STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0509

In the Matter of the Welfare of: D. L. M., Child.

Filed November 5, 2018
Affirmed
Hooten, Judge

Anoka County District Court
File No. 02-JV-17-1446

Cathryn Middlebrook, Chief Appellate Public Defender, Leslie J. Rosenberg, Assistant Public Defender, St. Paul, Minnesota (for appellant D.L.M.)

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

Anthony C. Palumbo, Anoka County Attorney, Kelsey R. Kelley, Assistant County Attorney, Anoka, Minnesota (for respondent county)

Considered and decided by Hooten, Presiding Judge; Halbrooks, Judge; and Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

HOOTEN, Judge

Appellant, a minor at the time, was charged with second-degree felony murder. The juvenile court certified appellant as an adult. He now appeals, arguing that the juvenile court abused its discretion by certifying him despite the contrary recommendations of the two experts who testified at trial. We affirm.

FACTS

For the purposes of certification determinations, the charges and factual allegations laid out in the juvenile delinquency petition are presumed to be true. *In re Welfare of J.H.*, 844 N.W.2d 28, 38 (Minn. 2014). The following factual recitation is based on the delinquency petition.

On the evening of November 10, 2017, appellant D.L.M., who was 17 years old at the time, was hanging out with L.G. and J.M. At the request of L.G. and D.L.M., J.M. looked into acquiring marijuana. J.M. contacted T.P., who offered to sell him marijuana. L.G. and D.L.M. told J.M. to steal the marijuana rather than pay for it. L.G. drove the trio to T.P.'s residence. T.P. and T.R., the sellers, jumped into the back of the car, and T.P. showed the trio the marijuana for sale. L.G. and D.L.M. informed the sellers that they did not have enough money to purchase all the marijuana, so T.R. and T.P. offered to go back inside the residence, remove some of the marijuana, reweigh it, and adjust the price accordingly. J.M. followed T.P. and T.R. into the residence. At some point, J.M. grabbed the bag of marijuana and fled to the car. T.P. and T.R. followed in hot pursuit.

At this point, the witness accounts in the petition differ. J.M. told police that he managed to enter the car and close and lock the door despite T.R. attempting to prevent him from doing so. T.P. told police that he held the car door open while T.R. tried to retrieve the stolen marijuana. During the scuffle, D.L.M. pulled out a nine-millimeter pistol and pointed it at T.R. L.G. backed out of the driveway and accelerated away quickly. T.R., who was still struggling with the door as L.G. was attempting to drive away, was knocked to the ground and run over by the vehicle. T.R. died from his injuries.

Anoka County charged D.L.M. with second-degree felony murder under Minn. Stat. § 609.19, subd. 2(1) (2016). The state moved to certify D.L.M. as an adult. A certification study was ordered, and the Anoka County juvenile court held a certification hearing. Probation officer Janie Vadnais conducted the certification study of D.L.M., and Dr. Fran Stawarz conducted a psychological evaluation. Both testified at the certification hearing, and both recommended extended juvenile jurisdiction (EJJ) rather than certification. The juvenile court certified D.L.M. as an adult. This appeal follows.

D E C I S I O N

D.L.M. challenges the juvenile court's decision to certify him as an adult. Under Minn. Stat. § 260B.125, subd. 3 (2016), there is a presumption that a juvenile will be certified as an adult if: (1) the juvenile defendant was 16 or 17 years old at the time of the offense and (2) the alleged offense would result in a presumptive prison commitment under the sentencing guidelines and statutes or a felony offense was committed while using or employing a firearm. Both requirements were met in this case. "If the court determines that probable cause exists . . . the burden is on the child to rebut this presumption by demonstrating by clear and convincing evidence that retaining the proceeding in the juvenile court serves public safety." *Id.* To determine whether it serves public safety, juvenile courts are to consider six statutory 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.

Id., subd. 4 (2016). Factors one and three—seriousness of the offense and the juvenile's prior record—are to be given greater weight than the other factors listed. *Id.* "A [juvenile] court has considerable latitude in deciding whether to certify a case for adult prosecution. Its decision will not be reversed unless [the court's] findings are clearly erroneous so as to constitute an abuse of discretion." *In re Welfare of P.C.T.*, 823 N.W.2d 676, 681 (Minn. App. 2012) (quotation omitted), *review denied* (Minn. Feb. 19, 2013). "In determining whether the juvenile court's findings are clearly erroneous, we view the record in the light most favorable to the juvenile court's findings." *J.H.*, 844 N.W.2d at 35. "A finding is clearly erroneous only if there is no reasonable evidence to support the finding or when an appellate court is left with the definite and firm conviction that a mistake occurred." *Id.* (quotation omitted).

D.L.M. broadly argues that the juvenile court abused its discretion because its decision was contrary to the recommendations of Dr. Stawarz and Vadnais. We emphasize that the burden was on D.L.M., not the state, to prove by clear and convincing evidence that public safety would be served by putting him on EJJ rather than certifying him as an adult. *See* Minn. Stat. § 260B.125, subd. 3. Accordingly, we turn to the six statutory

factors to see if the juvenile court clearly erred in any of its findings on the statutory factors, and if so, whether that amounts to an abuse of discretion.

The juvenile court found that the first two factors—severity of the crime and culpability of the juvenile—favored certification. These findings are clearly supported by the record because both Dr. Stawarz and Vadnais testified that both of these factors weighed in favor of certification.

The juvenile court found that the third factor—D.L.M.'s prior record consisting of two prior incidents—favored certification. The first incident was a 2017 adjudication of delinquency from Indiana for resisting law enforcement which led to D.L.M. spending 14 days in detention. D.L.M. and two other boys had been under police surveillance for engaging in what appeared to be the sale of drugs, with D.L.M. acting as a lookout. When police told the boys to stop and place their hands on the squad car, D.L.M. and the other boys ran and one of the three dropped a handgun. The second incident occurred when D.L.M. hit another student at school and was charged with misdemeanor assault. The juvenile court was particularly concerned with the timing of these incidents. It explained that the Indiana adjudication, the assault charge, and the felony-murder charge all "occurred within just a few months and suggests escalating, out of control behavior." While reasonable minds can differ on this conclusion, in light of the two prior incidents that D.L.M. was involved in shortly before T.R.'s death, we cannot say that the record is devoid of any reasonable evidence to support the juvenile court's finding.

While both Dr. Stawarz and Vadnais testified that the third factor weighed in favor of EJJ, these expert opinions do not make the juvenile court's finding clearly erroneous.

For example, in *J.H.*, the Minnesota Supreme Court held that, because appellate courts should defer to a juvenile court on matters of the credibility and weight to be given to testimony, a juvenile court's finding that a factor favors certification was not clearly erroneous despite the testimony of a juvenile probation officer and a clinical psychologist that the factor favors EJJ. 844 N.W.2d at 39. There may be situations in which a finding that is in conflict with expert testimony is clearly erroneous, but this prior-delinquency factor does not depend as much on the specialized knowledge and insight offered by expert witnesses as some of the other factors. For example, while psychologists and probation officers have valuable insight into whether certain programming is likely to help a juvenile, their specialized knowledge is less useful, particularly in cases such as this, in assessing whether a crime is serious or whether a juvenile has a prior record.

The juvenile court found, consistent with the testimony of both experts, that the fourth factor—programming history—favored EJJ. The juvenile court did not clearly err on this factor.

The juvenile court analyzed the fifth and sixth factors in tandem and determined that they favored certification. The fifth factor is the adequacy of the punishment or programming available in the juvenile justice system, and the sixth factor looks to the available dispositional options. The juvenile court reasoned that D.L.M. had not shown that the eight to twelve months that he would spend in a secure juvenile correctional program, followed by two to three years of probation, would be sufficient to protect public safety or provide appropriate punishment. Dr. Stawarz and Vadnais both testified that factors five and six favored EJJ. While we recognize the value of these experts' insights

on these factors, we cannot say that the juvenile court clearly erred with respect to these factors. D.L.M. was 17 at the time that T.R. was killed. In light of the severity of this crime and the fact that D.L.M.'s probation would end at the age of 21 under EJJ, the juvenile court's concerns about the adequacy of the juvenile justice system to ensure public safety are not unfounded.

We hold that the juvenile court did not clearly err in any of its findings. The juvenile court found that all of the factors except factor four weighed in favor of certification. Given our narrow standard of review and the record in this case, we cannot conclude that the juvenile court abused its discretion in concluding that D.L.M. failed to overcome the presumption of certification. And even if the district court did err in its findings on factors five and six, factors one and three weigh more heavily, so in balance D.L.M. still has not overcome the presumption against certification.

Affirmed.