IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF SUBJECT MINOR: J. R., DATE OF BIRTH: 04/05/2007; YEARS OF AGE: 17.

J.R.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89294

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from a juvenile court order certifying appellant to be tried as an adult in a criminal proceeding. Eighth Judicial District Court, Family Division, Clark County; Linda Marquis, Judge.

When J.R. was 16 years old, he posted a message on a chat platform believed by law enforcement to facilitate communication among supporters of the Islamic State. J.R. announced that he was "starting lone wolf operations in Las Vegas against the enemies of Allah" and asked readers "to make Dua for victory." The post prompted law enforcement to investigate J.R. and search his home and phone.

In J.R.'s room, police found ISIS memorabilia and components of an apparent improvised explosive device (IED). On J.R.'s phone, police found an instruction manual to assemble improvised bombs, notes and documents indicating J.R.'s interest in ISIS activity, and propaganda photos and videos, one of which J.R. made. J.R. also posted four ISIS propaganda videos to a public website, along with his email address. One person contacted J.R. at that email address and J.R. advised them on

making hijrah, referring to Islamic State supporters traveling to conflict zones to fight on behalf of ISIS.

J.R. was arrested and charged with one count of providing material support for act(s) of terrorism or terrorist(s), one count of attempting to commit or cause an act of terrorism, five counts of possession of component of explosive or incendiary device with intent to manufacture explosive or incendiary device, and one count of soliciting another person to aid or further an act of terrorism. The State moved to certify J.R. as an adult for trial. The juvenile court granted the motion, finding that the allegations were sufficiently "heinous and egregious" to warrant certification on the nature and seriousness of the offenses alone.

The State established prosecutive merit for the charges except for attempting to commit or cause an act of terrorism

J.R. argues that the juvenile court abused its discretion in certifying him to stand trial as an adult because the charges lack prosecutive merit. Juvenile courts have discretion to certify a minor age 14 or older to be tried as an adult if the charged offense "would have been a felony if committed by an adult." NRS 62B.390(1)(a). The certification determination requires a preliminary finding of prosecutive merit for each charge, that "there is probable cause to believe the subject minor committed the charged crime." *In re Seven Minors*, 99 Nev. 427, 437, 664 P.2d 947, 953 (1983) *overruled on other grounds by In re William S.*, 122 Nev. 432, 132 P.3d 1015 (2006). "A finding of probable cause may be based on slight evidence." *Sheriff v. Badillo*, 95 Nev. 593, 594, 600 P.2d 221, 222 (1979).

J.R. first argues that there is no probable cause to support the allegation that he provided material support to ISIS because he did not

provide goods, services, or money.[1] NRS 202.445(2)(c)(1) prohibits "[p]rovid[ing] material support with the intent that such material support be used, in whole or in part to [c]ommit, cause, aid, further or conceal an act of terrorism." "'Material support' means any financial, logistical, informational or other support or assistance intended to further an act of terrorism." NRS 202.4433. Informational support includes the "communication . . . of knowledge or intelligence." *Information*, *Merriam-Webster's Collegiate Dictionary* (11th ed. 2020); *see also Wyman v. State*, 125 Nev. 592, 607-08, 217 P.3d 572, 583 (2009) (stating that this court presumes that the legislature intended to use the "usual and natural meaning" of terms undefined in a statute, which may be indicated by a dictionary definition (citation modified)). By the plain statutory language, a person violates NRS 202.445(2)(c) if they provide knowledge of a particular fact, event, or situation with the intent that it be used to cause, aid, or further an act of terrorism.

Here, J.R. made at least one propaganda image and posted ISIS propaganda videos online. Then, when contacted about how to find ISIS to make "hijrah from Europe to the fields of battle in East Asia," J.R. provided detailed advice about where to go and how to contact the terrorist organization to contribute to its terrorist activity. He provided a PDF guide about hijrah and invited the inquirer to contact him again with further

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[1]J.R. also, for the first time on appeal, challenges the material support charge on the basis that NRS 202.445 is unconstitutional for vagueness and violation of the First Amendment rights of free speech and association. The failure to raise an issue below generally waives consideration of that issue on appeal. *State v. Hughes*, 127 Nev. 626, 630 n.4, 261 P.3d 1067, 1070 n.4 (2011). Although we have discretion to consider unobjected-to constitutional issues, *McCullough v. State*, 99 Nev. 72, 74, 657 P.2d 1157, 1158 (1983), we decline to do so here.

questions. In this exchange, J.R. provided informational support to someone interested in joining ISIS. J.R.'s intent in doing so is indicated by his collection of propaganda, holding himself out as a terrorist, posting that he was an ISIS supporter intending to begin "lone wolf operations" in Las Vegas, and assembling components to create an IED. Taken together, this evidence satisfies the slight-evidence threshold that J.R. instructed another on making hijrah with the intent to further acts of terrorism, namely attacks on ISIS's behalf.[2] We conclude that the juvenile court did not abuse its discretion in finding probable cause that J.R. provided material support to further acts of terrorism.

To combat the possession charges, J.R. argues that he lacked the intent to manufacture an explosive device and did not have an incendiary or explosive component. The State argues that J.R.'s construction of household items according to "explosive designs" establishes the intent to create an explosive device and that a person need not have every necessary component of an operable bomb to be guilty of possessing a component of an explosive or incendiary device with intent to manufacture the same. We agree with the State.

It is a crime to "knowingly possess any component of an explosive or incendiary device with the intent to manufacture an explosive or incendiary device." NRS 202.261. The statute prohibits possession of

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[2]J.R. argues that the online post is protected speech and thus cannot support the charges. This argument misses the mark because the charges do not seek to punish J.R. for the post he made. Rather, the post shows J.R.'s intent in engaging in other terrorism-related activity and is not protected from use as evidence. *See Wisconsin v. Mitchell*, 508 U.S. 476, 489 (1993) (holding that the First Amendment "does not prohibit the evidentiary use of speech to establish the elements of a crime or to prove motive or intent").

any component of an explosive or incendiary device with the requisite intent; it does not require possession of *every* component necessary to construct such a device. *Cf. In re William M.*, 124 Nev. 1150, 1162, 196 P.3d 456, 464 (2008) ("The language of a statute is generally read in accordance with its plain meaning, unless ambiguous.").

The items found in J.R.'s room included metal cans, one filled with screws seemingly to maximize damage upon detonation and with a hole drilled in the bottom through which wiring could be fed, Christmas lights with bulbs removed and wires stripped to serve as an initiator, a battery-operated light with an incorporated switch to serve as a detonator, and isopropyl alcohol. Four of the five counts correspond to groupings of the different components that could be combined into a single incendiary or explosive device. The remaining count charges possession of the isopropyl alcohol. All of these items are specifically identified as components of a homemade IED in the bomb-making guide on J.R's phone. Critically, the cans and Christmas lights were manipulated consistent with the guide's instructions. On these facts, we conclude that the juvenile court did not abuse its discretion in finding prosecutive merit for the possession charges.

J.R. next argues that "offering advice on the best geographical location to encounter ISIS" does not amount to soliciting another to aid or further an act of terrorism. NRS 202.445(2)(b) provides that no person shall "knowingly or intentionally . . . [a]ssist, solicit or conspire with another person to commit, cause, aid, further or conceal an act of terrorism." NRS Chapter 202 does not define "solicit" or "solicitation" and, accordingly, we construe it according to its "usual and natural meaning." *See Wyman*, 125 Nev. at 607, 217 P.3d 57 at 583. "Solicitation" in the context of criminal law refers to "urging, advising, commanding, or otherwise inciting another to

commit a crime." *Solicitation*, Black's Law Dictionary (12th ed. 2024); *see also United States v. Hansen*, 599 U.S. 762, 771 (2023) (defining "criminal solicitation" as "the intentional encouragement of an unlawful act").

The record repels J.R.'s characterization of the hijrah email exchange. J.R. did not merely indicate where ISIS might be encountered; his advice went much farther. In response to an inquirer who found J.R.'s propaganda videos online, J.R. offered guidance on traveling to the "fields of battle in East Asia" to make hijrah. He recommended journeying alone by motorcycle, researching "local attacks by the blessed groups" to determine where to find ISIS members, and upon encountering them "announc[ing], 'Dawlah Islamiyah!'" to engage. He provided a guide about hijrah and invited the inquirer to contact him again with further questions. By providing guidance and encouragement to contact ISIS and engage in terrorist activities, J.R. urged and advised the email recipient to commit an unlawful act. That the communication was prompted by J.R.'s propaganda videos suggests that J.R. posted them with his email address and responded to inquirers in order to incite and encourage others to make hijrah. This evidence establishes probable cause for the solicitation charge.

Finally, J.R. argues that, at most, his actions constituted preparation for an act of terrorism rather than an overt act toward accomplishing an attack. We agree. Under Nevada law, no person shall "knowingly or intentionally . . . attempt to commit or cause" "any act that involves the use or attempted use of sabotage, coercion or violence" with the intent to "[c]ause great bodily harm or death to the general population" or "substantial destruction, contamination or impairment of [a]ny building or infrastructure." NRS 202.445(1); NRS 202.4415. An attempt is "[a]n act done with the intent to commit a crime, and tending but failing to

accomplish it." NRS 193.153(1). "[A]ttempt requires performance of an overt act toward the commission of the crime," *Burnside v. State*, 131 Nev. 371, 397, 352 P.3d 627, 645 (2015) (citation modified), "beyond mere preparation," *State v. Verganadis*, 50 Nev. 1, 4, 248 P. 900, 901 (1926). "[P]reparation consists in devising or arranging the means or measures necessary for the commission of the offense"; whereas an overt act "is the direct movement toward the commission after the preparations are made." *Verganadis*, 50 Nev. at 5, 248 P. at 901 (citation modified).

Here, the basis of the attempt charge was J.R.'s gathering of IED components with the intent to begin "lone wolf operations." Although J.R. had at least partially assembled common household objects in accordance with instructions on building an IED—conduct addressed by the possession charges—nothing in the record indicates that J.R. progressed past that stage to take an overt step to accomplish an attack. *See United States v. Ivic*, 700 F.2d 51, 67 (2d Cir. 1983) (holding defendants' actions progressed beyond preparation when they had "constructed a fully operational time bomb, inspected the building to be bombed, picked a precise time for the bomb to explode, and transported the bomb to the close vicinity of the site"), *abrogated on other grounds by Nat'l Org. for Women, Inc. v. Scheidler*, 510 U.S. 249 (1994). Although J.R. created a propaganda image with overlaying text advocating the "conquest of Las Vegas" on January 1, 2024, there is no evidence that J.R. had completed the IED, chosen a location or time at which to detonate the IED, or taken steps to transport the IED to a target. While J.R. approached the threshold between preparation and an overt act, he had not yet crossed it. We therefore conclude that there is no prosecutive merit to support the attempt charge

and that the juvenile court abused its discretion in finding otherwise. Thus, we reverse the certification decision on the attempt charge.

The juvenile court did not abuse its discretion in analyzing the Seven Minors *factors*

J.R. next argues that Nevada's certification matrix violates due process rights because it does not require courts to consider a juvenile's "individual characteristics and environment." Additionally, J.R. argues that the juvenile court abused its discretion in finding that certification was warranted on seriousness of the charges alone because it improperly focused on the "title of the charges" rather than J.R.'s "actual actions."

After the juvenile court makes the preliminary determination that the charges have prosecutive merit, juvenile courts must consider "a decisional matrix comprised of" (1) the "nature and seriousness of the charged offense or offenses"; (2) the "persistency and seriousness of past adjudicated or admitted criminal offenses"; and (3) 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. The first two categories receive the "primary and most weighty consideration" because they address public interest and safety. *Id.* at 433, 435, 664 P.2d at 951-52. Accordingly, certification decisions "may be based on either or both of the first two categories." *Id.* at 435, 664 P.2d at 952; *William S.*, 122 Nev. at 441, 132 P.3d at 1021. Certification based on the first *Seven Minors* category alone—the "nature and seriousness" of the crime—is reserved for "the most heinous and egregious offenses." *Id.* "[V]ery harmful intentions" or consequences may elevate the nature of an offense to the level of seriousness to warrant certification solely on that basis. *Jeremiah B. v. State*, 107 Nev. 924, 928-29, 823 P.2d 883, 885-86 (1991).

With this framework in mind, we first address J.R.'s constitutional challenge. J.R. argues that the decisional matrix violates due process by permitting certification without considering subjective characteristics, in defiance of *Kent v. United States*, 383 U.S. 541 (1966), and *Miller v. Alabama*, 567 U.S. 460 (2012). J.R. misplaces his reliance on these cases. *See Kent*, 383 U.S. at 560-61 (indicating that certification decisions are to be made on a case-by-case basis); *Miller*, 567 U.S. at 465, 475, 479-80 (disapproving of mandatory life-without-possibility-of-parole sentencing schemes for juveniles, instead requiring individualized determinations as to the appropriate sentence in each case). The matrix contemplates consideration of subjective characteristics. That the seriousness of the offenses or the juvenile's criminal history may outweigh those considerations does not run afoul of *Kent* or *Miller* or violate due process rights. And insofar as J.R. asserts a due process violation because the court failed to explain "how each subjective factor weighed against public safety," we have declined to require such an explanation. *In re D.T.*, 133 Nev. 160, 162, 394 P.3d 936, 938 (2017).

As to the juvenile court's application of the matrix, we discern no abuse of discretion. The court found that J.R.'s actions, coupled specifically with his "very harmful intentions," were sufficiently heinous and egregious to warrant certification. While the court considered J.R.'s lack of criminal history and personal factors weighing against certification, it ultimately concluded "that public safety and welfare require transfer to the adult system." Although J.R.'s actions did not culminate in a terrorist attack, his conduct clearly demonstrates an intent to commit severe harm on a broad scale. Engaging in preparations to execute a terrorist attack, providing material support to facilitate ISIS activity, and soliciting others

to engage in acts of terrorism poses an undeniable danger to the public. J.R.'s assembly of materials to construct homemade explosives, infatuation with ISIS, and online declaration to institute "lone wolf operations" in Las Vegas underscore the severity of J.R.'s alleged crimes.

Consequently, we conclude that the juvenile court did not abuse its discretion in certifying J.R. as an adult for trial based on the nature and seriousness of the charged offenses. Given our determination that the district court did not abuse its discretion in finding prosecutive merit for the material support, possession, and solicitation charges, we affirm J.R.'s certification on those charges. We reverse, however, certification on the attempt charge due to a lack of prosecutive merit, and remand to the district court for further proceedings consistent with this opinion.

Therefore, we

ORDER the certification order of the juvenile court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

_____, C.J.
Herndon

_____, J.
Pickering

_____, J.
Parraguirre

_____, J.
Bell

_____, J.
Stiglich

_____, J.
Cadish

_____, J.
Lee

cc: Hon. Linda Marquis, District Judge, Family Division
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