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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-1904**

In the Matter of the Welfare of:  
L.L.K., Appellant.

**Filed May 6, 2008  
Affirmed  
Ross, Judge**

Hennepin County District Court  
File No. 27-JV-07-4240

Leonardo Castro, Hennepin County Public Defender, Peter W. Gorman, Assistant Public Defender, 317 Second Avenue South, Suite 200, Minneapolis, MN 55401-2700 (for appellant)

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Mike Freeman, Hennepin County Attorney, Elizabeth Roosevelt Johnston, Assistant County Attorney, C-2000 Government Center, Minneapolis, MN 55487 (for respondent)

Considered and decided by Johnson, Presiding Judge; Lansing, Judge; and Ross, Judge.

**UNPUBLISHED OPINION**

**ROSS, Judge**

This appeal concerns whether the district court appropriately certified 17-year-old L.L.K. to stand trial as an adult for first-degree aggravated robbery and attempted first-degree criminal sexual conduct after he allegedly cornered, detained, and robbed a

woman in her car and then attempted to force her to perform oral sex on him at gun point. L.L.K. appeals the district court's certification decision, highlighting that he has attention deficit hyperactivity disorder and arguing that his minimal programming history and the adequacy of both punishment and programming under extended juvenile jurisdiction prohibit him from being prosecuted as an adult. He argues that the district court erroneously concluded that he failed to rebut the presumption of adult certification and that it abused its discretion by considering unduly prejudicial evidence. Because the district court thoroughly and properly applied the statutory factors for certification for prosecution as an adult and because L.L.K. did not rebut the presumption of adult certification, we affirm.

## **FACTS**

The victim of the attack that underlies this appeal described what happened to her the evening of April 12, 2007. According to statements made by A.V., A.V. ended her shift as a server in a south Minneapolis restaurant and walked to her car. As she entered the car, L.L.K., a stranger to her, held a handgun to her head and demanded money. She gave him about \$30 from her pocket. L.L.K. ordered her to move to the passenger seat, and he demanded that she give him her purse. She complied, and he took her wallet, an electronic audio device, and her cell phone. She offered L.L.K. her car and pleaded with him to leave her alone.

But L.L.K. unzipped his pants and ordered A.V. to perform oral sex. He grabbed the back of her head and forced her toward his groin. A.V. resisted. She told L.L.K. that

the parking lot was being monitored by video cameras recording his actions. L.L.K. left the car and fled.

Three hours later, Minneapolis police officers observed an older juvenile after curfew apparently following a lone woman. Officers attempted to speak with the juvenile, but he ran, dropping a handgun as he fled. The officers pursued and apprehended him, and they found cash and items stolen from A.V. on his person. They identified him as L.L.K.

L.L.K. admitted robbing A.V. at gunpoint, but he denied attempting to force her to perform oral sex. The state filed a delinquency petition alleging first-degree aggravated robbery and attempted first-degree criminal sexual conduct. The state also moved the district court to certify the proceedings to prosecute L.L.K. as an adult.

The district court ordered an adult-certification study, and it conducted a hearing to determine whether to certify. The probation officer's study recommended adult certification based on all six statutory public-safety factors. She testified that certification was supported by the seriousness of the offense, L.L.K.'s sole culpability, L.L.K.'s record of delinquency, and L.L.K.'s prior programming interventions and failure to follow through with them. She also testified that punishment would be best achieved by adult certification because of L.L.K.'s threat to public safety and because the option of extended juvenile jurisdiction seemed inadequate based on L.L.K.'s behavioral history.

A clinical forensic psychologist also testified, recommending that L.L.K. be treated as a juvenile specifically at the Indiana Developmental Training Center (IDTC). The psychologist acknowledged that L.L.K.'s alleged offenses are serious and that L.L.K.

was solely culpable. But she testified that L.L.K.'s delinquency history was moderate compared with other juveniles whom she had examined, and she opined that the factor did not strongly favor either certification or juvenile jurisdiction. She believed that L.L.K.'s programming history supports certification but was concerned that L.L.K. had not received residential treatment. She testified that there were juvenile-system treatment options available that would ensure public safety, including IDTC treatment.

The district court received evidence of L.L.K.'s prior delinquencies. These include adjudicated second-degree assault in August 2005, three disorderly conduct charges, a curfew violation, and a probation violation. His non-adjudicated conduct includes additional charges for disorderly conduct, fifth-degree criminal sexual conduct, and tobacco, curfew, and truancy violations. He has a record of school suspensions for violent, threatening, or intimidating behavior, a history of similar types of behavior in juvenile detention centers, and a record of multiple incidents of sexually inappropriate behavior.

The district court also considered L.L.K.'s unsuccessful programming history. He received services from Project Support, a juvenile-justice behavioral-health clinic; Institute for Minority Development, a family-support organization for children and adults with developmental disabilities; Washburn Child Guidance Center, which assists children with social, emotional, and behavioral problems; and Hoy & Associates, which provides individual and family counseling. He also received other community services. He has never been placed in a corrections program or at a residential treatment center. He has been placed in a group home twice, but he ran away both times.

The district court found probable cause to believe that L.L.K. committed the offenses, and it granted the state's motion to certify the proceeding so that L.L.K. would be prosecuted as an adult. The court assessed each statutory factor as favoring certification and concluded that L.L.K. failed to rebut the presumption of adult certification by clear and convincing evidence that retaining the matter in juvenile court would serve public safety. It therefore certified the proceeding to allow L.L.K. to face the charges as an adult. L.L.K. appeals.

## D E C I S I O N

### I

L.L.K. contests the district court's decision to certify the proceeding for adult prosecution. He first challenges the evidence relied on by the district court, and he also contests its analysis.

We are not persuaded by L.L.K.'s argument that the district court abused its discretion when it admitted evidence during the certification hearing. L.L.K. identifies the following evidence as improperly admitted and prejudicial: (1) the probation officer's statement about the arresting officer's speculation that L.L.K. was following a woman at the time police found him; (2) L.L.K.'s alleged statement that he would never have sexual relations with a white woman because his mother told him white women smell "like dogs"; and (3) the probation officer's report of the victim's impact statement. This court reviews evidentiary rulings for a clear abuse of discretion. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003).

In a certification hearing, the district court may consider any relevant non-privileged information, including hearsay. Minn. R. Juv. Delinq. P. 18.05, subd. 4(B). Relevant evidence is that which has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Minn. R. Evid. 401. The police officer’s statement that L.L.K. was following a woman is relevant to L.L.K.’s potentially escalating aggressive behavior toward women and his threat to public safety. Although the record is unclear as to A.V.’s race, L.L.K.’s alleged statement about sex with white women is relevant, as it was L.L.K.’s stated defense to the charge of attempted criminal sexual conduct in a proceeding in which his degree of culpability was at issue. And the probation officer’s report of the victim impact statement is relevant because it may be considered when weighing the factor of the seriousness of the crime. The court did not abuse its discretion by admitting these statements.

L.L.K.’s challenge to the district court’s decision to certify the proceeding for adult prosecution is also not persuasive. District courts are given considerable latitude in determining whether certification is appropriate, and we will not reverse a determination to certify unless the district court’s findings are clearly erroneous so as to render the consequent decision an abuse of that discretion. *In re Welfare of S.J.G.*, 547 N.W.2d 456, 459 (Minn. App. 1996), *review denied* (Minn. Aug. 6, 1996). On an appeal from a certification order, we presume that the factual allegations in the delinquency petition and the charges against the juvenile are true. *In re Welfare of U.S.*, 612 N.W.2d 192, 195 (Minn. App. 2000).

The statutory criteria for presumptive certification in this case have been met. *See* Minn. Stat. § 260B.125, subd. 3 (2006) (presuming adult certification if juvenile is 17 years old while allegedly committing offense that would result in presumptive commitment to prison). Because the district court found probable cause to support the charges, the burden shifted to L.L.K. to rebut this presumption with clear and convincing evidence that retaining the proceeding in the juvenile court serves public safety. *Id.* If a juvenile fails to rebut the presumption by clear and convincing evidence, certification is mandatory. *Id.*

L.L.K. argues that he rebutted the presumption of certification by showing that he is not a risk to public safety. The district court must weigh six factors to determine whether public safety is served by certification: (1) the seriousness of the alleged offense in terms of community protection, including aggravating factors, such as the impact on the victim; (2) the child's culpability, including the involvement in the planning and carrying out of the offense; (3) the child's prior record of delinquency; (4) the child's programming history; (5) the adequacy of punishment or programming available in the juvenile justice system; and (6) the dispositional options available. *Id.*, subd. 4 (2006). The statute mandates that greater weight be given to the seriousness of the offense and to the juvenile's prior record than to other factors. *Id.* The certification statutes emphasize public safety rather than treatment options. *State v. Mitchell*, 577 N.W.2d 481, 489 (Minn. 1998). We conclude that the district court properly addressed all six statutory factors in its certification order without unduly focusing on any one. And we hold that

the district court's finding that L.L.K. failed to rebut the presumption of certification by clear and convincing evidence is not clearly erroneous.

1. *Seriousness of the Offense*

L.L.K. argues that the district court weighted the first factor, seriousness of the offense, too heavily. But the statute directs that greater weight be given to this factor and to the juvenile's prior record. Minn. Stat. § 260B.125, subd. 4.

L.L.K. also disputes the district court's reliance on aggravating factors. Regarding the seriousness of the offense, aggravating factors include the use of a firearm, the impact on the victim, and factors recognized by the Sentencing Guidelines. *Id.*, subd. 4(1). The court identified the following aggravating factors: L.L.K. used a firearm; the victim has been traumatized and diagnosed with Post-Traumatic Stress Disorder and is unable to sleep without medication; and L.L.K. was particularly cruel to the victim. L.L.K.'s use of a firearm in the commission of the crime alone supports the court's finding of seriousness. *Cf. St. Louis County v. S.D.S.*, 610 N.W.2d 644, 648 (Minn. App. 2000) (reversing a district court's weighing of the seriousness of a crime because it gave too little weight to seriousness where a defendant used a gun). The district court did not abuse its discretion in weighing this factor in favor of certification.

2. *Juvenile's Culpability*

The district court found that L.L.K.'s culpability also supports certification. When the juvenile is the only participant in the offense, the culpability factor supports certification. *In re Welfare of S.J.T.*, 736 N.W.2d 341, 354 (Minn. App. 2007), *review denied* (Minn. Oct. 24, 2007). The district court was not persuaded that L.L.K.'s

attention deficit hyperactivity disorder or low mental capacity mitigated his culpability. When considering a juvenile's culpability, mitigating factors recognized by the Sentencing Guidelines must be considered. Minn. Stat. § 260B.125, subd. 4(2). Mitigating factors include whether the "offender, because of physical or mental impairment, lacked substantial capacity for judgment when the offense was committed." Minn. Sent. Guidelines II.D.2.a.(3). The impairment must be "extreme" to the point of depriving the juvenile of control over his actions. *State v. McLaughlin*, 725 N.W.2d 703, 716 (Minn. 2007).

L.L.K. argues that he has suffered from untreated ADHD for most of his life, that he may suffer from fetal-alcohol spectrum disorder, and that he has been diagnosed as mildly mentally handicapped, functioning only at a second-to-fourth-grade level of intelligence. He cites a pair of death-penalty cases to argue that minors have less culpability because of immaturity, susceptibility to pressure, and transitory personality traits. *Roper v. Simmons*, 543 U.S. 551, 125 S. Ct. 1183 (2005); *Thompson v. Oklahoma*, 487 U.S. 815, 108 S. Ct. 2687 (1988). But these cases address the narrow issue of the appropriateness of the death penalty in specific situations and do not discuss the issue of procedural treatment of the juvenile offender as an adult. L.L.K. does not demonstrate how his impairments cause an "extreme" deprivation of control over his actions. *McLaughlin*, 725 N.W.2d at 716. The record amply supports the finding that L.L.K.'s culpability supports certification.

### 3. *Juvenile's Prior Record of Delinquency*

The district court found that L.L.K.'s August 2005 adjudication of delinquency for second-degree assault also supports certification. The record bolsters this conclusion. L.L.K. stabbed a stranger multiple times near the spine and on the left side of the neck in a dispute about a stolen bicycle. Since 2002, L.L.K. has been charged with six petty offenses, truancy, two misdemeanor offenses, and one gross misdemeanor offense.

The district court also found that L.L.K. displayed threatening, violent and remorseless behavior in school, in the community, and while in secure placement, particularly toward female victims. L.L.K. disputes the district court's consideration of his unadjudicated conduct, school records, detention-center behavior, and dismissed charges. But in a certification proceeding, the district court "may receive any information, except privileged communication, that is relevant to the certification issue, including reliable hearsay and opinions." Minn. R. Juv. Delinq. P. 18.05, subd. 4(B). This includes reports of unadjudicated conduct, school records, truancy, misdemeanors, and other minor offenses related to the certification proceeding as a whole. *In re Welfare of K.A.P.*, 550 N.W.2d 9, 12 (Minn. App. 1996) (unadjudicated conduct), *review denied* (Minn. Aug. 20, 1996); *K.M.*, 544 N.W.2d 781, 785 (Minn. App. 1996) (school records); *In re Welfare of J.A.R., Jr.*, 408 N.W.2d 692, 693 (Minn. App. 1987) (misdemeanors and minor offenses), *review denied* (Minn. Aug. 26, 1987); *In re Welfare of D.M.*, 373 N.W.2d 845, 847 (Minn. App. 1985) (truancy). The record supports the finding that L.L.K. has a prior record of delinquency, and the district court did not abuse its discretion by considering this factor in favor of certification.

#### 4. *Juvenile's Programming History*

The district court found that L.L.K. has had multiple intervention opportunities in juvenile court but that none has been successful in establishing law-abiding behavior. L.L.K. claims that he has only minimal programming history. But both the testifying psychologist and probation officer indicated that L.L.K.'s programming history showed a poor prognosis and a failure to correct his antisocial behaviors. The district court considered L.L.K.'s attendance in programs such as Project Support, Institute for Minority Development, Washburn Child Guidance Center, and individual and family counseling. Although L.L.K. was never placed in a corrections program or a residential treatment center, the district court had a sufficient basis to find that his failure to comply with intervention efforts or to reform with programming shows that further programming would not likely result in significant changes in L.L.K.'s behavior. The district court did not abuse its discretion when it considered this factor in favor of certification.

#### 5. *Adequacy of Punishment or Programming in Juvenile System*

L.L.K. challenges the district court's finding regarding the adequacy of punishment or programming in the juvenile system. The district court found that because of L.L.K.'s past failure to reform after intervention efforts, he was not amenable to treatment and that juvenile placement would only be "housing" him with little chance of long-term change. The court found that if L.L.K. faced prosecution as an adult, he could face a presumptive sentence of 72 months with a chance for an upward departure and face a 10-year conditional release term. But if adjudicated guilty under juvenile

jurisdiction, he would receive only a stayed adult sentence of 72 months' incarceration and juvenile probation of 44 months.

L.L.K. argues that the psychologist's testimony shows that the juvenile system would adequately protect public safety and restore L.L.K. to law-abiding behavior. But the mere availability of juvenile programming does not necessarily favor maintaining juvenile jurisdiction. *S.D.S.*, 610 N.W.2d at 650.

If a juvenile has a substantial need for treatment that is not available in the juvenile system, or that would require a longer period than the time available under extended juvenile jurisdiction, certification may be preferable. *In re Welfare of H.S.H.*, 609 N.W.2d 259, 263 (Minn. App. 2000). L.L.K. claims that a sex-offender treatment program is available near the IDTC facility and that there is time to treat him in the juvenile system. But the district court determined that available juvenile programming did not provide sufficient time and resources to restore L.L.K. to law-abiding behavior, and that finding has support in the record. The court's determination that this factor favors certification was not an abuse of discretion.

#### 6. *Dispositional Options Available*

The district court also properly considered the final factor, the dispositional options available. Although the IDTC had been identified as a potential placement option, the court was concerned that IDTC did not provide primary sex-offender treatment. It found that requiring L.L.K. to leave IDTC grounds to receive sex-offender treatment posed a threat to public safety. The court relied on testimony that L.L.K. was not capable of immediately participating in successful sex-offender treatment due to his

behavioral and cognitive problems. It concluded that the strong need for sex-offender treatment that might require more time than available under extended juvenile jurisdiction made that an insufficient dispositional option.

We rely on the district court to weigh the evidence and to make discretionary factual determinations, and the district court reasonably and carefully undertook those obligations here. L.L.K. did not introduce clear and convincing evidence to rebut the presumption of adult certification, and he fails to convince us that the district court committed any error in its treatment of the evidence or its consideration of the statutory factors when it determined that L.L.K. should be prosecuted as an adult.

**Affirmed.**