Workman, J., Dissenting Opinion, Case No.23393, 23394 State of West Virginia v. George Anthony W., et al.

Nos. 23393, 23394 - State of West Virginia v. George Anthony W., An Infant Under the Age of 18 Years; and Joann W. O., Parent And/Or Custodian of Said Child, George Anthony W., An Infant Under the Age of 18 Years And State of West Virginia v. Stephfon W., An Infant Under the Age of 18 Years, and Betty B., Parent and/or Custodian of Said Child, Stephfon W., An Infant Under the Age of 18 Years

Workman, J., dissenting:

The result reached by the majority is patently absurd. It has stretched the intent of the juvenile procedural protections to the point of shattering. The complexity of this matter has been exaggerated, and the entire predicament boils down to one simple question: were the confessions of these two juveniles legally obtained? The lower court held, quite properly in my view, that they were. A majority of this Court disagreed.

I. Prompt Presentment

The factual recitation undertaken by the majority is quite thorough; its interpretation of those facts, however, is profoundly flawed. The essence of the juveniles' argument is that the requirements of West Virginia Code § 49-5-8(d) (1996) regarding prompt detention hearings for juveniles were not satisfied. Based upon that alleged imperfection in the procedural journey, the juveniles contend that their confessions, given prior to presentment, were inadmissible in their juvenile transfer hearing. This argument, apparently successful in its ability to lead the majority down a primrose path, overlooks several key inquiries. For instance, section 49-5-8(d) provides, in pertinent part, that "[a] child in custody must immediately be taken before a referee or judge of the circuit court and in no event shall a delay exceed the next succeeding judicial day."

We expounded upon that requirement in syllabus point three of State v. Ellsworth, 175 W. Va. 64, 331 S.E.2d 503 (1985), by stating as follows:

Under W.Va. Code, 49-5-8(d), when a juvenile is taken into custody, he must immediately be taken before a referee, circuit judge, or magistrate. If there is a failure to do so, any confession obtained as a result of the delay will be invalid where it appears that the primary purpose of the delay was to obtain a confession from the juvenile.

The juvenile in Ellsworth had also challenged the validity of his confession, taken while he was in custody and without counsel or relatives present. Based upon information from the victim's sister-in-law, the police had approached the juvenile, asked his if he would accompany them to the police station, and provided the juvenile with his Miranda warnings. 175 W. Va. at 67, 331 S.E.2d at 506. Confronted with some of the statements that the police had obtained, the juvenile confessed to pushing the victim into a quarry. Id. "Upon the arrival at the police barracks a short time later, he was again read his Miranda warnings and gave a seven-page written statement. He was taken before a magistrate within two and one-half hours after he was initially picked up by the police." Id.

The juvenile in Ellsworth attacked the confession based upon the prompt presentment statute, 49-5-8(d), as challenged in the present case. Noting that the "language of this provision is not without some ambiguity[,]" the Ellsworth opinion endeavors to ascertain the intent of the legislature in creating the presentment scheme. Ellsworth recognizes the relevance of West Virginia Code § 49-5A-2 (1996), providing, in pertinent part that "[a] child who has been arrested or who under color of law is taken into the custody of any officer or employee of the State or any political subdivision thereof shall be forthwith afforded a hearing to ascertain if such child shall be further detained." Ellsworth concluded that "[t]he purposes of a prompt detention hearing under W.Va. Code, 49-5-8(d), are for a neutral judicial officer to inform the child of his constitutional rights and to determine whether he should be released from custody to his parents or other appropriate person or agency." 175 W. Va. at 69, 331 S.E.2d at 507.

The pivotal question in the midst of this inquiry is the moment at which this requirement of prompt presentment is triggered. Ellsworth noted the "similarity between a juvenile detention hearing and the initial presentment of an adult before a magistrate. . . ." In State v. Persinger, 169 W. Va. 121, 286 S.E.2d 261 (1982), for instance, we discussed West Virginia Code § 62-1-5, requiring that an arresting officer

"take the arrested person without unnecessary delay before a magistrate," and "pointed out that it was designed to enable a neutral and detached magistrate to test whether there was probable cause for an arrest when the arrest had been made without a warrant." Ellsworth, 175 W. Va. at 69, 331 S.E.2d at 507. "Furthermore, it ensured that a defendant would be promptly advised by a magistrate of the nature of the charge and his constitutional right against self-incrimination and the right to counsel." Id.

All of this was designed to bring a detached judicial officer into the process once an arrest had been made to furnish meaningful protection for a defendant's constitutional rights. These same considerations apply to juvenile defendants even more forcibly because of their age and immaturity. Furthermore, because of the likelihood that a juvenile who commits a serious crime may be transferred to the adult jurisdiction of the circuit court under W.Va. Code, 49-5-10, there is a need to ensure that his constitutional rights are preserved at the initial proceedings.

Id.

While holding in syllabus point three of Ellsworth, as quoted above, that a confession obtained as a result of the delay will be invalid where it appears that the primary purpose of the delay was to obtain a confession from the juvenile, we specifically acknowledged "that in certain situations a confession otherwise proper is not necessarily invalid because it was obtained before the juvenile was brought before a referee, judge or magistrate." Id. at 70, 331 S.E.2d at 508. Time consumed in transportation is not counted, and the "State can justify delay by showing the necessity of performing customary booking and administrative procedures. . . ." Id. We concluded in Ellsworth that the oral and written confessions were admissible, noting that the written confession was preceded by an additional giving of the Miranda rights and the juvenile's waiver of these rights.

Regarding the meaning of the word "custody," in section 49-5-8, we explained in Ellsworth that "the term 'custody' is equivalent to an arrest, that is, it must be based upon probable cause where the juvenile is being taken into custody for an act which if committed by an adult would be a crime." 175 W. Va. at 70, 331 S.E.2d at 508. "[T]he grounds for taking a juvenile into custody where the juvenile has allegedly committed a criminal act are the same as for the arrest of an adult. Once such **custodial arrest** of a juvenile has occurred, his right to be immediately taken before a judicial officer arises under W.Va. Code, 49-5-8(d)." Id. (Emphasis added). Within the adult context, State v. Humphrey, 177 W.Va. 264, 351 S.E.2d 613 (1986), concisely defines the moment at

which the prompt presentment rule is triggered. Syllabus point two explains that "[o]ur prompt presentment rule contained in W.Va.Code, 62-1-5, and Rule 5(a) of the West Virginia Rules of Criminal Procedure, is triggered when an accused is placed under arrest. Furthermore, once a defendant is in police custody with sufficient probable cause to warrant an arrest, the prompt presentment rule is also triggered." Syllabus point three instructs that "[t]he delay occasioned by reducing an oral confession to writing ordinarily does not count on the unreasonableness of the delay where a prompt presentment issue is involved." Syllabus point four further elaborates: "Ordinarily the delay in taking an accused who is under arrest to a magistrate after a confession has been obtained from him does not vitiate the confession under our prompt presentment rule."

The analysis in Humphrey proceeded as follows:

In the present case, the defendant voluntarily went with the State police to be interrogated. Several of the State police officers who were involved in the interrogation testified that the defendant was not under arrest initially and could have left at any time of his own free will. Before the interrogation, the defendant was a suspect in the case, but it is not clear, based upon the record, that the police had probable cause to arrest until he orally confessed by stating, "I did it." It was at this point shortly after 9:00 p.m. that the prompt presentment rule was triggered.

Id. at 268, 351 S.E.2d at 617.

In syllabus point two of State v. Hosea, ___ W. Va. ___, 483 S.E.2d 62 (1996), we explained as follows:

The Court is constitutionally obligated to give plenary, independent, and de novo review to the ultimate question of whether a particular confession was obtained as a result of the delay in the presentment of a juvenile after being taken into custody before a referee, circuit judge, or a magistrate when the primary purpose of the delay was to obtain a confession from the juvenile. The factual findings upon which the ultimate question of admissibility is predicated will be reviewed under the deferential standard of clearly erroneous.

Applying that standard of review, this Court competently navigated the facts and procedural requirements relevant to Hosea, a case very similar to the one to which I am presently dissenting. In Hosea, the juvenile also challenged the admission of his confession given prior to presentment to a magistrate under West Virginia Code § 49-5-8(d). ___ W. Va. at ___, 483 S.E.2d at 64. The transfer of the juvenile from juvenile jurisdiction to criminal jurisdiction, on the basis of the confession, was also challenged. In affirming the transfer, we found that the confession given prior to presentment was not, in the language of Ellsworth, for the primary purpose of obtaining a confession. We noted various legal standards to be applied and observed the following facts:

(1) there was a substantial delay between the time the defendant was taken into custody and the time he was presented to a magistrate in Summers County; (2) prior to the time the defendant was presented before the magistrate in Summers County, a statement was taken from the defendant in which he described what occurred during the critical times on September 18, 1994; (3) the statement was obtained from the defendant after he had an opportunity to confer in person with his mother and after he was advised of and waived his rights to which he was entitled under Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

Id. at ___, 483 S.E.2d at 69. We then quite logically explained that "[b]uilding upon these factual predicates, the issue to address is whether the primary purpose for the delay between the time the defendant was taken into custody and the time of his presentment to a magistrate was to obtain a confession from the defendant." Id. We ultimately concluded that issues of the extent of the victim's injuries, the identity of the victim, and notification of the juvenile defendant's mother, were being addressed and we were "convince[d] . . . by a preponderance of the evidence that the primary reason for delay was not to obtain a confession." Id.

I disagree with the majority on two major elements encompassed within the prompt presentment discussion. First, I disagree regarding the point at which the prompt presentment rule was activated. The triggering event is not upon suspicion, not upon initial questioning, not upon denials of involvement, but only upon the advent of probable cause to arrest. Second, even if the majority had determined that the prompt presentment rule had been triggered, a confession prior to presentment is not invalidated unless the primary purpose of the delay in presentment was to obtain a

confession. Either avenue would have resulted in an affirmance of the determination of the lower court.

I am also troubled by the majority's ineffective management of the issue of admissibility of the physical evidence. The majority appears to conclude that the admissibility is an issue for consideration on remand by stating as follows:

We cannot discern from the record that the confessions were the only sources leading the police to the discovery of the physical evidence, and it appears that there might have been consents, other than those given by Stephfon W. and George W., which impact on the admissibility of this evidence. In light of the Court's confusion on this point, we believe that, upon remand, the trial court should take such steps as are reasonably necessary to develop the full facts surrounding the seizure of the physical evidence and should then reassess the admissibility of that evidence in light of the law.

However, the following paragraph appears to indicate a retreat from that position: "Since the

Court believes that the confessions **and physical evidence** were inadmissible, the decision

of the circuit court transferring jurisdiction of the case was based upon improper evidence and must be reversed." (Emphasis supplied).

Justice Neely penned a ravishing assault upon the majority the first time it remanded this juvenile matter in In re Stephfon, 191 W.Va. 20, 442 S.E.2d 717 (1994), for another juvenile transfer hearing. He accurately noted as follows:

Both Mr. S.W. and Mr. G.A.W. were given ample opportunity to consult with family members; both were afforded the opportunity to enlist the aid of a lawyer; both were read their juvenile rights and Miranda rights; both, with their parents, signaled their full understanding of such rights and signed knowing and voluntary waivers. Both, accompanied by their parents and relatives, confessed to the homicide and each implicated the other. On the request of the police, both voluntarily took officers to the

areas where items of evidence were thrown. Both, after thorough discussions with their lawyers, opted to waive detention hearings. Nowhere is there evidence of threats, promises, illegal or improper inducements or any other form of coercion exerted on either Mr. S.W. or Mr. G.A.W. to make such confessions.

191 W. Va. at 25, 442 S.E.2d at 722.

Ignoring the almost incontrovertible evidence presented at the preliminary hearing that Mr. S.W. and Mr. G.A.W. committed deliberate pre-meditated cold-blooded murder of a kindly old woman, that their confessions to this murder were made with all procedural safeguards afforded them, and that the full-blown trial-like transfer hearing that the majority now demands has essentially already occurred, is of record, and is fully transcribed in the preliminary hearing, not only renders what the court orders today redundant and superfluous; it also makes courts look preposterous and adds more fuel to inflame the "get tough on crime" enthusiasts. In plucking from the air procedural technicalities that in this case can only be designed to vindicate the majority's denial reflex, to wit, that children should not have evil intent, the majority's decision is like the thirteenth chime of a ridiculous clock which is not only in and of itself absurd, but casts aspersions on the legitimacy of the other twelve.

Id. I must say, I miss Justice Neely sometimes.

II. Policy Argument

Turning its decision upon the prompt presentment requirements, the majority did not focus upon the evidentiary constraints applicable to a juvenile transfer hearing. An extremely disconcerting trend has insidiously crept into our recent jurisprudence, affording juveniles unwarranted and unnecessary protections at juvenile transfer hearings. Absent a constitutional or statutory requirement, I believe that the presentation of evidence at juvenile transfer hearings should not be subject to the same evidentiary constraints that a trial on the merit demands and that transfer hearings should be treated more in the nature of preliminary hearings and grand jury proceedings.[(1)] At both preliminary hearings and grand jury proceedings, adherence to the West Virginia Rules of Evidence is relaxed--at least partially due to fact the guilt or innocence of an accused is not to be determined.[(2)] The purpose of such hearings and proceedings is to ascertain whether, at that time, a particular case against an accused should proceed toward trial. Likewise, the purpose of a juvenile transfer hearing is not to decide the guilt or innocence of a juvenile, but it is to determine whether there is "probable cause to believe" the juvenile proceeding should be transferred to the criminal jurisdiction. W. Va. Code § 49-5-10(d) (1992).[(3)] I can discern no persuasive reason to strictly adhere to the rules of evidence at a juvenile transfer hearing when the same evidentiary concerns can be raised at a trial on the merits.[(4)] Even subsequent to disposition, a juvenile transferred to adult jurisdiction is not necessarily sentenced as an adult. In State v. Ball, 175 W. Va. 652, 337 S.E.2d 310 (1985), for instance, we held that circuit courts "have authority under W.Va.Code, 49-5-13(e), and W.Va.Code, 49-5-13(b)(5), to sentence a person who commits a homicide while a juvenile to the Anthony Center for Youthful Male Offenders even though he is sentenced as an adult." See also State v. Pettrey, 177 W.Va. 723, 356 S.E.2d 477 (1987). West Virginia Code § 49-5-16(b) (1986 Repl. Vol.) provides:

No child who has been convicted of an offense under the adult jurisdiction of the circuit court shall be held in custody in a penitentiary of this State: Provided, That such child may be transferred from a secure juvenile facility to a penitentiary after he shall attain the age of eighteen years if, in the judgment of the commissioner of the department of corrections and the court which committed such child, such transfer is appropriate: Provided, however, That any other provision of this Code to the contrary notwithstanding, prior to such transfer the child shall be returned to the sentencing court for the purpose of reconsideration and modification of the imposed sentence, which shall be based upon a review of all records and relevant information relating to the child's rehabilitation since his conviction under the adult jurisdiction of the court.

Thus, "[j]uveniles who are transferred to and convicted under the adult jurisdiction of a circuit court are nevertheless afforded the same commitment and rehabilitation rights as those adjudged delinquent under juvenile jurisdiction." State v. Highland, 174 W.Va. 525, 528, 327 S.E.2d 703, 706 (1985). "Accordingly, the legislature has provided at

least three alternatives to a sentencing court for the proper disposition of such an individual." Id.[5]

Advocates of strict adherence to the rules of evidence contend that, unlike preliminary hearings and grand jury proceedings, juvenile transfers represent a comprehensive change in the way juvenile cases will be examined.[6] Indeed, there can be no doubt the United States Supreme Court considers a juvenile transfer hearing "a 'critically important' proceeding" that "must measure up to the essentials of due process and fair treatment." Kent v. United States, 383 U.S. 541, 560, 562 (1966) (citation omitted). However, the Supreme Court cautioned in Kent that it did not intend to imply that "the hearing to be held must conform with all of the requirements of a criminal trial or even of the usual administrative hearing,"[7] and, in a subsequent decision, the Supreme Court recognized that it "has never attempted to prescribe criteria for, or the nature and quantum of evidence that must support, a decision to transfer a juvenile for trial in adult court." Breed v. Jones, 421 U.S. 519, 537 (1975). In fact, the majority of jurisdictions today do not strictly adhere to procedural and evidentiary rules at juvenile transfer hearings. Monica Franklin Hill, Applicability of Rules of Evidence to Juvenile Transfer, Waiver, or Certification Hearings, 37 A.L.R.5th 703, 717 (1996). While I recognize that most courts have held that a juvenile is entitled to the protections of the Fifth Amendment right against self-incrimination at a juvenile transfer hearing, the rules of evidence are not universally applied in a stringent manner. Some jurisdictions have held that the rules of evidence should be relaxed at the juvenile transfer hearing and that even if confessions are illegally obtained, "a judge in a transfer hearing is permitted to consider evidence that might be inadmissible in a criminal trial." In re D. J., 909 S.W.2d 621, 623 (Tex. App. 1995). "In a transfer hearing, the rules of evidence are relaxed because the purpose of the hearing is not to determine guilt or innocence but rather to determine if there is probable cause to believe the child committed the offense." Id. "Strict rules of evidence are not applied in transfer proceedings because the weight of evidence is judged by whether it would support an indictment for the offense, and a grand jury considering an indictment is permitted to receive evidence that would be inadmissable at an adjudication hearing or trial." In re J.S.C., 875 S.W.2d 325, 330 (Tex. App. 1994).

In State v. Milk, 519 N.W.2d 313 (S. D. 1994), the court recognized that the legislature had statutorily defined the list of exceptions to the applicability of the rules of evidence, and refused to judicially expand those exceptions to include juvenile transfer hearings. Id. at 316. The court reasoned that the "decision to admit hearsay at juvenile transfer hearings should be made via the legislative or rulemaking process." Id.[8]

In State v. Nicholas H., 560 A.2d 1156 (N.H. App. 1989), the New Hampshire Supreme Court considered the admissibility of hearsay evidence in a juvenile transfer hearing, addressed the absence of any specific exception in the applicability of the rules of evidence, and concluded:

In the absence of a clear and specific exemption, we hold that the rules of evidence apply to juvenile certification hearings. Accordingly, we conclude that the hearsay statements [of a witness] were inadmissible and that the district court improperly considered them in making its finding of prosecutive merit under [N.H.Rev.Stat.Ann. S 169-B:24--the juvenile transfer statute].

Id. at 1158. Subsequent to the Nicholas decision, New Hampshire's Rules of Evidence were specifically amended to provide that the rules of evidence "do not now apply to juvenile certification proceedings." See In re Eduardo L., 621 A.2d 923, 930 (1993).

The statutory scheme in West Virginia, codified at West Virginia Code § 49-5-2(j) and (k) (1996), provides that "all procedural rights afforded to adults in criminal proceedings," unless otherwise specified, and "the rules of evidence applicable in criminal cases shall apply" to "all adjudicatory hearings held under . . . article [five] . . . ."[(9)] W. Va. Code § 49-5-2(j)-(k).[(10)] Although juvenile transfer hearings are not specifically mentioned in either Rule 5.1 or in West Virginia Code § 49-5-2(j) and (k), I believe, as previously mentioned, that juvenile transfer hearings ought to be more closely akin to preliminary hearings than adjudicatory ones and should be treated accordingly.

Thus, I urge the legislative branch, and this Court at an appropriate time, to address this issue and to consider moving toward the trend suggested herein, which will afford both juveniles and the state a fair, but more expedited procedure with regard to juvenile transfer to adult jurisdiction.

1. Rule 1101(b) of the West Virginia Rules of Evidence states, in part:

(b) Rules inapplicable.--Unless otherwise provided by rules of the Supreme Court of Appeals, these rules other than those with respect to privileges do not apply in the following situations:

(1) Preliminary questions of fact.--The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104(a).

(2) Grand jury.--Proceedings before grand juries.

Of course, as indicated above, any rules with respect to privileges continue to apply. In addition, evidence obtained in violation of the West Virginia Wiretapping and Electronic Surveillance Act of 1987 is inadmissible. W. Va. Code § 62-1D-6 (1992). See also 18 U.S.C. § 2515 (1994) (providing that the contents of any intercepted wire or oral communication and "evidence derived therefrom may [not] be received in evidence in any trial, hearing, or other proceeding in or before any court, [or] grand jury . . . if the disclosure of that information would be in violation of this chapter").

2. For instance, in State v. Haught, 179 W. Va. 557, 371 S.E.2d 54 (1988), this Court said "the purpose of a preliminary hearing is to determine whether there is probable cause to believe that an offense has been committed and that the defendant has committed it." Id. at 562-63, 371 S.E.2d at 59-60. Similarly, in denying an application for a stay of enforcement of a judgment, the Honorable William H. Rehnquist, Justice, stated in Bracy v. United States, 435 U.S. 1301 (1978):

The grand jury does not sit to determine the truth of the charges brought against a defendant, but only to determine whether there is probable cause to believe them true, so as to require him to stand trial. Because of this limited function, we have held that an indictment is not invalidated by the grand jury's consideration of hearsay, . . . or by the introduction of evidence obtained in violation of the Fourth Amendment . . . . While the presentation of inadmissible evidence at trial may pose a substantial threat to the integrity of that factfinding process, its introduction before the grand jury poses no such threat.

Id. at 1302 (citations omitted).

3. West Virginia Code § 49-5-10 pertains to the waiver and transfer of jurisdiction. This section was rewritten in 1995 and amended in 1996. The 1996 version still contains the "probable cause to believe" requirement. W. Va. Code § 49-5-10(d) (1996). In March 1997, the West Virginia Legislature passed Bill 2123 amending the juvenile transfer statutes to eliminate a juvenile's right to an interlocutory appeal of mandatory transfer to adult jurisdiction. Discretionary transfers, as designated in West Virginia Code §§ 49-5-10(e)-(g), may still be immediately appealed.

4. The events of the present consolidated cases began in November 1992. After four years and two appeals, these cases, at the time the majority opinion was released, had progressed no further than the transfer stage. Not only did these juveniles have to wait for a final resolution of their cases, but we must never forget that the family and friends of Ms. Minor, who was brutally beaten and murdered, must endure these seemingly endless court battles.

5. Those three alternatives are explained in Highland as follows:

First, under West Virginia Code Sec. 49-5-13(e) (Supp.1984), where a juvenile is transferred and convicted under adult jurisdiction the court may, "in lieu of sentencing such person as an adult," make its disposition under the section 49-5-13 provisions for treatment of juveniles adjudged delinquent. See also West Virginia Code Sec. 49-5-13b(c) (Supp.1984). Second, a sentencing court may initially proceed under the Youthful Male Offender Act, suspending the imposition of an adult sentence and committing the individual to the custody of Commissioner of Corrections for placement in a rehabilitation center for youthful offenders. See West Virginia Code Sec. 25-4-6 (1980 Replacement Vol.).

Third, as was done in the case at hand, the court may simply sentence the juvenile as an adult. But, as directed by West Virginia Code Sec. 49-5-16(b) (Supp.1984), the court must commit the child to a state juvenile facility rather than ordering the sentence to be served, ab initio, in an adult penal institution. This statute, however, does provide a procedure by which individuals eighteen years or older may be subsequently transferred to an adult penitentiary. It is this statutory procedure which is specifically at issue in this appeal.

Highland, 174 W. Va. at 528, 327 S.E.2d at 706.

6. In our first encounter with these juveniles, we noted that a "transfer of a juvenile to adult criminal jurisdiction under W. Va. Code, 49-5-10, is a matter of substantially more gravity" than a preliminary hearing. In re Stephfon W., 191 W. Va. 20, 23, 442 S.E.2d 717, 720 (1994).

7. Id. at 562; see also In re Gault, 387 U.S. 1, 30 (1967) (reiterating principles espoused in Kent.)

8. The Milk analysis provided a detailed recitation of the varying approaches of several jurisdictions. The following examples are instructive: Ariz.R.Crim.Pro. 5.4(c) (under which juvenile transfer hearings are conducted, and providing that, "The finding of probable cause shall be based on substantial evidence, which may be hearsay in whole or in part" including written reports of experts, documentary evidence without foundation and testimony of witnesses concerning declarations of others); Ill.Comp.Stat.Ann. 705 ILCS 405/5-22(1) ("All evidence helpful in determining [the transfer question under Ill.Comp.Stat.Ann. 705 ILCS 405/5-4(3)(b)] including oral and written reports, [which] may be admitted and may be relied upon to the extent of its probative value, even though not competent for the purposes of the adjudicatory hearing."); Iowa Code S 232.45(5) ("At the waiver hearing all relevant and material evidence shall be admitted."); Mich.R.Evid. 1101(b)(7) (providing that the rules of evidence "do not apply ... [to] (7) Juvenile court proceedings."); In re Welfare of T.D.S., 289 N.W.2d 137 (Minn.1980) (citing Minn.Stat.Ann. S 260.155(1) which provides that "juvenile court 'hearings on any matter ... may be conducted in an informal manner.' " and quoting Hennepin County Juvenile Court Rule 6.8 ("The court may consider any relevant evidence including hearsay and conclusions[.]"); Ohio Rev.Code Ann. S 2151.26(A)(1)(c) (directing the transfer court to make "an investigation, including a mental and physical examination of the child made by a public or private agency or a person qualified to make the examination ... and consideration of all relevant information and factors[.]"); Wash.Rev.Code Ann. S 13.40.110 (limiting juvenile transfer to felony crimes only, and directing the court to consider, "the relevant reports, facts, opinions and arguments presented by the parties and their counsel."); Wis.Stat. S 48.299(4)(b) ("Hearsay evidence may be admitted [in a juvenile proceeding] if it has demonstrable circumstantial guarantees of trustworthiness."). Milk, 519 N.W.2d at 316.

9. Clearly, article five distinguishes juvenile transfer hearings from adjudicatory hearings. See e.g. W. Va. Code § 49-5-10(a) (1996) (stating in introductory clause that "[u]pon written motion . . . prior to the adjudicatory hearing . . . the court shall conduct a hearing to determine if juvenile jurisdiction should or must be waived and the proceeding transferred to the criminal jurisdiction of the court").

10. West Virginia Code § 49-5-2(j) and (k) (1996) and provides:

(j) At all adjudicatory hearings held under this article, all procedural rights afforded to adults in criminal proceedings shall be applicable unless specifically provided otherwise in this chapter.

(k) At all adjudicatory hearings held under this article, the rules of evidence applicable in criminal cases shall apply, including the rule against written reports based upon hearsay.

The related 1992 version of this provision is contained in West Virginia Code § 49-5-1(d) (1992).