

IN THE SUPREME COURT OF THE STATE OF NEVADA

B. T.,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

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Case No. 83122

RESPONDENT'S ANSWERING BRIEF

**Appeal From Certification Order
Eighth Judicial District Court, Clark County**

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ROUTING STATEMENT

This proceeding is appropriately retained by the Nevada Supreme Court, as a juvenile court’s certification decision is not presumptively assigned to the Nevada Court of Appeals pursuant to NRAP 17(b).

STATEMENT OF THE ISSUES

1. Whether Juvenile Court properly certified Appellant to adult status.
2. Whether Appellant is not entitled to an evidentiary hearing or discovery.

STATEMENT OF THE CASE

On April 6, 2021, the State filed a Petition for Delinquency in the Eighth Judicial District Court (Juvenile Division), charging B.T. (hereinafter “Appellant”) with four counts of Sexual Assault with a minor under the age of 14, and two counts of Lewdness with a minor under the age of 14. Appellant’s Appendix (“AA”) at 1-

3. The crimes occurred between May 1, 2015, and August 15, 2015. AA at 1-3. The State also filed a Certification Petition, asking the Court to determine if jurisdiction over Appellant's case should be transferred to the adult system. AA at 4-6.

Appellant filed an opposition to the certification on May 14, 2021, along with a request for an evidentiary hearing and discovery. AA at 19. At a hearing on June 9, 2021, the court found prosecutorial merit. AA at 56. The Court weighed the nature and seriousness of the offenses, Appellant's lack of previous criminal history, his age at the time of the offenses, the psychological examination of Appellant, and other subjective factors pursuant to In the Matter of Seven Minors, 99 Nev. 427, 664 P.2d 947 (1983), disapproved of by In re William S., 122 Nev. 432, 132 P.3d 1015 (2006). AA at 57-61. The Court found certifying Appellant to the adult court would be in the best interest of public safety. AA at 60-61. The Certification to Adult Status Order was filed on June 10, 2021.

Appellant filed his Notice of Appeal on June 22, 2021, and his Opening Brief ("AOB") on November 10, 2021.

STATEMENT OF THE FACTS

The juvenile court relied on the facts of the offense from the certification hearing report:

[Appellant] is alleged to have committed Sexual Assault with a Minor Under the Age of 14 (4 counts), Lewdness with a Child Under 14 (2 counts), and Open or Gross Lewdness (1 count). Each of the incidents listed below are allegations at this time.

During the summer months of 2015, the victim who was nine years old at the time was sexually abused on eight different occasions by [Appellant], who was 15 years old at the time. It is alleged that the victim would go to [Appellant's] residence because his parents would babysit her when her parents were at work. [Appellant] would have the victim enter his room and close the door on every occasion.

The victim said during the first incident, [Appellant] told her to take off her pants and bend over. While the victim bent over, [Appellant] penetrated her anus with his penis against her will. The victim stated [Appellant] stopped and stated he did not ejaculate. She asserted every time after the first incident, [Appellant] would tell her to get on her knees and suck his penis. The victim stated there was only one time where [Appellant] ejaculated in her mouth and she spit it out.

The victim said [Appellant] was never violent but stated she felt she did not have the option of saying no. She said [Appellant] would downplay the incident and would tell her she did not have to tell anyone. The victim's mother found out about the incident on Labor Day in 2018 and immediately took her daughter to her pediatrician.

INITIAL CONTACT:

On September 29, 2018, LVMPD Officer J. Ortega was dispatched to the Comprehensive Therapy Center in reference to a disclosure of sexual abuse made by the victim. As a result, Detective C. Kitchen scheduled a Forensic interview with the victim at the Southern Nevada Children's Advocacy Center (SNCAC). During the interview, the victim disclosed that during the summer months of 2015, when she was going into the fifth grade, she was sexually abused by [Appellant] and was able to articulate 9 separate incidents of sexual abuse.

INTERVIEWS:

On March 3, 2020, Forensic Interview Specialist J. Scagnelli conducted a recorded interview with the victim at the SKCAC. Scagnelli went over the interview rules with the victim and the victim agreed to speak the truth and about things that really happened. The victim spoke about being sexually abused by a family friend's son she knows as [Appellant].

Incident #1

The victim remembered she was at [Appellant's] residence in the living room with [Appellant] and his little sister, who was a toddler. [Appellant] walked over and pulled his shorts down and exposed his penis. The victim told [Appellant] "no," but [Appellant] informed the victim she did not have a choice and made her perform oral sex on him. The victim said she attempted to push away from [Appellant] to finish playing with [Appellant's] little sister, but [Appellant] would say no. The victim believed she performed oral sex on [Appellant] for approximately 30 seconds. She asserted [Appellant] would count the seconds out loud. The victim was 9 years old when this incident took place.

Incident #2

The victim remembered a second incident which also took place while she was at a sleep over at [Appellant's] residence, due to her mother having to work late. She was in [Appellant's] sister's room when [Appellant] crawled into bed with her and held her for a very long time in a "spooning position." She described she was lying in the fetal position and [Appellant] was positioned behind her, holding her. The victim asserted [Appellant] was the person who got into bed with her because she saw [Appellant] enter the room prior to him getting into the bed. While holding the victim, [Appellant] told her everything was going to be fine and then got up and exited the room. The victim was 9 years old when this incident occurred.

Incident #3

The victim said another incident took place at [Appellant's] residence while she was downstairs and later walked upstairs with [Appellant]. [Appellant] told her to lie down and told her get on "all fours" (positioned on her hands and knees) with her buttocks near the edge of the bed. [Appellant] then pulled down his pants and pulled his penis out. The victim said she was "terrified" because she did not know what to do and stated she was "locked" in that position. She further described she was on all fours with her buttocks facing [Appellant]. [Appellant] pulled the victim's pants and underwear down and inserted his penis inside her anus. The victim believed [Appellant's] sister heard her make a noise, which caused the sister to call out to [Appellant] resulting in [Appellant] pulling up his pants and telling the victim to get

dressed. She said she was 9 years old and it was towards the beginning of the summer of 2015 when this incident took place.

Incident #4

The victim was at her residence and [Appellant] and his family were also at her residence talking to her parents. [Appellant] told the victim to go upstairs to her room. Upon entering the room [Appellant] told the victim to go into the corner and began pushing her down by her shoulders with his hands, which the victim described as the most aggressive [Appellant] had been. The victim was positioned against the wall on her knees with [Appellant] standing in front of her. [Appellant] then pulled his penis out and forced the victim to perform oral sex on him, instructing her by telling her “no biting.” The victim said she moved her head back and forth while [Appellant’s] penis was in her mouth. At some point during the incident, the victim told [Appellant] she did not want to do this anymore and [Appellant] replied by saying “ten more seconds” and then stopped and told the victim she was done. The victim described [Appellant’s] penis as being soft like a “chunk of fat,” “weirdly firm gelatin” that was a “weird popsicle shape.” She was nine years old when this incident took place.

Incident #5

The victim said she was in [Appellant’s] room and [Appellant] pushed her against the wall and made her perform oral sex on him. She remembered a liquid going into her mouth while [Appellant’s] penis was in her mouth (ejaculation). The victim believed it was semen and further described the liquid as being salty and watery like “pee.” She was able to push [Appellant] away and spit the liquid onto the floor. She said she felt disgusted which caused her to run downstairs. Later in the interview, the victim said since the incident she has realized “it was probably semen.” She was 9 years old at the time.

Incident #6

This incident occurred at [Appellant’s] residence while the victim was in the kitchen eating. [Appellant] walked in and began hugging her and forcing her to hug him back. The victim stated due to [Appellant] being taller than her, her hands were hugging his midsection. [Appellant] then “scoot” his hands down to her buttocks. He used his hands to go through her sweats to grab her buttocks over her underwear. The victim was 9 years old at the time.

Incident #7

During the 4th of July, friends and family gathered at [Appellant's] residence. The victim and [Appellant] had a conflict between them because [Appellant] had a specific firework, Monkey Box, that the victim wanted and [Appellant] refused to give it to her. Later while everyone was outside, the victim walked back into the residence and observed [Appellant] in the living room sitting on a couch with his penis out. She said his penis was "quite red" at the top. According to the victim, [Appellant] stated, "I'll give you the Monkey Box" and she replied "no" and walked out of the room. She said this was the last time [Appellant] pushed himself on her.

Based on prior incidents where [Appellant] sexually abused the victim, it is believed [Appellant] was attempting to persuade the victim to have sexual contact with him in exchange for the firework [Appellant] possessed.

During the forensic interview, the victim stated [Appellant] would make her "cup his balls" (testicles) with her "whole hand" and described [Appellant's] testicles as being hairy with lots of veins.

The victim also stated there were three additional times where [Appellant] forced her down and made her perform oral sex on him but did not provide specific details as to where or how these incidents occurred. She disclosed three incidents where she performed oral sex on [Appellant].

The victim disclosed to her older sister about the incidents between her and [Appellant] in 2017. They decided not to tell their parents, but in 2018 the older sister told their parents while the family was eating dinner. According to the victim, her parents called [Appellant's] parents and told them to come to their residence and to bring [Appellant]. The victim's parent informed [Appellant's] parents about the allegations and confronted [Appellant] to which he denied the allegations made against him.

On August 9, 2020, Detective Jenkins conducted a recorded phone interview with the victim's older sister. The following is a summary of the interview and it is not verbatim:

The victim's older sister was informed about the sexual abuse in 2017. She said her sister wrote some of the details of what took place between her and [Appellant] on a posted note and gave it to her. The note stated [Appellant] forced the victim to give him oral sex when the victim was 9 years old. The older sister was also told that the victim had performed oral sex on [Appellant] on more than one occasion, but only one occurred at the victim's residence. She said her sister had asked her not to tell their parents as the victim was only comfortable telling her. The older sister asserted she did not have the posted note and did not know its whereabouts.

On August 10, 2020, Detective Jenkins conducted a recorded phone interview with the victim's mother. The following is a summary of the interview and it is not verbatim:

The victim's mother said in September 2018, she and her husband were eating dinner with the family and they were informed that their daughter had been sexually abused. The victim told her mother that [Appellant] tried to "rape" her the first time and began asking her "a different way" and that it repeatedly happened but she was afraid to tell anyone. The victim's mother confirmed that her daughter wrote a letter to her older sister telling her about the sexual abuse but stated she was not ready to tell their parents. The mother also confirmed that the person the victim said sexually abused her was [Appellant]. She said she would drop the victim off at [Appellant's] residence, once a week to twice a month, so the victim could play with [Appellant's] younger brother.

The victim's mother noticed a change in her daughter's behavior after she was informed about the sexual abuse. She said her daughter would stay in her room and would not want to go anywhere. The victim would refuse to wear a dress or other feminine clothing. The victim's mother confronted [Appellant's] family about the allegations and she described their reactions as being shocked.

INVESTIGATION:

During the course of the interview, Detective C. Kitchen was able to identify a possible suspect who was identified as [Appellant]. On April 6, 2020, Detective C. Kitchen along with Detective E. Nogle completed an audio-recorded photo-lineup. The victim picked person number five, which was [Appellant]. She circled [Appellant's] picture

and placed her initials next to it. She wrote, “The facial shape of the person in photo number five identifies him as the person committing the crime now being investigated. The bags under his eyes are prominent,” another identification.

As a result, on April 27, 2020, Detective C. Kitchen attempted to contact [Appellant] to schedule an interview with him and was told to contact his lawyer; however, [Appellant] did not provide the detective with his lawyer’s contact information. A writ was issued for [Appellant’s] arrest in April 2021, and it was served on April 20, 2021.

A.A. at 10-16.

SUMMARY OF THE ARGUMENT

The Juvenile Court did not abuse its discretion in applying the decisional matrix of Seven Minors. The transfer of jurisdiction certifying Appellant as an adult was warranted due to the seriousness of the crimes charged, and the subjective factors did not outweigh the seriousness of the offenses. Appellant’s due process rights were not violated when the district court did not order discovery or hold an evidentiary hearing, as the court found the criminal court, rather than the juvenile court, had jurisdiction over any issue of investigative delay.

ARGUMENT

“Nevada's juvenile certification statute allows the juvenile court to certify juvenile offenders to adult court for criminal proceedings. The statute generally gives the juvenile court broad discretion in its certification decisions, except when the offenses involve firearms and forcible sexual assaults.” In re William S., 122 Nev. at 433, 132 P.3d at 1016. A juvenile court’s decision to certify an accused to

answer in adult court is reviewed for an abuse of discretion. In re Eric A.L., 123 Nev. 26, 33, 153 P.3d 32, 36–37 (2007). The court’s discretion must evaluate “community protection as the guiding principle to be considered in transfer proceedings.” Seven Minors, 99 Nev. at 434, 664 P.2d at 952.

I. JUVENILE COURT PROPERLY CERTIFIED APPELLANT TO ADULT STATUS

Appellant ascribes nefarious motive to the investigative delay in bringing charges against him:

Simply put, law enforcement delayed the investigation and certification process in order to avoid the jurisdiction of the Juvenile Court, and there was no good faith reason for the delay. The State's delay caused a clear tactical advantage and Appellant now faces life in prison if convicted of the charges in adult criminal court.

AOB at 21.

He alleges this investigative delay determines whether the juvenile or district court has jurisdiction over his case:

Accordingly, it is respectfully submitted that the Juvenile Court abused its discretion in certifying Appellant as an adult in light of the unconstitutional delay which has resulted in a due process violation.

AOB at 17.

A. The State showed prosecutive merit

Before a minor may be certified for trial as an adult, the State must show prosecutive merit, comparable to the probable cause determination in pre-adjudication detention hearings. Matter of Three Minors, 100 Nev. 414, 418, 684

P.2d 1121,1124 (1984), disapproved of by In re William S., 122 Nev. 432, 132 P.3d 1015 (2006). Prospective merit requires a reasonable inference the defendant committed the charged offense. Kinsey v. Sheriff, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971). The State may satisfy its burden by showing “slight, even marginal evidence.” State v. White, 130 Nev. 533, 539, 330 P.3d 482, 486 (2014).

“Transfer proceedings are essentially dispositional in nature and not adjudicatory.” Three Minors, 100 Nev. at 418, 648 P.2d at 1124. Therefore, “[d]ue process does not require that a juvenile be given an adversary hearing comparable to the preliminary examination.” Id.

A juvenile court may base prosecutive merit upon “evidence taken from the petition, sworn investigative reports, witnesses' affidavits, police affidavits, or other informal but reliable evidence.” Three Minors, 100 Nev. at 418, 684 P.2d at 1123-24. This minimal standard applies because a juvenile is not entitled to two preliminary hearings, and the certification hearing is not a substitute for a preliminary hearing. Faessel v. Second Jud. Dist. Ct., 106 Nev. 106, 108, 787 P.2d 767, 769 (1990); Three Minors, 100 Nev. at 418, 648 P.2d at 1124.

Here, the juvenile court found the State had proven by “slight or marginal evidence” that the requirement for prosecutorial merit had been met. AA at 56. Appellant is not entitled to an evidentiary hearing before certification. Three Minors, 100 Nev. at 418, 684 P.2d at 1123-24. He can raise his claim of investigative delay

in criminal court. Certification to district court merely determines jurisdiction but does not adjudicate his guilt or innocence. Nor does certification preclude litigation of Appellant's undue delay claim.

Appellant does not contest the determination of prosecutorial merit in his case.

B. Investigative delay is not a jurisdictional issue

Appellant asserts the juvenile court felt it had to certify him as he was about to age out of the juvenile system, but states this was not a factor to be considered under NRS 62B.390. AA at 52.

Even if Appellant's claim of purposeful investigative delay were believed, it would not rise to the level of a jurisdictional issue. The only issue before the juvenile court at the certification hearing was jurisdiction. AA at 4. Investigative delay and other affirmative defenses do not constitute jurisdictional matters. AA at 55. "Affirmative defenses is not something the Court usually considers when it determines—when it makes a decision on the certification issue, the transfer issue." Id. "The subject minor argued timing of the investigation but this Court finds the matter before the Court is that of jurisdiction, the appropriateness of transfer, and whether the State met its burden with clear and convincing evidence." AA at 66.

NRS 62B.390 does not state that if charges are not brought promptly, the felonies should be dismissed and the offender discharged. Whether a person can benefit from juvenile court before his age makes the issue moot has been considered

by this Court. Marvin v. State, 95 Nev. 836, 842, 603 P.2d 1056, 1060 (1979), overruled in part by In re William M., 124 Nev. 1150, 196 P.3d 456 (2008).

Marvin was overruled in part because that defendant made statements against his Fifth Amendment rights, and those statements could have been used against him in criminal court. (“Specifically, we renounce Marvin's conclusion that the Fifth Amendment is irrelevant during a certification proceeding simply because guilt is not being determined therein.”). In re William M., 124 Nev. at 1161, 196 P.3d at 463. That issue is not relevant here, as Appellant can allege no harm, other than being held to account for his crimes, by appearing in adult court. “Once a child commits an offense, he is in effect exempt from the criminal law unless the juvenile court waives its jurisdiction.” Marvin, 95 Nev. at 842, 603 P.2d at 1060.

The portion of Marvin in which “the juvenile court determined that [the defendant] was not amenable to juvenile treatment, *particularly within the period remaining before the juvenile court’s jurisdiction is terminated*,” was not overruled. Id. at 844, 603 P.2d at 1061 (emphasis added). The Marvin Court found nothing unusual about certifying to adult court when the defendant was about to age out of the juvenile system.

“After establishing public protection as the controlling principle upon which the transfer decision is to be based, we held that a court should consider the [Seven Minors factors]. Thus, judges are not free to use arbitrary criteria in the certification

process.” Castillo v. State, 110 Nev. 535, 546, 874 P.2d 1252, 1260 (1994), disapproved of on other grounds by Wood v. State, 111 Nev. 428, 892 P.2d 944 (1995). Affirmative defenses are generally irrelevant when adjudicating waiver of jurisdiction. In re E.J.P. 236 Ga. App. 221, 224, 511 S.E.2d 290, 293 (1999) (“Contrary to the appellant's assertions, the consideration of his affirmative defense in reaching a conclusive determination of whether the actor intended to commit the criminal act goes to the merits of the case and is not an issue during the juvenile court's consideration of whether to transfer the case.”). This Court should hold that affirmative defenses are arbitrary criteria in a certification hearing in Nevada.

The issue of investigative delay and all other affirmative defenses remain in Appellant’s arsenal as he begins his defense in criminal court. Marvin, 95 Nev. at 842, 603 P.2d at 1060. Because investigatory delay is not a factor to consider in determining whether the juvenile court ought to cede jurisdiction to the criminal court, the issue was inappropriately raised below and should not be considered on appeal. Appellant has cited no legal authority demonstrating that investigative delay may be considered in a Seven Minors analysis. As such, this naked argument should be summarily rejected. Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (“It is appellant’s responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court”).

C. Appellant cannot show prejudice because he is not entitled to be tried in juvenile court

Appellant claims he has been prejudiced by the delay in prosecuting him, as he “now faces life in prison” if convicted of his crimes. AOB at 21. Appellant does not specify what “significant” prejudice he has suffered as a result of the delay of proceedings in his case. AOB at 21. He claims the State gained a “clear tactical advantage” in its ability to prosecute him, but does not say how. AOB at 21.

There is no entitlement to prosecution in juvenile court. See, e.g., United States v. Juv., 228 F.3d 987, 990 (9th Cir. 2000); People v. Hana, 443 Mich. 202, 220, 504 N.W.2d 166, 175 (1993); United States v. Hayes, 590 F.2d 309, 310 (9th Cir. 1979). Because Appellant is not entitled to the jurisdiction of the juvenile court, his claims of prejudice are merely speculative.

Appellant attempts to conflate certification to adult court with an increase in punishment. The two concepts are not synonymous. “The transfer statute does not per se increase punishment; it merely establishes ‘a basis for district court jurisdiction of prosecutions to which it applies.’” United States v. Juv., 228 F.3d at 990 (quoting United States v. David H., 29 F.3d 489, 491 (9th Cir. 1994)).

Certification is an essential safety valve designed to deal with the worst offenders or egregious and heinous conduct:

Transfer has played an important role in juvenile court jurisprudence since its earliest days and has acted as a safety valve through which offenders who were within the statutory age of juvenile court

jurisdiction could in appropriate circumstances be held accountable for their criminal acts by referral to the adult criminal justice system.

Seven Minors, 99 Nev. at 430, 664 P.2d at 949.

Juvenile certification procedures are a creature of the legislative branch, without which crimes committed by juveniles would default to the criminal justice system. United States v. Juv., 228 F.3d at 990. “The District Courts in the several Judicial Districts of this State have original jurisdiction in all cases excluded by law from the original jurisdiction of justices' courts.” Nev. Const. art. VI, § 6(1). “The legislature may provide by law for ... The establishment of a family court as a division of any district court and may prescribe its jurisdiction.” Nev. Const. art. VI, § 6(2). Where juvenile court jurisdiction is unavailable due to the defendant’s age, as here, the case defaults to the district court. Barren, 128 Nev. at 340, 279 P.3d at 184.

The juvenile court’s jurisdiction over an offender terminates when the case is certified to the adult court or when the offender reaches 21 years of age. NRS 62B.410(2). The Nevada legislature intends juveniles to be held responsible for their crimes, even if they age out of the juvenile court’s jurisdiction. There exists no scenario in which a defendant can fall between the adult and juvenile systems, thus evading accountability for his crimes. “At the outset, we note that notwithstanding exceptions inapplicable here, some court always has jurisdiction over a criminal defendant.” State v. Barren, 128 Nev. 337, 340, 279 P.3d 182, 184 (2012) (citing

cases from other states); Castillo v. State, 110 Nev. 535, 542, 874 P.2d 1252, 1257 (1994); In re J.M., 129 Nev. 1126 (2013). “Every person, whether an inhabitant of this state, or any other state, or of a territory or district of the United States, is liable to punishment by the laws of this state for a public offense committed therein, except where it is by law cognizable exclusively in the courts of the United States.” NRS 171.010.

“Thus, the issue on appeal is not whether a court has jurisdiction over [Appellant], but rather, which court has jurisdiction over [him].” Barren, 128 Nev. at 341, 279 P.3d at 184. To hold otherwise “would make it possible for a person to commit any number of dangerous felonies a few days before his sixteenth birthday and then, by evading arrest until he is twenty-one, escape both corrective measures as a juvenile and punishment as an adult.” Barren, 128 Nev. at 343–44, 279 P.3d at 186 (*citing* State v. Little, 241 Or. 557, 562, 407 P.2d 627, 630 (1965)).

Because Appellant is not entitled to be tried in juvenile court, and because Appellant is unable to be tried in juvenile court, jurisdiction over his case defaults to the district court. Appellant does not demonstrate prejudice by being subject to the same criminal laws governing all Nevada citizens.

D. Even if there had been no delay in charging Appellant, he would have been subject to certification

Appellant’s claim that he has been prejudiced by certification to the adult court just before he turned 21 presupposes that he would not have been certified

when he was 18, right after the victim disclosed the abuse. He makes no showing that the juvenile court would have retained jurisdiction over this series of serious crimes.

Appellant alleges he was only fifteen at the time of the crimes. AOB at 17. This is misleading, as some of his crimes occurred after he turned sixteen. A.A. at 13, 33. His birthday is in June, but the last assault occurred on the Fourth of July weekend. Id. Regardless, whether Appellant was fifteen or sixteen, he was subject to certification under NRS 62B.390:

1. Except as otherwise provided in NRS 62B.400, upon a motion by the district attorney and after a full investigation, the juvenile court may certify a child for proper criminal proceedings as an adult to any court that would have jurisdiction to try the offense if committed by an adult, if the child:

- (a) Except as otherwise provided in paragraph (b), is charged with an offense that would have been a felony if committed by an adult and was 14 years of age or older at the time the child allegedly committed the offense;

Certification is possible where: 1) the district attorney has moved for certification, 2) the juvenile court has conducted a full investigation, 3) the charged offense would be a felony if committed by an adult, and 4) the offender was older than fourteen at the time of the offense. NRS 62B.390. Once these prerequisites are met, a juvenile court must apply the Seven Minors matrix. Castillo, 110 Nev. at 546, 874 P.2d at 1260.

The Washington Court of Appeals handled a case similar on the facts to the case at bar. In State v. Salavea, 115 Wash. App. 52, 60 P.3d 1230 (2003), the defendant was certified as an adult despite a pre-charging delay. He committed his crimes at age fifteen, the investigation continued until he turned sixteen, and Washington law required him to be tried as an adult at age sixteen. Id. at 54, 60 P.3d at 1231. The State could not charge him before age sixteen, as the investigation was ongoing, so the delay did not implicate due process. Id. Salavea claimed this denied him the benefits of juvenile court jurisdiction. Id. at 55, 60 P.3d at 1232. “Salavea would have been tried as an adult even if the State had charged him [earlier].” Id. Because he was subject to adult court jurisdiction anyway, “Salavea suffered no prejudice.” Id. at 56, 60 P.3d at 1233.

Like Salavea, Appellant was subject to a statute, here NRS 62B.410(2), that removed jurisdiction from the juvenile court near the time he was charged. If Appellant had been charged at age eighteen, as soon as the victim disclosed, he would likely have been subject to certification anyway under NRS 62B.390, based on the Seven Minors factors. As shown below in Section I.F., the juvenile court considered the Seven Minors factors, and did not solely base its decision on the fact that Appellant would elude responsibility based on his upcoming twenty-first birthday.

Here, the district attorney's office moved for certification, the juvenile court conducted a full investigation, the crimes would be felonies in adult court, and Appellant was older than fourteen when the offenses were committed. The juvenile court clearly could consider certification, and Appellant does not argue the court lacked statutory authority to do so.

E. Best interest of the minor is not the relevant analysis

Appellant claims it would have been in his best interests to have been adjudicated in juvenile court. AOB at 17. He further asserts the juvenile court may consider a juvenile's amenability to treatment by the juvenile court system. AOB at 16. Appellant argues that if not for the alleged investigative delay, he "could have been supervised by the Juvenile Court." AOB at 17. He appears to avow he has suffered actual prejudice because he faces criminal consequences. AOB at 21.

Waiver of jurisdiction over dangerous juvenile offenders is required by the policy decisions of the Nevada Legislature:

Juvenile courts have traditionally been preoccupied with the interests of the child, and the interests of the state, as such, did not become a declared, joint purpose of our Juvenile Court Act until 1949.

The juvenile court from its inception in Illinois in 1899 until approximately the middle of this century was a child-centered institution based on theories taken from the positive school of criminology and especially on the deterministic principle that youthful law violators are not morally or criminally responsible for their behavior but, rather, are victims of their environment--an environment which can be ameliorated and modified much in the way that a physician modifies the milieu interieur of a sick patient.

Under such a doctrine the juvenile court tended to lose its identity as a court and became more of a social clinic than a court of law. Lost to such an institution was the moralizing and socializing influence associated with the operation of criminal courts; and, more importantly, lost too were society's ageless responses to criminal behavior: punishment, deterrence, retribution and segregation. So it was that juvenile courts in Nevada prior to 1949 were not charged with administering the criminal law for the protection of society against juvenile criminality but were required to treat the youthful law violator "not as a criminal, but as misdirected, and misguided and needing aid, encouragement and assistance."

This kind of kindly, paternalistic approach was eventually seen as being ill-suited to the task of dealing with juvenile crime. The legislative response to this realization was that toward the middle of this century a number of state legislatures, including our own, made changes in the purpose clause of juvenile court acts so that juvenile courts were required to consider the public interest as well as the child's interest. This departure from traditional juvenile justice philosophy is significant. We take it to indicate that the status of juvenile courts as courts is to be recognized and that protection of the public against juvenile criminal offenders may be affected by invocation of the means traditionally employed in the judicial administration of the criminal law. Juvenile courts may under such legislative direction properly consider the punitive, deterrent and other accepted adjuncts of the criminal law.

Although juvenile courts may have difficulty at times in balancing the interests of the child and the public, there is no irreconcilable opposition between the two. By formally recognizing the legitimacy of punitive and deterrent sanctions for criminal offenses juvenile courts will be properly and somewhat belatedly expressing society's firm disapproval of juvenile crime and will be clearly issuing a threat of punishment for criminal acts to the juvenile population.

Seven Minors, 99 Nev. at 431-32, 664 P.2d at 950.

Seven Minors shifted the focus of the transfer inquiry to the conduct of the juvenile in terms of the danger the conduct represents to society, and away from an

amorphous attempt at guesstimating whether a particular juvenile will be saved by juvenile court intervention:

[T]he juvenile court no longer bases transfer decisions on the issue of whether a juvenile facing transfer is a suitable subject for the juvenile court's rehabilitation efforts, but, rather, on the youth's criminal conduct and whether under the circumstances the public interest and safety will permit the youth before the court to be treated as a child."

...

The transfer process is based upon the sound idea that there is no arbitrary age at which all youths should be held fully responsible as adults for their criminal acts and that there should be a transition period during which an offender may or may not be held criminally liable, depending upon the nature of the offender and the offense.

Jeremiah B. v. State, 107 Nev. 924, 926, 823 P.2d 883, 884 (1991), overruled on other grounds, In the Matter of William S., 122 Nev. at 442, n. 23, 132 P.3d at 1021, n. 23 (internal quotation marks and citation omitted, emphasis added).

Transfer decisions are now based upon a real-world desire to allow the community to pursue the kind of serious sanctions available only through criminal court jurisdiction:

In Seven Minors we turned away from the traditional test applied in transfer cases, that is to say, whether the minor was "amenable to treatment" in the juvenile court. Seven Minors, 99 Nev. at 433, 664 P.2d at 951. The traditional "amenability" or "fitness" rule formerly followed by this court (Marvin v. State, 95 Nev. 836, 603 P.2d 1056 (1979)) ... focuses attention on the juvenile as a person rather than on the offense committed by the juvenile; and, under this doctrine, if the juvenile court were to conclude that a juvenile subject to transfer proceedings could be "treated" or rehabilitated by the juvenile court, then the juvenile would be retained within the jurisdiction of the juvenile court irrespective of the nature of the criminal conduct. Seven Minors changed the traditional juvenile court approach and placed

emphasis not on the juvenile's amenability to juvenile court treatment nor on the juvenile's predicted response to the clinical armamentarium supposed to be possessed by the juvenile court but, rather, on the necessity for holding older youths accountable for the more serious, culpable and dangerous kinds of criminality. "The public interest and safety require that some youths be held accountable as adults for their criminal misconduct and be subjected to controls, punishment, deterrence and retribution found only in the adult criminal justice system." Seven Minors, 99 Nev. at 433, 664 P.2d at 951.

Jeremiah B., 107 Nev. at 926, 823 P.2d at 884.

The modern philosophy of juvenile justice elicited a clear enunciation of the Legislature's public policy from this Court: "the Court's duty to the public is paramount. The primary purpose of juvenile court intervention in delinquency cases is social control; and when one interest must predominate, it should be that of the public." Seven Minors, 99 Nev. at 433, 664 P.2d at 951. In the context of a transfer proceeding, this statement of public policy mandated a complete abandonment of the best interest of the child standard:

Once transfer is justified on the basis of public interest and safety, *there is no need to consider the "best interest of the child" or the youth's amenability to treatment* in the juvenile court system except insofar as such considerations bear on the public interest.

...
With community protection as the guiding principle to be considered in transfer proceedings, *subjective evaluations and prognostications as to whether a given youth is or is not likely to respond favorably to juvenile court treatment will no longer be the court's primary focus* in transfer proceedings; rather, the dispositive question to be addressed by the court is whether the public interest requires that the youth be placed within the jurisdiction of the adult criminal courts.

Id. at 433-34, 664 P.2d at 951-52 (emphasis added). “[A] minor cannot avoid certification merely by a showing of amenability to treatment in the juvenile court.” In re William S., 122 Nev. at 440, 132 P.3d at 1020.

It is in Appellant’s best interest for this case to remain in juvenile court, as that court may not now hold him accountable in any way. NRS 62B.410(2). However, Appellant is not amenable to juvenile services as he is statutorily barred from receiving them. Id. That Appellant has outgrown juvenile deterrence does not mean adult deterrence, punishment, retribution, and segregation may not be applied in his case. See Seven Minors, 99 Nev. at 431-32, 664 P.2d at 950.

The offender’s interests are not the deciding factor in transfer cases. Rather, the court must consider foremost the safety and interests of the community. The juvenile court properly put the safety of the community ahead of Appellant’s interest in having his charges dismissed due to NRS 62B.410(2). That Appellant disagrees with the court’s decision does not change this analysis. Any and all arguments about amenability to juvenile services became moot once the Juvenile Court determined that the public safety interest would be best served by certification.

F. The court properly analyzed the Seven Minors factors

Appellant does not complain that the juvenile court improperly applied the Seven Minors factors in considering whether to certify him to the adult court. Instead, he merely asserts the time between committing his crimes and answering

for them amounts to a jurisdictional defect robbing the adult court of authority over him. AOB at 12.

“[T]he [juvenile] court retains broad discretion in making discretionary certification decisions in accordance with the guidelines set forth in Seven Minors.” In re Eric A.L., 123 Nev. at 33, 153 P.3d at 36-37. In adjudicating a motion pursuant to NRS 62B.390(1)(a) to waive jurisdiction over a minor, a juvenile court is required to consider:

a decisional matrix comprised of the following three categories: first, nature and seriousness of the charged offenses; second, persistency and seriousness of past adjudicated or admitted criminal offenses; and third, what we will refer to as the subjective factors, namely, such personal factors as age, maturity, character, personality and family relationships and controls.

Seven Minors, 99 Nev. at 434-35, 664 P.2d at 952.

In certification proceedings the “primary and most weighty consideration will be given to the first two of the categories.” Id. at 435, 664 P.2d at 952. Essentially, the subjective factors act as a tie breaker:

This third category, involving subjective evaluations of the youth, will come into play principally in close cases in which neither of the other two categories clearly impels transfer to adult court. In such cases, even given fairly serious criminal activity, a decision not to transfer may be properly and wisely made because such individual considerations as mental attitude, maturity level, emotional stability, family support and positive psychological and social evaluations require a finding that the public interest and safety are best served by retaining the youth in the juvenile system.

Id. Accord, William S., 122 Nev. at 440, 132 P.3d at 1020 (Juvenile Court may consider substance abuse or emotional or behavioral problems that contributed to the minor's conduct, as well as the extent to which those problems are amenable to treatment in the juvenile court; these personal factors, however, are not the most weighty and controlling and may be considered only in close cases).

Here, the nature and seriousness of the charges against Appellant—repeated sexual assaults on a nine-year-old—clearly merit certification to adult court. The court deemed the charges serious though not egregious. AA at 59. Appellant was alleged to be the principal actor in the crimes. AA at 59. Certification may rest on consideration of the seriousness of the charges alone. In re Eric A.L., 123 Nev. at 33, 153 P.3d at 36.

The court considered that Appellant had no prior adjudications, then said it would consider that again under the subjective factors. AA at 59-60. Thus, Juvenile Court's transfer decision was not based on a misunderstanding of Appellant's criminal record.

Seven Minors urges the juvenile court to consider the subjective factors to determine if Appellant's situation calls for treatment in the juvenile court. The judge below complied with this mandate: "I've said that I will take the position the Court will always consider the subjective factors and will not make a decision based upon the serious nature of the alleged offense alone as it relates to transfer until told by

the Supreme Court or the Nevada legislature otherwise.” AA at 59. The juvenile court considered a bevy of subjective factors, including Appellant’s age at the time of the offenses. AA at 60. It considered his ability to learn from the juvenile justice system when Appellant would shortly age out of the system. AA at 60. The court considered reports from probation and from a psychologist. AA at 60. The psychological report described Appellant as an average 20-year-old male with average intelligence. AA at 38.

After balancing the Seven Minors factors, the juvenile court said “from a community safety standpoint the ability of the Court to exercise this jurisdiction and this matter is severely curtailed due to the statute that terminates this Court’s jurisdiction on 6/29 of this year as it relates to this young man.” AA at 61. The court clearly and correctly put the interests of the community first in determining that giving Appellant a free pass for his crimes was not in the community’s best interests. The tie-breaking subjective factors did not weigh heavily enough against certification to make the juvenile court’s decision an abuse of discretion.

Because the juvenile court has no jurisdiction over Appellant, nothing suggests retaining his case in juvenile court would be in the best interest of public safety. The juvenile court could not correct his criminal behavior in the few weeks remaining before his birthday. Appellant, if this case were to be remanded back to juvenile court, would not be “amenable” to treatment under the juvenile court’s

supervision, because the juvenile court has no jurisdiction to offer him any treatment whatsoever. NRS 62B.410(2). Transferring this case to the juvenile system is precisely the same as dismissing the charges altogether. The question is not *where* Appellant should be held accountable, but whether. Barren, 128 Nev. at 341, 279 P.3d at 184. If society's interest in not having children sexually assaulted is to be vindicated, it will be the district court which does so.

That Appellant disagrees with the conclusion the juvenile court drew after careful consideration does not demonstrate an abuse of discretion, but is rather a mere self-serving assertion, suitable only for summary dismissal under Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

G. Appellant's due process claim lacks merit

The entire focus of Appellant's argument is on delay and on whether he was entitled to discovery and an evidentiary hearing to determine the cause of the delay. AOB at 12-23. Delay is not responsible for Appellant's certification to adult court, as he would have been certified if he had been charged at eighteen. He may litigate his due process claim in adult court, though his argument is unlikely to meet with success.

Throughout his opening brief, Appellant attributes the delay, from the time the victim disclosed to the time the delinquency petition was filed, to both law enforcement and the district attorney's office, jointly and interchangeably. AOB at

12, 17, 21, AA at 26, 50, 51. The juvenile court attributed all pre-charging delay to the investigation: “And it’s obviously clear from the—what’s in the record at this point that any delay argument is attributed to the investigative portion of the case and not necessarily DA dropping the ball, lost a file behind the filing cabinet, some kind of—something like that for example, right?” AA at 54-55. Appellant did not correct the court with an assertion that the district attorney’s office, rather than law enforcement, was responsible for the delay. Therefore, the State will address the issue of delay in terms of pre- versus post- charging.

1. Pre-charging delay

Appellant complains the State made a “tactical” decision to file the delinquency petition just before he turned twenty-one. AOB at 17. He asserts pre-charge delays implicate the Due Process Clause. AOB at 17. Specifically, he complains of the time between the victim’s disclosure to her parents on September 24, 2018, and the filing of charges in April, 2021. AOB at 11.

Appellant has the burden to prove that the delay in bringing an indictment “was a deliberate device to gain an advantage over him and that it caused him actual prejudice in presenting his defense.” United States v. Gouveia, 467 U.S. 180, 192, 104 S. Ct. 2292, 2299 (1984); see also Wyman v. State, 125 Nev. 592, 601–02, 217 P.3d 572, 579 (2009). In Wyman, on August 10, 1974, Wyman brought her 3-year-old adopted son, J.W., to the hospital. 125 Nev. at 596. J.W. had multiple bruises

throughout his body, as well as a concussion and scratch marks. Id. J.W. ceased breathing and was pronounced dead. Id. The coroner determined his death to be accidental despite the doctor's concerns. Id.

Thirty years later, defendant's adult daughter called the police and told them that defendant had murdered J.W. Id. Thirty-two years later, a complaint was filed by the State. Id. Wyman filed a motion to dismiss due to the pre-indictment delay arguing that there was no new forensic evidence in the case, and no justifiable reason for the delay. Id. The motion was denied in district court. Id. This Court concluded that the district court did not abuse its discretion by refusing to dismiss a complaint due to alleged pre-indictment delay. Id. at 575. The court noted that witnesses may have died or moved away after 32 years but that the defendant had not shown that she was 1) prejudiced by the delay and 2) that the State intentionally delayed filing the complaint to gain a tactical advantage over Wyman. Id.

This Court affirmed this two-pronged test in Peck v. State, 126 Nev. 746, 367 P.3d 808 (2010) (unpub.) stating "we conclude [Peck] failed to show with adequate specificity any prejudice from the delay or that the State intentionally delayed filing a complaint to gain a tactical advantage." Additionally, this Court noted that, "[g]enerally, any delay between the commission of an offense and an indictment is limited by statutes of limitations." Wyman, 125 Nev. at 601 n. 3, 217 P.3d at 578 n.

3 (*citing* United States v. Lovasco, 431 U.S. 783, 789, 97 S. Ct. 2044, 2049 (1977); Jones v. State, 96 Nev. 240, 241 (1980)).

Appellant cites U.S. v. Sherlock, 962 F.2d 1349 (9th Cir. 1989), for the Fifth Amendment guarantee of due process as it relates to preindictment delay. AOB at 17. In Sherlock, charges were brought thirty-six months after the victim disclosed, a longer time period than in the case at bar. Sherlock, 962 F.2d at 1353. Here, police became aware of the sexual abuse on September 29, 2018, and Appellant was arrested on April 20, 2021. AOB at 11-16.

A due process claim based on preindictment delay must show actual, non-speculative prejudice from the delay and that “the delay, when balanced against the prosecution’s reasons for it, offends those ‘fundamental conceptions of justice which lie at the base of our civil and political institutions.’” Sherlock, 962 F.2d at 1353–54 (quoting Lovasco, 431 U.S. at 790, 97 S. Ct. at 2049. In Sherlock, the defendant argued the delay impaired the victim’s memories, the rape kit was lost, and the sentence could have run concurrent to another charge, thus reducing his overall confinement. Id. at 1354. The Court held this did not show prejudice. Id.

The defendant has a heavy burden to prove that a preindictment delay caused actual prejudice: the proof must be definite and not speculative, and the defendant must demonstrate how the loss of a witness and/or evidence is prejudicial to his case. Our cases reflect this heavy burden, as we frequently find actual prejudice lacking.

Id. Further, the Sherlock Court found the “ongoing investigation was a legitimate reason for the delay.” Id. at 1355.

Appellant cites to United States v. Marion, 404 U.S. 307, 92 S.Ct. 455 (1971), to assert that if a preindictment delay causes substantial prejudice to the right to a fair trial and if the delay was done intentionally to gain an advantage, there may exist a due process violation. AOB at 19. “Thus Marion makes clear that proof of prejudice is generally a necessary but not sufficient element of a due process claim, and that the due process inquiry must consider the reasons for the delay as well as the prejudice to the accused.” Lovasco, 431 U.S. at 790, 97 S. Ct. at 2049.

In Lovasco, the U.S. Supreme Court noted no court had yet found a due process violation based on investigative delay. AOB at 19; Lovasco, 431 U.S. at 796–97, 97 S. Ct. at 2052. Ultimately, the High Court held that “to prosecute a defendant following investigative delay does not deprive him of due process, even if his defense might have been somewhat prejudiced by the lapse of time.” Id. at 796, 97 S. Ct. at 2052.

Appellant discusses a Seventh Circuit case in which charges were dismissed based on preindictment delay. AOB at 20-21. In United States v. Sabath, 990 F. Supp. 1007 (N.D. Ill. 1998), a case was brought six years after the crime came to police attention and four years after the investigation concluded. Id. at 1008. The Court found the defendant suffered prejudice based on “the lost evidence, impaired

memories of fact witnesses, flawed governmental reports, and [three] deceased key witnesses.” Sabath, 990 F. Supp. at 1014. Unlike Appellant, the Sabath defendant articulated specific injuries he suffered as a direct result of the delay.

Preindictment delays differ in material ways from delays between indictment and arrest or between arrest and trial. Before indictment, a person is not the focus of government scrutiny, is not under pretrial incarceration, and is not subject to the anxiety and concern that naturally accompanies a criminal indictment. Further, the “relevant statute of limitations provides a safeguard against possible prejudice resulting from preindictment delay.” Jones v. State, 96 Nev. 240, 241–42, 607 P.2d 116, 117 (1980) (quoting Marion, 404 U.S. 307, 92 S.Ct. 455).

“The due process clause may also provide a basis for dismissing charges in the event of unreasonable preindictment delay.” Id. “However, the accused must show that the delay prejudiced his right to a fair trial and that the government delayed to gain a tactical advantage.” Id. In Jones, this Court found no prejudice in the loss of the possibility of an additional two years of concurrent time, especially as the record was silent as to whether the State deliberately delayed filing charges to gain a tactical advantage. Id.

Appellant points to no prejudice he suffered by living from ages eighteen to twenty years without criminal sexual assault charges hanging over his head. This places his case in accord with Wyman. Wyman, 125 Nev. at 601–02, 217 P.3d at

579. He alleges he has been “significantly prejudiced” and the State gained a “clear tactical advantage,” resulting in “actual prejudice,” but fails to identify either the prejudice or the advantage. AOB at 21. Other than these conclusory platitudes, Appellant fails to indicate how he suffered. Unlike in Sherlock, where the Court held no prejudice even when the victim’s memories had been impaired and the rape kit lost, Appellant does not allege any evidence has been impacted by the delay. As in Marion, Appellant merely asserts the delay was done intentionally to gain an advantage but can point to no evidence. Lovasco holds that investigative delay, standing alone, is not a due process violation even if it prejudices the defense.

The only prejudice Appellant alleges is that he would have preferred an adjudication in juvenile court. AOB at 21.

As the United States Supreme Court said:

There is no constitutional right to be arrested. The police are not required to guess at their peril the precise moment at which they have probable cause to arrest a suspect, risking a violation of the Fourth Amendment if they act too soon, and a violation of the Sixth Amendment if they wait too long. Law enforcement officers are under no constitutional duty to call a halt to a criminal investigation the moment they have the minimum evidence to establish probable cause, a quantum of evidence which may fall far short of the amount necessary to support a criminal conviction.

Hoffa v. United States, 385 U.S. 293, 310, 87 S. Ct. 408, 417 (1966).

Because Appellant points to no actual prejudice he suffered as a result of the investigatory delay, this Court is not required to delve into the day-by-day actions

of the Las Vegas Metropolitan Police Department to determine if the investigation proceeded as efficiently as it could. U.S. v. Manning, 56 F.3d 1188, 1194 (9th Cir. 1995) (“Generalized assertions of the loss of memory, witnesses, or evidence are insufficient to establish actual prejudice.”) As in Lovasco, this case does not implicate due process.

2. Post-charging delay

Appellant does not allege, nor can he, that he has been subject to an unusual post-charging delay. The State filed its Petition for Delinquency, comparable to an indictment, on April 6, 2021, and the Certification Petition was filed the same day. A.A. at 1, 4. The arrest warrant issued the next day and Appellant was arrested on April 20, 2021. Appellant’s certification hearing was held on June 9, 2021, where he was certified to district court. A.A. at 39.

Nevada examines several factors for a post-arrest speedy trial claim: “(1) the extent of the delay; (2) the reason for the delay; (3) the nature of the underlying charge; (4) whether or not there has been an extended period of pretrial incarceration; and (5) whether or not there is any indication that the defense has been impaired by reason of the delay.” In re Eric A.L., 123 Nev. at 28, 153 P.3d at 34-35 (*citing In re Benjamin L.*, 92 N.Y.2d 660, 668, 708 N.E.2d 156, 160 (1999)).

Here, there has been minimal delay after Appellant’s arrest. A.A. at 1, 4, 39. The delay before the arrest is attributable to the on-going police investigation, which

has yet to be deemed a due process violation. Lovasco, 431 U.S. at 796, 97 S. Ct. at 2052. The charges against Appellant are very serious, as they involve the sexual molestation of a nine-year-old child. AA at 59. Appellant was released pending trial, and there is no allegation the defense has been impaired by the delay.

As the Lovasco Court said, “

In our view, investigative delay is fundamentally unlike delay undertaken by the Government solely “to gain tactical advantage over the accused,” precisely because investigative delay is not so one-sided. Rather than deviating from elementary standards of “fair play and decency,” a prosecutor abides by them if he refuses to seek indictments until he is completely satisfied that he should prosecute and will be able promptly to establish guilt beyond a reasonable doubt. Penalizing prosecutors who defer action for these reasons would subordinate the goal of “orderly expedition” to that of “mere speed.” This the Due Process Clause does not require. We therefore hold that to prosecute a defendant following investigative delay does not deprive him of due process, even if his defense might have been somewhat prejudiced by the lapse of time.

Lovasco, 431 U.S. at 795–96, 97 S. Ct. at 2051–52.

H. The juvenile court did not abuse its discretion

Appellant believes certification where the defendant has a colorable affirmative defense is the definition of arbitrary conduct. “Accordingly, the Juvenile Court's finding that certification was warranted was arbitrary, capricious, and outside the bounds of law and reason *in light of the unexplained delay and Appellant's conduct after the alleged offenses.*” AOB at 21 (emphasis added).

This Court will not disturb Juvenile Court’s judgment call unless the “decision is arbitrary or capricious or if it exceeds the bounds of law or reason.” In re Eric A.L., 123 Nev. at 33, 153 P.3d at 36-37.

Because the juvenile court properly put the safety of the community ahead of Appellant’s interest in having his charges dismissed, it did not act in a manner “arbitrary, capricious, and outside the bounds of law and reason” when it certified Appellant to adult court. Id. Reason holds that where the juvenile court has no jurisdiction over Appellant, the district court does. Barren, 128 Nev. at 340, 279 P.3d at 184; 62B.410(2). The juvenile court did not act capriciously or arbitrarily when it conducted the Seven Minors analysis and concluded that public safety demanded Appellant be held to account for his crimes in the district court.

II. APPELLANT IS NOT ENTITLED TO AN EVIDENTIARY HEARING OR DISCOVERY

Appellant claims the juvenile court abused its discretion when it certified him without ordering discovery or holding an evidentiary hearing. AOB at 22.

A. Discovery Demands

Appellant does not allege he was deprived of discovery in his own case, only that he did not receive “five years of cases handled by the District Attorney's Juvenile Division wherein a defendant was charged with a sexual offense and the decisions by both the District Attorney's office to seek certification versus not seeking certification (and the Court's granting certification versus denying certification).”

AOB at 22. He speculates these cases will show “that the sole basis for the request for certification was the Appellant’s age and the jurisdictional issue that existed as a result of the prosecutorial delay.” AOB at 22.

The juvenile court would not have been able to adjudicate Appellant’s broad discovery demands in the short time available before NRS 62B.410(2) mooted the issue. If Appellant believes the State intentionally violated his due process rights by delaying prosecution, he will have a full and fair opportunity to litigate his discovery demands in adult court. The district court will have ample time to carefully adjudicate this issue without facing the deadline NRS 62B.410(2) imposed on the juvenile court.

Since the certification of Appellant is supported by the Seven Minors factors, other certification decisions of children in unrelated cases can have no relevance to his case. Appellant’s certification stands on its own merits.

B. Investigative Demands

Appellant fails to explain *how* he was denied a full investigation, stating only:

Furthermore, NRS 62B.390 requires a “full investigation” and in light of the significant issues related to unconstitutional delay, it is respectfully submitted that the Juvenile Court’s denial of the request for discovery and an evidentiary hearing, was an abuse of discretion that warrants reversal.

AOB at 23.

These few words comprise Appellant's entire argument regarding investigation. A party seeking review bears the responsibility "to cogently argue, and present relevant authority" to support his assertions. Edwards v. Emperor's Garden Restaurant, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006); Maresca, 103 Nev. 669, at 673, 748 P.2d at 6 (an arguing party must support his arguments with relevant authority and cogent argument; "issues not so presented need not be addressed"). Appellant's failure to comply with these precedents should be fatal.

Appellant's assertion that juvenile court did not conduct a "full investigation" as required by NRS 62B.390 is belied by the record. AOB at 23. That Appellant feels he has a viable affirmative defense does not mean the juvenile court failed to conduct a full investigation. That the juvenile court did not accept Appellant's conclusion after the Seven Minors analysis does not mean his due process rights were violated.

A "full investigation" is not synonymous with "evidentiary hearing." This Court has "expressly held that due process in certification proceedings does not 'require that a juvenile be given an adversary hearing comparable to [a] preliminary examination.'" Faessel, 106 Nev. at 108, 787 P.2d at 769 (quoting In re Three Minors, 100 Nev. at 418, 684 P.2d at 1123). Appellant ignores this Court's extensive "full investigation" jurisprudence.

The precedents of this Court hold that a reviewing Court must review and must make a record of its deliberations:

Meaningful review requires that the reviewing court should review. It should not be remitted to assumptions. * * * It may not ‘assume’ that there are adequate reasons, nor may it merely assume that ‘full investigation’ has been made. Accordingly, we hold that it is incumbent upon the Juvenile Court to accompany its waiver with a statement of reasons or considerations therefore. * * * (T)he statement should be sufficient to demonstrate that the statutory requirement of ‘full investigation’ has been met; and that the question has received the careful consideration of the Juvenile Court; and it must set forth the basis for the order with sufficient specificity to permit meaningful review.

Kline v. State, 86 Nev. 59, 61, 464 P.2d 460, 461-62 (1970) (footnote setting out text of the District of Columbia statute omitted).

“The statement of reasons need not be in the form of conventional findings of fact, but there must be a statement of reasons which is sufficient to show that the statutory requirement of ‘full investigation’ has been met so as to permit meaningful appellate review.” Three Minors, 100 Nev. at 417, 684 P.2d at 1123. This statement need not be particularly detailed, and the level of specificity required is quite low.

The Nevada Supreme Court approved of a statement it summarized as:

1. You are a menace. 2. You have committed robbery before. 3. You were placed on probation because of exerting force and violence upon another. 4. You have committed another crime of violence. 5. You were aware of the circumstances. 6. You have been aware of them in the past. 7. You did them of your own volition. 8. They were willful acts. 9. You are 17 ½ years old. 10. You are aware of what you did. 11. You are a man and you will stand trial as one.

Lewis v. State, 86 Nev. 889, 894, 478 P.2d 168, 171 (1970).

The full investigation requirement of NRS 62.080 means the juvenile court must carefully consider the information before it:

The instant order waiving jurisdiction provides with ample specificity the reasons for the appellant's certification as an adult. Appellant was certified to be tried as an adult primarily because the juvenile court determined that he was not amenable to juvenile treatment, particularly within the period remaining before the juvenile court's jurisdiction is terminated. The trial court's careful evaluation plainly meets the statutory requirement of "full investigation." We find no error.

Marvin, 95 Nev. at 844, 603 P.2d at 1061 (footnote omitted).

Several Nevada cases set clear parameters for a full investigation under NRS 62.080. Collectively, the rule of law to be gleaned from these cases is that the statutory requirement of a full investigation is fulfilled when the lower court sets out specific reasons supporting a decision to certify a minor to adult status in such a way as to leave a record for appellate review. The juvenile court fails to comply with the "full investigation" requirement when certifies arbitrarily or when it fails to set out the reasons for certification.

In Powell v. Sheriff, 85 Nev. 684, 462 P.2d 756 (1969), Powell appeared in juvenile court with his parents at a hearing, the purpose of which "was to consider the charges that had been lodged against [Powell]." Id. at 685, 462 P.2d at 757. The Powell Court found "there is no indication that the question of certification within the provisions of NRS 62.080 was to be considered." Id. (footnote omitted). Instead

of addressing the charges, the lower court stated, “You know as far as this department is concerned I think you’ve about run the route. I don’t know what we can do for you. I’m going to certify this boy as an adult.” Id. at 685, n.2, 462 P.2d at 757, n.2. The Powell Court concluded the juvenile court violated NRS 62.080 by failing to conduct a full investigation. Id. at 687, 462 P.2d at 758.

Similarly, in Kline, the Nevada Supreme Court was faced with a certification order that read as follows:

The Court having examined the files and records of the Juvenile Probation Officer and from evidence received in open Court that the subject of this petition is seventeen years of age, having been born on May 12, 1950; and having ascertained that the subject of this petition is charged with an offense which would be a felony if committed by an adult, IT IS HEREBY ORDERED, ADJUDGED and DECREED that NEAL ALLISON KLINE be certified as an adult * * *

Kline, 86 Nev. at 61, 464 P.2d 462. The Kline Court concluded “[i]t is patently clear that this order does not meet the mandates of Kent, *supra*, for it is completely lacking in the ‘specificity’ which is necessary ‘to permit meaningful review.’” Id.

In Marvin, this Court was faced with a very different fact pattern. “A petition was filed ... charging [Marvin] with fifteen felony counts consisting primarily of burglary and grand larceny.” Marvin, 95 Nev. at 840, 603 P.2d at 1059. The State also filed a motion to certify Marvin to stand trial as an adult. Id. The juvenile court ordered the probation department to conduct an investigation and file a report with the court. Id. “Following the investigation, a report consisting of a study and analysis

of appellant's home life, school and offense record and other relevant background information was submitted by the Juvenile Probation Department. The report was based largely upon information obtained from appellant during his confinement at Wittenberg Hall." Id. The Nevada Supreme Court concluded "[t]he trial court's careful evaluation plainly meets the statutory requirement of 'full investigation.'" Id. at 844, 603 P.2d at 1061.

Here, the State moved the juvenile court to conduct "a full and complete investigation" before the court certified Appellant, as in Marvin. AA at 4. The Certification Hearing Report described the alleged offenses, victim interviews, subsequent investigation, Appellant's lack of criminal history, and subjective factors. AA at 9-18. These subjective factors included his family situation, social life, childhood, education, work history, and lack of mental health issues. AA at 16-18. This report was completed by the Juvenile Probation Officer. AA at 18. Dr. Zucker, a psychologist, also examined Appellant before his certification hearing. AA at 34. Dr. Zucker interviewed Appellant and conducted an extensive battery of psychological tests. AA at 34. His report included Appellant's educational history, employment history, medical history, psychiatric history, drug and alcohol history, criminal activity, and the results of the psychological tests. AA at 34-38.

The State presented its view of the subjective factors. AA at 48-49. The defense focused on the investigative delay and Appellant's good behavior since

molesting his victim. AA at 51-53. The court found prosecutorial merit, the charges were serious, and there were no prior adjudications. AA at 56, 59-60. It referenced the probation report and Dr. Zucker's report. AA at 57, 60. It affirmed it examined subjective factors in *all* certification cases, not just the close ones. AA at 59. The court evaluated the subjective factors and found that in balance, the interest of public safety warranted transfer to the adult system. AA at 60-61.

Appellant does not allege what other subjective factors the court should have considered in addition to the ones described by the court. The juvenile court considered all information before it, as required by NRS 62B.390, and created a reviewable record. The record contains probation reports, transcripts, psychological reports, and defense pleadings, all of which make up a broad, reviewable record. Nothing more is required. A Minor v. State, 86 Nev. 691, 694, 476 P.2d 11, 13 (1970) (holding "the words . . . 'after full investigation,' clearly require the juvenile court to consider the reports before deciding whether the child is to be considered for adult proceedings."). An evidentiary hearing is not necessary to determine whether the juvenile court conducted a full investigation in Appellant's certification decision.

CONCLUSION

For the reasons above, the State respectfully requests this Court affirm the Juvenile Court's certification of Appellant as an adult.

Dated this 6th day of January, 2022.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the type-volume limitations of NRAP 32(a)(8)(B) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either proportionately spaced, has a typeface of 14 points and contains 11,626 words.
3. **Finally, I hereby certify** that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 6th day of January, 2022.

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on January 6, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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