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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-2003**

In the Matter of the Welfare of: D. T. M.-M., a/k/a D. M. M., Child

**Filed April 21, 2014
Affirmed
Smith, Judge**

Hennepin County District Court
File No. 27-JV-13-5441

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Jean E. Burdorf, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Susan J. Andrews, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Chutich, Presiding Judge; Connolly, Judge; and Smith, Judge.

UNPUBLISHED OPINION

SMITH, Judge

We affirm the district court's decision to certify appellant for adult prosecution because the district court did not abuse its discretion by finding that appellant failed to rebut the presumption of certification.

FACTS

For purposes of this appeal, the following allegations are presumed true. *See In re Welfare of S.J.T.*, 736 N.W.2d 341, 346 (Minn. App. 2007) (“For purposes of certification, the juvenile is presumed guilty of the alleged offenses.”), *review denied* (Minn. Oct. 24, 2007). During the afternoon of July 26, 2013, appellant D.T.M.-M., an adult companion, and a juvenile companion met a 40-year-old person on the light rail transit train. They all exited the train at the Lake Street station and headed east. When they reached an alley, appellant produced a BB pistol, put it against the victim’s back, and told him to get up against a garage. Appellant had his adult companion hold the pistol while appellant took the victim’s wallet and cellular telephone. Appellant and his companions fled, and police apprehended them shortly thereafter.

Respondent State of Minnesota charged appellant with one count of aiding and abetting first-degree aggravated robbery and moved for presumptive adult certification under Minn. Stat. § 260B.125, subd. 3 (2012). The district court ordered a certification study and a psychological evaluation of appellant. In the certification study, a Hennepin County probation officer weighed the six public safety factors enumerated in Minn. Stat. § 260B.125, subd. 4 (2012), and recommended that the district court deny the presumptive adult certification motion, designating the proceeding an extended jurisdiction juvenile (EJJ) prosecution instead. The district court held a certification hearing wherein appellant rested on the reports and the state offered testimony from the probation officer. In part, the probation officer testified that he believes the first public-safety factor—the seriousness of the alleged offense—weighs in favor of adult

certification. He also opined that three other factors weigh in favor of certification. The district court agreed with the probation officer's assessments on the individual factors. Consequently, the district court "regretfully" concluded that appellant "failed to rebut by clear and convincing evidence the presumption that [his] case should be certified to adult court," and granted the state's motion for presumptive adult certification.

D E C I S I O N

We review a district court's decision to certify a case for adult prosecution for an abuse of discretion. *In re Welfare of J.H.*, ___ N.W.2d ___, ___, 2014 WL 1047087, at *3 (Minn. March 19, 2014). "Specifically, we review questions of law de novo, and we review findings of fact under the clearly erroneous standard." *Id.* (citations omitted).

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 or is a felony offense involving a firearm. Minn. Stat. § 260B.125, subd. 3; *see also In re Welfare of P.C.T.*, 823 N.W.2d 676, 681 (Minn. App. 2012), *review denied* (Minn. Feb. 19, 2013). Neither party disputes that the state met its burden on these points.

"Once the state's burden is met, the juvenile may rebut the presumption of certification with 'clear and convincing evidence that retaining the proceeding in the juvenile court serves public safety.'" *P.C.T.*, 823 N.W.2d at 681 (quoting Minn. Stat. § 260B.125, subd. 3). If the juvenile rebuts the presumption, the proceeding is retained in the juvenile court system under an EJJ designation. Minn. Stat. § 260B.125, subd. 8(b)

(2012). But if the juvenile fails to provide sufficient evidence to rebut the presumption, the matter must be certified for adult prosecution. *Id.*, subd. 3.

In determining whether retaining the proceeding in juvenile court would serve public safety, the district court must consider six “public safety” factors: (1) the seriousness of the alleged offense; (2) the culpability of the juvenile in committing the alleged offense; (3) the juvenile’s prior record of delinquency; (4) the juvenile’s programming history; (5) the adequacy of punishment or programming available in the juvenile system; and (6) the dispositional options available for the juvenile. *Id.*, subd. 4. Of these six factors, the district court must give greater weight to the first and third factors regarding the seriousness of the offense and the juvenile’s record of delinquency. *Id.*

Here, the district court concluded that factors one, two, three, and four favored adult certification and that factors five and six favored EJJ designation. Arguing that the district court erroneously weighed the first factor—the seriousness of the alleged offense—in favor of adult certification, appellant challenges the district court’s conclusion that he failed to rebut the presumption of certification. Appellant contends that the alleged offense “is a typical first-degree aggravated robbery,” and therefore its seriousness cannot weigh in favor of adult certification. *See* Minn. Stat. § 609.245, subd. 1 (2012) (a person is guilty of first-degree aggravated robbery if the person, while committing a robbery, is armed with a dangerous weapon or inflicts bodily harm upon another). In essence, appellant argues that the district court erroneously failed to compare his alleged conduct to that typically involved in the commission of a first-degree

aggravated robbery. But the first public-safety factor does not require the district court to compare the alleged offense to other cases involving the same offense; rather, the statute directs the district court to consider “the seriousness of the alleged offense in terms of community protection.” Minn. Stat. § 260B.125, subd. 4(1); *see also In re Welfare of J.H.*, 2014 WL 1047087, at *6 (recognizing that “a court cannot add words or meaning to a statute or rule that are purposely omitted or inadvertently overlooked”). And under the statute, “the use of a firearm” enhances the seriousness of the offense. Minn. Stat. § 260B.125, subd. 4(1).¹ The district court found the alleged offense “very serious in terms of community protection” because appellant “held a firearm on a victim in order to rob him.” This finding is not clearly erroneous. *See In re Welfare of L.M.*, 719 N.W.2d 708, 710, 712 (Minn. App. 2006) (acknowledging that an aggravated robbery committed under the threat of a pellet gun is “a serious offense”). Because the district court did not abuse its discretion by weighing the first public-safety factor in favor of adult certification or by concluding that appellant failed to rebut the presumption of certification, appellant is not entitled to relief.

Affirmed.

¹ Appellant relies on *In Re Welfare of A.C.H.*, No. A06-2365, 2007 WL 1532164, at *3 (Minn. App. May 29, 2007), an unpublished case. This reliance is misplaced since, in addition to not being precedential, *see* Minn. Stat. § 480A.08, subd. 3(c) (2012), this case is not persuasive because it does not involve the use of a firearm.