and civil jurisdiction andhe need not even be a lawyer. This conforms to the national experience: a survey of the President's Crime Commission in 1967 shows that 75 percent of all juvenile court judges spend less than one-quarter of their time in juvenile court. Twenty percent were not lawyers; twenty percent had no college training whatsoever;

one-half had no college degree and 80 percent had no regular psychologist or psychiatric help in their courts.

Q Mr. Meltsner, help me in another respect: to what extent does the North Carolina Juvenile Court have, shall I say, jurisdiction over juveniles? Can they put them on probation or under one control or another for how long? Until 21?

A On probation until 21; yes.

Q So that the younger the alleged offender is the longer his possible probation?

A That is correct; that is correct.

Q And if a boy is 20 he has less risk that one who is 16?so far as duration of control is concerned?

A Under North Carolina law as it presently exists now, the youth is subject to the jurisdiction of the court until he is 21 except incarcerations will terminate at age 18, unless the state board of juvenile corrections certifies that the youth is in a special program, vocational training program and so should be kept.

So, the extent of the sanction does vary with age, although the juvenile's top jurisdictional age is 16. So there is always going to be at least two years in which the youth will be subject to some form of sanction.

Certainly the youth is benefitted byhaving a juxy administer the reasonable doubt standard which this Court held

he was entitled to in Winship. Reasonable doubt was formulated as a standard to be administered by the jury and it is plainly a higher burden for the prosecution to persuade six or 12 men to a subjective standard of certainty.

In addition to the weight of numbers, a jury gives content to reasonable doubt bymaking sure that men with different backgrounds and perspectives and outlooks concur in the result.

Now, there are certain benefits which a jury trial gives which I think are specially seen in juvenile court, because the juvenile judge is bombarded with inadmissible evidence; evidence that comes to him if he holds the waiver hearing which I mentioned before, or evidence which comes to him by reading social reports describing the youth's family and background, which North Carolina law explicitly permits him to see before adjudication, before he has made a final determination of delinquency by Section 7A-285.

These reports are -- the access the judge has to these reports is easy because he even hires and fires the men who accumulate the information: the probation officers.

A second reason why the jury trial is an especially appropriate protection for the youth in juvenile court, is that the juvenile judge has traditionally seen himself as acting on the needs rather than the deeds of the child. Thus he is more likely to see a finding of delinquency as a prelude to

treatment rather than punishment, and I would submit it will be more difficult for him to hold the balance true when applying a reasonable doubt standard.

It's simply easier to convict, given human nature, than to believe that something good, called "rehabilitation," as presently practiced by the state is a benefit to the youth and will follow adjudication of delinquency.

Now, it is said, in answer to these benefits, that making jury trials available to juveniles who wish them --

Q Mr. Meltsner, who would be the peers for the 14-year-old?

A Your Honor, no question of that sort is involved here, but we think the juveniles have as much right to a mature, competent and understanding jury --

Q But mature people wouldn't be their peers.

A The -- this court --

Q I say that facetiously, but what you mean is a regular jury panel that's sitting in, say the criminal court of Podunk?

A That's correct.

Q But, where would the trial be held; in the juvenile courtroom?

A The District Court involved here is a court of general, civil and criminal jurisdictions.

Q And could you have it right in the juvenile

court like some states do?

A I think that's a matter for the state to work out in the easiest and most flexible manner.

Q But only when requested?

A Correct.

Q With the same judge?

A There is no reason why it could not be. There is nothing in the Federal Constitution which would --

Q Well, the reason I say that is thatyou went into great detail about all of these nonlawyer judges all around and exactly I couldn't imagine what they and, to do with this case.

A Well, it has to do with the kind of judge who is trying cases in juvenile court and why some defendants may want a jury.

Q Yes, but I mean in this particular case you don't want us to get a new judge, too, do you?

A No.

Q I just want to know what you want in this case.

A We come now to the specific harmswhich are caused, according to the state, by introducing [illegible] juvenile court and I will run through very quickly the phrase used in their brief, I believe is it will rob the juvenile court of informality, flexibility and speed.

Well, now, informality only appears informal as the system presently is operated, the officials involved. A youth feels that he is in the presence of a quite formal an authoritative process. To quote Deal Paulson: "He knows that he is in court and not in school or in a doctor's office."

Formality is a difficult thing to measure but as long as the finding of delinquency can rest only on evidence given under oath by witnesses subject to cross-examination and confrontation and as long as reasonable doubt standards apply it seems to me that a certain amount of it is absolutely necessary to detached fact-finding.

This goes to what I think is the essence of this case. By virtue of this Court's decision in state law, juvenile courts now have an adversary fact-finding system, indistinguishable from the one the Court considered in Duncan and Bloom and --

Q Are you urging a Sixth Amendment guaranty or due process?

A I believe, Your Honor, that it's a due process question informed by the incorporation of the Sixth Amendment.

Q Informed by, because I heard you say earlier, did I not, that you felt a jury trial could be accorded without opening the courtroom to the general public?

A That is true; that is --

Q So I gather it's more nearly a due process

than a Sixth Amendment.

A Yes. Yes, Your Honor.

Q So you're not saying that this is a criminal proceeding for all purposes, subject to all the requirements in the Sixth Amendment?

A Certainly not; certainly not; only that the fact-finding stage is such that the same logic would require trial by jury in Duncan applies here and that the states have not presented any reason why it shouldn't. No, to quote Duncan, "alternative guarantees and protections " have been provided in this process to take the place of the jury trial.

Q May I ask you to repeat you say you are limiting your claims to?

A Mr. Justice Black, our primary claim is based on this Court's decision in Winship and the standards used there to determine whether reasonable doubt applied to juvenile court proceedings likewise requires trial by jury.

Q What about the right to counsel?

A That was decided in Gault.

Q Well, which ones do you think are left out?

A Well, the right to public trial is one that is left. I think that as it now stands the fact-finding stage of juvenile court proceedings is an adversa y proceeding as the same as takes place in any adjudication where someone will be imprisoned and stigmatized.

Q Do you think a juvenile can be given any different trial under the constitution when he's charged with an offense for which he can be sentenced and confined for ten years than an adult?

A Sir, we make no claim that he cannot in this case.

Q You make no what?

A We make no claim that he cannot in this case. We leave the sentencing or dispositional stage alone. We make no claim that the state can't decide that because someone is younger thathe should be potentially incarcerated for a longer period of time.

Q Could the public be excluded -- going back to Justice Brennan's question? I'm not sure I see a conflict between what you responded to Mr. Justice Black and Mr. Justice Brennan.

A Our position is the public can be excluded under the very standard which we say here gives us a right to jury trial, because including the public may be -- that's not this case, but it may be harm to the juvenile and if it is, then perhaps under due process tests the public can be excluded, but that is not the issue in this case and our primary argument is that this process does not harm the juvenile, giving him the right to a jury trial. It doesn't delay proceedings as the Public Defender Service's brief has shown.

Even if there is some delay I think the Court has crossed that bridge in Baldwin where it applied a right to a jury trial in the busiest court in the United States of America, withthe biggest backlog and said that administrative conveniences would not inhibit its doing so.

And finally, I think that such delays as our court system has already are complicated and are certainly not caused by jury trials and, given the fact of delay, a jury trial is an essential protection because it gives the defendant in a close case, the case that stirs community actions, to a fresh factfinder, to someone who will look at his case and not just treat it as another bit of material on the assembly line.

I would like to reserve the rest of my time.

Q Mr. Meltsner, do you think the next case, however, will demand the jury trial?

A Certainly the court will have to decide that question at some time, but nothing decided in thise case, it seems to me, can possibly affect the decision of that issue.

Q Suppose we decide this is a criminal proceeding?

A If you decide that it is a criminal proceeding for all purposes; yes. That is correct. We do not ask the Court to do that.

Thank you.

MR. CHIEF JUSTICE BURGER: Counsel, I think we'll not ask you to start for two minutes. We will begin in the morning afresh.

(Whereupon, at 3:00 o'clock p.m. the argument in the above-entitled matter was recessed to resume at 10:00 o'clock on Thursday, December 10, 1970.)