Cleveland State Law Review

Volume 11
Issue 3 *Symposium on Brain Injuries*

Article

1962

Evidence Problems in Juvenile Delinquency Proceedings

Ronald J. Harpst

Evidence Problems in Juvenile Delinquency Proceedings

*Ronald J. Harpst**

SOME OF THE MOST PERPLEXING PROBLEMS facing the attorney defending a child charged with a delinquency have their inception in misunderstandings, lack of uniformity and loose application of evidential rules.

An attorney who is accustomed to appearing in criminal and tort actions in courts other than Juvenile Court, tends to be somewhat confused by such items as delinquency charges, weight and sufficiency of evidence, use of extra-judicial reports, and the loose application of technical rules of evidence.

In order to serve the best interests of the children who are before it, and to obtain necessary facts with which to formulate a rehabilitation plan, the courts have a tendency to waive strict adherence to evidence rules. The methodical attorney wonders how the court can serve the best interests of the child and yet seemingly not afford to the child the equal protection of its laws of evidence.

Weight and Sufficiency of Evidence to Sustain a Finding of Delinquency

Youthful offenders are charged with offenses which, if committed by an adult, would constitute a crime and would therefore require the burden of proof to be beyond a reasonable doubt. In the case of the juvenile offender such alleged offenses are not deemed crimes, but delinquencies. A juvenile delinquent is an infant who violates a law or is incorrigible.[1] The courts consider the hearing on the delinquency as a means to determine whether the minor is in need of the protection, care or training of the state as a substitute or supplement for parental authority. The theory behind such action evolves from the old English common law principle of the sovereign acting as *parens patriae,* which today is applied in civil procedure.

---

* B.A., Gannon College, and studies at George Washington University and Baldwin-Wallace College; LL.B., Cleveland-Marshall Law School; Probation Officer and Assistant Boys Referee, Cuyahoga County Juvenile Court.

1 Black, Law Dictionary, 514 (4th ed. 1951). See, Young, A Synopsis of Ohio Juvenile Court Law, 31 U. Cinc. L. R. (2) 131 (Spring 1962); Symposium on Cuyahoga County Juvenile Court, 10 Clev-Mar. L. R. (3) 507 (Sept. 1961).

2 260 N. Y. 171, 183 N. E. 353, 86 ALR 1001 (1932).

The majority view is set forth in the much cited New York case of *People v. Lewis*[2] which held that in juvenile proceedings "customary rules of evidence, shown by long experience as essential to getting at the truth with reasonable certainty in civil trials, must be adhered to . . . and findings of facts in such cases must rest on a preponderance of evidence adduced under rules of evidence applying in civil trials."

Although a delinquent act is not deemed to be a crime, a specific form of delinquency must be charged in the complaint and must be established by evidence.[3] Evidence of the commission of a crime, is admissible in the proceeding, although the procedure is civil and not criminal. The theory is that civil proceedings comprehend every conceivable cause of action except those criminal in the "usual" sense.[4]

All fifty of the United States and the District of Columbia have adopted the civil test of evidence weight.[5]

In a minority of jurisdictions, while juvenile proceedings are recognized as civil proceedings, "criminal" delinquencies have to be proved with the same degree of certainty as any other criminal charge. In a few jurisdictions[6] proof beyond a reasonable doubt is required.

Confessions or Admissions

The admissibility of signed statements and verbal admissions of youthful offenders made to police officials, school authorities, store detectives, social workers, etc. differs somewhat from the rule governing actions involving adults. There is a distinct split in the cases regarding the use of evidence based on confessions or admissions of minors. The real controversy centers around the self-incriminating nature of the statements.

The majority of jurisdictions holds that because juvenile procedures are civil in nature, and not criminal, the safeguards against self-incrimination do not apply. This proposition has been carried to great lengths. In the Michigan case of *Re Broughton,*[7] the court received no testimony but committed a minor on the basis of a "full investigation," made by a court worker, which found the minor admitting his guilt. In a similar Texas case, a

---

[3] Re Mei, 122 N. J. Eq. 125, 192 A. 80, 110 ALR 1080 (1937).

[4] Bryant v. Brown, 151 Miss. 398, 118 So. 184, 60 ALR 1325 (1928).

[5] Pee v. United States, 274 F. 2d 556; 561-2 (C. A., D. C., 1959).

[6] Jones v. Commonwealth, 185 Va. 335, 38 S. E. 2d 444 (1946); In re Madik, 233 App. Div. 12, 251 N. Y. S. 765 (1931); In re James Rich, 86 N. Y. S. 2d 308 (Dom. Rel. Ct. N. Y. C. 1949).

[7] 192 Mich. 418, 158 N. W. 884 (1916).

minor was found to be delinquent at a hearing where no evidence was introduced other than the minor's name, age and extra-judicial confession.[8]

A number of states follow the principle that where an adjudication is based on admission, insufficient or inadmissible in other courts and made by a minor during the delinquency proceeding, it will be upheld, even though the court did not advise the minor as to the self-incriminating effect of the testimony.[9] In the Pennsylvania case of *Re Holmes,*[10] the court reasoned that a child, questioned by Juvenile Court, "in a manner and in the same spirit as a parent might have acted," was not improperly compelled to give a self-incriminating answer to a question.

There are many courts which oppose the aforementioned principle. They consider self-incriminating confessions of minors an invalid basis for a finding of delinquency. In the oft-mentioned case of *People v. Fitzgerald*[11] a child was found to be delinquent on the uncorroborated testimony of an accomplice and on his own confession, which was extorted by threats. The court held such evidence to be insufficient and reasoned that:

> . . . our activities in behalf of the child may have awakened, but the fundamental ideas of criminal procedure have not changed. These require a definite charge, a hearing, competent proof, and a judgment. Anything less is arbitrary.

On the same rationale as the *Fitzgerald* case, other cases have held that a charge, established on a confession and plea of guilty of a minor, where no witnesses were sworn or examined, nor testimony taken, is invalid.[12] Juvenile proceedings, too, must be governed by customary rules of evidence. A finding cannot be based on compelled self-incriminating testimony, regardless of the social desirability of obtaining testimony.[13]

Dealing with confessions extracted by illegal means, the Supreme Court of the United States in the case of *Haley v. State of Ohio*[14] ruled that a confession made by a fifteen-year old boy,

---

[8] Saliz v. State, 142 Tex. Crim. 278, 152 S. W. 2d 367 (1941).

[9] In re Dargo, 81 Cal. App. 2d 205, 183 P. 2d 282 (1947); Re Holmes, 379 Pa. 599, 109 A. 2d 523 (1954); Re Mont, 175 Pa. Super. 150, 103 A. 2d 460 (1954); Ballard v. State, 192 S. W. 2d 329 (Tex. Civ. App. 1946); People v. Lewis, *supra,* n. 2.

[10] Re Holmes, *supra,* n. 9.

[11] 244 N. Y. 307, 155 N. E. 584 (1927).

[12] People ex rel. Pelty v. Brewer, 232 App. Div. 1, 248 N. Y. S. 599, affd. 256 N. Y. 558, 177 N. E. 139 (1932).

[13] Dendy v. Wilson, 142 Tex. 460, 179 S. W. 2d 269 (1944).

[14] 36 Ohio Op. 530, 79 Ohio App. 237, 72 N. E. 2d 785 (1948).

after several hours of questioning commencing after midnight by relays of police officers, and without aid of counsel or being advised of his rights, is inadmissible because it is involuntary and has been obtained by methods which violate the Fourteenth Amendment. Justice Douglas reasoned that:

> Age 15 is a tender and difficult age for a boy of any race. He can not be judged by the more exacting standards of maturity. That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens. This is the period of great instability which the crisis of adolescence produces. A 15 year old lad, questioned through the dead of night by relays of police is a ready victim of inquisition . . . He needs counsel and support if he is not to become the victim first of fear, then of panic.

Judge Ketcham, of the District of Columbia Juvenile Court, recently rejected oral statements made to police officers, by alleged youthful offenders, admitting their involvement in a case of assault and attempted robbery. The statements had been made at an early hour at police headquarters and without parents, relatives or counsel to guide the statements. The court theorized that the juvenile judge's decision must be based on established facts in order to lay a foundation for corrective and rehabilitive procedures, and unless it is so, "it will fall like a house built upon quicksand." [15] Wigmore, noted authority on evidence, states that the principal reason for the inadmissibility of a confession is that under certain conditions it becomes untrustworthy as testimony.[16] In juvenile matters the issue is not whether the statements were voluntary but whether they were trustworthy. The juvenile judges' decision must rest upon the facts surrounding the making of the confession or admission and not upon whether it was voluntary or not. In considering the facts of this case, Judge Ketcham ruled that the statements were not testimonially trustworthy and were therefore inadmissible. His rationale centered primarily on the theory that youthful offenders, under pressure of interrogation, in a fearsome locale and without the aid of someone to guide them as to their rights, tend to make and sign statements, in order to terminate the questioning and to get home to their parents.[17]

---

[15] Guides for "Juvenile Court Judges," National Parole and Probation Association 1957, pp. 58-61 (no author listed).

[16] 3 Wigmore, Evidence, Sec. 822 (3rd ed.).

[17] As quoted in Note, Distrust of Confessions, 7 Crime and Delinquency J. (3) 278 (July, 1961).

In matters where a jury is impaneled, the lawyer, by proper and timely motion, can keep an inappropriate statement from consideration by the jury. In Juvenile Court the judge sits as the trier of facts and interpreter of the law. As such, he must hear the questioned statement before ruling on its admissibility. What effect the statement carries in the judge's subjective thoughts, only the judge himself can answer. Judge Harry Eastman, president emeritus of the Juvenile Court Judges' Council, has written that:

> . . . the judge must insist on a reasonable application of the rules of evidence. He may not conclude—and his professional training and code do not allow him to conclude—that a child must have committed the delinquent act specified in the petition simply because he had previously manifested bad behavior in general. The judge's training requires that he stand firm on this point, even if it means resisting the demands of quite naturally indignant people.[18]

Hearsay

Probably the most frequent evidence problems, in juvenile proceedings, involve hearsay testimony. Hearsay manifests itself frequently in the numerous reports submitted to the court. It may be a presentation of a police complaint by an officer who did not make the investigation, a school report charging incorrigible behavior without the presence of the witness to such alleged behavior, a probation officer's report of statements made to him, or even a psychiatric report read by a social worker.

The leading case on hearsay is *People v. Lewis*.[19] The Court, in a lengthy opinion covering a large area of juvenile law, stated:

> . . . to serve the social purpose for which it (the court) was created, provisions are made by statute for wide investigations before, during and after the hearing. Investigations are clinical in nature and their results are not to be used as legal evidence where an issue of fact is to be tried . . . The finding of fact must rest on the preponderance of evidence adduced under the rules. Hearsay, opinion, gossip, bias, prejudice, trends of hostile neighborhood feeling, the hopes and fears of social workers, are all sources of error and have no more place in Juvenile Court than in any other court.

---

[18] Eastman, *The Juvenile Court Judge's Job*, 5 National Probation & Parole Assoc. J. 416 (Oct. 1959).

[19] People v. Lewis, *supra*, n. 2; In re Mantell, 62 Neb. 900, 62 N. W. 2d 308, 43 ALR 2d 1142 (1954).

The majority of American jurisdictions follow the rule of *People v. Lewis.* Some representative states are, Nebraska,[20] Ohio,[21] California,[22] Wisconsin,[23] and Texas.[24]

The minority rule is illustrated by the Pennsylvania case of *Re Holmes,*[25] which held that Juvenile Court may avoid many of the legalistic features of rules of evidence customarily applied to other judicial hearings. The court further stated that hearsay evidence, admitted without objection, relevant and material to the issue, is to be given its "natural and probative effect" and may be received as direct evidence.

The Holmes opinion has been strongly criticized. Chief Justice Musmanno, of Pennsylvania's Supreme Court, dissented vigorously, stating that the holding of the majority was "an amazing paradox in jurisprudence." He said:

> . . . that certain constitutional and legal guarantees such as immunity against self-incrimination, prohibition of hearsay, interdiction of exparte and secret reports, all so zealously upheld in decisions from Alabama to Wyoming, are to be jettisoned in Pennsylvania when a person at the bar of justice is a tender aged boy or girl.
>
> * * * * *

A juvenile court delinquency proceeding, he stated:

> . . . may be designated a hearing or a civil inquiry, . . . but in substance and form it is a trial—a momentous trial which means more than one which confronts an adult, because in the Juvenile Court trial the defendant's whole mature life still lies before him. And no matter how trained and experienced a Juvenile Court judge may be he cannot by any magical fishing rod draw forth the truth out of a confused sea of speculation, rumor, suspicion and hearsay. He must follow certain procedures which the wisdom of centuries have established.

The admission of hearsay evidence, in juvenile delinquency proceedings, is one of the by-products of the informal atmosphere of the court. Informality should not, however, mean an absence

---

[20] In re Mantell, *supra,* n. 19.

[21] State v. Shardell, 8 Ohio Op. 2d 262, 107 Ohio App. 388, 79 Ohio L. Abs. 534, 153 N. E. 2d 510 (1958).

[22] In re Hill, 78 Cal. App. 23, 247 P. 591 (1926).

[23] Harry v. State, 246 Wis. 69, 16 N. W. 2d 390 (1944).

[24] Ballard v. State, *supra,* n. 9.

[25] Re Holmes, *supra,* n. 9.

of those technicalities which are essential to justice and which do not tend to confuse or intimidate a child.[26]

Use of Ex Parte Probation Officer Reports and Background Reports

The Background Report is probably the least uniform function of the delinquency hearings. Although it is not evidence in the technical sense, it can appear to be evidence and in some instances is used as such, almost to the effect of being incriminating hearsay testimony.

The confusion surrounding Background Report results from two distinct views as to when it should be presented. The Syracuse Law Review conducted a survey of Juvenile Judges in order to obtain their opinions on the Background Report's proper use. Surprisingly, the opinions were almost evenly split. Those who preferred consultation before and during the hearing, but before the adjudication of delinquency, reasoned that:

1. It serves best the interest of child and State;
2. The child has a tendency to talk more freely to the probation officer than in court;
3. Such consultation sometimes eliminates the necessity of the child's appearance;
4. It prevents loss of wages by parents;
5. It enables the judge to gain a better insight into the child's problems, and better evaluation of his testimony.

The reasons set forth by the judges desiring the use of these Reports prior to making a finding of delinquency are based on sociological factors, and not on laws guaranteeing rights.[27]

The opposite view, as followed in most jurisdictions, regardless of the trend of opinion, remains that, where an issue of fact is concerned, the child is entitled to a hearing free of hearsay and opinion. Background Reports are clinical in nature. Their use is proper only after a finding of delinquency and for the purposes of discovering what prompted the child's conduct and what proper disposition should be made for the purpose of rehabilitation.[28]

---

[26] Standards for Specialized Courts Dealing with Children, prepared by Children's Bureau, U. S. Dept. Health, Educ. and Welfare, U. S. Govt. Printing Office (Washington, 1954), p. 54.

[27] Cherif, Correct Use of Background Reports in Juvenile Delinquency Cases, 5 Syracuse L. R. 67 (1953).

[28] People v. Lewis, *supra*, n. 2; Re Holmes, *supra*, n. 9.

Sworn Testimony

The United States Department of Health, Education, and Welfare, in its publication on "Standards For Specialized Courts Dealing With Children," points out that persons giving testimony should do so under oath.[29] In practice this legal necessity is often ignored. This further result of the relaxation of rules of evidence is due primarily to two reasons: first, informality of procedure; secondly, infrequency of attorney appearances. The second reason adds to the growth of the first reason.

The general rule is set forth in *Re Mantell,*[30] a Nebraska decision. The court held that an adjudication of delinquency will not lie where a juvenile judge admitted unsworn testimony over the objection of the defendant. The court reasoned that to allow such testimony would destroy the traditional and customary safeguards of treatment and would amount to trial without benefit of testimony under sanction of oath or affirmation. The court further stated that the legislature, in enacting juvenile laws, did not intend to deprive a child of liberty with less formality than in the case of an adult.

There are exceptions to the aforementioned rule. The Wisconsin case of *State v. Scholl*[31] held that, where it seems necessary to take a child, who was previously on probation, permanently from his home and to consign him to the care of a state institution, due process is not violated by lack of sworn testimony. The court reasoned that "investigations of the probation officer and the facts brought out by the kindly questioning of the judge upon the hearing substantiate the fact of delinquency fully as well as sworn testimony."

A further exception to the rule set forth in *Re Mantell* considers the more practical problem of age of the witness. The court, in the case of *State ex rel. Christensen,*[32] held that if the court deems it advisable, in its discretion and in regard to a matter of procedure, not to administer an oath to a child witness because of age (in this case the witnesses were in the lower elementary grades) where such witness does not appreciate the

---

[29] Standards for Specialized Courts Dealing with Children, *supra,* n. 26, at p. 56.

[30] Re Mantell, *supra,* n. 19. See also, Re Sippy, 97 A. 2d 455 (D. C. Mun. App. 1953); Mill v. Brown, 31 Utah 473, 88 P. 609, 120 Am. S. Rept. 935 (1907).

[31] State v. Scholl, 167 Wis. 504, 167 N. W. 830 (1918).

[32] 227 P. 2d 760 (4th Jud. Dist. Utah Juv. Ct., 1954).

meaning of the oath, but is likely to state facts as he knows them, a finding of delinquency based on such testimony will be upheld.

Elements of Delinquency Charges

A cardinal principle of Juvenile Court is that no child under 18 years of age is considered to be a criminal nor shall be charged with or be convicted of a crime. Such child is looked upon as being in need of care, guidance and control; i.e., a "delinquent." Much confusion has resulted in referrals involving state and local violation, as terminology used by such agencies normally refers to offenses by adults.

Some specific form of delinquency must be charged.[33] It is not sufficient to charge a child with being a "juvenile delinquent." This term is as *generic* as charging an adult of being guilty of "a crime." The charge must be reasonably definite and specific in order to allow the accused to prepare his defense.[34]

This point is further illustrated by Healy & Bronner in the following statement:

> The terms by which delinquency is designated—larceny, truancy, breaking and entering, and so on are descriptions of behavior which do not in the least indicate what is expressed by the offender in the delinquent act. While it seems necessary to have labels for such types of conduct, yet it must be recognized in all common sense, that naming the offense reveals nothing of the determinants of the behavior.[35]

Although delinquency charges are, in essence, descriptions of behavior, they require specific allegations and definite evidence.

Reference to the *Cuyahoga County (Ohio) Probation Officers Manual* is a starting point for attorneys, subject to the requirements of the particular jurisdiction, to ascertain the common charges and their elements.[36] The elements of proof of the various delinquency charges are identical with elements of corresponding torts or crimes. The main variance exists in the burden of proof necessary in order to sustain the delinquency charge. The difference must be comprehended if the lawyer is to prepare an adequate defense for a child client.

---

[33] People v. Pikunas, 260 N. Y. 72, 182 N. E. 675, 85 ALR 1097 (1932).

[34] Re Mei, *supra,* n. 3.

[35] *New Light on Delinquency and Its Treatment,* Yale University Press (1936), pp. 3-4.

[36] Cuyahoga County (Ohio) Probation Officers Manual, pp. 609-613 (current ed.).