A05-283

STATE OF MINNESOTA

IN SUPREME COURT

State of Minnesota,

Respondent,

vs.

Richard Angelo McFee,

Appellant.

APPELLANT'S REPLY BRIEF

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Appellant challenged the enhancement of his sentence, based upon a judicial finding that he had been adjudicated delinquent of three offenses as a juvenile, under *Blakely v. Washington*, 542 U.S. 296 (2004). He submits the following by way of reply to respondent's arguments.

A. Respondent's attempt to avoid the requirements of *Blakely* based upon labeling the factfinding at issue should be rejected.

Respondent claims that *Blakely* "does not apply to findings required to determine a presumptive sentence." (Resp. Brief at 3-5). Respondent focuses upon the label attached to the fact at issue, rather than upon its effect on appellant's sentence. The United States Supreme Court has repeatedly held that this is the wrong inquiry. As this Court has recognized, "the relevant inquiry is not one of form, but of effect – does the required finding expose the defendant to a greater punishment than that authorized by the jury's guilty verdict?" *State v. Allen*, 706 N.W.2d 40, 47 (Minn. 2005) (quoting *Apprendi v.*

New Jersey, 530 U.S. 466, 494 (2000)). The findings in this case – that appellant had been adjudicated delinquent several times, leading to the imposition of a "juvenile point" – exposed appellant to a greater punishment than that authorized without the findings (an increase of a maximum 28 to a maximum 31 months). (*See* App. Brief at 8-9). The requirements of the Sixth Amendment therefore apply.

"[T]he fundamental meaning of the jury-trial guarantee of the Sixth Amendment is that all facts essential to the level of punishment that the defendant receives – whether the statute calls them elements of the offense, sentencing factors, or Mary Jane – must be found by the jury beyond a reasonable doubt." *Ring v. Arizona*, 536 U.S. 584, 610 (2002) (Scalia, J., concurring); *see also Apprendi*, 530 U.S. at 501 (Thomas, J., concurring). The facts of appellant's prior juvenile adjudications were "facts essential to the level of punishment [he] receive[d]." *Id.* Whether the State calls them elements, sentencing factors, presumptive-sentence calculations, or Mary Jane, they must be found by a jury.

B. Respondent's interpretation of the prior-conviction exception does not square with the caselaw from the United States Supreme Court or from this Court.

The gravaman of respondent's argument is that juvenile adjudications fall within *Blakely*'s "prior-conviction exception." Respondent claims that "[t]he Sixth Amendment applies at sentencing when a subjective judgment regarding the defendant's personal characteristics or the nature of the defendant's conduct is required." (Resp. Brief 5). Respondent is wrong. In *Allen*, this Court rejected the argument that *Blakely* was limited to certain types of facts. 706 N.W.2d at 46-47. The Court held that the *Blakely* "rule applies to '[a]ny fact (other than a prior conviction) which is necessary to support a

sentence exceeding the maximum." *Allen*, 706 N.W.2d at 46 (quoting *United States v. Booker*, 125 S.Ct. 738, 756 (2005)) (emphasis in *Allen*). The *Allen* Court noted that the United States Supreme Court "did not limit the rule" to offense-based factors. *Id.* Nor did the Supreme Court limit the rule to factors regarding "subjective judgment," as respondent would have it. The *Blakely* rule applies to "any fact" used to increase a sentence, other than the fact of a prior conviction. Because juvenile adjudications are not convictions, *Blakely* applies.

Respondent also relies upon *Allen*'s holding that the assignment of custody-status points does not violate *Blakely*.[1] (Resp. Brief at 4, 9-10). But *Allen*'s discussion of the custody-point issue supports appellant's position, not respondent's. In *Allen*, the Court held that "[t]he primary reason for excluding a prior conviction from the constitutional rule is that the prior conviction itself has been established by procedures that satisfy constitutional jury-trial and reasonable-doubt guarantees." *Allen*, 706 N.W.2d at 47 (citing *Apprendi*, 530 U.S. at 488; *Jones v. United States*, 526 U.S. 227, 249 (1999)) (emphasis added). Thus, the *Allen* Court recognized that the prior-conviction exception is, and always has been, directly tied to the "constitutional jury-trial" guarantee. (*See* App's Brief at 10-11, 13-17). Juvenile adjudications are not accompanied by the "constitutional jury-trial" guarantee. (Id.). And unlike an adult defendant's custody status, the finding of a juvenile adjudication does not "flow[] directly from…a prior

[1] Appellant acknowledges that this holding forecloses argument II of his principle brief.

conviction," in fact, it has nothing to do with a prior conviction. *Allen*, 706 N.W.2d at 48.

Respondent also argues that the prior-conviction exception is actually a broad "recidivism" exception that encompasses anything within a dictionary definition of recidivism. (Resp. Brief at 8). But this Court has already rejected such a broad interpretation of the exception. In *State v. Henderson*, the Court rejected the argument that the prior-conviction exception was broad enough to allow a judge to consider whether the defendant had engaged in "a pattern of criminal conduct." *State v. Henderson*, ___ N.W.2d ___, ___, 2005 WL 3211517, *4-5 (Minn. 2005) (holding that findings required for sentence enhancement under career-offender statute "involve more than the fact of prior convictions" and thus cannot be made by judge). The Court made "clear that recidivism is a narrow exception to the general rule that all facts going to punishment must be found by a jury." *Id.* at *5. The narrow exception applies only to "the fact of a prior felony conviction." *Id.* at *4. A juvenile adjudication is not a felony conviction and therefore the prior-conviction exception does not apply.[2]

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[2] The Indiana Supreme Court recently adopted a much broader interpretation of the prior-conviction exception and held that it encompasses juvenile adjudications. *Ryle v. State*, ___ N.E.2d ___, 2005 WL 3378569 (Ind. 2005). In *Ryle*, the Indiana court essentially held that juvenile adjudications were close enough to criminal convictions to "count" under the prior-conviction exception. The decision ignores both the determinative role of the "constitutional jury-trial" right, *Henderson*, 2005 WL 3121517, *5, and the role of the juvenile justice system, and this Court should lend it little to no weight. In any event, *Ryle* brings the status of this issue in state supreme courts to an even 2-2 split. *See State v. Hitt*, 42 P.3d 732 (Kan. 2002), *cert. denied*, 537 U.S. 1104 (2003) (juvenile adjudications fall within prior-conviction exception); *State v. Brown*, 879 So.2d 1276 (La. 2004), *cert. denied*, 125 S.Ct. 1310 (2004) (juvenile adjudications do not fall within prior-conviction exception); *State v. Harris*, 118 P.3d 236 (Or. 2005) (same).

Most disturbingly, respondent claims that "[a]sking a jury to find whether a juvenile adjudication exists would serve no useful purpose," and that "such a finding is a mere formality, given the nature of the evidence the jury will be asked to address." (Resp. Brief at 9, 11). Under this logic, perhaps the entire trial could be avoided for a defendant who is obviously guilty, because "such a finding [would be] a mere formality, given the nature of the evidence the jury [would] be asked to address." This is obviously impermissible. *Cf. Crawford v. Washington*, 541 U.S. 36, 62 (2004) ("Dispensing with confrontation because testimony is obviously reliable is akin to dispensing with jury trial because a defendant is obviously guilty. This is not what the Sixth Amendment prescribes.").

C. Juvenile Adjudications are Not Convictions.

In the end, this case is quite simple. The only exception to *Blakely* is the fact of a prior conviction. Juvenile adjudications are not convictions. (*See* App's Brief at 17-18); (Resp. Brief at 11 ("it is certainly true that juvenile adjudications are not convictions")). They therefore do not fit within the prior-conviction exception. *See State v. Montgomery*, 825 N.E.2d 250, 254 (Oh. Ct. App. 2005) (juvenile adjudications do not fit within the prior-conviction exception because "[i]t is well established in Ohio that an adjudication that a juvenile is delinquent is not the same as a criminal conviction.") (footnote omitted); *cf. State v. Boehl*, 697 N.W.2d 215, 222 (Minn. Ct. App. 2005), *rev. denied* (Minn. Aug. 16 2005) (holding that a juvenile adjudication did not qualify as a "conviction" under conditional-release statute because juvenile adjudications are not convictions).

CONCLUSION

Based upon the foregoing, appellant respectfully requests that the Court of Appeals' decision in this matter be reversed, and the matter be remanded for imposition of the presumptive sentence without regard for the juvenile point.

Respectfully Submitted,

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