

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0113**

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

**Filed June 1, 2021
Affirmed
Florey, Judge**

Becker County District Court
File No. 03-JV-20-1872

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Brian W. McDonald, Becker County Attorney, Matthew D. Jorud, Assistant County Attorney, Detroit Lakes, Minnesota (for appellant)

Mark D. Nyvold, Fridley, Minnesota (for respondent L.D.K.)

Considered and decided by Smith, Tracy M., Presiding Judge; Jesson, Judge; and Florey, Judge.

NONPRECEDENTIAL OPINION

FLOREY, Judge

In this pretrial appeal, appellant State of Minnesota (the state) argues that the district court abused its discretion by denying the state's motion for an extended-juvenile-jurisdiction (EJJ) prosecution in this matter. We affirm.

FACTS

On September 18, 2020, 17-year old respondent L.D.K. shot M.E., who was spending that night at respondent's home. Respondent told police that he had been showing

off and waving a shotgun around when it went off, killing M.E. Respondent maintained that he had accidentally discharged the shotgun and, at oral argument before this court, the state did not dispute this.

Respondent was charged by juvenile petition with third-degree murder and second-degree manslaughter. Despite respondent's age and the charges, the state did not include an EJJ designation in the delinquency petition. Instead, one week later, the state filed a motion to designate the matter as an EJJ proceeding. Respondent moved for dismissal of the motion, arguing that the state had not complied with the proper procedures, but the district court denied the motion and scheduled a hearing on the issues of probable cause and compliance with Minn. R. Juv. Delinq. P. 19.04 and 19.05.

After a hearing, the district court analyzed the state's motion using the public-safety factors of Minn. R. Juv. Delinq. P. 19.05. On January 7, 2021, the district court denied the motion, concluding that the state had failed to sustain its burden of proving that an EJJ prosecution would serve public safety. The state brings this pretrial appeal to contest the district court's denial of its motion.

DECISION

An EJJ prosecution gives the district court additional tools when dealing with an older juvenile offender who has committed a serious crime by extending the period of time the offender remains under court supervision and permitting pronouncement of an adult sentence, which is stayed as an incentive for the offender to comply with court supervision. *See* Minn. Stat. § 260B.130 (2020). EJJ proceedings are commenced in one of two ways. If the offender is at least 16 years old and has committed a crime that would result in a

presumptive prison commitment if the offender were an adult, the district court “shall commence” an EJJ proceeding if the prosecutor designates in the charging petition that the matter should be an EJJ prosecution (EJJ by designation). Minn. R. Juv. Delinq. P. 19.01, subd. 3; 19.06, subd. 1(B). In the alternative, the prosecutor may move for an EJJ proceeding after the delinquency petition has been filed, if the offender is over 14 years old and is alleged to have committed a felony (EJJ by motion). Minn. R. Juv. Delinq. P. 19.01, subd. 4; 19.06, subd. 2(B). Although the state could have proceeded with an EJJ by designation by including it in the charging petition, it did not do so, instead choosing to seek EJJ by motion.

When a motion is made for an EJJ proceeding, the district court must hold a contested hearing, unless the child waives a hearing. Minn. R. Juv. Delinq. P. 19.04, subd. 1. The prosecutor has the burden of proving by clear and convincing evidence that an EJJ proceeding would serve public safety. Minn. Stat. § 260B.130, subd. 2; Minn. R. Juv. Delinq. P. 19.04, subd. 3(D).

The district court must consider six factors to determine if public safety would be served by an EJJ prosecution:

- (A) the seriousness of the alleged offense in terms of community protection, including the existence of any aggravating factors recognized by the Minnesota Sentencing Guidelines, the use of a firearm, and the impact on the victim;
- (B) 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 Minnesota Sentencing Guidelines;
- (C) the child’s prior record of delinquency;

- (D) the child’s programming history, including the child’s past willingness to participate meaningfully in available programming;
- (E) the adequacy of the punishment or programming available in the juvenile justice system; and
- (F) the dispositional options available for the child.

Minn. Stat. § 260B.130, subd. 2 (2020) (directing the district court to apply the public-safety factors of Minn. Stat. § 260B.125, subd. 4 in EJJ proceedings); Minn. R. Juv. Delinq. P. 19.05. The district court is instructed to give greater weight to the seriousness of the offense and the juvenile’s prior record. Minn. Stat. § 260B.130, subd. 4 (2020); Minn. R. Juv. Delinq. P. 19.05.

We review the district court’s EJJ determination for an abuse of discretion, *In re Welfare of H.S.H.*, 609 N.W.2d 259, 261 (Minn. App. 2000), and its findings for clear error. *In re Welfare of D.M.D.*, 607 N.W.2d 432, 437 (Minn. 2000); *see also In re Welfare of N.J.S.*, 753 N.W.2d 704, 710 (Minn. 2008) (stating that an appellate court “does not disturb a finding that public safety would be served by certification unless it is clearly erroneous.”) “A finding is clearly erroneous if it is manifestly contrary to the weight of the evidence or is not reasonably supported by the evidence as a whole.” *In re Welfare of J.R.R.*, 943 N.W.2d 661, 667 (Minn. App. 2020). We view the record in the light most favorable to the findings. *In re N.A.K.*, 649 N.W.2d 166, 174 (Minn. 2002). “[T]he EJJ statute’s overriding purpose is to require the prosecutor to demonstrate by clear and convincing evidence that designating a proceeding [as] an EJJ prosecution will serve public safety.” *D.M.D.*, 607 N.W.2d at 438.

The district court here analyzed the state's motion using the six public-safety factors. As to the first two factors, the district court found that the crime was serious, a firearm was used, and respondent caused the death of M.E. But the district court noted the absence of other aggravating factors, such as the intent to cause harm or actions showing an ongoing community threat. The district court found that respondent was unlikely "to repeat his actions and endanger anyone else in the same manner," making him less culpable. The district court concluded that these two factors weighed against an EJJ prosecution.

Next, the district court noted that respondent had no juvenile record and had not participated in any programming, both factors weighing against an EJJ prosecution. Finally, as to the last two factors, the district court acknowledged the state's argument that programming could be inadequate because respondent would age out of the juvenile system in a short time, but noted that the state had presented no evidence that respondent needed long-term programming or that dispositional options in the juvenile system were inadequate. In the absence of any evidence supporting the state's argument, the district court concluded that these two factors weighed against an EJJ prosecution.

The state argues that the district court erred as to the first factor by minimizing the seriousness of the crime including use of a firearm and the death of the victim, as to the fifth factor, by concentrating on programming rather than adequacy of punishment, and as to the sixth factor, by prematurely determining that other dispositional options were not necessary.

The statute directs the district court to give greater weight to the seriousness of the offense. Minn. Stat. § 260B.125, subd. 4 (2020); *see* Minn. Stat. § 260B.130, subd. 2 (directing district court to consider public-safety certification factors when considering whether to designate a proceeding as EJJ). But one of the considerations in making this assessment is the danger posed to public safety by the juvenile. *See In re Welfare of B.N.S.*, 647 N.W.2d 40, 43-44 (Minn. App. 2002) (despite adjudication for three felonies, state failed to show by clear and convincing evidence that juvenile presented a risk to public safety). In *B.N.S.*, both the district court and this court considered a variety of facts about the juvenile beyond the crime committed, including the absence of aggravating factors. *Id.* The district court’s findings here are supported by the record and are not clearly erroneous. The circumstances of the crime, as set forth in the delinquency petition, support the district court’s finding that there were no aggravating factors and that the crime, while inarguably serious, did not present an ongoing public-safety issue.

In *H.S.H.*, 609 N.W.2d at 262, this court reversed the district court’s certification order, noting that “a strong need for treatment that is not available or would require more time to complete” can weigh in favor of certification, but the state presented no evidence that the juvenile needed programming or dispositional options not available in the juvenile court. Likewise here, the state provided no evidence that respondent needed further programming or dispositional options as part of an adult sentence. In fact, the state provided no evidence whatsoever about programming needs or dispositional options. The state had the ability to obtain additional information about respondent’s need for programming or other dispositional alternatives. Minn. R. Juv. Delinq. P. 19.03 provides

for “social, psychiatric, or psychological studies concerning the child who is the subject of the [EJJ] proceeding.” *Id.*, subd. 1. Such a study must address the public-safety considerations of Rule 19.05. *Id.*, subd. 2. But the state failed to do so. Again, the district court’s findings are supported by the record and are not clearly erroneous.

Finally, the state argues that the district court focused on programming to the exclusion of punishment. This is a mischaracterization of the district court’s ruling: the district court was well aware of the shortened time period for punishment when it analyzed this factor. While punishment is part of the juvenile-justice scheme, programming holds an equal place in the structure. One purpose of the laws relating to juveniles “is to promote the public safety and reduce juvenile delinquency by maintaining the integrity of the substantive law prohibiting certain behavior and by developing individual responsibility for lawful behavior.” Minn. Stat. § 260B.001, subd. 2 (2020). “This purpose should be pursued through means that are fair and just, that recognize the unique characteristics and needs of children, and that give children access to opportunities for personal and social growth.” *Id.* The district court did not abuse its discretion by weighing the relative importance of programming versus punishment on this record.

The district court’s findings are supported by the record and are not clearly erroneous. The state failed to sustain its burden of proving by clear and convincing evidence that this matter should proceed as an EJJ prosecution.

Affirmed.