522 P.3d 814
Supreme Court of Nevada.

In the MATTER OF B.J.W.-A., Date of Birth: 10/21/2002, a Minor 18 Years of Age.
B.J.W.-A., Appellant,
v.
The State of Nevada, Respondent.
In the Matter of B.J.W.-A., Date of Birth: 10/21/2002, a Minor 19 Years of Age.
B.J.W.-A., Appellant,
v.
The State of Nevada, Respondent.

No. 83621, No. 84276
|
Filed January 12, 2023

Synopsis

Background: In delinquency proceeding arising from alleged conduct that, if committed by adult, would constitute lewdness with a child, the District Court, Clark County, David S. Gibson, Jr., J., granted State's motion to transfer case to criminal court and denied juvenile's motion to accept transfer of case back to juvenile court. Juvenile appealed.

Holdings: The Supreme Court, en banc, Herndon, J., held that:

statutory exception to felony designation of offense of lewdness with a child for perpetrators under the age of 18, stating that "[a] person who is under the age of 18 years and who commits lewdness with a child under the age of 14 years commits a delinquent act," does not deprive juvenile courts of the ability to certify minor defendants as adults when the circumstances warrant such certification, and

in instant case, juvenile court acted within its discretion in certifying juvenile to stand trial as adult.

Affirmed.

Pickering, J., filed dissenting opinion.

Procedural Posture(s): Appellate Review; Juvenile Delinquency Proceeding.

Consolidated appeals from juvenile court orders certifying appellant to stand trial as an adult. Eighth Judicial District Court, Family Division, Clark County; David S. Gibson, Jr., Judge.

Attorneys and Law Firms

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BEFORE THE SUPREME COURT, EN BANC.[1]

[1] The Honorable Patricia Lee and the Honorable Linda Marie Bell did not participate in the decision of this matter.

OPINION

By the Court, HERNDON, J.:

***815** In 2015, the Legislature amended the statute criminalizing lewdness with a child, NRS 201.230, by redefining the crime based on the ages of the perpetrator and the victim. Under these amendments, if the victim is under the age of 14, the crime constitutes a category A felony, unless an exception applies. Relevant here, an exception to the category A felony designation exists for perpetrators under the age of 18 and recognizes the act as delinquent, rather than criminal, in those circumstances. Contrary to appellant's argument that, based on this exception, any defendant under the age of 18 charged with lewdness with a child must necessarily be tried as a juvenile, we now clarify that nothing in the amendment to NRS 201.230 limited

the juvenile court's authority to certify a juvenile defendant charged with violating NRS 201.230 to be tried as an adult. Thus, we conclude that the juvenile court did not abuse its discretion in certifying appellant to stand trial as an adult.

FACTS AND PROCEDURAL HISTORY

In August 2021, 14-year-old Z.W. disclosed to her parents and others that her then 18-year-old half-brother, B.J.W.-A. (B.J.), had been sexually abusing her. The abuse was alleged to have begun when B.J. was around 11 years old and Z.W. was 7 years old. Allegedly, B.J. repeatedly fondled and ejaculated onto Z.W. from the time she was 7 until she was 14, at which point B.J. would have been 18. Officers investigating the report learned that B.J. may have also sexually abused two of his other half-sisters, A.W. and C.W. Thereafter, C.W. likewise alleged that B.J. had repeatedly fondled and attempted to have sex with her. This abuse was alleged to have begun when B.J. was around 15 years old and it took place from the time C.W. was 10 until she was 13, at which point B.J. would have been 18. Evidence emerged that B.J. would hit Z.W. and C.W. when they would resist and that he once threatened to kill C.W. with a knife. Both Z.W. and C.W. stated they had refrained from reporting the abuse because they were afraid of B.J. Lastly, five-year-old A.W. similarly reported that B. J. had once done something to her vagina using a part of his body, although she did not disclose the details because B.J. had told her to keep it a secret. Because the alleged abuse of Z.W., C.W., and A.W. was continuing and occurred over an approximately seven-year time frame, the alleged incidents appear to have occurred both definitively before, and potentially after, B.J. turned 18.

The State filed a delinquency petition in juvenile court, alleging that B.J. committed five counts of lewdness with a child under the age of 14 between March 2018 and June 2021 in connection with the incidents with C.W. and Z.W. The State then filed a certification petition asking the juvenile court to transfer the case to criminal court. The juvenile court held a hearing on the matter and found the nature and seriousness of the charged offenses were "both heinous and egregious," given their repetitive nature and the victims' ages. The juvenile court further found that because of B.J.'s age, there was insufficient time to provide him with any warranted rehabilitative services before the juvenile court lost jurisdiction, and moreover, that because B.J. was 18 when he allegedly committed one or more of the offenses, all offenses should be tried together in the same court. The court therefore certified B.J. for criminal proceedings as an adult.

***816** B.J. appealed the decision and then filed a motion in juvenile court under the exceptional circumstances clause in NRS 62B.390(3)(b),[2] requesting that the court accept the transfer of his case back to juvenile court. He argued that pursuant to NRS 201.230(5), lewdness with a child under the age of 14 committed by a person under the age of 18 is an act of delinquency and, therefore, a juvenile alleged to have committed such an act cannot be certified for adult proceedings. Soon after B.J. filed his motion, the State amended the delinquency petition to add additional counts for other acts of lewdness against Z.W. and C.W. between March 2018 and June 2021 and moved to certify B.J. as an adult in relation to those additional charges. The juvenile court denied B.J.'s motion to accept jurisdiction and granted the State's motion to certify B.J. for criminal proceedings on the additional charges. B.J. appealed that decision as well.

2 This provision was previously located at NRS 62B.390(5)(b). Because the portions of NRS 62B.390 at issue in this appeal were not substantively changed by the 2021 amendments, *see* 2021 Nev. Stat., ch. 515, § 4, at 3421-22, we cite the current statute in our discussion.

DISCUSSION

B.J. argues that under NRS 201.230(5), juveniles who commit lewd acts on children under the age of 14 commit delinquent acts and are therefore excluded from felony sanctions and cannot be certified as adults for criminal prosecutions. We disagree.[3]

3 Because we conclude NRS 201.230 does not prevent the juvenile court from certifying a juvenile as an adult, we reject B.J.'s additional argument that certifying him as an adult violated the separation of powers doctrine.

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We review a juvenile court's decision to certify an accused to answer in adult court for an abuse of discretion. *In re Eric A.L.,* 123 Nev. 26, 33, 153 P.3d 32, 36-37 (2007). However, we review questions of statutory construction de novo. *Jackson v. State*, 128 Nev. 598, 603, 291 P.3d 1274, 1277 (2012). When the language of the statute is plain and unambiguous, this court gives that language its ordinary meaning and does not look beyond the statute. *Koller v. State*, 122 Nev. 223, 226, 130 P.3d 653, 655 (2006). Where possible, we interpret statutes within a common scheme harmoniously with each other and in accordance with those statutes' general purpose. *Washington v. State*, 117 Nev. 735, 739, 30 P.3d 1134, 1136 (2001).

NRS 62B.330(1) establishes that the juvenile court has exclusive jurisdiction over a child who is alleged to have committed a delinquent act, and NRS 62B.330(2)(c) provides that a child commits a delinquent act by committing an act designated as a criminal offense pursuant to Nevada law. Nevertheless, NRS 62B.390(1)(a) allows the juvenile court to certify a child for proper criminal proceedings as an adult if the child "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" of the offense.

NRS 201.230 provides that a person is guilty of the crime of lewdness with a child if he or she "willfully and lewdly commits any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body ... of a child." Previously, NRS 201.230 only criminalized the specified conduct when it was perpetrated against a child under the age of 14. At that time, the statute also had no age designation for the perpetrator of the crime. However, in 2015, the Legislature made two significant changes to the statute that created separate categories based on the age of the perpetrator and the age of the victim. Specifically, the Legislature amended NRS 201.230(1)(a) to specify that a person is guilty of lewdness with a child when the person is 18 years old or older and the child is under the age of 16. 2015 Nev. Stat., ch. 399, § 15, at 2241. Additionally, the Legislature added subsection 1(b) to NRS 201.230 to create a separate subsection for minors by providing that a person under the age of 18 can also be guilty of lewdness with a child but only if the person commits the act on a child under the age of 14. *Id.* NRS 201.230(2) provides that the crime of lewdness with a child under the age of 14 is a category A felony, unless an exception applies. In 2015, the Legislature included a new exception to that punishment in ***817** NRS 201.230(5), which provides, "[a] person who is under the age of 18 years and who commits lewdness with a child under the age of 14 years commits a delinquent act." 2015 Nev. Stat., ch. 399, § 15, at 2241.

The legislative history from these amendments demonstrates that the legislators were wary of criminalizing what they viewed as normal, albeit immature, adolescent behavior. For example, at a February 2015 committee meeting, legislators repeatedly voiced concerns over putting harsh penalties on immature school-aged children for "doing what high school students do," mentioning situations where a 17-year-old has a 15-year-old girlfriend or where 13- and 14-year-olds kiss each other. *Hearing on A.B. 49 Before the Assemb. Comm. on Judiciary*, 78th Leg., at 15-17 (Nev., Feb. 13, 2015). Proponents of the amendments explained that the juvenile court would generally handle such cases, but that in certain circumstances—such as where the perpetrator engaged in repeated sexual misconduct—the juvenile court retained discretion to certify the minor for adult proceedings to protect society, and no legislator indicated that certification should be removed as an option. *Id.* Accordingly, the inclusion of NRS 201.230(5)'s exception here was necessary to ensure that minors who commit lewdness with a child are not automatically subject to a mandatory felony prosecution in adult court.[4]

[4] The 2015 legislative amendment expressly created a unique felony criminal category for a person under the age of 18, as stated in NRS 201.230(1)(b), which necessitated the inclusion of NRS 201.230(5)'s delinquent act designation. The inclusion of such a designation in other criminal statutes, which lack NRS 201.230(1)(b)'s unique language, is unnecessary because the general rule that a child commits a delinquent act if the child commits a crime is recognized in NRS 62B.330(2)(c).

A plain reading of the 2015 amendments and NRS Chapter 62B does not demonstrate that the inclusion of NRS 201.230(5) deprived juvenile courts of the ability to certify minor defendants as adults when the circumstances warrant

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such certification. The 2015 amendments did not include any changes to the juvenile court's jurisdiction under NRS 62B.330. When a juvenile commits a crime under NRS 201.230(1), NRS 201.230(5) provides that the juvenile commits a delinquent act and is subject to the jurisdiction of the juvenile court. But under NRS 62B.390(1)(a), the juvenile court has the discretion to certify the juvenile as an adult if the crime, *had it been committed as an adult,* would have been a felony. Nothing in the 2015 amendments expressly barred the juvenile court from exercising its discretion under NRS 62B.390 and certifying a juvenile charged under NRS 201.230 as an adult. *Cf. Washington,* 117 Nev. at 739, 30 P.3d at 1136 (explaining we favor interpreting statutes within a scheme in harmony with one another). The Legislature certainly knew how to create a limitation on the juvenile court's discretion to certify a juvenile defendant as an adult, as it has limited the juvenile court's ability to certify juveniles under the age of 14 as adults, *see* NRS 62B.390(1)(a), but it created no such limitation here. Instead, the Legislature merely recognized that a person under the age of 18 who commits a lewd act on a child under the age of 14 is subject to the juvenile court's jurisdiction. NRS 201.230(5). The Legislature did not limit what occurs once the person is subject to the juvenile court's jurisdiction.

Further, the Legislature did not create a mandatory rule in NRS 201.230(5) requiring that all minors charged with lewdness with a child be adjudicated only in juvenile court. The Legislature could have done so had it included any such mandatory language, such as "must always be treated as," "can only be treated as," or "shall be treated as." Yet, the Legislature did not include such language. And under the plain language that the Legislature did choose, we cannot construe that statute as limiting the juvenile court's discretion to certify a minor charged with lewdness with a child as an adult under NRS 62B.390.[5]

[5] We conclude no reasonable doubt exists here as to NRS 201.230(5)'s interpretation, and we do not apply the rule of lenity to interpret the statute in B.J.'s favor. *See State v. Javier C.*, 128 Nev. 536, 541, 289 P.3d 1194, 1197 (2012) (explaining the rule of lenity applies to ambiguous statutes); *see also* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 299 (2012) (explaining the rule of lenity applies when, "after all the legitimate tools of interpretation have been applied, a reasonable doubt persists" (internal quotation marks omitted)).

***818** Here, the juvenile court has jurisdiction over B.J., as he allegedly committed lewdness with a child under NRS 201.230(1), which is a delinquent act under NRS 201.230(5). But under NRS 62B.390(1)(a), the juvenile court had discretion to certify B.J. for criminal proceedings as an adult because he was charged with offenses that would have been a felony had he been an adult, *see* NRS 201.230(1)-(2), and he was over the age of 14 at the time of the offenses.[6] Given the nature and severity of B.J.'s alleged conduct toward Z.W. and C.W.—repeatedly and habitually sexually abusing them over the course of years and physically abusing them when they tried to resist—we agree this conduct falls far outside the type of adolescent behavior the Legislature was hesitant to criminalize and is the type of situation that warrants certifying and trying the perpetrator as an adult. *Cf. In re Seven Minors*, 99 Nev. 427, 434-35, 664 P.2d 947, 952 (1983) (setting forth criteria for the juvenile court to consider in evaluating whether to transfer a juvenile to district court, including the nature and seriousness of the charged offenses), *holding modified by In re William S.*, 122 Nev. 432, 440-41, 132 P.3d 1015, 1021 (2006). Therefore, the juvenile court did not abuse its discretion by certifying B.J. as an adult.

[6] While we are sympathetic to B.J.'s argument that he needs rehabilitative treatment instead of incarceration, the juvenile court already considered his argument and concluded that, given B.J.'s age and the extent and seriousness of his alleged conduct, there was insufficient time to provide effective rehabilitative services, and we conclude this decision was not an abuse of discretion. *See* NRS 62B.410 (explaining a juvenile court only has jurisdiction over a child until the child turns 21 years old); *see also Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008) (explaining this court does not reweigh evidence on appeal).

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CONCLUSION

Under NRS 201.230 and NRS 62B.390, juvenile courts have the discretion to certify minors who commit lewd acts for criminal proceedings as adults. Because the circumstances of this case support the court's decision to certify B.J. as an adult, we affirm.

We concur:

Stiglich, C.J.

Cadish, J.

Parraguirre, J.

PICKERING, J., dissenting:

The certification of minors to adult court subjects them to significantly harsher punishments and, as the State admitted at oral argument, significantly less chance of rehabilitation. Applying common principles of statutory interpretation, NRS 201.230 can most reasonably be read to make lewdness with a child, by a child, a delinquent act not amenable to adult court certification—subsection 5 of NRS 201.230 says: "A person who is under the age of 18 years and who commits lewdness with a child under the age of 14 years commits a delinquent act." But even accepting the majority's contrary reading as also supportable, the statute is subject to two competing interpretations and thus ambiguous. And because we are statutorily mandated to liberally construe juvenile laws to protect the child's interests, I would apply the rule of lenity and resolve the ambiguity in B.J.'s favor.

As an initial matter, under NRS 62B.390, a child may be certified to adult court if the child 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 of the offense. Under NRS 201.230(1), a person is guilty of lewdness with a child if the person is either (a) 18 years of age or older and the child is under 16 years of age or (b) under the age of 18 years and the child is under 14 years of age. It is plainly legally impossible, with or without the contested subsection 5, for an adult to violate NRS 201.230(1)(b) because an adult will never be under the age of 18 years. In my view, this should end the inquiry.

Moving to NRS 201.230(5), the majority incorrectly states that, without subsection 5, minors who commit lewdness with a child would be "automatically subject to a mandatory felony prosecution in adult court." The ***819** State explicitly rejected this contention at oral argument and conceded that, absent NRS 201.230(5), a violation of NRS 201.230(1)(b) would still be a delinquent act. This result accords with NRS 62B.330(3), enumerating four criminal categories that automatically route a child to adult court, none of which include lewdness with a child; NRS 62B.330(2)(c), specifying that a delinquent act includes "an act designated a criminal offense pursuant to the laws of Nevada"; and footnote 3 of the majority opinion, which calls NRS 201.230(1)(b) a "criminal category." Subsection 1(b) is a crime that does not fall within the automatic routing categories enumerated in NRS 62B.330(3). Therefore, a violation of NRS 201.230(1)(b) renders B.J. a delinquent youth, with or without subsection 5. The State's argument that subsection 5 is not superfluous because it "restates" the delinquency of the act is foreign to long-held principles of statutory interpretation. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 176 (2012) ("Because legal drafters should not include words that have no effect, courts avoid a reading that renders some words altogether redundant."). Because subsection 5 must mean *something,* it must restrain the juvenile court's discretion to certify. *See id.* ("If a provision is susceptible of (1) a meaning that gives it an effect already achieved by another provision ... and (2) another meaning that leaves both provisions with some independent operation, the latter should be preferred.").

NRS 201.230(5) is not the only statute that operates this way. Pursuant to NRS 202.300(1), a child under the age of 18 years who possesses unsupervised any firearm "commits a delinquent act," and the juvenile court "may order the detention of the child in the same manner as if the child had committed an act that would have been a felony if committed by an adult." Here, the phrase "a child who violates this subsection commits a delinquent act" is a *restraint* on the juvenile court's discretion. Otherwise, the second clause, *permitting* the juvenile court to order detention *as if the child were an adult* would be unnecessary

because the court could simply certify him to adult court on the State's motion. *See also* NRS 200.900(2)(b) (using the same language to address electronic bullying by a minor). If the phrase, "a child who violates this subsection commits a delinquent act," is a restraint on the juvenile court's discretion to certify in NRS 202.300(1), it should also be read as a restraint in NRS 201.230(5). *See* Scalia & Garner, *Reading Law*, *supra*, at 170 ("A word or phrase is presumed to bear the same meaning throughout a text ....").

Furthermore, the majority characterizes the 2015 amendments resulting in subsection 5 as evidence that the Legislature did not intend to limit the juvenile court's discretion to certify because they failed to "change[ ] ... the juvenile court's jurisdiction under NRS 62B.330" or limit certification under NRS 62B.390(1)(a). But NRS 200.900(2)(b) and NRS 202.300(1) impact the juvenile court's discretion without amending these two lodestar statutes.

Faced with the linguistic snarls of NRS 201.230, the majority understandably resorts to its legislative history. As it notes, legislators were clearly concerned with penalizing what they characterized as innocent sexual contact between minors close in age, specifically a 17-year-old with a 15-year-old girlfriend or 13- and 14-year-olds kissing. *See* Hearing on A.B. 49 Before the Assemb. Comm. on Judiciary, 78th Leg., at 15-17 (Nev., Feb. 13, 2015). However, neither the majority nor the State mentions that the 17-year-old could not even be *charged* under NRS 201.230(1)(b), which limits prosecution for children under 18 to those who act upon a child under the age of 14, while the 14-year-old kissing the 13-year-old *could* be charged. The 14-year-old's only hope, then, is to rely on NRS 201.230(5), which ensures their case is retained by the juvenile court. (One could argue that NRS 201.230(3) penalizes the 17-year-old for committing lewdness with a child 15 years of age, but subsection 3 requires that the person is first charged with lewdness, and the 17-year-old cannot be so charged under NRS 201.230(1)(b.).) Given that the Legislature was concerned about the fate of the 14-year-old, it would make sense that NRS 201.230(5) protects children from certification rather than making them vulnerable to it, as the majority suggests.

***820** Because the language of the statute is ambiguous and both sides can find support in the legislative history, I would, at minimum, find that the peculiar construction of NRS 201.230(5) merits application of the rule of lenity in B.J.'s favor. *See State v. Fourth Judicial Dist. Court*, 137 Nev. 37, 39, 481 P.3d 848, 850 (2021) (quoting Scalia & Garner, *Reading Law, supra,* at 299) ("If, 'after all the legitimate tools of interpretation have been applied, a reasonable doubt persists' ... the rule of lenity calls the tie for the defendant."). The majority contends that the rule of lenity is inapplicable because subsection 5 is unambiguous but relies heavily on the legislative history. While it is not unprecedented to look to the legislative history to give context to an unambiguous statute, it is highly unusual, and potentially misleading, to rely on it almost exclusively when the statute's meaning is "plain." *See* Scalia & Garner, *Reading Law*, *supra,* at 376 ("The more the courts have relied on legislative history, the less reliable that legislative history has become."). If the statute is ambiguous enough to merit extensive review of its history, we should not reject the rule of lenity out of hand, particularly when we are required by statute to liberally construct juvenile laws as would best promote care, guidance, and the child's best interests. NRS 62A.360; *see Commonwealth v. Manolo M.*, 486 Mass. 678, 160 N.E.3d 1238, 1248 (2021) (concluding, in light of a statute similar to NRS 62A.860, that "the rule of lenity is not only a canon of construction in the juvenile delinquency context, but also a statutory mandate").

As an important aside, I write to correct the misuse of the phrase "avoiding absurdity" as it appeared in the State's briefing and at oral argument. That phrase is a term of art, reserved for use when the suggested disposition "makes no substantive sense." Scalia & Garner, *Reading the Law, supra,* at 235. The State deemed absurd the result that a child who both sexually assaulted and committed lewd acts with a child under 14 could be certified under NRS 62B.390(2) (permitting, after certification of one offense, the certification of related offenses arising from the same facts), but a child who committed only lewd acts could not. That is rational in my view—sexual assault is a more severe offense. Nor would Nevada be the only state to prohibit certification to adult court for felony prosecution of a child charged with lewdness with a minor.[1] Regardless, the inability to certify minors who commit lewd acts is a policy choice, not an absurdity.

[1] *See, e.g.,* Ark. Code Ann. § 9-27-318(b) (permitting certification of 14-or 15-year-olds only for enumerated crimes, not including that state's equivalent to lewdness with a minor (sexual assault in the second degree under § 5-14-125)); Cal. Wolf. & Inst. Code § 707(a)(2) (confining certification of 14- or 15-year-olds for lewdness with a minor, *see* § 707(b)(6), to cases where the minor was not apprehended prior to the end of juvenile court jurisdiction); La. Child. Code art. 857 (restricting certification of any minor over 14 to enumerated crimes, which do not include lewdness with a minor).

Finally, B.J. did not challenge the integrity of the juvenile court's factual statements at his certification hearing. It is therefore unnecessary for the majority to rehash the details of the charges against him, as it was unnecessary for the State, at oral argument, to posit that the chances of B.J.'s rehabilitation were "essentially zero." These superfluous statements only serve to disparage the young people whom the State and the court are charged to protect and rehabilitate under the doctrine of *parens patriae*, even when they do terrible things. Left out of these sordid details is B.J.'s own sexual abuse at the hands of his older brother prior to his assaults. In deeming B.J. beyond help at this point in his young life, we condemn him to a lifetime of further trauma. Transferred children are five times more likely to be sexually assaulted in adult prison, Edward P. Mulvey & Carol A. Schubert, *Transfer of Juveniles to Adult Court: Effect of a Broad Policy in One Court,* Juvenile Justice Bulletin, Off. of Juv. Just. & Delinquency Prevention, U.S. Dep't of Just. (Dec. 2012), at 4, and more likely to reoffend, often with more violent crimes, Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, Juvenile Justice Bulletin, Off. of Juv. Just. & Delinquency Prevention, U.S. Dep't of Just. (June 2010), at 4. This fate should only be meted out in the rarest of circumstances, and not dispensed out of deference to an ambiguous statute easily ***821** amended by the Legislature. Accordingly, I dissent.

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522 P.3d 814, 139 Nev. Adv. Op. 1

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