

66577-4

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No. 66577-4-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

QUINCY CHILDRESS,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SNOHOMISH COUNTY

REPLY BRIEF OF APPELLANT

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A. ARGUMENT

1. THE JUVENILE COURT ABUSED ITS DISCRETION IN DECLINING JURISDICTION BECAUSE THE STATE FAILED TO PROVE IT WOULD BE IN THE BEST INTEREST OF THE CHILD OR THE PUBLIC.

The juvenile court transferred this case to adult court primarily based on an evaluation performed on Quincy when he was 13 years old concluding he was at a high risk to reoffend. CP 82. The court abused its discretion in relying on this evaluation which by its own terms was no longer valid and was of questionable accuracy even when written. The evaluation stated:

It should be noted that there is no empirically validated method for appraising the risk of a young person to engage in harmful/delinquent behavior. ... Adolescence is a period of significant change and growth in many developmental areas such as cognitive functioning, emotional awareness, social competency, and both physical and sexual development. ... [C]onclusions of these risk assessments should be considered invalid outside the period of at most, 6 to 12 months.

CP 293 (emphasis added). Although this evaluation stated it was valid for only 6 to 12 months, the juvenile court relied on it three years later to find Quincy could not be rehabilitated in the juvenile system and had to be transferred to adult court. This is an abuse of discretion.

Remarkably, the State responds by arguing that the juvenile court judge probably did not even read the evaluation upon which it relied. Respondent's Brief at 6 n.3, 22-23. This argument merely proves Quincy's point. In other words, one of two things is true:

- (1) Either the juvenile court did read the 2008 evaluation on which it relied to find Quincy could not be rehabilitated, in which case the court abused its discretion because the report itself says its conclusions are no longer valid and did not use an "empirically validated method" even at the time; or
- (2) The juvenile court did not read the 2008 evaluation on which it relied to find Quincy could not be rehabilitated, in which case the court abused its discretion by relying on a report it did not even read.

The State then ignores its burden of proof in arguing that the probation officer's statement supported transfer to adult court.

Respondent's Brief at 21. The probation report stated, "I cannot determine through all of the social information if [Quincy] can be successfully treated by the age of 21." CP 246 (emphasis added).

On appeal, the State posits, "The uncertainty regarding the effectiveness of resources in the juvenile system to protect the public is the very thing that supports the conclusion that the last factor weighed in favor of declining jurisdiction to adult court."

Respondent's Brief at 21 (emphasis added); see also id. at 22

(Quincy would “possibly fall within” the admittedly “small percentage” of child offenders who reoffend as adults).

On the contrary, the uncertainty is the very thing requiring a conclusion that the State failed to meet its burden. The State bears the burden of proving by a preponderance of the evidence that the child is not likely to be rehabilitated by the juvenile system such that declination would be in the best interest of the child or public. State v. Massey, 60 Wn. App. 131, 137, 803 P.2d 340 (1991); State v. Holland, 98 Wn.2d 507, 516 n.2, 656 P.2d 1056 (1983); RCW 13.40.110. Here, the State proved that it does not know whether the child is likely to be rehabilitated or not. It therefore failed to meet its required burden under the statute and caselaw.¹

The State also argues that the nature of the offense supported transfer to adult court, but as explained in Quincy’s opening brief, the legislature has determined that 15-year-olds accused of second-degree rape should be tried in juvenile court unless the State proves there is something special about the

¹ Furthermore, as explained in the opening brief, scientific studies and Supreme Court caselaw reinforce the conclusions of Quincy’s probation officer and the 2008 evaluation that a juvenile’s risk to reoffend cannot be determined because the factors that cause juvenile sexual misconduct do not tend to cause adult sex offenses. For child offenders, rehabilitation is the appropriate response. Appellant’s Brief at 22. Quincy had never been in juvenile detention before and the State did not present evidence that the treatment available through JRA was inadequate.

particular child and incident at issue that requires transfer to adult court. Appellant's Brief at 19. The opening brief contrasted the case of M.A., in which the State proved the alleged assault was unusually brutal, warranting transfer to adult court. Id. (citing State v. M.A., 106 Wn. App. 493, 499, 23 P.3d 508 (2001)). Although all rapes are brutal, the rape here was not more brutal than the average second-degree rape; the evidence showed Quincy placed his thumbs on the victim's throat but only briefly penetrated her with his fingers before another person entered the room and ended the incident.

The State faults Quincy for citing State v. Stubbs, 170 Wn.2d 117, 124-28, 205 P.3d 143 (2010), arguing Stubbs is "not comparable" because it involved an exceptional sentence under the SRA. Respondent's Brief at 19-20. But of course the citation to Stubbs was appropriate. The State does not acknowledge the "cf." signal, which means "cited authority supports a proposition different from the main proposition but sufficiently analogous to lend support." The Bluebook: A Uniform System of Citation 47 (Columbia Law Review Ass'n et al. eds., 18th ed. 2005). Quincy properly explained the relevance in parentheses following the citation. See id.; Appellant's Brief at 19.

In sum, the juvenile court abused its discretion in transferring Quincy's case to adult court. It relied on an evaluation that was no longer valid and which failed to use an empirically validated method even when written. It found the State met its burden to prove Quincy could not be rehabilitated even though the probation officer stated Quincy's prospects for rehabilitation could not be determined. This Court should reverse.

2. THE DECLINATION PROCEDURE VIOLATED QUINCY'S SIXTH AND FOURTEENTH AMENDMENT RIGHTS BECAUSE QUINCY WAS SUBJECTED TO A SIGNIFICANT INCREASE IN PUNISHMENT BASED ON FACTS FOUND BY A JUDGE BY A PREPONDERANCE OF THE EVIDENCE.

As explained in Quincy's opening brief, his constitutional rights to a jury trial and proof beyond a reasonable doubt were violated when his case was transferred to adult court based on facts found by a judge by a preponderance of the evidence. Appellant's Brief at 25-33. The State complains that Quincy did not raise the issue below, but then acknowledges that a manifest error affecting a constitutional right may be raised for the first time on appeal. RAP 2.5(a)(3); Respondent's Brief at 24-25.

The error is a constitutional issue because it involves the rights guaranteed by the Sixth and Fourteenth Amendments. The

State argues the issue is not constitutional “because juveniles do not have a constitutional right to be tried in juvenile court.” Respondent’s Brief at 25. This statement misses the point. The defendant in Blakely did not have a constitutional right to a sentence within the standard range. But because a sentence above the standard range required proof of additional facts, the Constitution required those facts be proved to a jury beyond a reasonable doubt. Blakely v. Washington, 542 U.S. 296, 313, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004). Similarly here, because the imposition of an adult sentence required proof of additional facts, the Constitution requires those facts be proved to a jury beyond a reasonable doubt.

The constitutional error is manifest because it had “practical and identifiable consequences” in the case. See Respondent’s Brief at 25 (citing State v. Lynn, 67 Wn. App. 339, 345, 835 P.2d 251 (1992)). The identifiable consequence was that Quincy is serving a life sentence with a minimum term of 84 months, whereas the juvenile court could not have imposed a term of incarceration beyond his 21st birthday. CP 22; RCW 13.40.0357; RCW 13.40.160. This difference in sentencing is the result of facts found

by a judge by a preponderance of the evidence, in violation of the Sixth and Fourteenth Amendments.

The State points out that other jurisdictions have rejected the argument, but of course questions of constitutionality are “not answered by cataloging the practices of other states.” Martin v. Ohio, 480 U.S. 228, 236, 107 S.Ct. 1098, 94 L.Ed.2d 267 (1987).² Rather, the decisions of the United States Supreme Court govern federal constitutional issues. “When the United States Supreme Court decides an issue under the United States Constitution, all other courts must follow that Court's rulings.” State v. Radcliffe, 164 Wn.2d 900, 906, 194 P.3d 250 (2008).

The U.S. Supreme Court has addressed the issue many times, repeatedly emphasizing that “all facts legally essential to the punishment” must be proved to a jury beyond a reasonable doubt. Blakely, 542 U.S. at 313. The facts found by the juvenile court judge in this case were legally essential to the punishment, because without them, Quincy could not have been incarcerated

² In any event, at least one state court has read Apprendi to require findings in juvenile transfer hearings be made by a jury beyond a reasonable doubt. Commonwealth v. Quincy Q., 753 N.E.2d 781, 789 (Mass. 2001), overruled on other grounds by Commonwealth v. King, 834 N.E.2d 1175, 1201 n.28 (Mass. 2005).

beyond his 21st birthday. Thus, the Constitution requires those facts to be proved to a jury beyond a reasonable doubt.

The State argues the Supreme Court cases Quincy cited are not relevant because they “considered the procedures constitutionally necessary for sentencing.” Respondent’s Brief at 28. The State suffers the same confusion the respondents in those cases suffered – that form, rather than effect, is constitutionally relevant. Although the juvenile declination hearing was not technically a sentencing hearing, it was, in the State’s words, a “procedure constitutionally necessary” for imposition of the life sentence. The fact that it occurred before trial is irrelevant.

A hypothetical scenario illustrates the flaw in the State’s reasoning. Imagine if Washington had two criminal departments in its superior court: one for nonaggravated crimes and one for crimes with aggravating factors. If a judge found by a preponderance of the evidence that the victim of the crime was particularly vulnerable, the case could be transferred to “aggravated” court. If the defendant were convicted in that court, he could receive a life sentence. If, on the other hand, the case were tried in “nonaggravated” court, he could be sentenced only within the standard range if convicted. Under the State’s logic, this procedure

would pass constitutional muster. That is not the law. See Blakely, 542 U.S. at 313; United States v. Booker, 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005); Cunningham v. California, 549 U.S. 270, 127 S.Ct. 856, 166 L.Ed.2d 856 (2007).

Furthermore, the facts of this case demonstrate the necessity of the procedural protections guaranteed by the Sixth and Fourteenth Amendments. As explained above and in the opening brief, the juvenile court judge relied on a report that was by its own terms invalid and obsolete, and as the State points out, the judge may not have even read the report before relying on it to transfer jurisdiction. The juvenile court judge declined jurisdiction even though the State made clear it did not know one way or the other whether Quincy could be rehabilitated. If the guarantees of a jury trial and proof beyond a reasonable doubt had been implemented, it is highly unlikely that such an error would have occurred. This Court should hold that the facts necessary to support transfer from juvenile to adult court must be proved to a jury beyond a reasonable doubt.

B. CONCLUSION

For the reasons above and in the opening brief, this Court should reverse Quincy's conviction, reverse the juvenile court order declining jurisdiction, and remand for trial in juvenile court.

DATED this 1st day of February, 2012.

Respectfully submitted,



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Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 1ST DAY OF FEBRUARY, 2012, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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