

Criminal Law--Age of Infant Defendant Not Ground for Holding Confession Involuntary (People v. De Flumer, 16 N.Y.2d 20 (1965))

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curtailing constitutional rights.⁵¹ Neither the Passport Act nor the Immigration and Nationality Act expressly allows any type of passport restriction. If construed narrowly, such a grant of authority is difficult to derive from these statutes. In justification of this derivation of power, the Court in *Zemel* argued that an unspecified grant of power may be implied in the light of the executive's historical assumption of that power. The Court mentions several cases which have so construed statutes, but in none was a restriction of a constitutional right sought.⁵² The mandate of *Kent* and many other Supreme Court decisions—to narrowly construe statutes restricting constitutional rights—appears to have been displaced by the Court's argument.

Since the enactment of Section 215 of the Immigration and Nationality Act, and with the Presidential Proclamation of 1953 which declared the state of a national emergency, it is presently unlawful for a person to leave the country without a passport. Coupled with the recognition of the executive's power to impose area restrictions on passports, the President and his delegated agents may curtail an affirmed constitutional right without any clearly defined restraints. Neither Congress nor the Court has given any indication of the extent to which restrictions may be carried. Without any statutory or judicial restraints, the power to restrict passports could become an arbitrary control over travel, which the State Department might effectuate by increasing the number of restricted areas.⁵³ This potentiality may become aggravated by the Court's apparent willingness to accept without question the State Department's opinion as to what constitutes a national emergency. In cases where express congressional approval is lacking, courts should examine extensively the reasons for restricting the right to travel, and should not permit the violation of any constitutional right in the absence of a compelling necessity.



CRIMINAL LAW—AGE OF INFANT DEFENDANT NOT GROUND FOR HOLDING CONFESSION INVOLUNTARY.—In 1947, the defendant, then fourteen years old, was taken from his home at 9:30 P.M., and was interrogated by police officers until a formal confession was obtained in the absence of parents or counsel. After the grand

⁵¹ *Kent v. Dulles*, 357 U.S. 116, 129 (1957).

⁵² The Court cites *Norwegian Nitrogen Co. v. United States*, 288 U.S. 294 (1933), which considered tariff duties imposed upon foreign manufacturers; *Costanzo v. Tillinghast*, 287 U.S. 341 (1932), which dealt with the deportation of aliens; *United States v. Midwest Oil Co.*, 236 U.S. 459 (1914) and *Udall v. Tallman*, *supra* note 42, both of which were concerned with oil and gas leases on government-owned land.

⁵³ See 73 HARV. L. REV. 1610, 1611 (1960).

jury indictment, defendant was assigned counsel, and subsequently entered a plea of guilty to murder in the second degree, for which he was convicted. Defendant appealed from a 1963 coram nobis proceeding in which he sought to have the guilty plea and conviction vacated and the indictment dismissed. Affirming the denial by the appellate division of the coram nobis petition, the New York Court of Appeals held that the confession obtained was not coerced, and that there was no denial of the infant's due process. *People v. De Flumer*, 16 N.Y.2d 20, 209 N.E.2d 93, 261 N.Y.S.2d 42 (1965).

At common law, two presumptions operated in favor of minors with respect to criminal liability: first, an irrebuttable presumption that an infant under seven was incapable of committing a crime; secondly, a rebuttable presumption that an infant between the ages of seven and fourteen was incapable of understanding the nature of his acts.¹ Despite the application of these presumptions, common-law treatment of infants was often harsh. Consequently, certain states, including New York, enacted statutes establishing reformatories in order to separate infants from hardened adult criminals. Later, other jurisdictions provided separate hearings and a probation system permitting supervision instead of confinement for minors.² The philosophy which motivated these earlier statutory enactments has led to present legislation which, in some cases, relieves minors of criminal responsibility and provides special procedures and new rehabilitation techniques for juvenile offenders.³

Although an infant's capacity to confess guilt has been recognized,⁴ the standards to be applied in determining whether an infant's confession was coerced are unclear. The rule in all jurisdictions is that a minor's confession is not ipso facto inadmissible as coerced, absent a statute providing otherwise.⁵ Age is to be considered merely as one of many factors in determining the voluntariness of confessions. For example, in *State v. Berberick*,⁶ the court was faced with the problem of determining whether the confession of an eighteen year old was voluntary. It was held that the age, mental condition, intelligence, character, situation and experience of the defendant are factors to be considered in de-

¹ RUBIN, CRIME AND JUVENILE DELINQUENCY 94-95 (2d ed. 1961).

² SUSSMAN, JUVENILE DELINQUENCY 12-13 (2d ed. 1958).

³ See N.Y. FAMILY CT. ACT art. 7.

⁴ See, e.g., *Martin v. State*, 90 Ala. 602, 8 So. 858 (1891); *Carr v. State*, 24 Tex. App. 562, 7 S.W. 328 (1888); *State v. Watson*, 114 Vt. 543, 49 A.2d 174 (1946).

⁵ *De Souza v. Barber*, 263 F.2d 470 (9th Cir.), cert. denied, 359 U.S. 989 (1959); *Corbin v. State*, 19 Ala. App. 439, 98 So. 132, cert. denied, 210 Ala. 369, 98 So. 134 (1923); *Oliver v. State*, 354 P.2d 792 (Okla. Crim. 1960).

⁶ 38 Mont. 423, 100 Pac. 209 (1909); see *Hawkins v. State*, 6 Ga. App. 109, 64 S.E. 289 (1909).

termining the weight to be given to the alleged confession. In *Birkenfeld v. State*,⁷ the defendant, a sixteen year old alien who spoke English imperfectly, had confessed to a police officer. In affirming his conviction, the court stated that he was an intelligent boy who was old enough to fully comprehend the situation.

Until *Brown v. Mississippi*,⁸ state courts were reluctant to place great emphasis on the age of a defendant. In *Brown*, the United States Supreme Court declared invalid a confession admitted under circumstances which offended the requirements of due process under the fourteenth amendment. Thereafter, the Supreme Court established constitutional standards by which to judge the confession of a minor. For example, in *Haley v. Ohio*,⁹ the defendant, age fifteen, was arrested after midnight, and was questioned for five hours before he confessed to a crime. He was told that he had a right to remain silent, but was not allowed to see his parents or an attorney before the interrogation and subsequent confession. The Court, relying heavily upon the age of the defendant, reversed the conviction for first degree murder, holding that the method of eliciting the confession failed to meet the requirements of due process. The Court stated that, in determining the voluntariness of a minor's confession, "special care in scrutinizing the record must be used."¹⁰ The minor "cannot 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."¹¹ In many cases, the minor "needs counsel and support if he is not to become the victim of fear, then of panic."¹² In a more recent case, *Gallegos v. Colorado*,¹³ the defendant, fourteen years of age, was arrested by the police and immediately admitted the commission of an assault and robbery. The next day, his mother requested to see him, but permission was denied. Subsequently, a formal confession was obtained without adult advice, and the minor was committed to a state industrial school. Several weeks later, the victim died, and the defendant was returned to the criminal court where, based upon the confession, a conviction for murder was obtained. The United States Supreme Court reversed the conviction, holding that such factors as the youth of the defendant, the long detention, the failure to send for his parents, to bring him before a judge of the juvenile court, and to see that he had the advice of a lawyer or a friend,¹⁴ militated against finding that the confession was voluntarily rendered.

⁷ 104 Md. 253, 65 Atl. 1 (1906).

⁸ 297 U.S. 278 (1936).

⁹ 332 U.S. 596 (1948).

¹⁰ *Id.* at 599.

¹¹ *Ibid.*

¹² *Id.* at 600.

¹³ 370 U.S. 49 (1962).

¹⁴ *Id.* at 55.

Some lower courts have recently refused to reverse convictions based on confessions of minors, finding facts distinguishable from those in *Gallegos* and *Haley*. For example, in *United States v. New Jersey*,¹⁵ two minors were detained for a period exceeding nine hours, during which period both confessed to the crime of murder. A conviction, based on the confessions, was affirmed on the ground that the defendants, who were seventeen and had been involved in previous encounters with the police, had the maturity to understand the nature of their confessions.¹⁶ In effect, the court was reasonably assured that the confession was voluntary. Similarly, in *Hayden v. State*,¹⁷ a child, age fifteen, was brought to police headquarters by his parent, and was held for one day before a confession was obtained. Prior to his confession, he was advised of his right to have his counsel, mother and friends present, none of which he requested. The conviction based on the confession was affirmed, the court holding that the confession was voluntarily made.

The Court in the instant case denied the coram nobis petition on the ground that the confession was made under circumstances which indicated that the child's rights were fairly protected, viz., that the prior confession "met all requirements of voluntariness. . . ." ¹⁸ Therefore, the plea of guilty to murder in the second degree was offered as a humane disposition, since if the indictment had come to trial a conviction of first degree murder might well have resulted.¹⁹ Hence, the Court held that the age of the child could not be the sole ground for determining whether due process was violated.

The dissenting judges were of the opinion that, since the determination of voluntariness was based on "the more exacting standards of maturity," due process had indeed been violated. Therefore, they reasoned, the subsequent plea of guilty should not have been accepted by the Court.

The majority opinion can be criticized on the ground that the standards used to determine whether the confession was involuntary were not indicated. Instead, the Court made the nebulous statement that "there was no denial of due process under the law then existing."²⁰

¹⁵ 323 F.2d 146 (3d Cir. 1963).

¹⁶ *Id.* at 150.

¹⁷ 199 N.E.2d 102 (Ind. Sup. Ct. 1964).

¹⁸ *People v. De Flumer*, 16 N.Y.2d 20, 21, 209 N.E.2d 93, 94, 261 N.Y.S.2d 42, 43 (1965).

¹⁹ At the time of the defendant's conviction, the 1948 amendment to Section 486 of the New York Penal Law, providing that children seven to fifteen years of age could not be convicted of an act which if committed by an adult would be a crime, had not yet been enacted. See *People v. Oliver*, 1 N.Y.2d 152, 134 N.E.2d 197, 151 N.Y.S.2d 367 (1956).

²⁰ *Supra* note 18.

Note must be taken of the fact that the lower court actually applied the more exacting standards set forth in *Gallegos* and *Haley*. Perhaps the instant Court feared that if it applied these standards retroactively, and if the petitioner's confession were found to be involuntary, it would be overwhelmed by petitions for coram nobis for events which, in many cases, had occurred many years in the past and had, in all probability, gone through the normal appellate process.²¹

The New York procedure relating to the custody and detention of minors has undergone substantial change in the last few years. In 1962, Section 724 of the Family Court Act was enacted. The statute, in effect, provides that when a police officer takes custody of a minor, the officer must notify his parents or other persons legally responsible for him. In addition, he must release the minor to his parents upon the written promise that the child will be brought before the Family Court. In the alternative, the police officer may take the child directly to the Family Court, without first taking him to a police station.²² A recent amendment provides that if "it is necessary to question the child" the police officer may do so for a "reasonable period of time."²³

Both Section 724 of the Family Court Act and the Supreme Court cases of *Gallegos* and *Haley* have been used to determine whether the confession of a minor was voluntary.²⁴ For example, in *Matter of Rutane*,²⁵ a thirteen year old was apprehended and questioned by police from 11 A.M. to 6 P.M., until he confessed to a murder. The child's parents were not notified until later in the day, and they were not allowed to see him until he had signed the confession. The question presented was whether the confession was involuntary. If so, the juvenile delinquency proceeding would have to be dismissed, since the confession was the sole evidence at the hearing. In holding the confession involuntary, the judge stated that the provisions of section 724 had been violated. However, this was not the sole ground for declaring the confession invalid. The judge also relied upon *Haley* and *Gallegos* for justifying his decision, stating that "the methods used in obtaining this 'con-

²¹ A writ of error coram nobis, a post-conviction remedy, is commonly brought for an alleged error of fact not appearing on the record, and is directed to the same court in order that it may correct the error.

²² N.Y. FAMILY CT. ACT § 724, as amended, N.Y. Sess. Laws 1963, ch. 809. Other jurisdictions have similar statutes. See SUSSMAN, *op. cit. supra* note 2, at 38-44.

²³ N.Y. FAMILY CT. ACT § 724(b) (ii).

²⁴ This statute and others similar to it have been enacted to prevent the commingling of infants and adults in the police station, and not for the purpose of providing standards by which to judge the voluntariness of a confession. This has been left for the courts in the exercise of their judicial function. See SUSSMAN, *op. cit. supra* note 2, at 39-40.

²⁵ 37 Misc. 2d 234, 234 N.Y.S.2d 777 (Fam. Ct. 1962).

fession' violated the Fourteenth Amendment of the United States Constitution,"²⁶ and the confession, therefore, was inadmissible.

Two appellate division cases have held that violations of certain provisions of the Family Court Act were justification for setting aside a confession as involuntary. In the first case, *Matter of Dennis*,²⁷ defendant, age fifteen, was questioned for a period of four days and was not permitted to see anyone for the period of a week. He appealed from a Family Court order adjudicating him to be a delinquent. Several sections of the Family Court Act had been violated, including section 724. The court, setting aside the adjudication of delinquency, considered both the violation of section 724 and the violation of the standards set forth in *Gallegos*. From *Dennis* one could justifiably conclude that a violation of section 724, *i.e.*, the failure to notify the parents "immediately" and to transfer the child to a juvenile court, would not ipso facto invalidate a minor's confession. But, in *Matter of Addison*,²⁸ decided on the same day, a more liberal approach was taken by the court. Defendant, age thirteen, was charged with being a juvenile delinquent on a petition made by a police officer. She appeared at the police station of her own accord, without her parents, and voluntarily confessed to the offense. The court invalidated the confession, and indicated by dicta "that a confession may not be obtained prior to notifying parents or relatives and releasing the child either to them or to a Family Court. . . ." ²⁹ The implication here is that such a violation of section 724 could, of itself, be grounds for invalidating the confession.

If the issue of voluntariness of a confession were presented today, under facts similar to those in *De Flumer*, the Court could determine voluntariness in either of two ways: first, it could treat the violation of Section 724 of the Family Court Act as making the confession ipso facto invalid, with no other consideration; or, secondly, it could rely on the standards set forth in *Gallegos* and *Haley*—if the confession were found to be a violation of those standards, it could be held invalid as procured through an infringement of the defendant's constitutional rights.

In view of the policy to attempt to protect infants, as enunciated in section 724, it is reasonable to conjecture that the courts in the future will hold that any violation of section 724 invalidates an infant's confession, irrespective of whether the standards set forth in *Gallegos* and *Haley* were also violated.



²⁶ *Id.* at 236-37, 234 N.Y.S.2d at 780.

²⁷ 20 App. Div. 2d 86, 244 N.Y.S.2d 798 (4th Dep't 1963).

²⁸ 20 App. Div. 2d 90, 245 N.Y.S.2d 243 (4th Dep't 1963).

²⁹ *Id.* at 92, 245 N.Y.S.2d at 246.