

LEXSEE 562 PA. 32, AT 37

COMMONWEALTH OF PENNSYLVANIA, Appellee, v. ABRAHAM MARTINEZ  
COTTO, Appellant.

160 M.D. Appeal Docket 1998

## SUPREME COURT OF PENNSYLVANIA

562 Pa. 32; 753 A.2d 217; 2000 Pa. LEXIS 1522

October 20, 1999, Argued  
June 20, 2000, Decided

**PRIOR HISTORY:** [\*\*\*1] Appeal from the Order of the Superior Court entered *February 19, 1998, at No. 2375 Philadelphia 1997*, affirming the Judgment of Sentence of the Court of Common Pleas of Lancaster County entered May 19, 1997, at Nos. 1878-1996 and 3167-1996. *708 A.2d 806 (Pa. Super. 1998)*. Judges: Superior Court - Cavanaugh, Hoffman & Brosky, JJ. / CCP - Hon. D. Richard Eckman.

**DISPOSITION:** Order of the Superior Court affirmed.

**CASE SUMMARY:**

**PROCEDURAL POSTURE:** Appellant challenged the order of the of the Superior Court (Pennsylvania), which affirmed appellant's sentence for armed robbery on the basis that the 1995 amendments to the Juvenile Act, *42 Pa. Cons. Stat. § 6301 et seq.*, were unconstitutional.

**OVERVIEW:** Appellant pleaded guilty to armed robbery charges and was sentenced accordingly. Although at the time of the offense, appellant was a juvenile, he was charged as an adult pursuant to *42 Pa. Cons. Stat. § 6302*. Appellant sought a transfer to juvenile court, but it was denied. On appeal from the denial, appellant contended that the 1995 amendments to the Juvenile Act were unconstitutional because they were void for vagueness and because they placed the burden of proof on the juvenile seeking transfer to juvenile court. The court held that contrary to appellant's contention that the statute was vague because it did not define the public interest standard, the statute clearly provided definite standards to be applied in determining whether a transfer would serve the public interest. The court also found that placing the burden of persuasion on appellant in no manner denied him his due process rights since the burden to prove every fact necessary for conviction was still on the state.

**OUTCOME:** Finding that a state statute provided definite standards for determining whether transfer to juvenile court served the public interest and that the burden of proof was still on the state, the court affirmed appellant's sentence and rejected his arguments that the statute was unconstitutional.

## LexisNexis(R) Headnotes

*Constitutional Law > The Judiciary > Case or Controversy > Constitutionality of Legislation > General Overview*

*Evidence > Inferences & Presumptions > General Overview*

[HN1] A statute is presumed to be constitutional and will not be declared unconstitutional unless it clearly, palpably, and plainly violates the Constitution. Therefore, the party challenging the constitutionality of a statute has a heavy burden of persuasion.

*Civil Procedure > Jurisdiction > Subject Matter Jurisdiction > General Overview*

*Criminal Law & Procedure > Criminal Offenses > Weapons > Use > General Overview*

*Criminal Law & Procedure > Jurisdiction & Venue > Jurisdiction*

[HN2] As amended in 1995, the Juvenile Act, *42 Pa. Cons. Stat. § 6301 et seq.*, vests original jurisdiction in the criminal courts for specified violent felonies, e.g., rape, aggravated assault, and robbery committed by minors aged 15 or older who either used a deadly weapon in the commission of the offense or were previously adjudicated delinquent for such crimes.

*Criminal Law & Procedure > Juvenile Offenders > Trial as Adult*

*Criminal Law & Procedure > Trials > Burdens of Proof > Defense*

[HN3] See 42 Pa. Cons. Stat. § 6322(a).

*Governments > Legislation > Overbreadth*

*Governments > Legislation > Vagueness*

[HN4] A statute is constitutionally void only if it is so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. However, a statute will not be deemed unconstitutionally vague if the terms, when read in context, are sufficiently specific that they are not subject to arbitrary and discriminatory application.

*Criminal Law & Procedure > Juvenile Offenders > Trial as Adult*

*Criminal Law & Procedure > Sentencing > Alternatives > Substance Abuse Programs*

[HN5] See 42 Pa. Cons. Stat. § 6355.

*Criminal Law & Procedure > Juvenile Offenders > Trial as Adult*

[HN6] See 42 Pa. Cons. Stat. § 6301(b)(2).

*Constitutional Law > The Judiciary > Case or Controversy > Constitutionality of Legislation > General Overview*

[HN7] A legislative decision not to assign specific weight to a serous of various relevant factors does not render a statutory scheme unconstitutional.

*Criminal Law & Procedure > Juvenile Offenders > Capital Punishment*

*Criminal Law & Procedure > Juvenile Offenders > Trial as Adult*

[HN8] Under the Juvenile Act, 42 Pa. Cons. Stat. § 6301 et seq., the decision-maker has discretion in determining whether to transfer a direct file case to juvenile court. However, that discretion, like the discretion provided to juries under the death penalty statute, is guided by the specific factors that must be considered in making that determination.

*Criminal Law & Procedure > Juvenile Offenders > Trial as Adult*

*Criminal Law & Procedure > Trials > Examination of Witnesses > Cross-Examination*

*Criminal Law & Procedure > Sentencing > Alternatives > Probation > General Overview*

[HN9] In a proceeding to determine whether to transfer a juvenile, the youth is entitled to notice of the charges against him, to a counseled hearing where he may present evidence and cross-examine witnesses, access to social records and probation or similar reports, and a statement of the reasons for the court's determination.

**COUNSEL:** FOR Abraham Martinez Cotto, APPELLANT: James J. Karl, Chief Public Defender, OFFICE OF THE PUBLIC DEFENDER, Mark Scott Sedley, Assistant Defender, Defender's Association of Phila.

FOR Commonwealth, APPELLEE: Joseph C. Madenspacher, District Attorney, Hugh J. Burns, Jr., Special Prosecutor, Phila. Cty., Susan E. Moyer, Assistant District Attorney, Bruce A. Roth, Assistant District Attorney, OFFICE OF THE DISTRICT ATTORNEY.

**JUDGES:** Before: Flaherty, C.J., Zappala, Cappy, Castille, Nigro, Newman and Saylor, JJ. Madame Justice Newman concurs in the result.

**OPINION BY:** CASTILLE

**OPINION:** [\*\*218] [\*34]

**OPINION**

**MR. JUSTICE CASTILLE**

This Court granted allocatur in this matter to determine whether certain 1995 amendments to the Juvenile Act, 42 Pa.C.S. § 6301 et seq., violate the Fourteenth Amendment of the United States Constitution and Article I, Section 9, of the Pennsylvania Constitution. For the reasons that follow, we hold that the amendments are constitutional and, therefore, we affirm.

On April 23, 1996, appellant and two accomplices, armed with a handgun, robbed the owner, an employee and two customers of the Mane Magic Beauty Salon in Lancaster, Pennsylvania. Subsequently, on May 8, 1996, appellant and three accomplices, again armed with a handgun, robbed the Parkhill Jewelry Store, its employees [\*\*\*2] and one customer. On July 29, 1996, appellant was charged with four counts of robbery and one count of criminal conspiracy arising out of the April 23 incident and with two counts of robbery and one count of criminal conspiracy arising out of the May 8 incident.

Appellant, who was fifteen years old at the time of both robberies, was charged in criminal court as an adult pursuant to § 6302 of the Juvenile Act, which excludes [\*\*219] robbery from the definition of a delinquent act when, as in the case *sub judice*, (1) it was committed by a child who was fifteen years old or older and (2) a deadly weapon was used during the commission of the offense. n1 On February 28, 1997, appellant [\*35] filed a motion to transfer the proceedings to juvenile court and a petition for a writ of *habeas corpus* alleging that the 1995 amendments to the Juvenile Act governing transfer were unconstitutional on two grounds: because they were void for vagueness and because they unconstitutionally placed the burden of proof on the juvenile seeking transfer to juvenile court.

n1 Those offenses that the amended Juvenile Act requires to be initiated in criminal court when committed by juveniles are known as "direct file" cases.

[\*\*\*3]

The trial court promptly scheduled a hearing, which was held on March 20, 1997. After receiving briefs from the parties, the trial court issued an opinion on May 12, 1997, denying both motions. In the opinion, the trial court engaged in an exhaustive analysis of the statutory factors governing the decision to transfer a case to juvenile court. See 42 Pa.C.S. § 6355(a)(4)(iii).

One week later, on May 19, 1997, appellant entered a negotiated guilty plea to all charges and was sentenced to eight concurrent terms of five to ten years' imprisonment. Pursuant to the plea agreement, appellant specifically reserved the right to appeal his twin challenges to the constitutionality of the amendments to the Juvenile Act. On appeal, appellant did not challenge the trial court's discretionary denial of his transfer motion, but raised only his two challenges to the constitutionality of the amendments. The Superior Court held that the amendments were constitutional. *Commonwealth v. Cotto*, 708 A.2d 806 (Pa. Super. 1998).

In his appeal to this Court, as in the Superior Court, appellant contends that the 1995 amendments to the Juvenile Act are unconstitutional [\*\*\*4] in two respects. Initially, we note that [HN1] a statute is presumed to be constitutional and will not be declared unconstitutional unless it clearly, palpably and plainly violates the Constitution. *Commonwealth v. Hendrickson*, 555 Pa. 277, 724 A.2d 315, 317 (1999); *Commonwealth v. Barud*, 545 Pa. 297, 304, 681 A.2d 162, 165 (1996). Therefore, the party challenging the constitutionality of a statute has a heavy burden of persuasion. *Barud, supra*.

[HN2] As amended in 1995, the Juvenile Act vests original jurisdiction in the criminal courts for specified violent felonies, e.g., rape, aggravated assault and robbery committed by minors [\*36] aged fifteen or older who either used a deadly weapon in the commission of the offense or were previously adjudicated delinquent for such crimes. n2 Prior to the amendments, those [\*37] serious [\*\*220] felonies initially came within the jurisdiction of the juvenile courts, subject to certification and transfer to adult court. The 1995 amendments reflect a legislative judgment that the most serious violent felonies should be treated in the same manner as murder charges, i.e., as adult crimes in adult court, at least in the [\*\*\*5] first instance.

n2 42 Pa.C.S. § 6302 defines "Delinquent Act" as follows:

"Delinquent act."

(1) The term means an act designated a crime under the law of this Commonwealth, or of another state if the act occurred in that state, or under Federal law, or under local ordinances or an act which constitutes indirect criminal contempt under 23 Pa.C.S. Ch. 61 (relating to protection from abuse).

(2) The term shall not include:

(i) The crime of murder.

(ii) Any of the following prohibited conduct where the child was 15 years of age or older at the time of the alleged conduct and a deadly weapon as defined in 18 Pa.C.S. § 2301 (relating to definitions) was used during the commission of the offense, which, if committed by an adult, would be classified as:

(A) Rape as defined in 18 Pa.C.S. § 3121 (relating to rape).

(B) Involuntary deviate sexual intercourse as defined in 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).

(C) Aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to aggravated assault).

(D) Robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to robbery).

(E) Robbery of motor vehicle as defined in 18 Pa.C.S. § 3702 (relating to robbery of motor vehicle).

