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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2096**

In the Matter of the Welfare of:
C. D. G., Juvenile.

**Filed May 4, 2010
Affirmed
Johnson, Judge**

Olmsted County District Court
File No. 55-JV-09-5785

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Mark Ostrem, Olmsted County Attorney, Karen A. Arthurs, Assistant County Attorney, Rochester, Minnesota (for appellant State of Minnesota)

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Considered and decided by Johnson, Presiding Judge; Hudson, Judge; and Schellhas, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

The state alleges that C.D.G., a juvenile, committed the offenses of attempted first-degree murder, attempted second-degree murder, and attempted first-degree aggravated robbery based on evidence that he shot a man while attempting to steal

marijuana from him. The state sought to certify C.D.G. for prosecution as an adult. C.D.G.'s age and the nature of the charged offenses create a rebuttable presumption of certification. After an evidentiary hearing, the district court concluded that C.D.G. had rebutted the presumption and, accordingly, denied the state's motion for certification. The state appeals. We conclude that the district court did not abuse its discretion and, therefore, affirm.

FACTS

This case arises out of a shooting at a convenience store in Rochester on the evening of July 26, 2009. When police officers arrived at the scene, they saw that the victim had been shot in the face and the back. The victim told the police officers that a person known to him as "C" had shot him while attempting to rob him of marijuana after purporting to purchase it.

The investigation soon revealed that "C" is C.D.G., who was born in May 1992 and, thus, was 17 years old at the time of the shooting. According to witnesses, C.D.G. said earlier that day that he was going to rob the victim, and later that evening he told a person that he had shot someone. After being arrested, C.D.G. admitted that he shot the victim but told investigators that a person named "Milo" had forced him to do so and had threatened to shoot C.D.G. if C.D.G. did not shoot the intended victim. The police initially were skeptical of C.D.G.'s statement, but they learned several weeks later that "Milo" is a 20-year-old man named Samuel Douglas Miland. A confidential informant who was held in jail with Miland told investigators that Miland had admitted to the confidential informant that he drove C.D.G. to and from the shooting and later disposed

of two firearms, including the firearm used by C.D.G. Investigators corroborated the informant's statements when they found the firearm used in the shooting, which bore a distinctive characteristic that matched C.D.G.'s description.

In July 2009, the state charged C.D.G. with one count of attempted first-degree murder, in violation of Minn. Stat. §§ 609.185(a)(3), .17 (2008); one count of attempted second-degree murder, in violation of Minn. Stat. §§ 609.19, subd. 1(1), .17 (2008); and one count of attempted first-degree aggravated robbery, in violation of Minn. Stat. §§ 609.245, subd. 1, .17 (2008). The state represents in its appellate brief that it separately charged Miland with aiding and abetting C.D.G.

On the same day that it charged C.D.G., the state moved to certify him for prosecution as an adult. While the state's certification motion was pending, C.D.G. was evaluated by two psychologists: Gary Hertog, Psy.D., L.P., who was retained by the state, and James Gilbertson, Ph.D., who was retained by C.D.G. The Olmsted County Probation Department prepared a report in which it recommended certification. The district court held an evidentiary hearing in October 2009 at which it received testimony from four witnesses: Dr. Hertog, Dr. Gilbertson, a probation officer, and C.D.G. In November 2009, the district court issued a 24-page order denying the motion on the ground that C.D.G. had rebutted the presumption of certification. The state appeals.

DECISION

The state argues that the district court erred by concluding that C.D.G. rebutted the presumption of adult certification. The general rule is that children accused of criminal conduct are tried in the juvenile court division of the district courts. Minn. Stat.

§ 260B.101, subd. 1 (2008). But a child who is 14 years old or older may be certified for prosecution as an adult in district court. Minn. Stat. § 260B.125, subd. 1. If a child is alleged to have committed an offense that would result in a presumptive commitment to prison if the child were an adult, and if the child is 16 or 17 years of age at the time of the alleged offense, certification is presumed. Minn. Stat. § 260B.125, subd. 3 (2008). “Thus, in presumptive-certification proceedings, the state bears the burden of showing that (1) the juvenile was 16 or 17 years old, and (2) the alleged offense carries a presumptive prison sentence.” *In re Welfare of S.J.T.*, 736 N.W.2d 341, 346 (Minn. App. 2007), *review denied* (Minn. Oct. 24, 2007). Nonetheless, even if the state has carried its burden on those two issues, the juvenile may rebut the presumption by clear and convincing evidence. Minn. Stat. § 260B.125, subd. 3. If the juvenile rebuts the presumption of certification, the juvenile court division retains jurisdiction in an extended-jurisdiction juvenile (EJJ) prosecution. *Id.*, subd. 8 (2008); *see generally In re Welfare of N.J.S.*, 753 N.W.2d 704, 708 (Minn. 2008).

In determining whether a juvenile should be certified for adult prosecution, a district court must consider the following six factors:

(1) the seriousness of the alleged offense in terms of community protection, including the existence of any aggravating factors recognized by the Sentencing Guidelines, the use of a firearm, and the impact on any victim;

(2) the culpability of the child in committing the alleged offense, including the level of the child’s participation in planning and carrying out the offense and the existence of any mitigating factors recognized by the Sentencing Guidelines;

(3) the child's prior record of delinquency;

(4) the child's programming history, including the child's past willingness to participate meaningfully in available programming;

(5) the adequacy of the punishment or programming available in the juvenile justice system; and

(6) the dispositional options available for the child.

Minn. Stat. § 260B.125, subd. 4 (2008). The statute expressly directs a district court to give greater weight to the first and third factors. *Id.* "A district court has considerable latitude in deciding whether to certify, and this court will not upset its decision unless its findings are clearly erroneous so as to constitute an abuse of discretion." *S.J.T.*, 736 N.W.2d at 346 (quotation omitted). In addition, we apply an abuse-of-discretion standard of review to the district court's ultimate certification decision. *N.J.S.*, 753 N.W.2d at 711.

In this case, the district court determined that only one of the six factors (the first) favored adult certification and that four of the six factors (the second, third, fourth, and fifth) favored prosecution in the juvenile court division. The district court did not make a determination that the sixth factor weighed in favor of either outcome but did note that treatment within the juvenile setting would be suitable for C.D.G. On appeal, the state challenges the district court's analysis of all but the fourth factor. Below we discuss the district court's analysis and the parties' arguments with respect to each factor.

A. First Factor: Seriousness of the Offense

A district court determining whether a juvenile has rebutted the presumption in favor of certification must consider the seriousness of the alleged offense. Minn. Stat. § 260B.125, subd. 4(1). The district court also must consider any aggravating factors, whether a firearm was used in the offense, and the impact on any victim. *Id.* The first factor and the third factor in subdivision 4 receive greater weight than the other four factors. *Id.*, subd. 4.

In this case, the district court found that “[t]his is an extremely serious offense,” and concluded that “[t]his factor weighs heavily in favor of certification.” The state naturally does not challenge the district court’s conclusion that this factor favors certification. Rather, the state argues that the district court did not give enough weight to this factor. In essence, the state argues that, because C.D.G. is charged with attempted first-degree murder, this factor weighs so heavily in favor of certification that the district court abused its discretion by ultimately concluding that C.D.G. had rebutted the presumption of certification. This argument is best characterized as a challenge to the district court’s manner of weighing all the factors. Thus, we will not discuss the argument in isolation but, rather, in connection with our summary of all six factors, which is the subject of part G of this opinion.

B. Second Factor: Culpability of the Child

A district court also must consider the “culpability of the child in committing the alleged offense, including the level of the child’s participation in planning and carrying out the offense and the existence of any mitigating factors recognized by the Sentencing

Guidelines.” Minn. Stat. § 260B.125, subd. 4(2). The sentencing guidelines specifically provide that duress or coercion may constitute a mitigating factor for purposes of sentencing. Minn. Sent. Guidelines II.D.2.a.(2).

The district court found that C.D.G.’s culpability weighs against adult certification. The court explained, “Although [C.D.G.] is presumed guilty of the alleged offenses, there is evidence tending to establish facts regarding the circumstances of the offense and his state of mind at the time of the offense that serve in mitigation of his conduct.” The district court found that C.D.G.’s “claimed coercion or duress rebuts the presumption of certification in light of [his] PTSD diagnosis.” The district court further found that Miland’s influence “does not excuse [C.D.G.’s] culpability, but does offer proper context and some explanation for his behavior.”

The state challenges the district court’s analysis of this factor on four grounds. First, the state contends that the district court failed to assume that C.D.G. is guilty of the charged offense, as required by law, and ignored evidence contrary to C.D.G.’s claim of duress. But the district court noted repeatedly that it assumed the charges to be true. Furthermore, the district court acknowledged C.D.G.’s admission that he shot the victim. The district court may accept C.D.G.’s arguments concerning mitigation of his culpability without negating the assumption (for purposes of the state’s certification motion) of guilt.

Second, the state contends that the district court ignored evidence of C.D.G.’s planning. But as C.D.G. points out, and as the state does not dispute, C.D.G. planned a robbery, not a shooting. There is no evidence that C.D.G. planned the shooting in advance. The evidence reflects that Miland participated in the robbery and shooting.

C.D.G. told investigators that Miland wanted C.D.G. to shoot the victim and told C.D.G. that if he did not shoot the victim, Miland would shoot C.D.G. C.D.G. also stated that he would not have shot the victim if Miland had not “pulled a gun on him.” In *In re Welfare of L.M.*, 719 N.W.2d 708 (Minn. App. 2006), this court concluded that the district court did not abuse its discretion by considering the juvenile’s lack of contact with a gun used in an aggravated robbery “in assessing the level of [the juvenile’s] participation in the offense.” *Id.* at 713-14.

Third, the state contends that the district court ignored facts that “directly contradict C.D.G.’s claimed duress/coercion.” Specifically, the state contends that C.D.G.’s claim of duress is contradicted by the fact that C.D.G. possessed the gun in advance of the robbery and the fact that Miland was not continuously present with C.D.G. so as to force him to shoot the victim. But the investigation gathered conflicting pieces of information as to when C.D.G. came into possession of the gun used in the attack. Some witnesses reported that C.D.G. was in possession of the gun several days before the shooting; some witnesses reported that C.D.G. did not yet have the gun earlier in the day. C.D.G. told investigators that he obtained the gun from Miland just before the shooting; Miland told the confidential informant that he gave the gun to C.D.G. two weeks before the shooting. The district court did not clearly err because there is evidence supporting its findings, and the district court did not clearly err by not reciting each witness’s testimony concerning the gun. *See L.M.*, 719 N.W.2d at 713-14 (noting that district court’s “failure to explicitly acknowledge [juvenile’s] participation in the

planning of the offense does not mean that the court did not take that factor into account”).

Fourth, the state contends that the district court erred by relying on the PTSD diagnosis because it does not rise to the level of a mitigating factor under Minnesota law. It is true that “only [an] *extreme* mental impairment justifies a mitigation of sentence.” *State v. Wilson*, 539 N.W.2d 241, 247 (Minn. 1995). But the district court did not solely rely on C.D.G.’s PTSD. Rather, the district court mentioned PTSD only in conjunction with Miland’s imposition of duress. The district court explained that C.D.G.’s “residual symptoms of PTSD may have very well contributed to his belief that Mr. Miland was coercing him and affected his judgment on the day of the offense,” thereby exacerbating C.D.G.’s propensity for fear and anxiety. In any event, the state’s expert conceded that C.D.G.’s PTSD likely did not play a significant role in C.D.G.’s succumbing to Miland’s imposition of duress:

[I]f what [C.D.G.] stated is true, is that someone was basically telling him either you shoot this person or I’m going to shoot you, that would trump whether or not there was PTSD or anxiety disorder, and anybody in that circumstance I would certainly say that that would take away considerable responsibility or culpability for their offense regardless of whether there was an anxiety disorder or not.

Dr. Gilbertson also stated that C.D.G.’s PTSD may have affected his conduct on the day of the alleged offense. Dr. Gilbertson concluded that C.D.G.’s anxiety might have caused him to experience more fear and fright in the presence of a threatening male.

Thus, the district court's findings related to this factor are not clearly erroneous, and the district court did not abuse its discretion in determining that the second factor weighs against certification.

C. Third Factor: Prior Record of Delinquency

A district court also must consider a juvenile's prior record of delinquency. Minn. Stat. § 260B.125, subd. 4(3). This factor, like the first factor, must be weighed more heavily than the other factors. *Id.*, subd. 4.

The district court found that C.D.G.'s prior record of delinquency weighs against adult certification. The district court noted that C.D.G. had two prior adjudications, one for misdemeanor theft in 2008 and one for simple robbery in 2007. The district court described C.D.G.'s record of delinquency as "unremarkable."

The state contends that the district court failed to give this factor sufficient weight and erred by deeming C.D.G.'s prior record "unremarkable." The state asserts that C.D.G.'s record is similar to or worse than the record of the juvenile in *St. Louis County v. S.D.S.*, 610 N.W.2d 644 (Minn. App. 2000), who had four prior misdemeanor adjudications. 610 N.W.2d at 649. The district court in *S.D.S.* found that the prior record was "minimal." *Id.* This court, however, concluded that "[b]y not recognizing the gang-related nature of all his prior offenses, the trial court understated his prior delinquency record, a factor that the law clearly requires be given greater weight." *Id.* *S.D.S.* is distinguishable because there is no allegation that C.D.G.'s alleged offense, or any of his prior adjudications, was gang-related.

Furthermore, the state's argument is blunted by the report of its own expert, Dr. Hertog, who concluded that C.D.G.'s prior record "weigh[ed] in favor of EJJ." Dr. Gilbertson's testimony was not inconsistent with the district court's finding. A district court has broad discretion to determine the credibility of expert witnesses and to consider their recommendations as appropriate. *In re Welfare of M.D.O.*, 462 N.W.2d 370, 374-75 (Minn. 1990). C.D.G.'s prior adjudication of misdemeanor theft is relatively minor and did not involve violence. The other adjudication, for simple robbery, is more serious but, again, did not involve actual violence. Both adjudications were relatively recent, occurring after C.D.G. reached adolescence. According to Dr. Gilbertson, their recency may indicate that "contextual factors and opportunity" may be the cause, rather than "underlying psychopathy or violent-prone personality."

We may not agree with the district court's characterization of C.D.G.'s delinquency record as "unremarkable." Nonetheless, the district court's findings related to this factor are not clearly erroneous, and the district court did not abuse its discretion in determining that the third factor weighs against certification.

D. Fourth Factor: Programming History

A district court also must consider "the child's programming history, including the child's past willingness to participate meaningfully in available programming." Minn. Stat. § 260B.125, subd. 4(4). The district court found that this factor weighs against certification. The district court stated that the evidence suggests that C.D.G. "is willing to participate in programming" based on his history of participation in therapy at the Mayo Clinic. On appeal, the parties agree that this factor weighs against certification on

the ground that C.D.G. never has had any programming in the juvenile system. *See In re Welfare of D.T.H.*, 572 N.W.2d 742, 744 (Minn. App. 1997), *review denied* (Minn. Feb. 19, 1998) (noting that fourth factor weighed against certification where juvenile had not participated in any programs).

E. Fifth Factor: Adequacy of Punishment or Programming in Juvenile System

A district court also must consider “the adequacy of the punishment or programming available in the juvenile justice system.” Minn. Stat. § 260B.125, subd. 4(5).

In this case, the district court found that this factor weighs against certification. The district court reasoned that “the time available in the juvenile system under EJJ appears to be adequate for punishment and treatment needs” and that “the risk is not ‘significant’ that [C.D.G.] would revert back to his former pattern of behavior after successfully completing a juvenile correctional program.” The district court explained that the presumptive adult sentence for attempted first-degree murder, C.D.G.’s most serious charge, is 180 months in prison. By comparison, there were approximately 45 months between the date of C.D.G.’s alleged offense and his 21st birthday, when EJJ jurisdiction would end. The district court noted that, if certified as an adult, C.D.G. would likely receive “minimal rehabilitative programming and rehabilitation efforts,” whereas in the juvenile system there would be treatment programs that would “increase[] greatly the likelihood of enhanced public safety over time.”

The state argues that the district court erred because the emphasis should be on punishment. The state contends that 45 months on EJJ status is not adequate punishment.

In essence, the state contends that in a case with a very serious offense and a long presumptive sentence, juvenile adjudication is inappropriate as a matter of law. But there is no caselaw supporting that proposition. The state relies on a statement in *State v. Mitchell*, 577 N.W.2d 481 (Minn. 1998), for the proposition that the determinative factor is public safety. But that statement is merely a comment on a 1994 amendment to the statute providing that the state must prove by clear and convincing evidence that retaining the child in the juvenile court division will not serve public safety. *Id.* at 489 (citing Minn. Stat. § 260.125, subd. 2(6)(ii) (1994)). The state’s argument is inconsistent with the statutory scheme, which makes certification presumptive in a case of this type but not automatic. The legislature is capable of making categorical determinations. For example, the legislature has declared that the juvenile court division of the district court *never* has jurisdiction over “a child alleged to have committed murder in the first degree after becoming 16 years of age.” Minn. Stat. § 260B.007, subd. 6(b) (2008); *see also* Minn. Stat. § 260B.101, subs. 1, 2 (2008); *State v. Behl*, 564 N.W.2d 560, 567-68 (Minn. 1997) (holding that automatic-certification statute does not violate doctrines of procedural due process, substantive due process, and equal protection). In cases like the present case, the legislature has determined that a case-by-case approach is appropriate.

The state also contends that the available treatment programs are not appropriate for C.D.G. The state relied on a report prepared by the probation department. But that report actually is contrary to the state’s argument. It states, “If [C.D.G.] were to be retained in the juvenile system under the [EJJ] statute, there would be punishment and programming options available to the Court. MCF-Red Wing could address both criteria

for punishment and programming.” The probation department’s report states that C.D.G. is not amenable to treatment, but it does so by relying on Dr. Hertog’s written report, which was prepared before the investigation revealed Miland’s role in the shooting. At the evidentiary hearing, Dr. Hertog testified that C.D.G.’s version of events changed his view of the culpability factor. Thus, the district court was justified in disregarding the conclusions of both Dr. Hertog’s report and the probation department’s report.

The state also contends that the district court erred because of “the inadequacy of the punitive sanctions available in the EJJ system.” The state asserts that the available programming is inadequate because there is not enough time for C.D.G. to be rehabilitated in the juvenile system. “Insufficient time for rehabilitation under the juvenile system is an appropriate consideration when determining whether to certify a juvenile.” *S.J.T.*, 736 N.W.2d at 354. But the evidence on this issue supports the district court’s findings. Dr. Gilbertson concluded, based on testing, that “there are treatment programs available . . . that could address [C.D.G.’s] criminogenic and pro-social needs.” His testing showed that C.D.G. has a lesser tendency toward deviancy than 74 percent of institutionalized offenders and 60 percent of probationers. Furthermore, the testing showed that C.D.G. is more amenable to treatment than 60 percent of those on probation. Dr. Gilbertson concluded that “there exists a fair prognosis of [C.D.G.] meeting or responding to treatment within that available time period consistent with public safety.” The state’s expert, Dr. Hertog, provided similar testimony. He agreed that C.D.G. has a “fair chance of being amenable” to treatment. His evaluation noted that the onset of C.D.G.’s conduct disorder was in adolescence, not earlier in childhood, which is

significant because it means that C.D.G.'s misconduct is "less likely to continue into adulthood."

The state compares this case to *S.D.S.*, in which the juvenile was of an age similar to that of C.D.G. But the juvenile in that case faced "relatively short" prison sentences for gang-related robberies. 610 N.W.2d at 648. More importantly, this court did not discuss the length of the potential prison sentence when analyzing this factor. 610 N.W.2d at 650.

Thus, the district court's findings related to this factor are not clearly erroneous, and the district court did not abuse its discretion in determining that this factor weighs against certification.

F. Sixth Factor: Dispositional Options Available

A district court also must consider "the dispositional options available for the child." Minn. Stat. § 260B.125, subd. 4(6). Because certification is presumptive in this case, the only possible dispositions are jurisdiction as an EJJ or adult prosecution. Minn. Stat. § 260B.125, subd. 8.

The district court found that C.D.G. "is suitable for treatment within the juvenile/EJJ setting and no threat to public safety exists during the period of time that he [is] retained in the juvenile system and involved in programming at the facilities suggested by Dr. Gilbertson." The evidence supports the district court's finding. In his report, Dr. Gilbertson offered several possible treatment locations for C.D.G. that are experienced at addressing the specific needs of EJJ juveniles. He explained that "there are . . . juvenile correctional programs that could be responsive to [C.D.G.'s] risk level,

and his criminogenic and pro-social treatment needs.” Dr. Gilbertson recommended a number of treatment locations at which C.D.G. could receive appropriate treatment and programming, including the Minnesota Correctional Facility at Red Wing, Woodland Hills in Duluth, Bar None Ranch in Northern Anoka County, and the juvenile offender program at The Glen Mills Schools in Concordville, Pennsylvania. Dr. Gilbertson further stated, “it is my opinion that a combination of primary institutional care, followed by transition to a therapeutic group home or supervised residential setting and then passing on to a more community-based supervision that might be more intense given the EJJ designation, would address [C.D.G.’s] needs.”

Thus, the district court’s findings related to this factor are not clearly erroneous and the district court did not abuse its discretion in determining that this factor weighs against certification.

G. Summary and Weighing of Factors

In the concluding section of its order, the district court recited its findings concerning the six statutory factors and found that C.D.G. had rebutted the presumption of certification. The district court expressed its belief that “a prison sentence will only serve to ingrain anti-social behavior in this young man that will, in turn, increase the risk to public safety when he is ultimately released back to the community in his mid-20s.” In addition, the district court acknowledged that “[t]he superficial knee-jerk reaction to this case” would be to certify C.D.G. as an adult and that “adult certification could be justified on [the first] factor alone with the other statutory factors being glossed over and superficially discarded.” But the district court reasoned that “EJJ provides sufficient

punishment, isolation and rehabilitation over a three-year period of time to ensure long-term public safety.” The district court concluded that, “[i]n the end, long-term public safety cannot be accomplished without giving [C.D.G.] the opportunity to successfully complete comprehensive programming within the juvenile system.” The district court noted that it would “not hesitate” to impose “significant adult consequences . . . if [C.D.G.] does not adequately progress within the juvenile system between now and his 21st birthday.”

The state’s primary argument is that the district court erred because it did not give enough weight to the first factor, the seriousness of the offense. The state contends that public safety can be served only by adult certification because C.D.G.’s crime is too severe to warrant EJJ. In response, C.D.G. contends that “giving offense severity *determinative weight*, as the State suggests, is incompatible with this statutory command.” Indeed, the state’s position is tantamount to a *per se* rule that some very serious offenses always require certification. The state’s argument is inconsistent with this court’s prior statement that “evidence of the alleged offense alone is insufficient to justify certification.” *L.M.*, 719 N.W.2d at 712. To reiterate, the legislature has decided that only one category of offenses -- first-degree murder by 16-year-olds and 17-year-olds -- always requires certification. Minn. Stat. § 260B.007, subd. 6(b); *see also* Minn. Stat. § 260B.101, subs. 1, 2. But the legislature has decided that when a 17-year-old is charged with attempted murder, certification is presumed but may be rebutted based on the six factors in section 260B.125, subdivision 4.

Thus, the relevant question is whether the district court abused its discretion when it analyzed and balanced the six statutory factors. The state compares the facts of this case with those of other cases, such as *In re Welfare of K.A.P.*, 550 N.W.2d 9 (Minn. App. 1996), *review denied* (Minn. Aug. 20, 1996). In *K.A.P.*, the district court *granted* the state's motion for certification, and this court reviewed that decision for an abuse of discretion. *Id.* at 11. In this case, however, we must determine whether the district court abused its discretion by *denying* the certification motion. The standard of review is deferential. There are only a few published cases that come to this court in the same posture as the present case. In one such case, this court reversed the denial of a motion for certification but only because the district court improperly shifted the burden to the state to prove that the juvenile was not amenable to treatment. *L.M.*, 719 N.W.2d at 714.

The *S.D.S.* case is a somewhat closer fit. The juvenile in that case was a member of two violent gangs. 610 N.W.2d at 645. After he committed two gang-related armed robberies within a nine-day span, the state sought to have him certified as an adult. *Id.* at 645-46. The district court found that *S.D.S.* had rebutted the presumption of certification, reasoning that “while ‘the offenses are serious,’ the prison term was relatively short, and ‘the victims were frightened, while not physically harmed.’” *Id.* at 648. This court concluded that the district court “understated and failed to weigh properly facts that demonstrated the seriousness of respondent’s alleged offenses,” *id.* at 648, and erred by placing “extra emphasis on respondent’s programming history and dispositional options and ignoring facts that clearly indicated that respondent’s alleged offenses were serious and his prior delinquency record extensive,” *id.* at 650.

The *S.D.S.* case is meaningfully different from this case. In *S.D.S.*, the district court erred in its analysis of the first factor because “the alleged offenses were much more serious than the trial court concluded.” *Id.* at 648. The district court in that case did not conduct a proper balancing of factors in large part because it had not assigned proper weight to the first factor. But in this case, the district court gave the seriousness of the offense considerable weight. It may be true, as the state argues, that the victim of C.D.G.’s offense feared for his life. But there is no indication that the district court failed to appreciate that fact. In addition, in *S.D.S.*, this court placed heavy emphasis on the juvenile’s gang affiliation, a factor that is not present in this case. *Id.* at 648-49. The gang-related aspects of that case caused the first factor to overwhelm the other factors. Furthermore, this case must be distinguished from *S.D.S.* because of the evidence that serves to mitigate C.D.G.’s culpability, which is discussed above. Thus, this court’s prior opinion in *S.D.S.* does not compel reversal in this case.

The state also contends that C.D.G. is at risk of reoffending. A juvenile’s risk of reoffending is not, however, one of the statutory factors that the legislature has directed the district court to consider in determining whether certification is required. As this court has explained, “the likelihood that a juvenile will reoffend is not specifically listed as a factor to consider in deciding whether public safety is served by retaining [the juvenile] in the juvenile system.” *S.J.T.*, 736 N.W.2d at 354.

Whether a juvenile should be tried in the juvenile court division or certified for prosecution as an adult may be a difficult, complex decision. Some of the relevant factors are forward-looking in that a district court judge is asked, in a sense, to predict the

future. A deferential standard of review applies because a district court judge is in a much better position than an appellate court to identify the relevant evidence and make the necessary findings. The district court judge in this case thoroughly considered the matter, as a district court judge should do. In light of the evidentiary record and the district court's careful analysis, we have no basis for believing that we have a better answer to the certification question than the answer that was provided by the district court.

In sum, the district court did not err in its consideration of the six factors, and its determination that C.D.G. rebutted the presumption of certification is not clearly erroneous.

Affirmed.