In re WINSHIP

SUPREME COURT OF THE UNITED STATES
397 U.S. 358 (1970)
(all **bolding** by editor, not the Court)

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Constitutional questions decided by this Court concerning the juvenile process have centered on the adjudicatory stage at "which a determination is made as to whether a juvenile is a 'delinquent' as a result of alleged misconduct on his part, with the consequence that he may be committed to a state institution." In re Gault, 387 U.S. 1, 13 (1967). Gault decided that, although the Fourteenth Amendment does not require that the hearing at this stage conform with all the requirements of a criminal trial or even of the usual administrative proceeding, **the Due Process Clause does require application during the adjudicatory hearing of "'the essentials of due process and fair treatment.'"** Id., at 30. This case presents the single, narrow **question whether proof beyond a reasonable doubt is among the "essentials of due process and fair treatment" required during the adjudicatory stage** when a juvenile is charged with an act which would constitute a crime if committed by an adult.

Section 712 of the New York Family Court Act defines a juvenile delinquent as "a person over seven and less than sixteen years of age who does any act which, if done by an adult, would constitute a crime." During a 1967 adjudicatory hearing, conducted pursuant to ' 742 of the Act, a judge in New York Family Court found that appellant, then a 12-year-old boy, had entered a locker and stolen $ 112 from a woman's pocketbook. The petition which charged appellant with delinquency alleged that his act, "if done by an adult, would constitute the crime or crimes of Larceny." **The judge acknowledged that the proof might not establish guilt beyond a reasonable doubt, but rejected appellant's contention that such proof was required by the Fourteenth Amendment.** The judge relied instead on ' 744 (b) of the New York Family Court Act which provides that "any determination at the conclusion of [an adjudicatory] hearing that a [juvenile] did an act or acts must be based on a preponderance of the evidence."[1] During a subsequent dispositional hearing, appellant was ordered placed in a training school for an initial period of 18 months, subject to annual extensions of his commitment until his 18th birthday -- six years in appellant's case..... We reverse.

I

The **requirement that guilt of a criminal charge be established by proof beyond a reasonable doubt dates at least from our early years as a Nation.** The "demand for a higher degree of persuasion in criminal cases was recurrently expressed from ancient times, [though] its crystallization into the formula 'beyond a reasonable doubt' seems to have occurred as late as 1798. It is now accepted in common law jurisdictions as the measure of persuasion by which the prosecution must convince the trier of **all the essential elements of guilt."** C. McCormick, Evidence ' 321, pp. 681-682 (1954); see also 9 J. Wigmore, Evidence ' 2497 (3d ed. 1940). Although virtually unanimous adherence to the reasonable-doubt standard in common-law jurisdictions may not conclusively establish it as a

[1] The ruling appears in the following portion of the hearing transcript:
Counsel: "Your Honor is making a finding by the preponderance of the evidence."
Court: "Well, it convinces me."
Counsel: "It's not beyond a reasonable doubt, Your Honor."
Court: "That is true . . . . Our statute says a preponderance and a preponderance it is."

requirement of due process, such adherence does "reflect a profound judgment about the way in which law should be enforced and justice administered." Duncan v. Louisiana, 391 U.S. 145, 155 (1968).

Expressions in many opinions of this Court indicate that **it has long been assumed that proof of a criminal charge beyond a reasonable doubt is constitutionally required.** [Citations omitted] Mr. Justice Frankfurter stated that "it is the duty of the Government to establish . . . guilt beyond a reasonable doubt. This notion -- basic in our law and rightly one of the boasts of a free society -- is a requirement and a safeguard of due process of law in the historic, procedural content of 'due process.'" Leland v. Oregon, supra, at 802-803 (dissenting opinion). In a similar vein, the Court said in Brinegar v. United States, supra, at 174, that "guilt in a criminal case must be proved beyond a reasonable doubt and by evidence confined to that which long experience in the common-law tradition, to some extent embodied in the Constitution, has crystallized into rules of evidence consistent with that standard. These rules are historically grounded rights of our system, developed to safeguard men from dubious and unjust convictions, with resulting forfeitures of life, liberty and property." Davis v. United States, supra, at 488, stated that the requirement is implicit in "constitutions . . . [which] recognize the fundamental principles that are deemed essential for the protection of life and liberty." In Davis a murder conviction was reversed because the trial judge instructed the jury that it was their duty to convict when the evidence was equally balanced regarding the sanity of the accused. This Court said: "On the contrary, he is entitled to an acquittal of the specific crime charged if upon all the evidence there is reasonable doubt whether he was capable in law of committing crime. . . . No man should be deprived of his life under the forms of law unless the jurors who try him are able, upon their consciences, to say that the evidence before them . . . is sufficient to show beyond a reasonable doubt the existence of every fact necessary to constitute the crime charged." Id., at 484, 493.

The reasonable-doubt standard plays a vital role in the American scheme of criminal procedure. It is a prime instrument for reducing the risk of convictions resting on factual error. The standard provides concrete substance for the presumption of innocence -- that bedrock "axiomatic and elementary" principle whose "enforcement lies at the foundation of the administration of our criminal law." Coffin v. United States, supra, at 453. As the dissenters in the New York Court of Appeals observed, and we agree, "a person accused of a crime . . . would be at a severe disadvantage, a disadvantage amounting to a lack of fundamental fairness, if he could be adjudged guilty and imprisoned for years on the strength of the same evidence as would suffice in a civil case."

The requirement of proof beyond a reasonable doubt has this vital role in our criminal procedure for **cogent reasons.** The accused during a criminal prosecution has at stake interests of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction. Accordingly, a society that values the good name and freedom of every individual should not condemn a man for commission of a crime when there is reasonable doubt about his guilt. As we said in Speiser v. Randall, supra, at 525-526: "There is always in litigation a margin of error, representing error in factfinding, which both parties must take into account. Where one party has at stake an interest of transcending value -- as a criminal defendant his liberty -- this margin of error is reduced as to him by the process of placing on the other party the burden of . . . persuading the factfinder at the conclusion of the trial of his guilt beyond a reasonable doubt. Due process commands that no man shall lose his liberty unless the Government has borne the burden of . . . convincing the factfinder of his guilt." To this end, the reasonable-doubt standard is indispensable, for it "impresses on the trier of fact the necessity of reaching a subjective state of certitude of the facts in issue." Dorsen & Rezneck, In Re Gault and the Future of Juvenile Law, 1 Family Law Quarterly, No. 4, pp. 1, 26 (1967).

Moreover, use of the reasonable-doubt standard is indispensable to command the respect and confidence of the community in applications of the criminal law. It is critical that the moral force of the criminal law not be diluted by a standard of proof that leaves people in doubt whether innocent men are being condemned. It is also important in our free society that every individual going about his ordinary affairs have confidence that his government cannot adjudge him guilty of a criminal offense without convincing a proper factfinder of his guilt with utmost certainty.

Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.

II

[In Part II, the Court held that there should be no distinction between the standard of proof in a criminal court and in a juvenile court when the juvenile is charged with a crime that can result in incarceration. AThe same considerations that demand extreme caution in fact-finding to protect the innocent adult apply as well to the innocent child.]

. . . . **Finally, we reject the Court of Appeals' suggestion that there is, in any event, only a "tenuous difference" between the reasonable-doubt and preponderance standards**. The suggestion is singularly unpersuasive. In this very case, the trial judge's ability to distinguish between the two standards enabled him to make a finding of guilt that he conceded he might not have made under the standard of proof beyond a reasonable doubt. Indeed, the trial judge's action evidences the accuracy of the observation of commentators that "the preponderance test is susceptible to the misinterpretation that it calls on the trier of fact merely to perform an abstract weighing of the evidence in order to determine which side has produced the greater quantum, without regard to its effect in convincing his mind of the truth of the proposition asserted." Dorsen & Rezneck, supra, at 26-27.[2]

III

In sum, the constitutional safeguard of proof beyond a reasonable doubt is as much required during the adjudicatory stage of a delinquency proceeding as are those constitutional safeguards applied in Gault -- notice of charges, right to counsel, the rights of confrontation and examination, and the privilege against self-incrimination. We therefore hold, in agreement with Chief Judge Fuld in dissent in the Court of Appeals, "that, where a 12-year-old child is charged with an act of stealing which renders him liable to confinement for as long as six years, then, as a matter of due process . . . the case against him must be proved beyond a reasonable doubt."

Reversed.

---

[2] Compare this Court's rejection of the preponderance standard in deportation proceedings, where we ruled that the Government must support its allegations with "clear, unequivocal, and convincing evidence." Woodby v. Immigration and Naturalization Service, 385 U.S. 276, 285 (1966). Although we ruled in Woodby that deportation is not tantamount to a criminal conviction, we found that since it could lead to "drastic deprivations," it is impermissible for a person to be "banished from this country upon no higher degree of proof than applies in a negligence case." Ibid.

MR. JUSTICE HARLAN, concurring.

No one, I daresay, would contend that state juvenile court trials are subject to no federal constitutional limitations. Differences have existed, however, among the members of this Court as to what constitutional protections do apply. See In re Gault, 387 U.S. 1 (1967).

The present case draws in question the validity of a New York statute that permits a determination of juvenile delinquency, founded on a charge of criminal conduct, to be made on a standard of proof that is less rigorous than that which would obtain had the accused been tried for the same conduct in an ordinary criminal case. While I am in full agreement that this statutory provision offends the requirement of fundamental fairness embodied in the Due Process Clause of the Fourteenth Amendment, I am constrained to add something to what my Brother BRENNAN has written for the Court, lest the true nature of the constitutional problem presented become obscured or the impact on state juvenile court systems of what the Court holds today be exaggerated.

I

Professor Wigmore, in discussing the various attempts by courts to define how convinced one must be to be convinced beyond a reasonable doubt, wryly observed: "The truth is that no one has yet invented or discovered a mode of measurement for the intensity of human belief. Hence there can be yet no successful method of communicating intelligibly . . . a sound method of self-analysis for one's belief," 9 J. Wigmore, Evidence 325 (3d ed. 1940).

Notwithstanding Professor Wigmore's skepticism, we have before us a case where the choice of the standard of proof has made a difference: the juvenile court judge below forthrightly acknowledged that he believed by a preponderance of the evidence, but was not convinced beyond a reasonable doubt, that appellant stole $ 112 from the complainant's pocketbook. Moreover, even though the labels used for alternative standards of proof are vague and not a very sure guide to decisionmaking, **the choice of the standard for a particular variety of adjudication does, I think, reflect a very fundamental assessment of the comparative social costs of erroneous factual determinations.**

To explain why I think this so, I begin by stating two propositions, neither of which I believe can be fairly disputed. First, **in a judicial proceeding in which there is a dispute about the facts of some earlier event, the factfinder cannot acquire unassailably accurate knowledge of what happened. Instead, all the factfinder can acquire is a belief of what probably happened**. The intensity of this belief -- the degree to which a factfinder is convinced that a given act actually occurred -- can, of course, vary. In this regard, a standard of proof represents an attempt to instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication. Although the phrases "preponderance of the evidence" and "proof beyond a reasonable doubt" are quantitatively imprecise, they do communicate to the finder of fact different notions concerning the degree of confidence he is expected to have in the correctness of his factual conclusions.

A second proposition, which is really nothing more than a corollary of the first, is that **the trier of fact will sometimes, despite his best efforts, be wrong in his factual conclusions.** In a lawsuit between two parties, a factual error can make a difference in one of two ways. First, it can result in a judgment in favor of the plaintiff when the true facts warrant a judgment for the defendant. The analogue

in a criminal case would be the conviction of an innocent man. On the other hand, an erroneous factual determination can result in a judgment for the defendant when the true facts justify a judgment in plaintiff's favor. The criminal analogue would be the acquittal of a guilty man.

The standard of proof influences the relative frequency of these two types of erroneous outcomes. If, for example, the standard of proof for a criminal trial were a preponderance of the evidence rather than proof beyond a reasonable doubt, there would be a smaller risk of factual errors that result in freeing guilty persons, but a far greater risk of factual errors that result in convicting the innocent. Because the standard of proof affects the comparative frequency of these two types of erroneous outcomes, the choice of the standard to be applied in a particular kind of litigation should, in a rational world, reflect an assessment of the comparative social disutility of each.

When one makes such an assessment, the reason for different standards of proof in civil as opposed to criminal litigation becomes apparent. In a civil suit between two private parties for money damages, for example, we view it as no more serious in general for there to be an erroneous verdict in the defendant's favor than for there to be an erroneous verdict in the plaintiff's favor. A preponderance of the evidence standard therefore seems peculiarly appropriate for, as explained most sensibly,[11] it simply requires the trier of fact "to believe that the existence of a fact is more probable than its nonexistence before [he] may find in favor of the party who has the burden to persuade the [judge] of the fact's existence."

In a criminal case, on the other hand, we do not view the social disutility of convicting an innocent man as equivalent to the disutility of acquitting someone who is guilty. As MR. JUSTICE BRENNAN wrote for the Court in Speiser v. Randall, 357 U.S. 513, 525-526 (1958):

> "There is always in litigation a margin of error, representing error in factfinding, which both parties must take into account. Where one party has at stake an interest of transcending value -- as a criminal defendant his liberty -- this margin of error is reduced as to him by the process of placing on the other party the burden . . . of persuading the factfinder at the conclusion of the trial of his guilt beyond a reasonable doubt."

In this context, I view the requirement of proof beyond a reasonable doubt in a criminal case as bottomed on **a fundamental value determination of our society that it is far worse to convict an innocent man than to let a guilty man go free**. It is only because of the nearly complete and long-standing acceptance of the reasonable-doubt standard by the States in criminal trials that the Court has not before today had to hold explicitly that due process, as an expression of fundamental procedural fairness, requires a more stringent standard for criminal trials than for ordinary civil litigation.

II

[1] The preponderance test has been criticized, justifiably in my view, when it is read as asking the trier of fact to weigh in some objective sense the quantity of evidence submitted by each side rather than asking him to decide what he believes most probably happened. See J. Maguire, Evidence, Common Sense and Common Law 180 (1947).

When one assesses the consequences of an erroneous factual determination in a juvenile delinquency proceeding in which a youth is accused of a crime, I think it must be concluded that, while the consequences are not identical to those in a criminal case, the differences will not support a distinction in the standard of proof. First, and of paramount importance, a factual error here, as in a criminal case, exposes the accused to a complete loss of his personal liberty through a state-imposed confinement away from his home, family, and friends. And, second, **a delinquency determination, to some extent at least, stigmatizes a youth in that it is by definition bottomed on a finding that the accused committed a crime**. Although there are no doubt costs to society (and possibly even to the youth himself) in letting a guilty youth go free, I think here, as in a criminal case, it is far worse to declare an innocent youth a delinquent. I therefore agree that a juvenile court judge should be no less convinced of the factual conclusion that the accused committed the criminal act with which he is charged than would be required in a criminal trial.

III

I wish to emphasize, as I did in my separate opinion in Gault, 387 U.S. 1, 65, that there is no automatic congruence between the procedural requirements imposed by due process in a criminal case, and those imposed by due process in juvenile cases. It is of great importance, in my view, that procedural strictures not be constitutionally imposed that jeopardize "the essential elements of the State's purpose" in creating juvenile courts, id., at 72. In this regard, I think it worth emphasizing that the requirement of proof beyond a reasonable doubt that a juvenile committed a criminal act before he is found to be a delinquent does not (1) interfere with the worthy goal of rehabilitating the juvenile, (2) make any significant difference in the extent to which a youth is stigmatized as a "criminal" because he has been found to be a delinquent, or (3) burden the juvenile courts with a procedural requirement that will make juvenile adjudications significantly more time consuming, or rigid. Today's decision simply requires a juvenile court judge to be more confident in his belief that the youth did the act with which he has been charged.

With these observations, I join the Court's opinion, subject only to the constitutional reservations expressed in my opinion in Gault.

MR. CHIEF JUSTICE BURGER, with whom MR. JUSTICE STEWART joins, dissenting.

[Omitted. These two Justices dissented primarily on the ground that juvenile proceedings should be treated differently from adult criminal proceedings, because the purpose of juvenile proceedings is to “rehabilitate” errant youths, and the system does not “stigmatize” youths, at least in theory. The terms of this dissent sound somewhat quaint by today=s standards, which evince an increasing concern about serious crimes committed by juveniles.]

MR. JUSTICE BLACK, dissenting.

The majority states that "many opinions of this Court indicate that it has long been assumed that proof of a criminal charge beyond a reasonable doubt is constitutionally required." Ante, at 362. I have joined in some of those opinions, as well as the dissenting opinion of Mr. Justice Frankfurter in Leland v. Oregon, 343 U.S. 790, 802 (1952). The Court has never clearly held, however, that proof beyond a reasonable doubt is either expressly or impliedly commanded by any provision of the Constitution. The Bill of Rights, which in my view is made fully applicable to the States by the Fourteenth Amendment, see Adamson v. California, 332 U.S. 46, 71-75 (1947) (dissenting opinion), does by express language provide for, among other things, a right to counsel in criminal trials, a right to indictment, and the right of a defendant to be informed of the nature of the charges against him. And in two places the Constitution provides for trial by jury, but nowhere in that document is there any statement that conviction of crime

requires proof of guilt beyond a reasonable doubt. **The Constitution thus goes into some detail to spell out what kind of trial a defendant charged with crime should have, and I believe the Court has no power to add to or subtract from the procedures set forth by the Founders.** I realize that it is far easier to substitute individual judges' ideas of "fairness" for the fairness prescribed by the Constitution, but I shall not at any time surrender **my belief that that document itself should be our guide, not our own concept of what is fair, decent, and right. That this old "shock-the-conscience" test is what the Court is relying on, rather than the words of the Constitution,** is clearly enough revealed by the reference of the majority to "fair treatment" and to the statement by the dissenting judges in the New York Court of Appeals that failure to require proof beyond a reasonable doubt amounts to a "lack of fundamental fairness." *Ante*, at 359, 363. As I have said time and time again, I prefer to put my faith in the words of the written Constitution itself rather than to rely on the shifting, day-to-day standards of fairness of individual judges.

[discussion omitted]

It can be, and has been, argued that when this Court strikes down a legislative act because it offends the idea of "fundamental fairness," it furthers the basic thrust of our Bill of Rights by protecting individual freedom. But that argument ignores the effect of such decisions on perhaps **the most fundamental individual liberty of our people -- the right of each man to participate in the self-government of his society.** Our Federal Government was set up as one of limited powers, but it was also given broad power to do all that was "necessary and proper" to carry out its basic purpose of governing the Nation, so long as those powers were not exercised contrary to the limitations set forth in the Constitution. And the States, to the extent they are not restrained by the provisions in that document, were to be left free to govern themselves in accordance with their own views of fairness and decency. Any legislature presumably passes a law because it thinks the end result will help more than hinder and will thus further the liberty of the society as a whole. The people, through their elected representatives, may of course be wrong in making those determinations, but **the right of self-government that our Constitution preserves is just as important as any of the specific individual freedoms preserved in the Bill of Rights.** The liberty of government by the people, in my opinion, should never be denied by this Court except when the decision of the people as stated in laws passed by their chosen representatives, conflicts with the express **or necessarily implied** commands of our Constitution.

II

I admit **a strong, persuasive argument can be made for a standard of proof beyond a reasonable doubt in criminal cases** -- and the majority has made that argument well -- **but it is not for me as a judge to say for that reason that Congress or the States are without constitutional power to establish another standard that the Constitution does not otherwise forbid**. It is quite true that proof beyond a reasonable doubt has long been required in federal criminal trials. It is also true that this requirement is almost universally found in the governing laws of the States. And as long as a particular jurisdiction requires proof beyond a reasonable doubt, then the Due Process Clause commands that every trial in that jurisdiction must adhere to that standard. See Turner v. United States, 396 U.S. 398, 430 (1970) (BLACK, J., dissenting). But when, as here, a State through its duly constituted legislative branch decides to apply a different standard, then that standard, unless it is otherwise unconstitutional, must be applied to insure that persons are treated according to the "law of the land." The State of New York has made such a decision, and in my view nothing in the Due Process Clause invalidates it. . . . . [END]