IN THE SUPREME COURT OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN RE THE MATTER OF	)	**APPEAL NO. 98-043**
	)	**FCD-Juvenile Case No. 98-0165**
J.J.C.,	)	
	)	
A Minor Child.	)	**OPINION**
	)	
	)	

Argued and Submitted November 24, 1999

Cite as: *In re J.J.C.*, 2000 MP 8

Counsel for Appellant: G. Anthony Long, Saipan

Counsel for Appellee: Barry A. Hirshbein, Assistant Attorney General, Saipan

BEFORE: CASTRO, Associate Justice, MANGLONA and TAYLOR, Justices *Pro Tem*.

CASTRO, Associate Justice:

[1,2] J.J.C. appeals a ruling of the Superior Court, sitting as the juvenile court, granting the Government's motion to transfer juvenile proceedings to adult criminal court. We have jurisdiction pursuant to Article IV, Section 3 of the Commonwealth Constitution, as amended.[1] Further, an order transferring jurisdiction over a juvenile to the adult court is immediately appealable under the collateral order exception.[2] We affirm.

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[1] N.M.I. Const. art. IV, § 3 was amended by the passage of Legislative Initiative 10-3, ratified by the voters on November 1, 1997 and certified by the Board of Elections on December 13, 1997.

[2] The Ninth Circuit Court of Appeals has stated that:

> To fall within the limited class of final collateral orders, an order must (1) 'conclusively determine the disputed question,' (2) 'resolve an important issue completely separate from the merits of the action,' and (3) 'be effectively unreviewable from a final judgment.'

United States v. Gerald N., 900 F.2d 189, 190 (9th Cir. 1990) (citations omitted). The first two factors are met because the transfer order conclusively terminates the juvenile court's jurisdiction, and this issue is separate from J.J.C.'s guilt or innocence in committing the alleged offenses. The third factor is met because "the legal and practical value of the right to be tried as a juvenile would be destroyed without the concomitant right of immediate appeal." *Id.* For example, the sealing of records and the withholding of names and pictures from the media are rights that would be "irretrievably lost unless the juvenile is permitted to appeal the [juvenile] court's order before conviction" as an adult. *Id.* (citation omitted).

ISSUES PRESENTED AND STANDARDS OF REVIEW

J.J.C. presents the following issues for our review:

I. Whether the certification order violated J.J.C.'s right to due process under the Fourteenth Amendment of the United States Constitution;

II. Whether the juvenile court abused its discretion in granting certification;

III. Whether the juvenile court abused its discretion in compelling J.J.C.'s mother to testify on behalf of the Government;

IV. Whether the issue of adult certification was properly before the juvenile court;

V. Whether the certification order constituted an adjudication for purposes of double jeopardy;

VI. Whether the Commonwealth's adult certification statute, 6 CMC § 5102, violates Article I, Section 4(j) of the Commonwealth Constitution.

[3,4,5,6,7,8]Issues I, V and VI involve constitutional issues, which we review *de novo*. *Commonwealth v. Bergonia*, 3 N.M.I. 22, 35 (1992). Issue II, involving the decision to grant certification, is reviewed for abuse of discretion. *United States v. Doe*, 94 F.3d 532, 536 (9th Cir. 1996). Issue III involves a claim of evidentiary error and is reviewed for abuse of discretion. *Commonwealth v. Delos Reyes*, 4 N.M.I. 340, 342 (1996). Issue IV involves statutory interpretation and is reviewed *de novo*. *In the Matter of S.S.*, 3 N.M.I. 177, 179 (1992).

FACTUAL AND PROCEDURAL BACKGROUND

On or about April 30, 1998, Anthony Sablan Jr. was stabbed to death. Thirty-one stab wounds were found on the body. Although there was no indication that J.J.C. actually stabbed Sablan, J.J.C. was implicated in Sablan's death and was arrested on May 2, 1998. At the time of his arrest, J.J.C. was approximately seventeen years and four months old.[3] On May 28, 1998, the Government filed a juvenile delinquency complaint against J.J.C., charging him with conspiracy to commit murder and solicitation to commit murder.

On October 5, 1998, the Government filed a motion to transfer the juvenile proceedings to adult court. A certification hearing was held on December 4, 1998. At the hearing, the court heard testimony

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[3] J.J.C. was born on December 29, 1980.

from J.J.C.'s teacher, a psychologist, a police officer, a social worker and J.J.C.'s mother. The parties presented their closing arguments on December 7, 1998, and the juvenile court issued its oral order granting certification on December 9, 1998. The court stated that it took into consideration the nature of the crime committed, the minor's age and appearance, and his independent lifestyle. *See* Transcript, Excerpts of Record ("E.R.") at 3-4. A written order transferring jurisdiction was entered on December 10, 1998. *In re the Matter of J.J.C.*, Juv. Case. No. 98-0165 (N.M.I. Super. Ct. Dec. 10, 1998) (Order Transferring Juvenile For Adult Prosecution). J.J.C. timely appealed.

ANALYSIS

[9,10]Under the statutory scheme in the Commonwealth, the juvenile court has exclusive original jurisdiction over all juvenile delinquency proceedings, except in certain enumerated cases.[4] *See In Re the Matter of N.T.M.*, App. No. 98-022 (N.M.I. Sup. Ct. Dec. 28, 1999) (Opinion at 4). Jurisdiction over a juvenile, however, may be waived, i.e., transferred to the adult criminal court, if the following criteria are met:

> An offender 16 years of age or over may, however, be treated in all respects as an adult if, in the opinion of the court, his or her physical and mental maturity so justifies.

6 CMC § 5102.

I. Whether the Certification Order Violated JJC's Right to Due Process Under the Fourteenth Amendment of the United States Constitution

J.J.C. claims that his due process rights under the Fourteenth Amendment of the United States Constitution were violated on a number of grounds. As explained below, we find no due process violations.

Standard of Proof

The standard of proof to be applied in determining whether juvenile jurisdiction should be waived differs from jurisdiction to jurisdiction.

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[4] Where an offender sixteen years of age or older is charged with a traffic offense, murder or rape, the juvenile is subject to the original jurisdiction of the adult criminal court and the juvenile court is automatically divested of jurisdiction. *See* 6 CMC § 5103(a).

> In some jurisdictions, the burden is on the juvenile. In others, the burden of proof is on the state, and the standard of proof may be the "clear and convincing" standard, it may be the lower but more common "preponderance of the evidence" standard, or may merely be the requirement of "substantial evidence."

W.M.F. v. State, 723 P.2d 1298, 1301 (1986) (citations omitted).

J.J.C. asserts that since neither 6 CMC § 5102 nor the certification order identifies the evidentiary standard the Government must prove in order to have a juvenile certified as an adult, the proper standard should be beyond a reasonable doubt or, alternatively, the clear and convincing standard. The Government contends that the preponderance of the evidence standard should govern. We agree with the Government.

[11,12,13]Except in the adjudicative phase, the standard of proof generally in juvenile proceedings is the preponderance of the evidence standard. *In re F.S.*, 586 P.2d 607, 611 (Alaska 1978), *overruled on other grounds*, 608 P.2d 12 (Alaska 1980). A waiver hearing is not an adjudicatory proceeding. *Imel v. State*, 342 N.E.2d 897, 900 (Ind. Ct. App. 1976). Further, since a delinquency proceeding is more of a civil nature, the criminal standard of proof beyond a reasonable doubt must be rejected. *See id.* Since the purpose of a waiver hearing is not to determine guilt or innocence, the strict standard of proof beyond a reasonable doubt is not appropriate. *Duncan v. State*, 394 So.2d 930, 932 (Ala. 1981).

[14,15]We agree with the majority of jurisdictions that have concluded that the burden upon the Government to establish that juvenile jurisdiction should be waived is by preponderance of the evidence. Here, the preponderance standard of more likely than not was met by the juvenile court.[5] The court's belief, based upon the evidence, that J.J.C.'s mental and physical fitness warranted his transfer to the adult court was essentially a determination that it was more probable than not that J.J.C. was mature enough to be treated as an adult.

Constitutionally Required Factors

J.J.C. further contends that the certification order violates due process because the juvenile court failed to consider the eight factors set forth by the United States Supreme Court in *Kent v. United States*,

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[5] The meaning of the term "preponderance of the evidence" has been stated as "proof which leads the jury to find that the existence of the contested fact is more probable than its nonexistence. Thus the preponderance of evidence becomes the trier's belief in the preponderance of probability." *In re Randolph T.*, 437 A.2d 230 (Md. 1981) (citing C. McCormick, Evidence § 339 (2d ed. Cleary 1972).

383 U.S. 541, 86 S. Ct. 1045, 16 L. Ed. 2d 84 (1966).[6] According to J.J.C., these factors are constitutionally required. We disagree.

[16]In *Kent*, the relevant provision of the District of Columbia Juvenile Court Act stated that the juvenile court may waive its jurisdiction "after full investigation."[7] In this context, the U.S. Supreme Court considered whether the juvenile court's decision to waive jurisdiction over a juvenile constituted a denial of due process where the court did not hold a hearing, did not make any findings, and did not state any reasons for its decision. In concluding that the juvenile court failed to provide the minimum requirements of due process and fair treatment mandated by the Fourteenth Amendment, the U.S. Supreme Court emphasized that the determination of whether a child should be transferred from the juvenile court to the adult criminal court is a "critically important proceeding." *Id.*, 383 U.S. at 560, 86 S. Ct. at 1057.

[17,18]Initially, it seemed that the holding of *Kent* was limited in scope since it turned on an interpretation of a District of Columbia waiver statute. Subsequent cases, however, have made clear that *Kent* did set forth constitutional principles. *In re Gault* contained the following language:

> Although our decision [in *Kent*] turned upon the language of the statute, we emphasized the necessity that 'the basic requirements of due process and fairness' be satisfied in such proceedings.

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[6] The *Kent* factors are as follows: (1) The seriousness of the alleged offense to the community and whether the protection of the community requires waiver; (2) Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner; (3) Whether the alleged offense was against persons or against property, greater weight being given to the offenses against persons especially if personal injury resulted; (4) The prosecutive merit of the complaint, i.e., whether there is evidence upon which a Grand Jury may be expected to return an indictment (to be determined by consultation with the United States Attorney); (5) The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime in the U.S. District Court for the District of Columbia; (6) The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living; (7) The record and previous history of the juvenile, including previous contacts with the Youth Aid Division, other law enforcement agencies, juvenile courts and other jurisdictions, prior period of probation to this Court, or prior commitments to juvenile institutions; (8) The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available to the Juvenile Court. *Id.*, 383 U.S. at 566-67, 86 S. Ct. at 1060.

[7] The full provision reads as follows: "If a child sixteen years of age or older is charged with an offense which would amount to a felony in the case of an adult, or any child charged with an offense which if committed by an adult is punishable by death or life imprisonment, the judge may, after full investigation, waive jurisdiction and order such child held for trial under the regular procedure of the court which would have jurisdiction of such offense if committed by an adult; or such other court may exercise the powers conferred upon the juvenile court in this subchapter in conducting and disposing of such cases." *Kent v. United States*, 383 U.S. at 547-48, 86 S. Ct. at 1050 (citing D.C. Code § 11-914 (1961), now § 11-1553 (Supp. IV, 1965)).

In re Gault, 387 U.S. 1, 12, 87 S. Ct. 1428, 1436, 18 L. Ed. 2d 527 (1967).

> With respect to the waiver by the Juvenile Court to the adult court of jurisdiction over an offense committed by a youth, we said [in *Kent*] that 'there is no place in our system of law for consequences without ceremony – without hearing, without effective assistance of counsel, without a statement of reasons.' We announced with respect to such waiver proceedings that while 'We do not mean . . . to indicate that the hearing to be held must conform with all of the requirements of a criminal trial or even of the usual administrative hearing; but we do hold that the hearing must measure up to the essentials of due process and fair treatment.'

Id., 387 U.S. at 30, 87 S. Ct. at 1445 (citations omitted). In interpreting this language in *In re Gault*, the Ninth Circuit Court of Appeals concluded in *Powell v. Hocker*, 453 F.2d 652 (9th Cir. 1971), *overruled on other grounds*, 498 F.2d 576 (9th Cir. 1974), that:

> due process requires the rights to counsel, to adequate notice and to a statement of reasons at a hearing to determine whether a juvenile is to be tried as an adult. We join a growing list of courts that interpret *Kent* in light of *Gault* as establishing certain minimum constitutional rights of juveniles at such hearings.

Id. at 654; *see also Kemplen v. State*, 428 F.2d 169 (4th Cir. 1970); *Brown v. Wainwright*, 537 F.2d 154, *cert. denied*, 430 U.S. 970, 97 S. Ct. 1656, 52 L. Ed. 2d 363 (1977). Thus, a close look at the holding in *Kent* indicates that *Kent*, 383 U.S. at 561-63, 86 S. Ct. at 1057-58. Accordingly, we find that the requirements of due process are satisfied where the foregoing four factors are met.

[19]In the case at bar, the juvenile court did hold a hearing to determine whether J.J.C. should be certified to be tried as an adult, J.J.C. was represented by his counsel at the hearing, and J.J.C.'s counsel had access to J.J.C.'s social records. In addition, the juvenile court stated its reasons for waiving jurisdiction on the record, which included the nature of the crime committed, J.J.C.'s age and appearance, and his independent lifestyle. *See* Transcript, E.R. at 3-4. Accordingly, we find that the minimum requirements of due process and fair treatment were met in this case.

The eight factors relied upon by J.J.C., on the other hand, are not constitutionally required factors. They were only set forth as part of a policy memorandum for the District of Columbia, attached as an appendix to the opinion of the Court, and are merely suggested criteria for making a waiver determination.[8] Some states have codified some or all of the suggested criteria, or have developed their own similar criteria.

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[8] Following the decision in *Kent*, the eight suggested criteria were incorporated into the new District of Columbia Juvenile Court Code. *See* D.C. Code § 16-2307(e) (1981).

Other states do not set forth any criteria in their statutes:

> If any attempt is made to set forth a standard at all, it is usually in the form of a statement of the last criterion suggested in *Kent, i.e.*, that the child is not amenable to the rehabilitative processes of the juvenile court or else a statement that 'it would be contrary to the best interests of the child or of the public' to handle the case as a juvenile matter. Indeed, such generalized standards have been found to satisfy constitutional tests. . . . [M]any states, as a practical matter, simply leave the waiver determination to the discretion of the juvenile court.

Samuel M. Davis, *Rights of Juveniles, the Juvenile Justice System*, § 4.3 (2d ed. 1990).

[20,21]In the Commonwealth, the Legislature has chosen to leave the waiver determination to the discretion of the juvenile court by stating that juvenile jurisdiction may be waived "if, in the opinion of the court" a 16 year-old minor's "physical and mental maturity so justifies." *See* 6 CMC § 5102. The only criteria specifically identified in our waiver statute for the court's consideration is the "physical and mental maturity" of the minor child. We find such criteria sufficient, as long as the four safeguards of due process set forth in *Kent* are present. Of course, if the juvenile court wishes to consider some or all of the eight suggested criteria enunciated in *Kent*, the court is free to do so. Indeed, the court in this case did consider some of the *Kent* criteria, such as the seriousness of the alleged offense and the sophistication and maturity of the juvenile.

Constitutional Vagueness

[22]A penal statute or ordinance is void for vagueness if it does not state with reasonable clarity the act it proscribes or does not provide fixed standards for adjudging guilt. *Commonwealth v. Bergonia*, 3 N.M.I. 22, 36 (1992); *Commonwealth v. Kaipat*, 2 N.M.I. 322, 330 n.7 (1991). J.J.C. contends that 6 CMC § 5102 is void for vagueness because neither Section 5102 nor any other provision of the Juvenile Justice Division of the Criminal Code defines "physical and mental maturity" or sets forth any guidelines for determining whether a minor possesses sufficient physical and mental maturity.

Appellant cites *Grayned v. City of Rockford*, 408 U.S. 104, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972) to support his contention that, in the absence of specific guidelines, the Commonwealth's transfer statute is unconstitutionally vague. *Grayned*, however, is not on point because the allegedly unconstitutional law in that case was a criminal ordinance, not a procedural statute.

[23,24]In rejecting a similar vagueness challenge to a statute which permitted waiver of juvenile jurisdiction "if the judge finds that the needs of the child or the best interest of the State will be served," the court in *In re Bullard*, 206 S.E.2d 305 (N.C. Ct. App. 1974) stated:

> [The waiver statute], however, is not a penal statute "which either forbids or requires the doing of an act" to constitute a criminal offense. It is a procedural statute. [The statute] does not place anyone in the position of being unable to determine whether his conduct is against the law. It is a statute which sets out a method of procedure and is sufficiently explicit to meet constitutional requirements.

Id. at 307. Likewise, we find that 6 CMC § 5102 is not unconstitutionally vague. The statute merely states the method by which the juvenile court may transfer jurisdiction to the adult court.[9] It does not put anyone in the position of not knowing what conduct is prohibited. Thus, J.J.C.'s vagueness argument fails.

Prosecutorial Delay

[25]In the Ninth Circuit, a two-prong test is applied to determine if pre-indictment delay has violated a defendant's due process rights. *United States v. Doe*, 149 F.3d 945, 948 (9th Cir. 1998). First, the defendant must show that the delay caused him to suffer actual, non-speculative prejudice. *Id.* A showing of actual prejudice is a prerequisite to the second prong even being considered. *Id.* Second, the defendant must demonstrate that the delay, "when balanced against the prosecution's reasons for it, offends those fundamental conceptions of justice which lie at the base of our civil and political institutions. *Id.*

[26]Although J.J.C. was arrested on May 2, 1998, the Government did not seek certification until October 5, 1998. J.J.C. contends that this delay prejudiced him because the Government was then able to argue that insufficient time existed for treatment or rehabilitation before J.J.C. would turn 18.[10] However, J.J.C. cites no authority for the proposition that the Government's alleged delay in seeking transfer of

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[9] Implicit in the juvenile court's discretion to treat juveniles as adults if their maturity warrants is the requirement of a hearing. *Commonwealth v. Cabrera*, 2 CR 1092, 1100-01 (Dist. Ct. App. Div. 1987).

[10] Both the Juvenile Court and the Government assumed that juvenile jurisdiction ends when the minor reaches age 18. *See* Transcript, Supplemental Excerpts of Record ("S.E.R.") at 8. This issue was recently decided by this Court in two other appeals, *In re the Matter of N.T.M.*, App. No. 98-022 (N.M.I. Sup. Ct. Dec. 28, 1999) and *Nakatsukasa v. Superior Court*, Original Action No. 99-006 (N.M.I. Sup. Ct. Dec. 28, 1999). In *N.T.M.*, we concluded that the time of the commission of the offense should govern and that the juvenile court does not lose jurisdiction once the minor turns 18.

juvenile jurisdiction can violate due process. J.J.C.'s reliance on *United States v. Doe* is misplaced since that case involved *pre-indictment* delay. *See id.* (defendant alleged that government's four-year delay in bringing information against him resulted in actual prejudice). Here, J.J.C. does not claim that the Government delayed in bringing charges against him. Rather, the claim is that the Government delayed in seeking transfer of his case to adult court. In the absence of authority to the contrary, we find no due process violation by the Government's alleged delay in seeking certification.

II. Whether the Juvenile Court Abused Its Discretion in Granting Certification

[27]The decision to transfer a juvenile to adult court is within the sound decision of the juvenile court, and will not be disturbed absent an abuse of discretion. *See United States v. Doe*, 94 F.3d 532, 536 (9th Cir. 1996); *United States v. Gerald N.*, 900 F.2d 189, 191 (9th Cir. 1990); *see also Imel v. State*, 342 N.E.2d 897 (Ind. Ct. App. 1990) (appellate review of waiver of juvenile jurisdiction is limited to considering whether abuse of discretion has been demonstrated). The court abuses its discretion when it fails to make required findings or its findings are clearly erroneous. *United States v. Doe*, 94 F.3d at 536.

[28]J.J.C. argues that the juvenile court abused its discretion by failing to make required findings, which should have incorporated the eight *Kent* factors. As we have already established, the *Kent* factors are not constitutionally required. The juvenile court was only required to make findings with regard to J.J.C.'s mental and physical maturity. The court did make such findings, based upon its consideration of witnesses' testimonies, including the psychologist who evaluated J.J.C., one of J.J.C.'s teachers, and J.J.C.'s mother. *See* Transcript, E.R. at 3-4. Further, we find no clear error in any of the juvenile court's findings.

III. Whether the Juvenile Court Abused Its Discretion in Allowing J.J.C.'s Mother to Testify Over Objection

Although the Commonwealth has not expressly adopted a parent-child evidentiary privilege, J.J.C. submits that given the high esteem for children in our local society, J.J.C.'s mother should not have been compelled to testify against her own child. Be that as it may, J.J.C. fails to cite to any jurisdiction that has

adopted a parent-child privilege into its rules of evidence. J.J.C.'s reliance on *In re Agosto*, 553 F. Supp 1298 (D. Nev. 1983), a case that recognized a common-law privilege for parent-child communications, is not persuasive.

Agosto has been criticized for its failure to recognize "that such privileges, whether they be those traditionally recognized by the common law or new ones which courts seek to engraft into the common law, 'are not lightly created nor expansively construed, for they are in derogation of the search for truth.'" *United States v. Davies*, 768 F.2d 893, 898 (7th Cir. 1985) (citing *United States v. Nixon*, 418 U.S. 683, 710, 94 S. Ct. 3090, 3108, 41 L. Ed. 2d 1039 (1974)). Moreover, the narrowness of privileges under Rule 501 of the Rules of Evidence has been reaffirmed by the United States Supreme Court in *Trammel v. United States*, 445 U.S. 40, 53, 100 S. Ct. 906, 914, 63 L. Ed. 2d 186 (1980) (modifying spousal privilege "so that the witness spouse alone has a privilege to refuse to testify adversely.").

[29]No federal courts of appeal have recognized a parent-child privilege, and several, including the Ninth Circuit, have expressly rejected such a privilege. *See, e.g., United States v. Penn*, 647 F.2d 876 (9th Cir. 1980) (en banc), *cert. denied*, 449 U.S. 903 (1980) (no judicially or legislatively recognized general "family" privilege); *Port v. Heard*, 764 F.2d 423 (5th Cir. 1985); *In re Grand Jury Subpoena (Santarelli)*, 740 F.2d 816 (11th Cir. 1984); *United States v. Jones*, 683 F.2d 817 (4th Cir. 1982).

[30]Thus, we agree with the *Davies* court that it would be inappropriate to engraft a parent-child privilege into Rule 501. *Davies*, 768 F.2d at 898. The juvenile court therefore did not abuse its discretion in allowing J.J.C.'s mother to testify during the certification hearing.

IV. Whether the Issue of Adult Certification Was Properly Before the Juvenile Court

[31]J.J.C. contends that since 6 CMC § 5102 is silent regarding how the Government initiates an adult certification, the complaint initiating the juvenile proceeding must inform the minor that the Government intends to have him tried as an adult. In juvenile delinquency proceedings, all procedure not expressly covered by law or rule of procedure are to be governed by principles of civil procedure. Com. R. Juv. Del. P. Rule 1. J.J.C. therefore maintains that the issue of having him treated as an adult is one of capacity contemplated by Rule 9 of the Commonwealth Rules of Civil Procedure and needed to be specifically pled

in the accusatory instrument filed in this case.

[32]The Government counters that J.J.C. has failed to cite any Commonwealth constitutional or statutory authority for his position that the Government must give notice of its intent to transfer a juvenile case to adult court. The statute does not set forth any specific procedure, but it states that the court shall "adopt a flexible procedure based on the accepted practices of juvenile courts of the United States . . . ." 6 CMC § 5102.

[33]J.J.C. has failed to direct us to any other jurisdiction which requires the procedure he suggests. Moreover, to require such a procedure would place an undue burden upon the Government to know in advance without investigation which juvenile cases will be appropriate for transfer. We decline to adopt such an unreasonably burdensome procedure.

V. Whether the Certification Order Constituted an Adjudication For Purposes of Double Jeopardy

[34,35]In *Breed v. Jones*, 421 U.S. 519, 95 S. Ct. 1779, 44 L. Ed. 2d 346 (1975), the United States Supreme Court held that a juvenile is put in jeopardy within the meaning of the Fifth Amendment if he is subjected to a proceeding that may result in an adjudication that he has committed criminal acts, and that may put his liberty and reputation at risk. *Id.*, 421 U.S. at 529, 537-38, 95 S. Ct. at 1785, 1789-90. Further, in *Rios v. Chavez*, 620 F.2d 702 (9th Cir. 1980), *superseded by statute as stated in Barker v. Estelle*, 913 F.2d 1433 (9th Cir. 1990), the Ninth Circuit Court of Appeals held that jeopardy attaches if the minor is exposed to the risk of adjudication of the underlying criminal offense during a transfer hearing, even though the court does not actually adjudicate the underlying crime. *Id.* at 707.

J.J.C. contends that he was exposed to the risk of adjudication at his certification hearing because the use of the term "offender" in 6 CMC § 5102 required the juvenile court to adjudicate the underlying crime. An "offender" is associated with a person who has violated a criminal statute. Moreover, J.J.C. argues that an adjudication actually occurred at his hearing because in granting certification, the juvenile court stated "in light of the crime that was committed . . . ." E.R. at 3. Thus, J.J.C. asserts that the determination to certify him was based partly on the ground that a "crime was committed" and that J.J.C. had in fact committed a crime. We disagree.

[36]We do not see how the statute's use of the term "offender"or the juvenile court's use of the words, "in light of the crime that was committed" can be said to have exposed J.J.C. to the risk of adjudication or have resulted in an actual adjudication that J.J.C. committed the underlying crime. To "adjudicate" means "to determine finally" or "adjudge," which means "to decide, settle or decree." *Barker v. Estelle*, 913 F.2d at 1440 n.12 (citing BLACK'S LAW DICTIONARY 39 (5th ed. 1979)). The court did not make any final determination that J.J.C. committed the crime. The court's reference to a crime having been committed is simply an accurate statement of the facts since another juvenile had already admitted his guilt in the underlying murder case. *See* S.E.R. at 10-11. J.J.C.'s guilt or innocence, however, was in no way adjudicated at the transfer hearing.

[37]If we were to accept J.J.C.'s reasoning, during a transfer hearing the juvenile court would commit error every time it alludes to the fact that a crime had occurred. This is not the law. Although the U.S. Supreme Court in *Breed v. Jones* found that jeopardy had attached in that case, the Court also noted the importance of the availability of a procedure for transferring juveniles to adult court. *Barker v. Estelle*, 913 F.2d at 1438 (citing *Breed v. Jones*, 421 U.S. at 535, 95 S. Ct. at 1789). As long as the transfer hearing does not involve the risk of an adjudication of guilt, the juvenile court is not prohibited from conducting such a hearing even if substantial evidence that the juvenile committed the alleged offense is a prerequisite to the transfer. *Id.* Here, nothing even amounting to substantial evidence that J.J.C. committed the alleged offense was introduced at the transfer hearing. In contrast, the *Rios* court found that the minor in that case was exposed to the risk of adjudication where witnesses were called and 140 pages of the transcript dealt exclusively with evidence of the alleged offense. *See Rios v. Chavez*, 620 F.2d at 708.

[38]As no risk of adjudication was present and no actual adjudication was made by the juvenile court during the transfer hearing, double jeopardy did not attach.

VI. Whether the Commonwealth's Adult Certification Statute, 6 CMC § 5102, Violates Article I, Section 4(j) of the Commonwealth Constitution

[39]Article I, Section 4(j) of Commonwealth Constitution provides:

[p]ersons who are under eighteen years of age, shall be protected in criminal judicial

proceeding and in conditions of confinement.

N.M.I. Const. art. I, § 4(j).[11]

J.J.C. contends that the foregoing language requiring protection of persons under eighteen years of age in criminal proceedings prohibits him from being certified under 6 CMC § 5102 to be tried as an adult. He further asserts that 6 CMC § 5103(a), which mandates that a juvenile 16 years or older accused of murder, rape or a traffic offense be automatically tried as an adult, is unconstitutional.

[40,41]The constitutionality of 6 CMC § 5103(a) was addressed and decided in *Commonwealth v. Cabrera*, 2 CR 1092 (Dist. Ct. App. Div. 1987). In *Cabrera*, the Appellate Division of the N.M.I. District Court rejected essentially the same argument made here. The court noted that treatment as a juvenile is not an inherent right, but a right created by the legislature which can be restricted in any way that is not arbitrary or discriminatory. *Id.* at 1099. Further, the court found that 6 CMC § 5103(a) satisfied the "language, intent and requirements of Article I, § 4(j) of the Commonwealth Constitution." *Id.* at 1100.

> Article I, § 4(j) of the Commonwealth Constitution does not provide the support appellant claims. The protection provided juveniles in criminal proceedings centers on shielding them to avoid the life-long stigma of a criminal record, minimizing their contact with adult criminals, and rehabilitation. Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands (1976), pp. 19-20.

Specifically, appellant's situation was expressly contemplated:

> This section does not prevent the legislature from directing that certain offenders who are under the age of 18 may be tried as adults in specified circumstances. Id. at p. 20.

Id. at 1099-1100. J.J.C. has not advanced any compelling argument for overturning the holding of *Cabrera*, nor do we find any reason for doing so.

[42]Although *Cabrera* only addressed the constitutionality of 6 CMC § 5103(a), the same reasoning may be applied to uphold 6 CMC § 5102. Moreover, it would be anomalous to hold that it is constitutional for a juvenile to be automatically tried as an adult for committing certain offenses, but that it

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[11] The ANALYSIS OF THE CONSTITUTION OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS (1976) ("ANALYSIS") explains the protections of Article I, Section 4(j) in relevant part as follows:

> This section requires that persons who are under 18 years of age be protected in criminal proceedings and in conditions of imprisonment. The term criminal proceedings means the hearings and trials in which juveniles appear on criminal or delinquency charges and the publicity given or records kept with respect to these matters.

ANALYSIS at 19.

is unconstitutional for a juvenile to be certified for trial as an adult after findings are made at a hearing by a court. Thus, we find that Article I, Section 4(j) does not prohibit a juvenile from being tried as an adult under 6 CMC § 5102.

CONCLUSION

For the foregoing reasons, we hereby **AFFIRM** the juvenile court's ruling transferring J.J.C. to be tried as an adult.

DATED this 9th day of ~~April~~ May, 2000.

/s/ Alexandro C. Castro
ALEXANDRO C. CASTRO, Associate Justice

/s/ John A. Manglona
JOHN A. MANGLONA, Justice *Pro Tem*

/s/ Marty W.K. Taylor
MARTY W.K. TAYLOR, Justice *Pro Tem*