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**In the Matter of William M. v. State of Nevada,
124 Nev. Adv. Op. No. 95 (November 26, 2008)¹**

Constitutional Law – Fifth Amendment Rights

Summary

Requirement that a juvenile incriminate himself to rebut certification presumption violates the Fifth Amendment right against self-incrimination.

Disposition/Outcome

NRS 62B.390(2)² and (3)³ violates juvenile's Fifth Amendment rights against self-incrimination. Requirement that a juvenile incriminate himself to rebut certification presumption violates the Fifth Amendment. Overruling *Marvin v. State*⁴, in part.

Factual and Procedural History

This is a consolidation of two matters for consideration.⁵

In re Williams

William, who was 17 years old at the time of the incident, was identified as the lookout during the robbery of a Roberto's Taco Shop. William was charged with conspiracy to commit robbery, burglary while in possession of a firearm, and robbery with the use of a deadly weapon. William was certified as an adult under NRS 62B.390(2) presumptive certification. William filed an opposition to the State's certification petition, attaching juvenile psychological reports detailing William's alcohol and drug abuse.

At his certification hearing, William stipulated to prosecutive merit. William argued that while there was clear and convincing evidence regarding his substance abuse, he was unable to rebut the presumption of adult certification by connected the substance abuse to the robbery because he denied any involvement. William argued the court to assume a hypothetical situation that if he had been there, his actions would have been influenced by his substance abuse.

The court orally responded that while William had clearly established a problem with substance abuse, he had not established a direct nexus between his abuse and the alleged conduct. The court reasoned that assumption of a hypothetical situation would not amount to clear and convincing evidence. William was certified for criminal proceedings as an adult, pleaded not guilty, and timely filed his notice of appeal.

¹ By Elham Roohani

² In relevant part NEV. REV. STAT. §62B.390(2)(b) reads "the juvenile court shall 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. . . [a]n offense or attempted offense involving the use or threatened use of a firearm."

³ In relevant part NEV. REV. STAT. §62B.390(3)(b) reads "[t]he juvenile court shall not certify a child for criminal proceedings as an adult . . . if the juvenile court specifically finds by clear and convincing evidence that. . . [t]he actions of the child were substantially the result of the substance abuse or emotional or behavioral problems of the child and the substance abuse or emotional or behavioral problems may be appropriately treated through the jurisdiction of the juvenile court."

⁴ 95 Nev. 836, 603 P.2d 1056

⁵ The Court consolidated the cases of *In re Williams* and *In re Marques*, as they raised similar issues as to the constitutionality of Nevada's presumptive certification provisions.

In re Marques

Marques, who was 17 years old at the time of the incident, was charged in relation to the armed robbery of two individuals in a park. Marques was charged with conspiracy to commit robbery, two counts of robbery with the use of a deadly weapon, discharging a firearm, endangering a person, and possession of a firearm. Marques was certified as an adult under NRS 62B.390(2) presumptive certification. Marques filed an opposition to the State's certification petition, attaching court-ordered psychological reports detailing Marques' drug abuse and developmental delays.

At his certification hearing, Marques stipulated to prosecutive merit. Marques argued that while there was clear and convincing evidence regarding his substance abuse, he was unable to rebut the presumption of adult certification by connected the substance abuse to the robbery because he denied any involvement. Marques argued the court to assume a hypothetical situation that if he had been there, his actions would have been influenced by his substance abuse.

The court held Marques had not established a direct nexus between his substance abuse and developmental delays and the alleged conduct. Marques was certified for criminal proceedings as an adult, plead not guilty, and timely filed his notice of appeal.

Discussion

Appellants argue the presumptive certification violates Fifth Amendment rights against self-incrimination by requiring them to admit guilt to rebut the presumption but not prohibiting use of that evidence against them in subsequent proceedings. The Court's analysis begins by determining whether Fifth Amendment protection extends to statements in juvenile proceedings, and then addresses the constitutionality of the statute. Review of the constitutionality of a statute is de novo.

The Fifth Amendment right applies in juvenile certification proceedings and such proceedings may elicit inculpatory statements

The Court notes that the United States Supreme Court has "unequivocally extended" Fifth Amendment protections to juveniles in delinquency proceedings.⁶ Thus, the Court concluded that Fifth Amendment privilege against self-incrimination extends to juveniles and inculpatory statements made in juvenile proceedings. Inculpatory statements are protected if they could be used to incriminate the juvenile in future proceedings.

NRS 62B.390(3)(b) requires admission to overcome rebuttable presumption

Under the NRS 62B.390(3)(b), the court must find by "clear and convincing evidence that. . . [t]he actions of the child were substantially the result of the substance abuse or emotional or behavioral problems."⁷ Relying on reasoning from *Anthony Lee R. A Minor v. State*,⁸ the court held that for a juvenile to rebut the presumption, they would have to establish that substance abuse, emotional or behavioral problems, "substantially influenced or contributed" to the criminal actions, they would in fact have to admit to the criminal actions, thereby incriminating himself. Further buttressing their opinion is the practice of the juvenile court requiring juveniles to establish a direct nexus between the substance abuse, emotional, or behavioral problems to the charged conduct. Therefore, for Williams or Marques to rebut the presumption that their intoxication the night of the incident "substantially influenced or contributed" to the criminal actions, they would have to admit first that they were present during the incident.

Incriminating statements may be used in later proceedings

⁶ *In re Gault*, 387 U.S. 1, 49 (1967).

⁷ NEV. REV. STAT. §62B.390(3)(b)

⁸ 113 Nev. 1406, 1416 (Nev. 1997).

In *Marvin v. State*,⁹ a juvenile made statements while in detention about his participation in several burglaries. In a later proceeding and based on the incriminating statements made prior, the State filed additional burglary charges. Recognizing the dilemma and violation of Fifth Amendment rights, the Court overruled *Marvin* in part. Specifically, *Marvin*'s conclusion that because guilt is not being determined Fifth Amendment rights are irrelevant during a certification proceeding.

Alternative interpretations of the Statute

The Court held that the plain language of the statute is unambiguous, and unconstitutional. The State argued that it would be possible for a juvenile overcome the presumption without incriminating himself. The Court rejected this argument because the statute expressly requires the juvenile to present "clear and convincing evidence." The Court held that to construe the statute in a way that removed the "clear and convincing" standard would require the Court to re-write the statute. The Court declines to make any statutory revisions and leaves that task to the Legislature. Further, in adhering to Legislative intent to create exceptions, the Court held the certification provisions unconstitutional in their entirety.

Conclusion

Therefore, the Court overruled part of their decision in *Marvin v. State*, suggesting that the right against self-incrimination is irrelevant in juvenile proceedings. Additionally, the Court held Nevada presumptive certification provisions¹⁰ to be void in their entirety.

⁹ 95 Nev. 836, (Nev. 1979).

¹⁰ NEV. REV. STAT. § 62B.390(2), NEV. REV. STAT. § 62B390(3).