

A10-1686

STATE OF MINNESOTA

IN SUPREME COURT

STATE OF MINNESOTA,

Respondent,

vs.

WILLIAM HENRY GRIGSBY, JR.

Appellant.

APPELLANT'S BRIEF

LORI SWANSON
State Attorney General
1800 Bremer Tower
445 Minnesota Street
St. Paul, MN 55101

JOHN CHOI
Ramsey County Attorney

PETER R. MARKER
Assistant County Attorney
License No. 0211928
50 Kellogg Boulevard West, Suite 315
St. Paul, MN 55102

ATTORNEYS FOR RESPONDENT

**OFFICE OF THE MINNESOTA
APPELLATE PUBLIC DEFENDER**

ANDREW G. BIRKELAND
Special Assistant State Public Defender
License No. 391080

510 Marquette Avenue
Suite 200
Minneapolis, MN 55402
(612) 284-6962

ATTORNEY FOR APPELLANT

A10-1686

STATE OF MINNESOTA

IN SUPREME COURT

STATE OF MINNESOTA,

Respondent,

vs.

WILLIAM HENRY GRIGSBY, JR.

Appellant.

APPELLANT'S BRIEF

LORI SWANSON
State Attorney General
1800 Bremer Tower
445 Minnesota Street
St. Paul, MN 55101

JOHN CHOI
Ramsey County Attorney

PETER R. MARKER
Assistant County Attorney
License No. 0211928
50 Kellogg Boulevard West, Suite 315
St. Paul, MN 55102

ATTORNEYS FOR RESPONDENT

**OFFICE OF THE MINNESOTA
APPELLATE PUBLIC DEFENDER**

ANDREW G. BIRKELAND
Special Assistant State Public Defender
License No. 391080

510 Marquette Avenue
Suite 200
Minneapolis, MN 55402
(612) 284-6962

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	ii
LEGAL ISSUES.....	1
PROCEDURAL HISTORY.....	3
STATEMENT OF THE CASE.....	5
STATEMENT OF THE FACTS.....	6
ARGUMENT:	
I. THE DISTRICT COURT LACKED SUBJECT-MATTER JURISDICTION TO CONVICT AND SENTENCE APPELLANT OF OFFENSES NOT SPECIFIED IN THE CERTIFICATION ORDER.....	8
A. Legislative Intent Favors Offense-Specific Certification.....	9
B. Minnesota Supreme Court Precedent and the Rules of Juvenile Delinquency Procedure Favor Offense-Specific Certification.....	12
C. Public Policy Favors Offense-Specific Certification.....	14
II. IF THE TRIAL COURT RETAINED JURISDICTION OVER THE AMENDED AND LESSER INCLUDED OFFENSES, THEN MINN. STAT. § 260B.125, AS APPLIED, DEPRIVED APPELLANT OF HIS RIGHT TO PROCEDURAL DUE PROCESS.....	16
A. Section 260B.125 Deprived Appellant of a Protectable Liberty Interest...	16
B. One Additional Procedural Safeguard Would Eliminate the Risk to Juveniles and Impose No Fiscal or Administrative Burdens on the State...	18
CONCLUSION.....	21
INDEX TO THE APPENDIX	

TABLE OF AUTHORITIES

	<u>Page</u>
I. MINNESOTA CASES	
<i>Burkstrand v. Burkstrand</i> , 632 N.W.2d 206 (Minn. 2001).....	8
<i>Dahlberg v. Young</i> , 42 N.W.2d 59 (Minn. 1950).....	9
<i>ILHC of Eagan, LLC v. County of Dakota</i> , 693 N.W.2d 412 (Minn. 2005).....	10
<i>In re Kleven</i> , 736 N.W.2d 707 (Minn. Ct. App. 2007).....	8
<i>In re Welfare of C.A.W.</i> , 579 N.W.2d 494 (Minn. Ct. App. 1998).....	13
<i>In re Welfare of Hartung</i> , 304 N.W.2d 621 (Minn. 1981).....	13
<i>In re Welfare of K.A.A.</i> , 410 N.W.2d 836 (Minn. 1987).....	9
<i>In re Welfare N.F.</i> , 749 N.W.2d 802 (Minn. 2008).....	9
<i>In re Welfare of S.J.D.</i> , 617 N.W.2d 614 (Minn. 2000).....	13
<i>In re Welfare of W.H.G.</i> , No. A08-1996, 2009 WL 1684487 (Minn. Ct. App. June 16, 2009).....	5, 6, 17
<i>Kearns v. Julette Originals Dress Co.</i> , 126 N.W.2d 266 (Minn. 1964).....	11
<i>State v. Ali</i> , A10-1737, slip op., 2011 WL 4809219 (Minn. Oct. 12, 2011).....	8, 16
<i>State v. Behl</i> , 564 N.W.2d 560 (Minn. 1997).....	1, 2, 10, 11, 12, 16, 17
<i>State v. Grigsby</i> , A10-1686 slip op., 2011 WL 3557784 (Minn. Ct. App. Aug. 15, 2011).....	6, 7, 8, 11, 13, 18
<i>State v. Haas</i> , 159 N.W.2d 118 (1968).....	9
<i>State v. Larivee</i> , 656 N.W.2d 226 (Minn. 2003).....	11
<i>State v. Leathers</i> , 799 N.W.2d 606 (Minn. 2011).....	8

<i>State v. Moseng</i> , 95 N.W.2d 6 (1959).....	9
<i>State v. Shevlin-Carpenter Co.</i> , 108 N.W.2d 935 (1906).....	9, 17
<i>State v. Vang</i> , 788 N.W.2d 111 (Minn. 2010).....	9, 13

II. FEDERAL CASES

<i>Graham v. Florida</i> , 130 S.Ct. 2011, 2035 (2010).....	14
<i>J.D.B. v. North Carolina</i> , 131 S.Ct. 2394 (2011).....	14
<i>Kent v. United States</i> , 383 U.S. 541 (1966).....	1,2, 14, 16
<i>Matthews v. Eldridge</i> , 424 U.S. 319 (1976).....	2, 16
<i>Miller v. Quatsoe</i> , 348 F. Supp. 764 (E.D. Wis. 1972).....	15
<i>Montgomery Ward & Co. v. Snuggins</i> , 103 F.2d 458 (8th Cir. 1939).....	13
<i>Rice v. United States</i> , 356 F.2d 709 (8th Cir. 1966).....	13
<i>United States v. Bland</i> , 472 F.2d 1329 (D.C.Cir. 1972).....	16

III. FOREIGN CASES

<i>Benge v. Commonwealth</i> , 346 S.W.2d 311 (Ky. 1961).....	15
<i>E.H.N. v. Willis</i> , 350 So.2d 829 (Fla. App. 1977).....	15
<i>Gibson v. State</i> , 177 N.W.2d 912 (1970).....	15
<i>State v. Dinkins</i> , 627 P.2d 523 (Utah 1981).....	15

IV. STATUTES AND COURT RULES

Minn. R. Juv. Delinq. P. 1.01.....	14
Minn. R. Juv. Delinq. P. 18.07.....	12, 14

Minn. R. Juv. P. 18.08 (1996).....	12
Minn. Stat. § 260B.001.....	9, 11
Minn. Stat. § 260B.101.....	14, 18
Minn. Stat. § 260.015 (1996).....	12
Minn. Stat. § 260B.125.....	1, 7, 8, 10, 11, 13, 14, 16, 17
Minn. Stat. § 609.19.....	3, 4, 5, 6
Minn. Stat. § 645.16.....	9
Minn. Stat. § 645.17.....	12

V. ACADEMIC SOURCES

Black's Law Dictionary (9th ed. 2009).....	13
7 Henry W. McCarr & Jack S. Nordby, <i>Criminal Law and Procedure</i> (3rd ed. 2001).....	14

No. A10-1686

STATE OF MINNESOTA

IN SUPREME COURT

STATE OF MINNESOTA,

Respondent,

vs.

WILLIAM HENRY GRIGSBY, JR.

Appellant.

LEGAL ISSUES

I. Did the district court lack subject-matter jurisdiction to convict and sentence Appellant for offenses not specified in the certification order?

(1) The juvenile court certified Appellant to stand trial as an adult on the sole charge of second-degree intentional murder. (App. 3)

(2) The district court convicted and sentenced Appellant to offenses not specified in the certification order. The Court of Appeals affirmed the petitioner's conviction and sentences and held that Minn. Stat § 260B.125 (2010) is not offense-specific. (App. 19, 27-28; T11 15-16)

(3) Subject-matter jurisdiction may be raised for the first time on appeal.

(4) Apposite authority:

State v. Behl, 564 N.W.2d 560 (Minn. 1997).

Kent v. United States, 383 U.S. 541 (1966).

Minn. Stat. § 260B.125, subd. 1 (2010).

II. Did Minn. Stat. Sec. 260B.125, as applied, deprive appellant of his right to procedural due process?

Apposite authority:

State v. Behl, 564 N.W.2d 560 (Minn. 1997).
Matthews v. Eldridge, 424 U.S. 319 (1976).
Kent v. United States, 383 U.S. 541 (1966).

PROCEDURAL HISTORY

1. August 23, 2008: Date of offense.
2. August 27, 2008: Juvenile delinquency petition filed in Ramsey County Juvenile Court charging Appellant with second-degree intentional murder.
3. September 23, 2008: Certification hearing held in Ramsey County Juvenile Court on the charge of second-degree intentional murder.
4. October 15, 2008: Ramsey County Juvenile Court entered an order certifying the proceedings on the sole offense of second-degree murder.
5. October 16, 2008: Complaint filed in Ramsey County District Court charging Appellant with second-degree intentional murder pursuant to Minn. Stat. § 609.19, subd. 1(1).
6. June 16, 2009: Court of Appeals affirmed certification order.
7. May 20, 2010: Complaint amended to include second-degree felony murder pursuant to Minn. Stat. § 609.19, subd. 2(1).
8. May 24, 2010: Jury trial begins.
9. June 4, 2010: Lesser included offense of second-degree manslaughter presented to the jury.
10. June 5, 2010: Jury finds Appellant not guilty of second-degree intentional murder and guilty of second-degree felony murder and second-degree manslaughter.
11. June 16, 2010: Petitioner sentenced to 180 months.
12. August 15, 2011: Court of Appeals issued opinion affirming Appellant's convictions.

13. September 14, 2011: Appellant filed petition for review in Supreme Court.
14. October 26, 2011: Supreme Court granted petition for review.
15. November 15, 2011: Appellant filed motion to extend time for briefing in Supreme Court.
16. November 18, 2011: Order filed by Supreme Court extending deadline for briefing to December 15, 2011.
17. December 15, 2011: Appellant's brief filed in Supreme Court.

STATEMENT OF THE CASE

Appellant, William Henry Grigsby, Jr., was charged by juvenile petition in Second District Juvenile Court with second-degree intentional murder pursuant to Minn. Stat. § 609.19.1(1).¹ (App. 1) The juvenile court, Hon. Gary W. Bastian presiding, certified Appellant to stand trial as an adult on the charge of second-degree murder. (App. 3) Appellant appealed the juvenile court's ruling to the Minnesota Court of Appeals. The appellate court found that the juvenile court committed harmless error. *In re Welfare of W.H.G.*, No. A08-1996, 2009 WL 1684487, at *6 (Minn. Ct. App. June 16, 2009), *review denied* (Minn. Aug. 26, 2009).

Appellant was charged in Second District Court by adult criminal complaint of second-degree intentional murder, pursuant to Minn. Stat. § 609.19.1(1). (App. 12) The complaint was amended to include second-degree felony murder in violation of Minn. Stat. § 609.19.2(1). (App. 19) A jury trial was held, Hon. Gary W. Bastian presiding. The lesser included offense of second-degree manslaughter was also submitted to the jury. (T11 15-16) The jury acquitted Appellant of second-degree intentional murder, but found Appellant guilty of second-degree felony murder and second-degree manslaughter. (App. 26-28) Appellant was sentenced to 180 months, the upper range of Minnesota Sentencing Guidelines. (App. 29-30)

¹ Appellant was born on December 6, 1992. At the time of the incident, Appellant was fifteen years-old.

STATEMENT OF THE FACTS

On August 23, 2008, Appellant William Grigsby Jr. attended a party at a residence in St. Paul. *State v. Grigsby*, A10-1686, 2011 WL 3557784, at *1 (Minn. Ct. App. Aug. 15, 2011). Appellant encountered the victim in the back yard at the party and offered to shake hands. *Id.* The victim rebuffed Appellant's offer to shake hands, and shortly thereafter, Appellant rapidly shot six shots from a .44 caliber gun. *Id.* One bullet struck and killed the victim. *Id.* Appellant fled, and police arrested Appellant after witnesses identified him as the shooter. *Id.*

On August 27, 2008, a juvenile delinquency petition was filed in Ramsey County Juvenile Court, alleging that Appellant committed second-degree intentional murder, in violation of Minn. Stat. § 609.19, subd. 1(1) (2008). (App. 1) After a contested certification hearing, the proceeding was certified for trial in adult court on the sole offense of second-degree intentional murder. (App. 3) Appellant appealed certification. The Minnesota Court of Appeals found that the juvenile court erred under the prior-record-of-delinquency factor, but held that the error was harmless because the seriousness of the alleged offense factor supported certification. *Welfare of W.H.G.*, 2009 WL 1684487, at *6. Appellant was charged by criminal complaint with second-degree intentional murder on October 16, 2008. (App. 12)

One week before trial in May 2010, the state amended the complaint to add a charge of second-degree felony murder pursuant to Minn. Stat. § 609.19.2(1). (App. 19) At trial, Appellant testified that he was surrounded by East Side Boys gang members, and that he was positive that he was going to "get jumped." (T8 128) In addition to second-

degree intentional murder and felony murder, the lesser-included offense of second-degree manslaughter was also presented to the jury. (T11 15-16) The jury found Appellant not guilty of second-degree intentional murder but guilty of second-degree felony murder and second-degree manslaughter. (App. 26-28) Appellant was sentenced to 180 months, the upper range of the sentencing guidelines, for second-degree felony murder. (App. 29-30)

Appellant appealed his convictions, arguing that the district court did not have subject-matter jurisdiction over the amended and lesser included offenses. *Grigsby*, 2011 WL 3557784, *1. The court of appeals affirmed Appellant's convictions holding that "certification under Minn. Stat. § 260B.125 is not offense-specific, and the district court had subject matter jurisdiction over all offenses arising out of the conduct that gave rise to the certification." *Id.* at *7. Appellant petitioned the Minnesota Supreme Court for further review on September 14, 2011. On October 26, 2011, the Supreme Court granted Appellant's petition for review.

ARGUMENT

I. THE DISTRICT COURT LACKED SUBJECT-MATTER JURISDICTION TO CONVICT AND SENTENCE APPELLANT OF OFFENSES NOT SPECIFIED IN THE CERTIFICATION ORDER.

“Statutory construction is a question of law, which [the appellate] court reviews de novo.” *In re Kleven*, 736 N.W.2d 707, 709 (Minn. Ct. App. 2007). The appellate courts review questions of subject-matter jurisdiction de novo. *State v. Ali*, A10-1737, 2011 WL 4809219, at *6 (Minn. Oct. 12, 2011) (citing *Burkstrand v. Burkstrand*, 632 N.W.2d 206, 209 (Minn. 2001)).

Minn. Stat. § 260B.125, subd. 1 states, “When a child is alleged to have committed, after becoming 14 years of age, an offense that would be a felony if committed by an adult, the juvenile court may enter an order certifying the proceeding for action under the laws and court procedures controlling adult criminal violations.” The court of appeals held that “certification under Minn. Stat. § 260B.125 is not offense-specific, and the district court had subject-matter jurisdiction over all offenses arising out of the conduct that gave rise to the certification.” *Grigsby*, 2011 WL 3557784, at *7. However, section 260B.125 is silent on whether certification is offense-specific. Section 260B.125 could reasonably be interpreted to mandate offense-specific certification, depriving the district court of jurisdiction over offenses not specified in the certification order. It follows that Minn. Stat. § 260B.125 is ambiguous, and the court must determine the legislature’s intent on this issue. *State v. Leathers*, 799 N.W.2d 606, 608 (Minn. 2011) (finding that a statute is ambiguous when the language is subject to more than one reasonable interpretation).

A. Legislative Intent Favors Offense-Specific Certification.

The primary goal in statutory interpretation is to give effect to the intent of the legislature. Minn. Stat. § 645.16 (“The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature.”); *see also, In re Welfare N.F.*, 749 N.W.2d 802, 806 (Minn. 2008). The legislature had the clear intent to make laws dealing with juvenile delinquency, and codified its purpose for enacting juvenile delinquency laws. *State v. Vang*, 788 N.W.2d 111, 118 (Minn. 2010) (Dietzen, J. concurring) (quoting *In re Welfare of K.A.A.*, 410 N.W.2d 836, 838 n. 4 (Minn. 1987)). The legislature instructs that the Juvenile Court Act shall be liberally construed to “recognize the unique characteristics and needs of children.” Minn. Stat. § 260B.001, subd. 2. Application of a statute is to be determined in the light of the statutory purpose as a whole. *See, e.g., Dahlberg v. Young*, 42 N.W.2d 570, 574 (Minn. 1950). Accordingly, offense-specific certification effectuates the purpose of the Juvenile Court Act by recognizing the unique characteristics and needs of children.

Similarly, the rule of lenity favors offense-specific certification. Whenever there is ambiguity about the scope of a criminal statute, the court must “resolve all reasonable doubts about the legislative intent in favor of the defendant.” *State v. Haas*, 159 N.W.2d 118, 120 (1968). A statute’s penal features must be strictly construed and its remedial features liberally construed. *Id.*; *see also, State v. Moseng*, 95 N.W.2d 6, 11 (1959); *State v. Shevlin-Carpenter Co.*, 108 N.W.2d 935, 936 (1906)). In the present case, “if there is to be a presumption about the legislature’s intent regarding juvenile sentencing jurisdiction, the past interpretive practices of [the Minnesota Supreme Court] indicate that

juvenile court jurisdiction and its well tailored dispositions should prevail.” *State v. Behl*, 564 N.W.2d 560, 572 (Minn. 1997) (Keith, C.J. dissenting).

Additionally, Minn. Stat. § 260B.125, read as a whole, supports the legislature’s intent of offense-specific certification. Minn. Stat. § 260B.125, subd. 1 specifies “when a child is alleged to have committed ... *an offense* ... the juvenile court may enter an order certifying the proceeding.” (emphasis added) Similarly, Subdivision 2 states that a certification order must contain a finding of probable cause on “the *offense alleged* by delinquency petition.” Minn. Stat. § 260B.125, subd. 2 (emphasis added). Moreover, “the seriousness of the *alleged offense*” is one of two factors to be given greater weight when determining whether the juvenile court should enter a certification order. Minn. Stat. § 260B.125, subd. 4 (emphasis added). Also, Subdivision 5 provides an exception to other provisions of Section 260B.125 only “if the child is convicted of *the offense or offenses* for which the child was prosecuted pursuant to the order of certification.” Minn. Stat. § 260B.125, subd. 5 (emphasis added). In total, Section 260B.125 employs the word “offense” sixteen (16) times. A particular provision of a statute must be read in context with other provisions of the same statute. *See, e.g., ILHC of Eagan, LLC v. County of Dakota*, 693 N.W.2d 412 (Minn. 2005). Therefore, Minn. Stat. § 260B.125, read as a whole, illustrates the legislature’s intent for offense-specific certification.

Furthermore, the court of appeals skewed the legislature’s intent by reading language into Section 260B.125 while dismissing a significant term. Minn. Stat. § 260B.125, subd. 7 states, “When the juvenile court enters and order certifying an *alleged violation* the prosecuting authority shall proceed with the case as if the jurisdiction of the

juvenile court had never attached.” Like the legislature’s use of the word “offense” throughout Section 260B.125, the words “alleged violation” signify the legislature’s intent to create offense-specific certification proceedings. The court of appeals rejected this proposition, but instead, concluded that the legislature intended the district court to have jurisdiction over “any additional related charges arising out of the same behavioral incident.” *Grigsby*, 2011 WL 3557784, at *7. However, “a statute should be interpreted, whenever possible, to give effect to all of its provisions, and no word, phrase, or sentence should be deemed superfluous, void, or insignificant.” *State v. Larivee*, 656 N.W.2d 226, 229 (Minn. 2003) (citation omitted). And, the letter of law may not be disregarded under pretext of pursuing its spirit. *Kearns v. Julette Originals Dress Co.*, 126 N.W.2d 266, 269 (Minn. 1964). Therefore, the court of appeals erred by disregarding a significant term of Minn. Stat. § 260B.125 and reading language into the statute. This erred skewed the legislature’s intent to create offense-specific certification proceedings.

Finally, fundamental notions of fairness support offense-specific certification. The legislature intended the Juvenile Court Act to be pursued through means that are “fair and just” to “give children access to opportunities for personal and social growth.” Minn. Stat. § 260B.001, subd. 2. The unavoidable consequence of the court of appeal’s reasoning is that a child who is certified on one specific offense but later acquitted of the same enumerated offense faces “the harsher sentencing regime that the legislature crafted for adult perpetrators.” *Behl*, 564 N.W.2d at 571 (Keith, C.J. dissenting). Appellant was sentenced to 180 months in adult prison, despite the fact that his presumptive sentence was 150 months according to the Minnesota Sentencing Guidelines. This sentence and

conviction defiles the legislature's presumption against absurd and unreasonable results. See Minn. Stat. § 645.17 (1). Thus, fundamental notions of fairness support the legislature's intent for offense-specific certification proceedings.

B. Minnesota Supreme Court Precedent and the Rules of Juvenile Delinquency Procedure Favor Offense-Specific Certification.

In *State v. Behl*, the Minnesota Supreme Court relied upon a rule of juvenile procedure to determine the scope of the district court's jurisdiction. 564 N.W.2d 560. The Court found that under Minn. Stat. § 260.015 (1996), the automatic certification statute, "juvenile court jurisdiction terminates all proceedings arising out of the same behavioral incident." *Id.* at 563, 569 (quoting Minn. R. Juv. P. 18.08, subd. 1 (1996)). The Court directly quoted and applied a rule of juvenile procedure to determine the scope of the district court's jurisdiction.

Minnesota Rule of Juvenile Delinquency Procedure 18.07, subd. 2(A)(1), the controlling rule in the present case, states "adult court prosecution is to occur on the *alleged offense(s) specified* in the certification order."² (emphasis added) To the extent the rule concentrates on "offenses," certification of a juvenile for adult prosecution of an alleged offense should not automatically expose the juvenile to adult prosecution for charges other

² The complete text of Minn. R. Juv. Delinq. P. 18.07, subd. 2(A)(1) states,

- (A) *Certification of the Alleged Offense for Prosecution under the Criminal Laws.* If the court orders a certification for adult prosecution, the order shall state:
- (1) that adult court prosecution is to occur on the alleged offense(s) specified in the certification order.

than those specified in the certification order. The court of appeals rejected this argument reasoning that the legislature's use of the word "proceeding" in Minn. Stat. § 260B.125, subd. 1 provides the district court with jurisdiction over all charges arising out of the same behavioral incident as the offense listed in the certification order. *Grigsby*, 2011 WL 3557784, at *7. However, the appellate court's interpretation of the word "proceeding" is misguided.

The meaning of the term "proceeding," according to its common usage, is "a particular step or a series of steps, adopted for accomplishing something." *Rice v. United States*, 356 F.2d 709, 712 (8th Cir. 1966). Similarly, Black's Law Dictionary defines "proceeding" as "[a]n act or step that is part of a larger action." Black's Law Dictionary 568 (9th ed. 2009). Therefore, the common meaning and dictionary definition of the word "proceeding" each refer to a procedural process. *Montgomery Ward & Co. v. Snuggins*, 103 F.2d 458, 461 (8th Cir. 1939) (holding that statutory language must be understood in its plain, ordinary and popular sense).

Moreover, the rules of juvenile delinquency procedure "govern the procedure for all delinquency matters in the juvenile courts." *In re Welfare of S.J.D.*, 617 N.W.2d 614, 616 (Minn. 2000); *see also, Vang*, 788 N.W.2d at 115 ("[T]he Juvenile Court Act and the Minnesota Rules of Delinquency Procedure define the process by which a juvenile court terminates its original and exclusive jurisdiction."); *In re Welfare of Hartung*, 304 N.W.2d 621 (Minn. 1981); *In re Welfare of C.A.W.*, 579 N.W.2d 494, 497 (Minn. Ct. App. 1998) (holding that the "combined provisions" of the juvenile code and rules of juvenile procedure establish the necessary findings for a valid juvenile disposition);

Minn. R. Juv. Delinq. P. 1.01 (stating that rules of juvenile procedure “govern the procedure in the juvenile courts of Minnesota for all delinquency matters”); 7 Henry W. McCarr & Jack S. Nordby, *Criminal Law and Procedure* 2 (3rd ed. 2001) (“Criminal proceedings in Minnesota are governed by rules arising from a variety of sources, the sometimes intricate interplay of which should be kept in mind by the conscientious practitioner.”). It follows that the word “proceeding” in Minn. Stat. § 260B.125, subd. 1 only refers to the procedural certification process as a whole, while Minn. R. Juv. Delinq. P. 18.07 dictates the requirements of the certification order, and the juvenile court retains “original and exclusive” jurisdiction over offenses that are not specified in the certification order. Minn. Stat. § 260B.101, subd. 1.

C. Public Policy Favors Offense-Specific Certification.

The United States Supreme Court and foreign case law support offense-specific certification. The Supreme Court has clarified that juveniles warrant special consideration because of their impulsivity, less-developed decision-making skills, and susceptibility to outside pressures. *Cf., J.D.B. v. North Carolina*, 131 S.Ct. 2394, 2403-2405 (2011). In 1966, the United States Supreme Court determined that waiver of juvenile jurisdiction is a “critically important” part of criminal proceedings where a juvenile stands accused. *Kent v. United States*, 383 U.S. 541, 553 (1966). More recently, on May 17, 2010, the Supreme Court questioned the constitutionality of Minn. Stat. § 260B.125 in *Graham v. Florida*. 130 S.Ct. 2011, 2035 (2010) (listing Minnesota as a jurisdiction that permits life without parole

for juvenile nonhomicide offenders). These cases demonstrate that juveniles are a separate class for whom adult sentences should face strong scrutiny.

Additionally, foreign case law supports offense-specific certification. In *Gibson v. State*, the Wisconsin Supreme Court held that “[a] juvenile court can only waive its jurisdiction with respect to charges of delinquency that are actually before it.” 177 N.W.2d 912, 915 (1970). In *Gibson*, a juvenile was charged in a single petition with two separate charges, but it was unclear whether the juvenile had been certified on both charges. *Id.* at 914. The Wisconsin Supreme Court held that “the conviction is void *ab initio* unless the juvenile court has ceded its jurisdiction to the criminal court in regard to each particular charge contained in the information.” *Id.* at 915. *See also, Miller v. Quatsoe*, 348 F. Supp. 764 (E.D. Wis. 1972) (holding that waiver of a juvenile under Wisconsin law is only effective with regard to the specific charge alleged); *E.H.N. v. Willis*, 350 So.2d 829, 831 (Fla. App. 1977) (finding that certification statute “transforms the child into an adult for the sole purpose of dealing with the alleged violation pending in the juvenile division and no other”); *Benge v. Commonwealth*, 346 S.W.2d 311 (Ky. 1961) (concluding that circuit court lacked authority to try a juvenile defendant for an offense different from the one described in the certification order); *State v. Dinkins*, 627 P.2d 523, 526 (Utah 1981) (determining that juvenile court judge retains sole authority to certify a juvenile “for a particular offense”). Therefore, foreign jurisdictions that have faced a similar question have found that juveniles can only be transferred to adult court on offenses that are specifically listed in the certification order. Accordingly, public policy strongly favors offense-specific certification. Therefore, Appellant’s convictions are void for lack of subject-matter jurisdiction.

II. IF THE TRIAL COURT RETAINED JURISDICTION OVER THE AMENDED AND LESSER INCLUDED OFFENSES, THEN MINN. STAT. § 260B.125, AS APPLIED, DEPRIVED APPELLANT OF HIS RIGHT TO PROCEDURAL DUE PROCESS.

Whether sufficient due process is satisfied requires weighing the private interest that will be affected by the official action against the government's asserted interest and the fiscal and administrative burden that the additional procedural requirement would require. *Ali*, 2011 WL 4809219, at *9 (citing *Matthews v. Eldridge*, 424 U.S. 319, 335 (1976)). The balancing test requires weighing "the risk of an erroneous deprivation of [the private] interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards." *Eldridge*, 424 U.S. at 335.

A. Section 260B.125 Deprived Appellant of a Protectable Liberty Interest.

Imposition of juvenile court jurisdiction is a protectable liberty interest. *Behl*, 546 N.W.2d at 567 (citing *Kent*, 383 U.S. at 553-56). Juvenile court "is another system of justice that necessarily includes a different penalty structure, and a different philosophy of rehabilitation." *Id.* at 567 (citing *United States v. Bland*, 472 F.2d 1329, 1348 (D.C.Cir. 1972) (Skelly Wright, C.J., dissenting), *cert. denied*, 412 U.S. 909 (1973)). Juvenile court provides the child with certain procedural protections not available in adult court, such as privacy of the proceedings and records. *Ali*, 2011 WL 4809219, at *6. Therefore, Appellant had a protectable liberty interest in juvenile court jurisdiction and disposition on the amended and lesser included offenses.

The court of appeals decision deprived Appellant of the imposition of juvenile court jurisdiction. In the present case, the juvenile court found that five out of the six certification factors favored certification to district court. *Welfare W.H.G.*, 2009 WL 1684487, at *1. The court of appeals affirmed the certification order, but found that the juvenile court erred by considering gang-related activity and truancy under the prior-record-of-delinquency factor. *Id.* at *6. This factor is mandated by statute to be given more weight. *Id.* (citing Minn. Stat. § 260B.125, subd. 4). The court of appeals held that since the seriousness of the offense factor, the other factor to be given greater weight, favored certification, the juvenile court's error was harmless beyond a reasonable doubt. *Id.* at *6. However, Appellant was acquitted of second-degree intentional murder, the sole offense considered in the certification proceedings, and the juvenile court arguably could not support a finding that Appellant should be certified on the amended and lesser included offenses. While Appellant concedes that, regardless of the offense charged, there was a loss of life and use of a firearm, the lack of intent to murder in the amended and lesser included offenses may have been the deciding factor as to whether those offenses could support certification. And when there's a dispute as to whether a juvenile should be subject to juvenile or district court jurisdiction, "juvenile court jurisdiction and its well tailored dispositions should prevail." *Behl*, 564 N.W.2d at 572 (Keith, C.J. dissenting) (citing *Shevlin-Carpenter Co.*, 108 N.W.2d at 936). Accordingly, the court of appeals' decision deprived Appellant of his right to a certification hearing on the amended and lesser-included offenses and juvenile court jurisdiction.

Furthermore, the court of appeals decision creates a risk of erroneous deprivation of the imposition of juvenile court jurisdiction on offenses greater than those specified in the certification order. The court of appeals held that “the district court had subject-matter jurisdiction over *all* offenses arising out of the conduct that gave rise to the certification.” *Grigsby*, 2011 WL 3557784, at *7. This holding necessarily reaches offenses greater than those listed in the certification order. For example, had Appellant been certified on the sole charge of second-degree felony murder, under the appellate court’s holding, the State may have amended the complaint to include second-degree intentional murder. Amending the complaint to include a greater offense would deprive the juvenile court of its “original and exclusive” jurisdiction over the greater offense. Minn. Stat. Sec. 260B.101, subd. 1. Accordingly, the court of appeals holding creates a risk that a juvenile defendant will be deprived of juvenile court jurisdiction on offenses greater than those specified in the certification order.

B. One Additional Procedural Safeguard Would Eliminate the Risk to Juveniles and Impose No Fiscal or Administrative Burdens on the State.

In this case, the State should have been required, on due process principles, to provide notice to Appellant of all charges he would face in adult court. The court of appeals’ decision should be reversed because the State violated Appellant’s due process rights by not asserting the charge for which he was convicted, felony murder, at the time he was certified on the offense of second-degree intentional murder.

As stated above, the due process analysis involves a balancing test that weighs the risk of erroneous deprivation through procedures used with the value of providing additional or substitute procedures. Here, prior to charging the case, the State conducted a complete and thorough investigation of Appellant's conduct and determined that the alleged behavior warranted a charge of second-degree intentional murder. Based on its investigation and analysis of the case, the State also decided to request removal of the case from juvenile court through certification. The State requested certification only on the charge of second-degree intentional murder – no other charges were presented or asserted at the certification hearing.

It was not until one week before trial, and well after Appellant's alleged offense had been certified for removal from juvenile court that the State decided to amend the complaint to include a charge of felony murder. This decision deprived Appellant of his right to contest certification based on the charge of felony murder, a much less serious offense than second-degree intentional murder. Arguably, if the State had included this charge at the time of the certification hearing, the case may not have been certified. Accordingly, there is a very real risk that juveniles will be deprived of their right to contest certification if the State is allowed to amend its complaint to include less serious offenses after the case has been certified.

Conversely, requiring the State to include all possible charges at the time of certification will not add any fiscal or administrative burden. The State will have its investigation fully completed at the time of certification. In this case, there were no new facts or evidence that caused the State to request the amendment of the complaint.

Apparently, the State was simply hedging its bet to gain a conviction in the event its evidence did not sustain the second-degree intentional murder charge – the very scenario that played out at trial. It will require no added money or time to require the State to include any and all charges in its certification request. Accordingly, in order to protect the due process rights of Appellant and all juveniles who face certification, the State should not be allowed to amend a complaint after offenses have been specified in the certification order, and the State should be strictly required to include all charges it will pursue against a juvenile in its certification request. Therefore, if the district court had jurisdiction over the amended and lesser included offenses, then Minn. Stat. § 260B.125, as applied, deprived Appellant of his constitutional right to procedural due process.

CONCLUSION

For all the reasons stated herein, Appellant respectfully requests that his convictions be vacated.

Dated: December 15, 2011

Respectfully submitted,

By:



Andrew G. Birkeland
Special Assistant State Public Defender
Atty. Reg. No. 391080

510 Marquette Avenue
Suite 200
Minneapolis, MN 55402
Ph. (612) 284-6962
Fax (612) 342-2685

ATTORNEY FOR APPELLANT