

# Criminal Procedure - Effect of Subsequent Supreme Court Decision - Retrospective Application of Jackson v. Denno

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gressive remedial liquor control provision which prohibits the gift of alcoholic liquor to a minor by anyone.<sup>21</sup> This amendment corrected inherently defective legislation which had prohibited only licensees from giving intoxicants to minors.<sup>22</sup> At this writing, no court of review has construed this amendment in regard to the issue of a non-licensee furnishing liquor to minors in a private home.<sup>23</sup>

The holding in the case at bar represents the definite trend toward liberal interpretation of liquor control statutes. Legislation prohibiting liquor sales or gifts to minors includes gifts of intoxicating beverages to minors at private parties in the home. The legislative intent has clearly been to restrain consumption of alcoholic liquor by minors. In order to implement the legislative intent, courts are finding it necessary to reject the statutory rule of construction, *ejusdem generis*, which would place a strict interpretation on the phrase *any person*, in favor of rules which require that every word in a statute be construed so that none are redundant or superfluous. Preference for this latter construction affirms the trend toward liberal interpretation of alcoholic beverage control laws.

*James Burstein*

<sup>21</sup> ILL. REV. STAT. ch. 43, § 131 (1963). It is interesting to note that the Liquor Control Act was amended in 1965 to allow minors to consume alcoholic beverages in the privacy of a home under the direct supervision and approval of the parents. 73rd ILL. GEN. ASS. H. B. 470, approved August 6, 1965, amending ILL. REV. STAT. ch. 43, § 134(a) (1963).

<sup>22</sup> ILL. REV. STAT. ch. 43, § 38 (1934): "No licensee shall give, or deliver alcoholic liquor to any minor. . . ."

<sup>23</sup> ILL. REV. STAT. ch. 43, § 131 (1963). This amendment has not been construed up to and including cases reported in 209 N.E. 2d 648 (1965). See also, Comment, 37 CHI.-KENT L. REV. 123 (1960), wherein the commentator suggested that a non-commercial host may be liable in tort "[d]espite reported decisions touching on the matter of non-commercial host liability, in the face of the legislative intent and other persuasive elements, it seems reasonable to conclude a corporate host who conducts an Office Christmas Party or Hospitality Room serving intoxicating beverages will find itself subject to civil damages as a tortfeasor under the Liquor Control Act." (*Id.* at 128.)

## CRIMINAL PROCEDURE—EFFECT OF SUBSEQUENT SUPREME COURT DECISION—RETROSPECTIVE APPLICATION OF JACKSON v. DENNO<sup>1</sup>

In 1960, Charles Huntley was tried for first degree robbery. A complete confession by the defendant was entered into evidence, and in accordance with existing New York procedure, the issue of the voluntariness of the confession was submitted as a question of fact to the same jury that determined guilt. The jury returned a general verdict of guilty with-

<sup>1</sup> 378 U.S. 368 (1964).

out making a specific finding as to the voluntariness of the confession, and the defendant was sentenced to prison. In 1964, after the time for appeal had expired and the defendant's conviction had become final, the Supreme Court of the United States ruled that the New York procedure for determining the voluntariness of a confession was unconstitutional in that due process required that a separate hearing be held to determine whether a confession was voluntary.<sup>2</sup> The New York Court of Appeals subsequently reopened the defendant's conviction and ruled that he was entitled to a new hearing on the issue of the voluntariness of his confession, thereby giving retrospective effect to the Supreme Court's ruling. *People v. Huntley*, 15 N.Y.2d 72, 204 N.E.2d 179, 255 N.Y.S.2d 838 (1965).

The holding in the instant case illustrates the retrospective application of a contemporary Supreme Court decision. In a technical sense, every judicial decision is retrospective, for a decision which is purely prospective would not even apply to the parties before the court. In the present context, the term retrospective refers to the application of a recent Supreme Court decision to reopen a state court conviction that had already become final, in that the time for appeal had expired before the decision was rendered.<sup>3</sup> Recently, constitutional changes in the concept of due process of law in criminal matters have been rapid, and consequently, the question of the retrospective effect of these changes upon prior decided cases has become important. When trials which took place under one constitutional rule of due process are challenged under a superseding rule, the question is whether to give retrospective effect to the latter rule. The rules of New York criminal procedure which were applied in the instant case, and which were subsequently held in violation of due process by the Supreme Court, had been directly considered and approved in previous Supreme Court decisions.<sup>4</sup> While expanding the concept of due process, the Supreme Court has given little consideration to the question of retrospectivity, and, until recently, confusion existed as to whether every newly enunciated constitutional right of due process is automatically subject to an absolute rule of retroaction.

In the case of *Griffin v. Illinois*,<sup>5</sup> the Supreme Court held that Illinois' denial of a trial record to an indigent defendant was unconstitutional, but

<sup>2</sup> *Ibid.*

<sup>3</sup> For a discussion of retrospectivity in relation to constitutional law, see Bender, *The Retroactive Effect of an Overruling Constitutional Decision*, 110 U. PA. L. REV. 650 (1962). See also Torcia & King, *The Mirage of Retroactivity and Changing Constitutional Concepts*, 66 DICK. L. REV. 269 (1962).

<sup>4</sup> *Stein v. New York*, 346 U.S. 156 (1953); *Spano v. New York*, 360 U.S. 315 (1963).

<sup>5</sup> 351 U.S. 12 (1956).

the Court was silent on the issue of retrospectivity. Subsequently, in a similar factual situation, the Supreme Court, in *Eskridge v. Washington State Bd. of Prison Terms & Paroles*,<sup>6</sup> relied on the *Griffin* case to reopen a conviction already made final in state courts. Since the Court merely stated that a constitutional right had been denied and did not address itself specifically to the issue of retrospectivity, the *Eskridge* decision could not serve as a precedent for a rule of general application.

When the Supreme Court further expanded the concept of due process in *Gideon v. Wainwright*,<sup>7</sup> by making applicable to the states the sixth amendment's guarantee of an accused's right to the assistance of counsel in criminal prosecutions, they were again silent on the subject of retrospectivity. Subsequently, the Florida Supreme Court denied application by several pre-*Gideon* prisoners seeking to set aside their convictions. The United States Supreme Court summarily reversed and remanded the cases for reconsideration in the light of *Gideon*, thereby applying the *Gideon* rule retrospectively without giving the issue full-dress consideration.<sup>8</sup>

The Supreme Court's decision in *Jackson v. Denno*,<sup>9</sup> to the effect that due process requires a separate hearing specifically on the issue of the voluntariness of a defendant's confession, led to the holding in the instant case. Although the *Jackson* decision did not mention the issue of retrospectivity, the New York Court of Appeals reopened the defendant's conviction and ordered a new hearing on the voluntariness of his confession as prescribed by the *Jackson* decision, thereby giving the *Jackson* case retrospective effect. The New York Court reasoned that the Supreme Court must have intended that their new ruling be given such effect since the defendant in the *Jackson* case was given relief in a Federal Habeas Corpus proceeding brought long after state appellate procedures had been exhausted.<sup>10</sup> Hence, simply by rendering the decision in the *Jackson* case within the context of a federal collateral proceeding after the conviction had become final in the state courts, the Supreme Court had given it retrospective effect without discussion of the issue.

These cases illustrate the manner in which recent Supreme Court decisions expanding due process were applied retrospectively. In each instance, the Supreme Court applied new constitutional rules to cases final-

<sup>6</sup> 357 U.S. 214 (1958).

<sup>7</sup> 372 U.S. 335 (1963).

<sup>8</sup> *Pickelsimer v. Wainwright*, 375 U.S. 2 (1963).

<sup>9</sup> *Supra* note 1.

<sup>10</sup> *People v. Huntley*, 15 N.Y.2d 72, 74, 204 N.E.2d 179, 181, 255 N.Y.S.2d 838, 840 (1965). Had the decision in the *Jackson* case been rendered on direct review instead of in a federal collateral proceeding, New York precedent would have required that only prospective effect be given to it. See *People v. Muller*, 11 N.Y.2d 154, 182 N.E.2d 99, 227 N.Y.S.2d 421 (1962), *cert. denied*, 371 U.S. 850 (1962).

ized before promulgation of the rules without fully discussing the issue of retrospectivity. Thus, the Court created a question as to whether an absolute rule of retroaction existed in this area of constitutional adjudication or whether certain rules of due process might only require prospective application. The controversy over this question reached its peak in the wake of the Supreme Court's decision in *Mapp v. Ohio*,<sup>11</sup> which held that the exclusion of evidence seized in violation of the search and seizure provisions of the fourth amendment was required of the states by the due process clause of the fourteenth amendment. Contrary to their approach in the *Griffin, Gideon* and *Jackson* cases, the Supreme Court was slow to indicate the effect of the *Mapp* rule upon prior convictions. Conflicting views arose in the federal courts over the retrospective effect of the *Mapp* case.<sup>12</sup> It was argued that a fundamental difference existed between the due process rights involved in *Mapp* and those involved in the *Griffin, Gideon* and *Jackson* cases, and that this difference dictated that only prospective effect be given to the *Mapp* case, notwithstanding the fact that the other decisions were applied retrospectively.<sup>13</sup> The rationale of this argument was accepted when the Supreme Court recently refused to give retrospective effect to the *Mapp* decision.<sup>14</sup>

In ultimately deciding that the rules laid down in *Mapp* would not be applied to pre-*Mapp* prisoners, the Supreme Court presented a complete discussion of the issue of retrospectivity for the first time.<sup>15</sup> After briefly outlining the history and theory of the problem, the Court adopted the view once expressed by Mr. Justice Cardozo that the Constitution has "no voice upon the subject" of whether judicial decisions should be applied retrospectively.<sup>16</sup> With this as a premise, the Court continued on to say that it must

weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation.<sup>17</sup>

The Court reaffirmed that in illegal search and seizure cases such as *Mapp*, control of the police is the desired end, and stated that such an end would not be served by retrospective application.

<sup>11</sup> 367 U.S. 643 (1961).

<sup>12</sup> Compare *Hall v. Warden*, 313 F.2d 483 (4th Cir. 1963) (retroactive); *Walker v. Peppersack*, 316 F.2d 119 (4th Cir. 1963) (retroactive); *California v. Hurst*, 325 F.2d 891 (9th Cir. 1963) (retroactive); *with Gaitan v. United States*, 317 F.2d 494 (10th Cir. 1963) (prospective); *Linkletter v. Walker*, 323 F.2d 11 (5th Cir. 1963) (prospective); *Angelet v. Fay*, 333 F.2d 12 (2d Cir. 1964) (prospective).

<sup>13</sup> *Angelet v. Fay*, 333 F.2d 12, 17-20 (2d Cir. 1964).

<sup>14</sup> *Linkletter v. Walker*, 85 Sup. Ct. 1731 (1965).

<sup>15</sup> *Ibid.*

<sup>16</sup> *Id.* at 1737.

<sup>17</sup> *Id.* at 1738.

While limiting the *Mapp* rule to only prospective application, the Supreme Court defended the fact that they had applied the rules of the *Griffin*, *Gideon* and *Jackson* cases retrospectively. The Court distinguished these cases by showing that the principles developed went to the fairness of the trial and the reliability of the fact-finding process, whereas with the *Mapp* rule, the reliability of the evidence was not in question, only the admissibility.<sup>18</sup> Thus, the controversy as to whether an absolute rule of retroaction exists in constitutional rights cases has been settled. Retropective application is not an automatic result of an overruling Supreme Court decision. It remains a question, the answer to which will vary in each case depending on the nature of the rights involved.

The court in the instant case was also presented with the problem of adopting a new form of procedure for the admission of confessions into evidence in future criminal prosecutions. Under previous New York procedure, the trial judge made a preliminary determination regarding the voluntariness of the accused's confession, excluding it only if under no circumstances could it be deemed voluntary. If the trial judge found the evidence presented a fair question as to the confession's voluntariness, he was required to receive it in evidence and leave to the jury the issues of the voluntariness of the confession and its weight, provided the jury found that it was voluntary. Under this procedure, the jury returned only a general verdict of guilt or innocence, making it impossible to determine what the jury found as to the voluntariness of the confession.<sup>19</sup> The Supreme Court declared that due process requires that the issue of a confession's voluntariness be resolved separately from the issue of its reliability or weight, such resolution to be made by "the trial judge, another judge, or another jury, but not the convicting jury."<sup>20</sup>

The New York Court of Appeals, in the instant case, adopted the "Massachusetts rule" for determining the voluntariness of confessions in future trials.<sup>21</sup> Under this rule, the jury passes on the voluntariness of a confession only after the judge has fully and independently resolved the issue against the accused. While not expressly ruling on the question of the validity of the "Massachusetts rule," the Supreme Court of the United States has stated that "given the integrity of the preliminary proceedings before the judge," the Massachusetts procedure does not "pose hazards to the rights of a defendant."<sup>22</sup>

The instant case illustrates the changes in procedure required of state courts in order to conform to recent Supreme Court decisions expanding

<sup>18</sup> *Id.* at 1743.

<sup>19</sup> *Jackson v. Denno*, *supra* note 1 at 379.

<sup>20</sup> *Id.* at 391.

<sup>21</sup> *People v. Huntley*, *supra* note 10 at 76, 204 N.E.2d at 183.

<sup>22</sup> *Jackson v. Denno*, *supra* note 1 at 378.

the concept of due process in the trial of criminal actions. In the instant case, the effects of the changes are relatively minor insofar as they apply to subsequent trials. In regard to criminal trials already terminated, the effects of the changes are much greater. Through lapse of time, the task of reproving the voluntariness of a confession can become difficult. It is the type of task many state courts must face as the concept of due process continues to expand.

*Patrick Agnew*

### DOMESTIC RELATIONS—RIGHT OF A PUTATIVE FATHER TO VISIT HIS ILLEGITIMATE CHILD

Joseph Stanley was born illegitimate to Mildred Stanley on March 24, 1963. In March of 1964, Mildred brought a charge of fornication and bastardy against the putative father, Walter Golembewski. Walter acknowledged that he was the child's father, and he was ordered to pay weekly support for the child. The mother thereafter informed the putative father that he could no longer visit the child. Subsequently, the father brought proceedings demanding visitation privileges. The court found that both the mother and putative father were fit persons, that the mother was to retain custody, and that the putative father was to be granted visitation privileges. On appeal, the lower court's decision was reversed, the court stating "as a matter of legal policy it is detrimental to the welfare of an illegitimate child in the mother's custody to award visitation privileges to the putative father."<sup>1</sup> *Commonwealth ex rel. Golembewski v. Stanley*, 205 Pa. Super. 101, 208 A.2d 49 (1965).

The controversial point presented for review is whether a putative father who is a fit person should be allowed to visit his illegitimate child, or must any relation whatsoever between the two be cut off.

Early common law considered an illegitimate *quasi nullius filius*.<sup>2</sup> However, a trend toward liberalization of the common law concept has resulted in the illegitimate being brought closer and closer to the status of legitimacy. These changes have occurred in three areas: inheritance, in which

<sup>1</sup> *Commonwealth ex rel. Golembewski v. Stanley*, 205 Pa. Super. 101, —, 208 A.2d 49, 50 (1965).

<sup>2</sup> The doctrine of *quasi nullius filius* or *filius populi* made an illegitimate a child of the people and not a child of any specific parent. *In re Gibson*, 154 Mass. 378, 28 N.E. 296 (1891), (has subsequently been changed by statute); *In re Shriver's Estate*, 159 Pa. Super. 314, 48 A.2d 52 (1946). Practically speaking, the illegitimate child had a *parish* which had the same relationship with the child as natural parents have with a legitimate child. See *Horner v. Horner*, 161 Eng. Rep. 573 (1799). For a discussion of the medieval common law rules concerning illegitimacy, see Adams, *Nullius Filius*, 6 U. TORONTO L.J. 361 (1945).