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APPENDIX A

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Decision of Minnesota Supreme Court A1-A13

962 N.W.2d 874
Supreme Court of Minnesota.

STATE of Minnesota, Respondent,
v.
Jquan Leearthur MCINNIS, Appellant.

A20-0492
|
Filed: August 11, 2021

Synopsis
Background: Defendant, a juvenile offender, was convicted in a bench trial in the District Court, Hennepin County, of first-degree premeditated murder of adult victim and infant victim via shooting into a parked vehicle, and was sentenced to permissive consecutive life sentences. Defendant appealed.

Holdings: The Supreme Court, G. Barry Anderson, J., held that:

defendant's invocation of right to remain silent approximately one hour after *Miranda* warnings was unambiguous and unequivocal;

trial court's error in failing to suppress defendant's police statement due to *Miranda* violation was harmless;

evidence was sufficient to support conviction for murder of infant victim on a transferred-intent theory; and

trial court acted within its discretion in imposing consecutive life sentences.

Affirmed.

Procedural Posture(s): Appellate Review; Pre-Trial Hearing Motion; Sentencing or Penalty Phase Motion or Objection.

***879** *Syllabus by the Court*

1. Because appellant unambiguously invoked his right to remain silent during a custodial investigation, his statement to police should have been suppressed, but the failure to do so was harmless beyond a reasonable doubt.

2. The evidence presented by the State was sufficient to prove that appellant had an intent to kill when he fired the gunshot that killed the infant.

3. The district court did not abuse its discretion by sentencing appellant to consecutive life sentences.

Hennepin County

Attorneys and Law Firms

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Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public Defender, Saint Paul, Minnesota, for appellant.

OPINION

ANDERSON, Justice.

Appellant Jquan Leearthur McInnis was convicted of two counts of first-degree premeditated murder for the deaths of Gustav (Gus) Christianson, an adult, and J.R., an infant. On each count, McInnis was sentenced to life in prison with the possibility of release after 30 years. Because the sentences were imposed consecutively, however, McInnis would not be eligible for release for at least 60 years. McInnis was 17 years old when he committed the offenses.

McInnis challenges his convictions and sentences on several grounds. First, he argues that his statement to police should have been suppressed because he unambiguously invoked his constitutional right to remain silent during the police interrogation. Second, McInnis argues that the evidence supporting his conviction for the murder of the infant is insufficient because the State failed to prove that he had an intent to kill when he fired the gunshot that killed the infant. And finally, McInnis

challenges the imposition of consecutive sentences.

Although we agree that McInnis's statement to police should have been suppressed, we conclude that the failure to do so by the district court was harmless beyond a reasonable doubt. In addition, we conclude that the evidence presented by the State was sufficient to prove that McInnis had an intent to kill when he fired the gunshot that killed the infant. Finally, we conclude that the court did not abuse its discretion by imposing consecutive sentences. Accordingly, we affirm the judgment of conviction.

FACTS

Gus Christianson and an infant were shot and killed while sitting in a car in Minneapolis. The State charged McInnis with two counts of first-degree murder. Before trial, McInnis moved to suppress his confession to police because his constitutional right to remain silent had been violated. The district court denied his motion. McInnis waived his right to a jury trial and agreed to a court trial on stipulated evidence, pursuant to Minn. R. Crim. P. 26.01, subd. 3. Based on the evidence and arguments submitted by the parties, ***880** the district court made the following findings of fact.

C.R., the child's father, drove a car to a Minneapolis house and parked in a driveway with an alley directly behind his car. Inside of the vehicle were C.R., C.R.'s girlfriend, their infant child, Christianson, and another woman. C.R.'s girlfriend and the other woman left the car and entered the house. C.R., Christianson, and the child remained inside of the car, except for a short time in which C.R. and Christianson got out to smoke. C.R. sat in the driver's seat, Christianson sat directly behind him in the back seat, and the child was buckled into a rear-facing car seat on the passenger side of the back seat.

Around the same time, McInnis was the passenger in a vehicle driven by D.A. As the two men drove past C.R.'s parked car, McInnis told D.A. to pull over a few blocks away. McInnis left the vehicle wearing a blue hoodie and headed toward C.R.'s parked car.

McInnis walked down the alley, approached C.R.'s parked car from behind, and walked up to Christianson, who was sitting in the back seat with the door open. Without saying a word, McInnis shot Christianson six times with a handgun through the open door. All of the bullets entered Christianson's chest from the left side, with at least two bullets passing through his left arm.

McInnis then turned back towards the alley. As he began walking away, McInnis fired a final gunshot into the back of C.R.'s parked car. The gunshot entered the left side of the rear window at an angle, just above a white baseball hat that was sitting on the back window ledge behind Christianson. The bullet shattered the window, continued on, and struck the infant. Both Christianson and the infant died of their injuries.

After the shooting, many witnesses gave statements to police. C.R. told police that he saw a black male in a blue shirt with the hood pulled up over his head come down the alley. He then heard someone walk to the open car door where Christianson was sitting and, without speaking, begin shooting. C.R. told police that the same person ran away in the alley moments later and that he heard Christianson exclaim that he had been "hit."

Another witness, M.S., observed the shooting from a park across the street from the driveway. She told police that she saw a black male wearing a blue hoodie walk down the alley. M.S. claimed that the driver left the parked car and argued with the person wearing the hoodie. The person wearing the hoodie then opened the rear driver's side door of the parked car, leaned into the back seat, and started shooting. She also stated that someone from inside the car shut the door and that the person wearing the hoodie walked to the rear of the parked car, fired one more round through the back window, and ran away in the alley.[1]

Two paramedics were responding to a nearby medical emergency call at the time of the shooting. A video recording from the ambulance shows both paramedics visibly reacting to the sound of gunshots. The paramedics told police that, after hearing the gunshots, they observed a black male in a blue hoodie running in the alley with the hood up.

A.B., who lived nearby, observed McInnis, wearing a white T-shirt but no hoodie, ***881** leap over her back gate and run through her yard around the time of the shooting. When officers walked the route from the scene of the shooting toward A.B.'s house, they found a blue hoodie in a garbage can in an alley.

The police also interviewed D.A., who explained that McInnis had a dispute with Christianson over $250. D.A. also told police that McInnis had asked him to pull over a few blocks away from where C.R.'s car was parked shortly before the shootings and that McInnis admitted to him later that day that he had "hit" a baby and left his blue hoodie behind.

McInnis's girlfriend told police that McInnis said he regretted killing the baby but "don't regret killing that dude."

In addition to witness statements, police gathered various physical and forensic evidence. The police recovered surveillance footage from a parking ramp camera that showed the vehicle driven by D.A. pull up on a residential street shortly before the shooting. The camera recorded McInnis leaving D.A.'s vehicle wearing a blue hoodie with the hood down and walking southbound through the yards of two houses. The Minneapolis Shot Spotter system recorded multiple gunshots at the location where C.R. was parked, and the first 911 call related to this incident was received one minute after the shooting occurred. The surveillance camera at the parking ramp later recorded McInnis run from the direction of A.B.'s house toward the car that D.A. was driving and enter the car while wearing a white T-shirt but no hoodie. *Id.* The car pulled away a short time later.

An autopsy revealed that Christianson was struck in the chest by six bullets, two of which passed through his arm; the infant was struck in the chest by one bullet. Using trajectory rods, police determined the probable path of the final gunshot fired by McInnis, which passed through the back window of the car and struck the infant.

Two days after the shooting, McInnis was arrested and questioned by police. Initially he denied knowing anything about the shootings or even knowing Christianson. McInnis claimed that, at the time of the shooting, he was with his girlfriend. When confronted with facts that contradicted his story, McInnis eventually confessed that he had committed the murders.

McInnis explained that he was angry with Christianson for stealing $250 in connection with the sale of a gun. He admitted that, on the day of the shootings, he saw Christianson while riding with D.A. and asked D.A. to pull over a few blocks away. McInnis told police that he left D.A.'s car with his gun, cut through several back yards, and came down the alley toward Christianson. He then walked up to Christianson, shot him without speaking, and fired a final gunshot through the rear window of the car before running back up the alley. McInnis admitted taking off the hoodie and throwing it in a garbage can as he fled the scene of the shootings.

McInnis described the killings to police in this way: "Boom, I walked up on the car and I—I—I hit 'em like four or five times—boom, and then when I, right before I ran off I threw one more through the window—bam—and then I ran off." He told police that he had no intention of killing Christianson; he only intended to "holla" at Christianson and beat him up. McInnis claimed that he was aiming at Christianson's legs when he fired the gunshots and that he did not know an infant was in the car.

The district court found McInnis guilty of two counts of first-degree murder. ***882** [2] Because McInnis was a juvenile at the time of the shooting, and because the State was seeking a sentence of life in prison without the possibility of parole, the court held a *Miller* hearing and determined that McInnis was not "irreparably corrupt."[3] Accordingly, the court declined to impose a sentence of life imprisonment without the possibility of release and instead imposed two consecutive sentences of life imprisonment, each with the possibility of release after 30 years. McInnis appealed his convictions and sentences to us.

ANALYSIS

I.

McInnis first argues that his convictions must be reversed because the district court failed to suppress his confession to police. According to McInnis, his confession was obtained in violation of his constitutional right to remain silent as set forth in *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). We consider whether the district court erred by failing to suppress his statement, and if so, whether the error was harmless beyond a reasonable doubt.

A.

The validity of a suspect's invocation of his constitutional right to remain silent presents a mixed question of fact and law. *State v. Ortega*, 798 N.W.2d 59, 67 (Minn. 2011). A suspect must invoke the right "sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be an invocation of the right to remain silent." *State v. Day*, 619 N.W.2d 745, 749 (Minn. 2000) (citation omitted) (internal quotation marks omitted). We review the factual issue of whether a suspect unequivocally and

unambiguously invoked his right to silence for clear error. *Ortega*, 798 N.W.2d at 67. But we review the application of the reasonable officer standard to the facts of the case de novo. *Id.*

"If a suspect invokes his right to remain silent, law enforcement officers must cease interrogation and 'scrupulously honor[ ]' the suspect's right to remain silent." *Id.* at 67–68 (quoting ***883** *Michigan v. Mosley*, 423 U.S. 96, 104, 96 S.Ct. 321, 46 L.Ed.2d 313 (1975)). But "nothing short of an unambiguous or unequivocal invocation of the right to remain silent will be sufficient to implicate *Miranda*'s protections." *State v. Williams*, 535 N.W.2d 277, 285 (Minn. 1995); *see also Berghuis v. Thompkins*, 560 U.S. 370, 381, 130 S.Ct. 2250, 176 L.Ed.2d 1098 (2010) (stating that under the federal constitution, the *Miranda* rights—including the right to remain silent—must be unambiguously and unequivocally invoked before police must cease questioning). When an invocation is ambiguous or equivocal, the interrogating officers are not required to clarify the suspect's intent. *Williams*, 535 N.W.2d at 285.

At issue in this case is the following exchange, which took place about an hour and fifteen minutes after McInnis was read his *Miranda* warning but before McInnis confessed to the murders:

> [Detective 2]: It's not just us, it's what the video saw you doing and there were a lot of people outside that day was a beautiful Sunday at 1:30 in [the] afternoon. They had a football game going on across the street—lots of people out so people and videos—so it's not just us saying you were there.
>
> [McInnis]: I wasn't there. I have nothing else to say now because now I feel like that I'm being—I'm a suspect and I don't wanna talk about this anymore because I know I didn't have anything to do with this.
>
> [Detective 1]: We ca- we can respect that, you know, but this is—remember back when I told you that this is gonna be the point where people are gonna make, not he or I, people are gonna make judgments on this case.
>
> [McInnis]: Mm-hmm.

The district court found that McInnis did not unambiguously and unequivocally invoke his right to remain silent because he freely talked with police prior to this exchange and continued to answer questions on "lighter" subjects after this exchange. The State repeats this argument and adds that the words "because" and "about this" cloud McInnis's request. For his part, McInnis insists that his invocation was clear and that his responses to later questions were unconstitutionally elicited.

In assessing this exchange, our decision in *Day* is instructive. In *Day*, law enforcement agents read the defendant his *Miranda* warning and then asked whether the defendant would be willing to talk with them. 619 N.W.2d at 747. After mumbling a response, the defendant stated, "Said I don't want to tell you guys anything to say about me in court." *Id.* Nevertheless, the agents proceeded to question him. *Id.* We held that the defendant's invocation of his constitutional right to remain silent was unambiguous and unequivocal because the first part of his statement clearly indicated that there was "no action, event, or time that [the defendant] was willing to discuss" with the agents, and the second part of the statement "further cemented" his invocation by repeating part of the *Miranda* warning. *Id.* at 750.

McInnis's statement is like the statement made in *Day* in two important respects. First, McInnis clearly stated a desire to stop talking with police entirely when he said: "I have *nothing* else to say now" and "I don't wanna talk about this *anymore*." (Emphasis added.) Second, McInnis "implicitly referenced" the *Miranda* warning by connecting his desire to stop talking with the detectives with his concern about being a suspect in the shootings, which "further cemented" his invocation and removed any possibility of ambiguity.

***884** Under the circumstances, a reasonable police officer would have understood the statements by McInnis to be an invocation of his right to remain silent because he unequivocally stated that he did not want to continue talking with the detectives about the shootings. Indeed, one of the detectives questioning McInnis *understood* McInnis's request because he responded by saying, "[W]e can respect that, you know, but....", and continued to question him. Instead of trying to elicit additional responses from McInnis, the detectives should have immediately stopped the questioning and "scrupulously honored" McInnis's right to remain silent. *See Mosley*, 423 U.S. at 104, 96 S.Ct. 321; *see also Miranda*, 384 U.S. at 473–74, 86 S.Ct. 1602 ("Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the

interrogation must cease.").

The State attempts to distinguish *Day* based on the timing of the statements made by McInnis. In *Day*, the defendant invoked his right to remain silent immediately after receiving the *Miranda* warning. 619 N.W.2d at 747. But McInnis invoked his right to remain silent about an hour and fifteen minutes after receiving the *Miranda* warning, after freely engaging with police by asking and answering questions. According to the State, the dispositive point in *Day* was not *what* the defendant said but *when* he said it.

This argument is not persuasive. Certainly, the timing of the defendant's statement in *Day* was a relevant factor because we view a suspect's invocation in context. *See id.* at 749; *Ortega*, 798 N.W.2d at 68 ("[W]e review invocations of the right to remain silent in light of all the circumstances."). But it was not the timing alone that made the defendant's request in *Day* unambiguous. We relied heavily on the content of his statement, reasoning that the sentence, "Said I don't want to tell you guys anything," showed that there was "no action, event or time" in which he would talk to police. *Id.* at 750. And the defendant's reference to the possibility that his words would be used against him "in court" cemented that he was exercising the right of which he had just been informed. *Id.* Here, McInnis clearly stated that he had nothing else to say and that he no longer wanted to talk about the shootings because he realized that he was a suspect. The timing of his invocation does not cast doubt on his statements or nullify *Miranda*'s protections, which are triggered *at any time* a suspect indicates *in any manner* that he wishes to remain silent. *See* 384 U.S. at 473–74, 86 S.Ct. 1602.

The State also argues that, when viewed in the context of the entire conversation, the statements made by McInnis are ambiguous and equivocal. For example, the State contends that McInnis's refusal to talk "about this" showed only that he was unwilling to talk about a particular subject—namely, the detective's claim that McInnis was lying about where he was at the time of the shootings—but was not trying to cut off questioning completely. Similarly, the State claims that the word "because" showed that McInnis wanted to continue talking to explain himself. Furthermore, the State emphasizes that McInnis's invocation was unclear because McInnis was "incessantly cooperative" during the interview and willingly talked "at length" about his alibi and certain "lighter" topics but not about other topics. According to the State, a defendant's willingness to talk about some subjects but not others is generally insufficient to invoke the constitutional right to remain silent.

These arguments are also unpersuasive. The State is correct that a ***885** suspect's expression of a willingness to discuss some, but not other, topics is generally inadequate to constitute a clear invocation of the right to remain silent. *See, e.g.*, *Williams*, 535 N.W.2d at 284 (holding that the statement "I don't have to take any more of your bullsh*t" was insufficient to invoke the right to remain silent when the defendant "never exhibited a general refusal to answer any of the questions" and merely "expressed insult" when accused of lying); *State v. Jobe*, 486 N.W.2d 407, 415 (Minn. 1992) (holding that the defendant's answer that he would not talk about the claimed assault of the night before but would talk about other "lighter" subjects was not unambiguous); *State v. Wilson*, 535 N.W.2d 597, 602–03 (Minn. 1995) (holding that the refusal to "talk about Mary just then" was ambiguous when the defendant appeared willing, and in fact proceeded, to answer questions relating to other subjects). But in this case, McInnis expressed a general refusal to answer *any* further questions.

Our decision in *Ortega* provides a helpful contrast. There, the defendant talked with police for about 25 minutes before saying, "I ain't got nothin' else to say man. That's it, I'm through. I told you." 798 N.W.2d at 65. We concluded that the defendant's invocation was ambiguous because the defendant's assertion that he was "through" could simply mean that he was done discussing a particular topic that police had exhausted. *Id.* at 68–69. The uncertainty was enhanced because the defendant added, "I told you" and because the statement, "I ain't got nothin' else to say," could mean that the defendant "lacked additional information *or* the desire to share it." *Id.* at 70 (emphasis added). Moreover, we noted that the defendant had been " 'incessantly cooperative' " throughout the interview and had shown no reservations about talking with police. *Id.* Taken together, these facts made the defendant's statement ambiguous.

Like the defendant in *Ortega*, McInnis stated that he had nothing else to say. That was a general refusal to continue talking. But unlike in *Ortega*, McInnis did not follow that statement by saying, "I'm through. I told you," which could cast doubt on the clarity of the refusal. Instead, he clarified that he had nothing else to say

"because" he recognized that police viewed him as a suspect, which, as in *Day*, eliminated any possibility that he was merely expressing his lack of further knowledge on a particular subject. *See* *Day*, 619 N.W.2d at 750. Furthermore, McInnis immediately *repeated* his refusal by saying that he did not want to talk anymore and again linked the refusal to his status as a suspect. In this context, neither McInnis's prior willingness to talk with police nor the words "about this" are sufficient to cast doubt on his general refusal to continue talking.

In addition, McInnis's later willingness to answer "lighter" questions does not make his invocation ambiguous. Under *Miranda*, a suspect has the constitutional right to discontinue questioning by police "at any time." 384 U.S. at 473–74, 86 S.Ct. 1602. When a suspect clearly exercises that right, police must immediately stop questioning, *id.*, and they may not continue to ask questions in order to manufacture ambiguity, *see* *Smith v. Illinois*, 469 U.S. 91, 100, 105 S.Ct. 490, 83 L.Ed.2d 488 (1984) ("[A]n accused's postrequest responses to further interrogation may not be used to cast retrospective doubt on the clarity of the initial request itself."). Here, McInnis's invocation was unambiguous. Accordingly, his later willingness to talk about "lighter" topics is irrelevant because ***886** those answers were unconstitutionally elicited.[4]

We conclude that, because McInnis's invocation of his right to remain silent was unambiguous and unequivocal, the district court erred by failing to suppress his statement to police.

B.

We next consider whether the district court's failure to suppress McInnis's confession was harmless beyond a reasonable doubt. *See State v. Davis*, 820 N.W.2d 525, 533 (Minn. 2012) ("When an error implicates a constitutional right, we will award a new trial unless the error is harmless beyond a reasonable doubt."). According to McInnis, the erroneous admission of his confession was not harmless beyond a reasonable doubt because he gave a "full confession" to police, and the district court relied on the confession to find that he acted with premeditation and intent to kill. In response, the State contends that the error of the district court was harmless beyond a reasonable doubt because the record contains ample evidence of McInnis's guilt.

"An error is harmless beyond a reasonable doubt if the jury's verdict was 'surely unattributable' to the error." *Id.* (citation omitted). We must "look to the basis on which the [factfinder] rested its verdict and determine what effect the error had on the actual verdict." *Townsend v. State*, 646 N.W.2d 218, 223 (Minn. 2002) (citation omitted) (internal quotation marks omitted); *see* *State v. Juarez*, 572 N.W.2d 286, 291 (Minn. 1997) (explaining that the harmless error analysis is "better labelled as 'harmless error impact analysis,' because it is the impact of that error that the appellate court must consider").

In deciding whether an error is harmless beyond a reasonable doubt, we consider "the manner in which the evidence was presented, whether it was highly persuasive, whether it was used in closing argument, and whether it was effectively countered by the defendant." *State v. Al-Naseer*, 690 N.W.2d 744, 748 (Minn. 2005). In addition, "[o]verwhelming evidence of guilt is a factor, often a very important one, in determining whether, beyond a reasonable doubt, the error has no impact on the verdict.' " *Id.* (quoting *Townsend*, 646 N.W.2d at 224). The standard applies to trials before a district court, not just to trials before a jury. *See, e.g.*, *State v. Leonard*, 943 N.W.2d 149, 162–63 (Minn. 2020) (court trial on stipulated evidence); *State v. Caulfield*, 722 N.W.2d 304, 314 (Minn. 2006) (court trial). We address each factor in turn.

1.

The first factor is the manner in which the evidence was presented. *See* *Al-Naseer*, 690 N.W.2d at 748. Because the ***887** trial in this case was based on stipulated evidence that was submitted without a formal presentation, this factor weighs in favor of the error being harmless beyond a reasonable doubt. *See* *State v. Sterling*, 834 N.W.2d 162, 174 (Minn. 2013) (concluding that the error was harmless in part because the introduction of the evidence was "without drama or fanfare and likely had no unduly prejudicial effect").

2.

The second factor asks whether the erroneously admitted evidence is "highly persuasive." *Al-Naseer*, 690

N.W.2d at 748. A confession can be highly persuasive. *See* *State v. Chavarria-Cruz*, 784 N.W.2d 355, 365 (Minn. 2010) (holding that an erroneously admitted confession had "powerful evidentiary value" because it was "unquestionably the strongest piece of evidence" against the defendant and was the "central focus" of the prosecutor's closing argument). But the erroneous admission of a statement can be harmless beyond a reasonable doubt when it does not amount to a confession, and other evidence of guilt is strong, *State v. Johnson*, 915 N.W.2d 740, 745 (Minn. 2018); *State v. Risk*, 598 N.W.2d 642, 650 (Minn. 1999) (holding that erroneously admitted statements, including a reference to "my victim," were harmless beyond a reasonable doubt because the statements did not amount to a confession and there was overwhelming independent evidence of guilt), or when the impact of the statement is merely "cumulative" to that of properly admitted evidence, *State v. McDonald-Richards*, 840 N.W.2d 9, 19 (Minn. 2013).

On appeal, McInnis challenges the elements of intent and premeditation for each murder conviction. Notably, in his confession to the police, McInnis maintained that he did not intend to cause or premeditate the death of Christianson or the infant. Instead, he claimed that he intended only to "holla" at Christianson and beat him, and McInnis told police that he was aiming at Christianson's legs when he fired the gunshots. McInnis also insisted that he was unaware that the infant was in the car. Consequently, McInnis's statement to police was not a confession as to the elements at issue, it was an "exculpatory version of events." *Johnson*, 915 N.W.2d at 745.

In addition, to the extent that McInnis confessed to some of the underlying facts on which the district court relied to convict him, his admissions were cumulative of other evidence presented by the State. *See id.* (observing that all of the facts admitted by the defendant were "easily proven with other evidence"). Concerning McInnis's intent to kill Christianson, the district court noted that the "strongest evidence" was the manner of the attack. Specifically, the court observed that the "natural and probable consequence of firing six shots into a person's torso is that the person will die." *See State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997) (holding that a factfinder may infer that a person intends "the natural and probable consequences" of the person's actions even when contrary to the person's stated intent). Even without McInnis's confession, the manner of Christianson's death is established by abundant evidence in the record, including the medical autopsy report and several eyewitness accounts.

Concerning McInnis's premeditation to kill Christianson, the district court relied on three categories of evidence: McInnis's planning activities, the nature of the killing, and his motive. The district court found that there was "ample evidence" of planning activity and found it particularly significant that, when McInnis saw Christianson, McInnis did not ask D.A. to pull over immediately, which would suggest impulsive ***888** action. Instead, McInnis asked D.A. to pull over on a separate block. Then, carrying the gun he had with him in the car, McInnis covered his head with a hood to conceal his identity, approached in a stealthy manner through backyards and an alley, and approached Christianson from behind. Although McInnis recounted these facts during his confession, the facts are also established by other evidence in the record, including witness statements, surveillance camera footage, and other forensic evidence.

There is also ample evidence of the nature of the killing, which the district court considered to be "some of the strongest evidence supporting a finding of premeditation." Evidence related to the nature of the killing includes "the number of wounds inflicted, infliction of wounds to vital areas, infliction of gunshot wounds from close range, [and] passage of time between infliction of wounds." *State v. Palmer*, 803 N.W.2d 727, 736 (Minn. 2011) (citation omitted) (internal quotation marks omitted). The court determined that McInnis decided to shoot Christianson before he reached the parked car because he purposefully carried a gun, immediately fired six shots at Christianson without provocation and without speaking, aimed at a vital region of Christianson's body, and later told his girlfriend that he did not regret Christianson's death. Again, although McInnis confessed to many of the underlying facts, his admissions were cumulative with other evidence, including statements made by other witnesses and the autopsy report.

The district court also found that McInnis's motive added support to a finding of premeditation but acknowledged that the evidence of a motive was neither necessary for a conviction nor "particularly strong" here. Although McInnis confessed to police that he was angry with Christianson for stealing $250 from him in a failed gun sale, this admission was duplicative with other witness statements.

Finally, McInnis admitted to his girlfriend that, although he regretted the death of the infant, he did not regret the death of Christianson. This admissible statement is strongly indicative of both intent to kill and premeditation.[5]

To establish intent and premeditation for the death of the infant, the district court again relied on circumstantial evidence. The district court found that, after McInnis shot Christianson six times in the chest, he fired a final shot through the rear window. According to McInnis, he fired the last shot not to harm Christianson but to deter C.R. from chasing him. The court rejected this explanation because there was no evidence that McInnis's intent in firing the final shot was different from his intent in firing the first ***889** six shots. Specifically, the court noted that McInnis was still close to the car and that it was only a "moment or matter of moments" before the final shot. It also observed that there was no evidence that C.R. or anyone else had begun to retaliate.

There is corroborating forensic evidence about the timing of the shots from the ambulance video, the Shot Spotter system, a 911 call, and witness statements. And based on the use of trajectory rods to determine the path of the bullet, there is corroborating forensic evidence of McInnis's location when he fired the final shot. *See* *State v. Larson*, 788 N.W.2d 25, 33 (Minn. 2010) (noting there was "other extensive evidence" of guilt when multiple witnesses testified and their testimony was corroborated by forensic evidence). And we agree with the district court that there was no evidence of retaliation. Thus, although McInnis's confession corroborates these details, we again conclude that the statement is cumulative.

In sum, because McInnis's confession to the police was "exculpatory" as to intent and premeditation, and because the underlying facts are "easily proven" by other evidence, this factor weighs in favor of the error being harmless beyond a reasonable doubt.

3.

The third factor is whether the erroneously admitted evidence was used in the State's closing argument. *Al-Naseer*, 690 N.W.2d at 748. Although the State did not rely exclusively on McInnis's confession, the State summarized the statement in detail and relied on it to establish intent and premeditation. Accordingly, this factor weighs against the error of the district court being harmless beyond a reasonable doubt. *See* *State v. Farrah*, 735 N.W.2d 336, 344 (Minn. 2007) (holding that an erroneously admitted statement was not harmless beyond a reasonable doubt "[g]iven the evidentiary value the state placed on" it).

4.

The fourth factor is whether McInnis was able to "effectively counter the questioned evidence." *Caulfield*, 722 N.W.2d at 315. "[U]nrebutted evidence" weighs against an error being harmless beyond a reasonable doubt, even when the reason the evidence is unrebutted is because the defendant chose to challenge admissibility and not to counter the evidence on the merits. *Id.* That is the case here. Because this was a trial based on stipulated evidence, McInnis did not testify, cross-examine witnesses, or otherwise rebut the State's use of his confession to police. Thus, this factor weighs against the error being harmless beyond a reasonable doubt. *See* *State v. Sterling*, 834 N.W.2d 162, 174 (Minn. 2013) (weighing the fact that the defendant's counsel "effectively countered" the effect of the erroneously admitted statements in favor of the error being harmless beyond a reasonable doubt).

5.

The fifth factor is whether there was overwhelming evidence of guilt. *Al-Naseer*, 690 N.W.2d at 748. This is an "important consideration," *McDonald-Richards*, 840 N.W.2d at 19, but not one that "controls" over all other factors, *Caulfield*, 722 N.W.2d at 317.

In this case, the evidence of intent by McInnis to kill Christianson is overwhelming. It is undisputed that McInnis repeatedly shot Christianson in the chest from a close range. We agree with the district court's observation that "[t]he natural and probable consequences of firing six shots into a person's torso is that the person will die." *See* ***890** *Cooper*, 561 N.W.2d at 179; *State v. Boitnott*, 443 N.W.2d 527, 531 (Minn. 1989) (stating that intent to cause death "may be inferred from the manner of shooting"). Moreover, McInnis's statement to his girlfriend that he did not regret Christianson's death is compelling evidence of his intent to kill.

There is also strong evidence of premeditation. Premeditation does not "require proof of extensive planning or preparation, nor does it demand that a specific time period elapse for deliberation." *State v. Cox*, 884 N.W.2d 400, 412 (Minn. 2016). It requires only "*some* appreciable passage of time between a defendant's formation of the intent to kill and the act of killing, and

that during this time [the] defendant deliberated about the act." *Id.*

Here, witness statements establish that McInnis ordered D.A. to stop his car, walked some distance to C.R.'s parked car, carried a gun, and immediately fired multiple shots at Christianson without provocation or even conversation. Based on the medical autopsy report, it is clear that McInnis was aiming at Christianson's chest. These facts demonstrate the targeted and deadly nature of the attack, which strongly shows that McInnis had decided to shoot Christianson before he reached the car in which Christianson was sitting. In addition, D.A.'s statements to police and the time-stamped footage from the surveillance camera establish that McInnis had sufficient time—at least three minutes—to consider the act.

Based on our assessment of the relevant factors, we conclude that the verdicts on both counts were surely unattributable to the erroneously admitted confession. The confession was not presented in a prejudicial manner because the parties submitted their exhibits without a formal presentation. The confession was not highly persuasive on the elements at issue because it was largely cumulative with other evidence or contained exculpatory statements that the district court expressly rejected. And the evidence of guilt in this case is overwhelming. Accordingly, we hold that the erroneous admission of McInnis's confession was harmless beyond a reasonable doubt.

II.

McInnis next claims that his conviction for the murder of the infant must be reversed because there is insufficient evidence that he intended to kill at the time he fired the gunshot that killed the infant.

As a state of mind, intent is generally proved circumstantially. *Cooper*, 561 N.W.2d at 179. When reviewing a conviction based on circumstantial evidence, we apply a "heightened two-step test." *State v. Petersen*, 910 N.W.2d 1, 6–7 (Minn. 2018). At the first step, we identify the circumstances proved by the State, deferring to the factfinder's acceptance of the State's evidence and rejection of inconsistent evidence. *Id.* at 7. At the second step, we determine "whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt." *Id.* (citation omitted) (internal quotations omitted). In doing so, we do not defer to the factfinder but examine the reasonableness of the inferences ourselves. *Id.* "If a reasonable inference other than guilt exists, then we will reverse the conviction." *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). "But if circumstantial evidence forms 'a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt,' then we will uphold the conviction." *Petersen*, 910 N.W.2d at 7 (quoting *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010)). We "will not overturn a conviction based on circumstantial evidence ***891** on the basis of mere conjecture." *State v. Lahue*, 585 N.W.2d 785, 789 (Minn. 1998).

McInnis argues that the circumstances proven by the State support a reasonable inference that, when he fired the shot that killed the infant, he intended to only scare C.R. and did not intend to kill. In particular, McInnis relies on the manner in which he fired the final shot—through the back window as he began to run away—and the presence of C.R. as a potential threat to support his theory. The State counters that the manner of McInnis's final shot is not meaningfully different because it was still aimed at Christianson and was fired in quick succession with the prior shots.

The relevant circumstances proven by the State in this case are the following: C.R. was sitting in the driver's seat of the parked car, and Christianson was seated directly behind him in the rear passenger seat. McInnis approached the parked car from the alley with his hood up, walked up behind the parked car, immediately started firing gunshots without speaking, and fired six times directly at Christianson. McInnis fired the final gunshot as he started to flee the scene. There was only a moment or a matter of moments between the first six shots and the final shot. McInnis was still close to the car when he fired the final shot. The shot entered through the left side of the rear window at an angle, passed just above a white baseball cap that was sitting on the window ledge behind Christianson, and struck the infant, who died from the injury. McInnis then fled the scene through the alley.

These circumstances do not support a reasonable inference other than guilt. Having just shot Christianson six times, McInnis shot again as he began to flee the scene. This final shot was aimed *at or past* his targeted victim's head, which is not consistent with the theory that McInnis was shooting only to scare C.R. Just as the "natural and probable consequence" of firing six shots into a person's chest is that the person will die, the natural and probable consequence of firing a gunshot through a window at or past a person's head is that a person may be killed. And the infant was killed. The evidence of

McInnis's intent to kill is sufficient to support his conviction for the murder of this infant.[6] Thus, McInnis is not entitled to relief on this ground.

III.

McInnis also claims that the district court abused its discretion by imposing ***892** *consecutive* sentences of life imprisonment with the possibility of release after 30 years. McInnis maintains that the resulting punishment is disproportionate to his culpability for the crimes for five reasons. He also asserts that his sentence is unconstitutional because it is the functional equivalent of life imprisonment without the possibility of release.

We review a district court's decision to impose consecutive sentences for an abuse of discretion. *State v. Ali*, 895 N.W.2d 237, 247 (Minn. 2017). "A trial court's decision regarding permissive, consecutive sentences will not be disturbed unless the resulting sentence unfairly exaggerates the criminality of the defendant's conduct." *State v. Hough*, 585 N.W.2d 393, 397 (Minn. 1998). In evaluating a sentence, we "look to past sentences received by other offenders in determining whether the district court abused its discretion." *State v. Fardan*, 773 N.W.2d 303, 322 (Minn. 2009).

McInnis gives five reasons why the consecutive sentences imposed by the court exaggerate his culpability. First, his conduct was consciously directed at only one person, Christianson. According to McInnis, every other juvenile who has been given consecutive sentences on murder convictions has "intentionally directed [the criminal act] towards more than one person." He cites *State v. Ali*, 895 N.W.2d 237 (Minn. 2017), *State v. McLaughlin*, 725 N.W.2d 703 (Minn. 2007), *State v. Ouk*, 516 N.W.2d 180 (Minn. 1994), and *State v. Brom*, 463 N.W.2d 758 (Minn. 1990). He asserts that his conduct is not comparable to the conduct in those cases.

Although in most of the cases cited by McInnis the juvenile defendant consciously directed force at more than one victim, that is not true in *McLaughlin*. In *McLaughlin*, the juvenile defendant brought a gun to school and, although he fired multiple times at one student, not only did he shoot the student, but he also shot another student and both died. 725 N.W.2d at 706. The defendant stipulated to guilt for second-degree felony murder for the death of the second student and, after trial, was found guilty of first-degree murder for the death of the first student. *Id.* at 708. At sentencing, the district court imposed consecutive sentences, which we upheld on appeal. *Id.* at 717. Thus, *McLaughlin* is an example of a defendant who, like McInnis, aimed at only one person but killed two people. And like McInnis, the defendant in *McLaughlin* received consecutive sentences. Consequently, we cannot say that McInnis's sentence is not commensurate with his culpability based on the number of victims he consciously directed force at when compared with prior cases.

McInnis's second reason for claiming that consecutive sentences exaggerates the culpability of his conduct is that he did not engage in extensive planning that would exhibit callousness. He again cites *McLaughlin*, 725 N.W.2d at 705, 714, in which the defendant brought his father's gun to school in a gym bag with the intention to shoot people, and *State v. Warren*, 592 N.W.2d 440, 452 (Minn. 1999), in which the defendant "drove at least 24 miles to obtain the murder weapon and made it clear to his friends that he planned to shoot the victims." This argument is not persuasive. Certainly, extensive planning and preparation can be an aggravating factor. *See id.* Here, the district court acknowledged that the shooting was impulsive to the extent that McInnis "made the decision to act very quickly after he spotted [Christianson] on the street" and acted "without appreciation or consideration for the long-term consequences." But the court deemed it relevant that McInnis "showed planning and purpose" by walking ***893** straight up to Christianson and immediately shooting him repeatedly in the chest at point-blank range. This was a permissible consideration, given that premeditation can be formed in a matter of "moments," *State v. Richardson*, 393 N.W.2d 657, 664 (Minn. 1986), and was one of many factors considered by the district court when imposing the consecutive sentences.

The third reason given by McInnis is that his actions did not create a high level of risk to others because he did not discharge his gun in the direction of a nearby park where many people were present. This argument has no merit. C.R. was in the parked vehicle at the time of the shooting, and McInnis's conduct put C.R. in significant danger. He also endangered others in the vicinity, including a bicyclist who was a few yards away on the sidewalk, a mother and daughter across the street, and numerous people in the park across the street.

McInnis's fourth reason is that his sentence fails to account for the effects of his age and troubled past on his

brain development. McInnis points to his extensive history of childhood trauma, stress, and neglect, and also to his heavy drug and alcohol use, diagnosed mental health conditions, and susceptibility to peer influence. We agree that those are relevant considerations, *see Flowers v. State*, 907 N.W.2d 901, 907 (Minn. 2018) (stating that a district court may consider a defendant's "unique circumstances" when determining a sentence), but it is clear that the district court considered them and nevertheless concluded that consecutive sentences were appropriate. The court relied on a variety of factors, including McInnis's "significant" criminal history, the "brazen and heartless" nature of his act, the fact that he acted alone, and his killing of an infant who died in front of his father. We see no indication that the court abused its discretion when giving these factors more weight than McInnis's age and personal history.

Fifth, McInnis argues that the district court improperly relied on the fact that he was almost 18 years old at the time of the shootings. Essentially, McInnis claims that juveniles of any age must be treated alike. McInnis relies on *Nelson v. State*, 947 N.W.2d 31, 40 (Minn. 2020), in which we held that the "categorical rule" announced in *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), and applied retroactively in *Montgomery v. Louisiana*, 577 U.S. 190, 212, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016), did not apply to an 18-year-old offender who committed an offense one week after his eighteenth birthday. But in *Nelson* we did not prohibit a district court from considering a juvenile's age when determining whether to impose consecutive or concurrent sentences. To the contrary, age is undoubtedly a relevant consideration. *See Flowers*, 907 N.W.2d at 906 (acknowledging that the "specific facts considered by a sentencer in determining whether to impose permissive consecutive or concurrent sentences, such as the defendant's age at the time of the offense ... [,] may overlap somewhat with the facts elicited at a *Miller* hearing, but the two inquiries are fundamentally distinct"). Thus, none of the reasons advanced by McInnis to challenge his consecutive sentences is persuasive.

Finally, McInnis asserts that his sentence is unconstitutional because it is the functional equivalent of life imprisonment without the possibility of release. McInnis acknowledges that we have previously rejected this argument, *see id.*, *Ali*, 895 N.W.2d at 246; *State v. Williams*, 862 N.W.2d 701, 703 (Minn. 2015), but raises the argument to preserve it "for potential further litigation." For the reasons explained in those decisions, we reject McInnis's argument.

***894** Accordingly, we hold that the district court did not abuse its discretion in imposing the consecutive sentences.

CONCLUSION

For the foregoing reasons, the judgment of conviction is affirmed.

Affirmed.

All Citations

962 N.W.2d 874

Footnotes

1 The district court acknowledged that there were conflicting statements given by witnesses about whether an argument occurred before the shooting. The court credited the statement of C.R. and the confession of McInnis, both of which indicated that no argument took place.

2 The district court found McInnis guilty of first-degree murder in the death of the infant under the doctrine of transferred intent. Under that doctrine, a person may be convicted of premediated murder if the State proves that he intended to kill one person but instead killed another person. *State v. Cruz-Ramirez*, 771 N.W.2d 497, 507 (Minn. 2009); *see* Minn. Stat. § 609.185(a)(1) (2020) (defining murder in the first degree for causing the death of a person with premeditation and intent to cause the death "of the person *or another*" (emphasis added)). Because the court found that McInnis intended to kill Christianson when he fired the gunshot that killed the infant, it concluded that McInnis murdered the infant under the doctrine of transferred intent.

3 In *Miller v. Alabama*, the Supreme Court of the United States held that the Eighth Amendment prohibits *mandatory* sentences of life imprisonment without the possibility of release for *juveniles*. 567 U.S. 460, 479, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012). But the Court did not foreclose a sentence of life imprisonment without the possibility of release for a juvenile whose crime reflects " 'irreparable incorrigibility.' " *Id.* at 479–80, 132 S.Ct. 2455 (citation omitted). Accordingly, at a *Miller* hearing, a district court determines whether a juvenile is irreparably corrupt. *Flowers v. State*, 907 N.W.2d 901, 907 (Minn. 2018).
The Supreme Court has since clarified that a sentencing judge may, consistent with the Eighth Amendment, impose a sentence of life imprisonment without the possibility of release for a juvenile without expressly or impliedly finding that the juvenile is "irreparably corrupt" or "permanently incorrigible" as long as the sentencing judge has discretion to consider the juvenile's youth. *Jones v. Mississippi*, —— U.S. ——, 141 S. Ct. 1307, 1321, 209 L.Ed.2d 390 (2021).

4 The State cites several cases in which the defendant's invocation was ambiguous because the defendant immediately continued talking with police. *See United States v. Adams*, 820 F.3d 317, 323 (8th Cir. 2016) (holding that the defendant's statement, "I don't want to talk, man" was an equivocal invocation of his right to remain silent when *immediately* followed by, "I mean," signaling that he intended to clarify the statement, and when he continued to talk to the interrogator for an additional 16 minutes); *United States v. Williams*, 690 F. Supp. 2d 829, 847 (D. Minn. 2010) (holding that the defendant's statement, "I'm done answering questions, I'm sorry, goodbye" was equivocal when, in response to the officer's clarifying question, "You're done?", the defendant responded, "yes," and without pause launched into a monologue explaining her situation and claiming that she did not do anything). Those decisions are inapplicable because McInnis did not freely and immediately continue talking to police; his answers were elicited after several minutes of unconstitutional questioning by the investigators.

5 During oral argument, counsel for McInnis claimed that McInnis's confession was highly persuasive and should be suppressed because it provided the only direct evidence that McInnis brought the gun with him, took a furtive route to the scene, and was wearing the blue hoodie found by police. These arguments are not persuasive. Regardless of whether McInnis brought the gun with him from D.A.'s car or acquired it in the 3 minutes before the shooting, he clearly brought the gun with him to use in the attack, which is evidence of planning. In addition, there is evidence of the route McInnis took to approach Christianson, including the surveillance camera, which showed him crossing two yards, witness statements that he approached from the alley, and the fact that only about 3 minutes passed between McInnis leaving D.A.'s car and making his attack blocks away. Finally, McInnis told D.A. that police had his hoodie and, in any event, the relevant evidence of planning is that McInnis put up his hood before making his approach, which is established by the surveillance camera and witness statements. Thus, we conclude that McInnis's confession was duplicative of other evidence.

6 McInnis claims that statements made by the district court during sentencing show the reasonableness of his theory. For example, at sentencing the district court stated, "Having just brutally murdered Mr. Christianson, he was aware of the awesome power of his shots and fired that last shot intentionally to avoid apprehension.... The last shot was intended to dissuade and/or harm anyone else who might have been coming after him, i.e., another victim." Whatever credence these statements may appear to lend to McInnis's theory is irrelevant. In conducting our review, we accept the circumstances proved as determined *by the verdict*, not by statements at sentencing, and we review the inferences that may be drawn from those circumstances de novo. *Petersen*, 910 N.W.2d at 7.
McInnis also criticizes the district court for relying on the absence of evidence of retaliation from C.R., or anyone else at the scene, citing *State v. German*, 929 N.W.2d 466, 473–74 (Minn. App. 2019) ("[T]he absence of evidence in the record regarding a certain circumstance does not constitute a circumstance proved."). We reject this argument. The district court did not rely on the absence of any evidence of retaliation *to prove* that no retaliation occurred; it relied on the absence of that evidence simply to show that McInnis could point to no facts that would raise his hypothesis beyond mere conjecture. *See Lahue*, 585 N.W.2d at 789. In any event, because we reach our conclusion without relying on the absence of retaliation as a separate circumstance proved, this argument is

unavailing.

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APPENDIX B

Page

Trial Court's *Miller* Sentencing Memorandum.....B1-B8

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

27-CR-16-26893

State of Minnesota,

Plaintiff,

v.

Jquan Leearthur McInnis,

Defendant.

Sentencing Memorandum

Case File # 27-CR-16-26893

The above-entitled matter came duly before the Honorable Jeannice M. Reding on November 21 and 22, 2019 for a *Miller* sentencing hearing. Post-hearing submissions were received.

Mark Griffin and Darren Borg, Assistant Hennepin County Attorneys, appeared for and on behalf of the State of Minnesota.

Elizabeth Hogan and Laura Baldwin, Assistant Hennepin County Public Defenders, appeared with and on behalf of Defendant.

MEMORANDUM

A *Miller* hearing was held on November 21 and 22, 2019, to determine whether the Minnesota sentencing scheme that requires imposition of a sentence of life without possibility of release (LWOR) is unconstitutional as applied to Defendant because he was a juvenile at the time of the offense. *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012). The court must consider the ways in which juveniles are different from adult offenders, and whether this defendant is the "rare juvenile offender whose crime reflects irreparable corruption." *Id.*, 132 S.Ct. at 2471.

The facts of Defendant's life have been heavily documented in school, court, placement, medical, and mental health records, and are not in dispute in any significant way. What is disputed is what those facts mean for purposes of sentencing in this case. The following is a non-exhaustive summary and discussion of information compiled from the evidence in the court file and from the Miller hearing.

1. **Consideration of Defendant's chronological age and its hallmark features, including immaturity, impetuosity, and failure to appreciate risks and consequences.**

   Defendant Jquan McInnis was born on March 17, 1999. At the time of the homicides, he was 17 years, 7 months of age. At that age, he was still undergoing brain development. Neuroscience has shown that full brain maturity does not occur until the mid-20s up until approximately age 30. Males, in particular, often mature at rates slower than same-age females. The prefrontal cortex, which controls impulsivity, strategy formation, planning, anticipating and weighing consequences, insight, and empathy, is one of the last parts of the brain to fully develop. Defendant's history, as outlined in detail below, might also have contributed to affect his brain development, including likely prenatal drug and alcohol

exposure; chronic childhood trauma, stress, and neglect; heavy drug and alcohol use during childhood; and his diagnosed mental health conditions.

During his stay at Red Wing near the end of his minority, notes indicate that his "insight and judgment are profoundly poor." Defendant lacks awareness or is indifferent to the effects of his behavior on others.

Impulsivity is a hallmark of immaturity. Defendant's particular mental health conditions and susceptibility to peer influence, even subconsciously, made it likely that he had diminished cognitive control over his actions and made him more impulsive than would be expected of someone else his age. He was prescribed medications which helped, in part, to control impulsivity. He was not taking his medication at the time of the offenses.

Further, Defendant's act, even though it took several minutes to complete, likely was impulsive to the extent that Defendant made the decision to act very quickly after he spotted Christianson on the street, and immediately acted on that decision without considering any planning before or after and without appreciation or consideration for the long-term consequences, which would be a normative response. As described by Dr. Kavanaugh, this reflects youthful impulsivity in response to a stimulus, rather than responding in an organized and planned response.

Studies show that youth are more susceptible to peer influence and pressure than mature adults. Defendant likely was unconsciously affected by peer influence. Defendant has stated both that his gang peers discouraged him from assaulting Christianson, and that they encouraged him to do so. He reported that his "best friend" Rashad Austin, a gang member 7 years older than Defendant, yelled and cussed at Defendant when he heard that he had paid Christianson without getting the gun. Defendant thought he had to redeem his reputation by "tak(ing) care of that," as suggested by Rashad Austin. From his experience coming up in the gang, he believed that meant he had to hurt Christianson.

Defendant exhibits immature thinking. In his juvenile court cases, he made immature decisions regarding his cases which resulted in short-term benefit at the expense of worse long-term consequences. Defendant's immaturity is shown by his decision to undertake such a devastating act for the purpose of establishing his reputation for toughness amongst his gang peers. Another indicator of his immature thinking is that one of the reasons he stated for not wanting Christianson to die was because "If I kill him, he can't go and tell people . . . don't take shit from [Defendant] because he will fxxk you up."

2. Defendant's intellectual capacity at the time of the offense.

Although Defendant had received Individualized Education Plans (IEPs) since second grade for a learning difficulty in reading and for Emotional Behavior Disturbance (EBD), his overall intellectual capacity is in the low average to average range. Defendant's education has been disrupted many times because he went in and out of so many placements, so he generally has tested below grade level. However, when he has applied himself and remained focused (usually when appropriately medicated), he has shown the potential and ability to successfully complete academic subjects. At times, he earned A's and B's. IQ testing on Defendant indicates an overall average score, but it is noted that the Verbal Comprehension Index score measuring verbal reasoning, comprehension, and conceptualization skills scored in the Below Average Range.

3. Defendant's mental, emotional, and psychological health at time of offense.

Defendant has a long history of serious mental health and behavioral issues. His diagnoses over the years have included ADHD Combined Type, Oppositional Defiant Disorder, suspected Fetal Alcohol Spectrum Disorder/Effects, Features of Reactive Attachment Disorder, Conduct Disorder NOS, Adjustment Disorder, Cannabis Use Disorder, Anxiety Disorder NOS, and a Learning Disorder in reading.

Defendant was exposed prenatally to drugs and cocaine and he began using marijuana regularly by the age of 7 or 8. He was using marijuana and alcohol daily by age 11. He has used other drugs, including synthetic marijuana. The exact effects of these chemicals on his developing brain are unknown; however, it has been scientifically established that prenatal drug exposure affects brain functioning. It has negative influences on cognition and reward processing that persist into adolescence and early adulthood.

Defendant's mental health issues, which were rooted in his childhood neglect and trauma, fueled his negative behaviors, according to all experts who testified. Chronic trauma and neglect heighten the emotional system. By age 5, Defendant was having significant behavioral issues. By second grade, he was receiving IEP services for a learning disability and Emotional Behavior Disorder (EBD). Walter Maginnis High School notes indicate that EBD is a disability. The Evaluation Discharge Report from Volunteers of America dated July 22, 2014 refers to his negative behaviors as "conduct disorder behaviors."

The effects of his life traumas persisted into late adolescence. The Psychological Evaluation and Diagnostic Assessment by Dena Bohn, Psy.D. filed on August 15, 2016, evaluated Defendant when he was 17 years, 4 months, only 3 months before the murders. She concluded, "It is evident that the trauma he has experienced in his life is negatively impacting his life." His Conduct Disorder is "rooted in experiences of trauma" and results in "a repetitive and persistent pattern of behavior where the basic rights of others(s) are violated." "In addition, J-Quan meets the criteria for SED (Severe Emotional Disturbance). His diagnoses and emotional disturbance significantly impairs, home, school and community functioning which has lasted more than one year."

In the Psychological Evaluation dated February 14, 2019, Dr. Rebecca Reed indicated that his "complex developmental trajectory which has been impacted by trauma, (probable) neurobiological impacts from prenatal substance exposure, immersion in youth gang culture, inconsistent schooling, and erratic participation in treatment" affected his cognitive capacities, emotional functioning, and independent thinking and contributed to his delinquent/criminal recidivism. His inability to benefit from his many prior treatment interventions might be limited by his "(surmised) developmental immaturity, or to "a mis-match between his treatment needs and interventions offered." She was not able to predict his rehabilitation potential.

4. Defendant's family and home environment.

Defendant's family history is well documented in the record. He was born to a single mother and never knew his father. His mother had four children removed from her custody prior to Defendant's birth for neglect, endangerment, and maltreatment. Defendant's mother has been diagnosed with bipolar disorder, schizophrenia, and she has history of significant drug and alcohol abuse. It is believed that she used alcohol and

crack cocaine while pregnant with Jquan. She was in and out of his life and was often disruptive to him when she was around.

Defendant was removed from his mother's custody at age 4 months and he was placed with his maternal grandmother and her husband. It is noteworthy that the maternal grandmother with whom Defendant was placed was previously involved in Child Protection for her abuse of Defendant's mother when she was a minor. In 1989, Defendant's mother was not returned to the care of his grandmother because it was determined that placement with her was likely unresponsive to (Defendant's mother's) needs and might exacerbate the child's behavioral and emotional problems. Sadly, Defendant was placed with this same woman, with predictably negative results.

Even at that early stage in Defendant's life, there were concerns about excessive drinking by the grandmother and her husband. Excessive alcohol use and drug use by the grandparents continued throughout Defendant's minority. The grandparents had a "party house" where friends would stop by frequently to use alcohol and drugs, including crack cocaine. During these times, Defendant's physical and emotional needs were neglected. He went without food and literally was told to go outside and stay away from the home so the adults could party. His grandmother described that they were "just busy doing (them)" at that time, i.e., attending to their desires instead of meeting Defendant's needs.

Defendant experienced chronic maltreatment throughout his youth. His grandparents were not able or willing to adequately attend to his intensive physical, emotional, or mental health needs. Although Defendant was repeatedly provided with services, his grandmother did not follow up on those services when Defendant returned home, failing to engage community providers and practice skills.

Defendant was largely unsupervised. At a young age, he told professionals working with him that he was lonely and asked to be provided with someone who would spend time with him. Due to the lack of family involvement and support, Defendant ultimately turned to the streets and figured out how to survive on the streets. His actions often were survival reactions to his environment.

By age 5, Defendant was experiencing "behavioral dysregulation" and he was described as having serious emotional disturbance. Defendant was engaging in extremely negative behaviors, including fighting, aggression, and noncompliance. By second grade he had IEP and qualified for services because of his Emotional Behavioral Disorder. Around 2006-7 he obtained a children's mental health case worker.

Defendant was provided with a multitude of mental health interventions and school services. He was hospitalized on four occasions in 2009-2010 because of his behaviors and emotional disturbances. Despite his needs and the availability of services, his grandmother remained minimally involved in treatment and did not follow through with recommendations. She failed to take him to appointments and to ensure that he took his medication regularly. "Despite intense outpatient services with case management, medication management, therapy and skills training and school interventions, (Defendant) continued to decompensate rapidly." Dr. Nicole Lynch letter, Oct. 14, 2009.

By age 10 or 11, Defendant was engaged in the street/gang culture. The lack of family engagement with him was replaced by engagement with gang members, who provided him with food, clothing, and shelter, but also rewarded his antisocial behaviors and engaged him in their criminal lifestyle.

Throughout Defendant's childhood, there were multiple recommendations for residential treatment (RTC). During those years, Hennepin County leaned toward community-based services that kept children in their homes and with supportive family members, so he had only a few residential treatment placements. Also, insurance often would not pay for out of home placements. At a crucial age, around age 10, RTC placements were denied him, even though one provider working with him estimated that 98% of his issues were related to his environment.

Unfortunately, in Defendant's case, he did not have a home environment that was supportive and helpful. His grandmother was unwilling or unable to follow through with the home portion of his case and treatment plans to assist Defendant with the skills that his therapists and other providers were working to instill in him. On the contrary, his home life was neglectful and chaotic, and continued to be a place of significant stressors instead of a place of support and guidance. Staying in his home environment allowed Defendant to continue to spiral out of control. Placement out of the home in appropriate residential treatment centers would have been better placements for Defendant.

Unfortunately, Defendant turned to the streets for support and guidance. He spent time with mostly older gang members and learned how to survive on the streets, including using violence as a way of conflict resolution.

At 11 years of age, Defendant's behavior had escalated to the extent that he appeared in Juvenile Court on 17 charges that occurred in a 7-month period. In addition to associating with older gang members, he was having frequent contact with police, absenting himself from his grandmother's home, and chronically abusing marijuana. From that age on, he embraced the gang-life attitude. His extensive use of drugs and alcohol may have been efforts to self-medicate. His running away behaviors likely were avoidant behaviors, typical of traumatized youth.

Among the services provided to Defendant over the years were individual treatment plans and assignments, cognitive skills development, drug awareness programming, Aggression Replacement Training/anger management training, trauma group, one on one counseling, IEP assignments, process groups, drug awareness/relapse prevention, special education instruction, paraprofessional assistance. At times, when Defendant was in appropriately structured and stable environment and regularly taking his mental health medications, he was able to stabilize his behaviors and make improvement. At times he appeared motivated to change and make progress. However, he frequently had difficulty maintaining positive behavior and controlling his behavior. At many times, despite all efforts to help him, his behavior was chronically bad.

By age 13 or 14, Defendant had significant difficulty functioning in basic life areas such as school and home. He exhibited poor impulse control, lack of coping skills, emotional and behavioral issues, and a criminal mindset. He lacked appropriate boundaries with leaders. His behavior frequently was manipulative and coercive to accomplish what he wanted done. His negative behaviors were often disruptive and detrimental to peers. He

has a long history of assaultive behavior when things did not go his way or when he felt "disrespected." Defendant spent much of his adolescence in different placements. In these placements, he had limited access to family members and family support.

Notably, throughout his adolescence, Defendant constantly exhibited negative behaviors such as: goading peers into being disruptive and even harming others, assaultive behavior, teasing and belittling behavior, disrespect of authority, and inappropriate sexual comments. He frequently was terminated from placements for assaultive behavior or failure to follow rules. He appeared to "self-sabotage" when nearing completion of programming. He also ran from treatment facilities or placements. These behaviors are typical of children with unresolved trauma.

Multiple professionals found Defendant to be at high risk of continuing to engage in a pattern of delinquent behavior, given his impulsiveness, outbursts, and lack of understanding of the dangers of the streets, which put both the safety of Defendant and others in the community at risk.

5. **Nature and circumstances of the homicide offense, including mitigating and/or aggravating factors and the extent of Defendant's participation in the offense.**

The homicides committed by Defendant were brazen and heartless. He was the sole actor. The adult male victim had deceived Defendant on a $250 firearm sale, and Defendant planned to retaliate by scaring or harming the adult male victim in order to protect his reputation on the streets. Seeing the adult male victim sitting in a parked vehicle, he had his friend park around the block. He put up his hoodie to avoid detection, and he continued furtively through alleys and backyards until he approached the adult victim. He walked straight up to him and immediately shot him at point blank range in his chest and arms and upper torso. As he ran away from the scene, he threw one final shot back towards the vehicle, which hit the infant victim in the chest, causing his death. The infant was shot in front of his father.

6. **Extent of Defendant's participation in the conduct.**

Defendant was the only participant in the homicides. He obtained a gun with the purpose of assaulting the adult victim. Defendant alone walked up to the vehicle in order to settle a score he believed he had with the adult victim. Defendant alone pulled the trigger many times, striking his intended victim and an innocent infant.

7. **Nature and extent of Defendant's prior delinquency and/or criminal history and prior history of programming and treatment.**

Defendant has a significant prior delinquency and criminal history. Petitions were brought alleging at least twenty-seven (27) different charges and crimes, ranging from petty misdemeanors to felonies. Defendant has seven (7) juvenile adjudications as follows:

11/20/2009	Theft
10/08/2010	Assault
10/08/2010	Burglary
06/23/2011	GMD – Assault 2nd degree with dangerous weapon
01/05/2012	Assault on Corrections Employee

03/18/2014 Escape from Custody
09/18/2014 Theft

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A juvenile delinquency petition was filed in Hennepin County Juvenile Court alleging Defendant committed 1st Degree Aggravated Robbery on or about June 28, 2016. By Order dated August 15, 2016, Adult Certification was granted. Defendant was prosecuted in adult court and ultimately plead guilty to that charge. After being charged with the offenses in this case, Defendant again waived certification and Adult Certification was granted. On September 13, 2016, he entered a guilty plea. He committed this offense one month later.

Defendant's history of extensive treatment efforts is well-documented in the records and is not in dispute. Defendant's history of 15 out-of-home placements in addition to the Juvenile Detention Facility is well-documented in the record. Defendant spent large amounts of his adolescence in placements. Approximately 6 months before this offense, he had been released from the Red Wing correctional facility after an 18-month stay, where he had received the following interventions: psychoeducational groups regarding substance use, gang involvement, and anger management; psychotropic medications, milieu therapy, individual therapy, and special educational services. He subsequently absconded from the step-down facility, Vintage Place, and committed these crimes shortly thereafter.

8. Effects of familial and peer pressures on Defendant.

Defendant was subject to significant peer pressure from street gang members, who became his "family" in the absence of a stable family of origin. His actions seem largely motivated by his desire to show that he would be willing to retaliate for wrongs against him in order to cement a tough reputation on the streets. Further, according to Dr. Kavanaugh's testimony, he likely was unconsciously affected by peer influence.

9. Defendant's inability to deal with police officers or prosecutors.

Defendant did not have difficulty dealing with police officers or prosecutors. He had spent significant amounts of time in custody previously and was fairly sophisticated regarding the process for someone of his age. He had been arrested or taken into custody many times before, and he did not appear to be under any particular duress when talking to the officers for hours. After extensive questioning and hours of lying to police, he ended up giving a statement to police confessing to the murders after requesting the opportunity to make a phone call to his grandmother first.

10. Incompetencies of youth of Defendant.

As discussed in great detail above, Defendant was age 17 years, 7 months at the time of this offense and had not reached full brain development, which would not be expected until the mid- to late-twenties. He was immature and impulsive and lacked full cognitive reasoning skills.

11. Possibility of rehabilitation of Defendant.

Both of the professionals who testified opined that Defendant is capable of rehabilitation. With anticipated growth in maturity and intelligence, he could form more prosocial attachments. He is capable of growth and responding to treatment, as he has at times in

the past. He has sufficient intelligence and cognitive functioning to engage in treatment and make change.

His past failures do not necessarily predict future failure, as expected brain development and intellectual growth might allow him to successfully rehabilitate. Further, if he is provided the appropriate treatments for his particular issues, including work on dealing with the traumas underlying some of his behaviors, he could successfully rehabilitate. He would also need to be medication compliant.

Although future behavior cannot be scientifically determined, it has been scientifically shown that most people "age out" of crime, which is partly attributable to maturity. In addition, Defendant does not have any glaring factors that would suggest he is irrevocably corrupt. On the contrary, he has a background of long-standing maltreatment and neglect, and typical, albeit negative, responses to his circumstances for someone in his situation and with his diminished coping skills.

Defendant has good qualities. He has been described as smart, creative, engaged, with a good sense of humor. He has exhibited leadership and good social interaction skills at times. Some providers indicated that he genuinely wanted to do better and tried to do better. When given the chance, he was able to calm down and reevaluate triggering situations.

12. Any other circumstances relevant to the determination of irreparable corruption or permanent incorrigibility or transient immaturity of Defendant

Despite the amount of programming and assistance provided to Defendant, he has failed to learn socially acceptable methods of problem solving. Instead, he has reacted with "planned aggression directed towards others." "Jquan has the aptitude to become a thoughtful, productive member of society – we are concerned that the temptation to continue to utilize his street survival skill set – will negate efforts to correct his behavior." Ex. 31, Mesabi Discharge Summary dated July 15, 2009, p. 166. Over 10 years later, this concern continues.

Defendant has exhibited limited empathy or sympathy for the victims. While he has stated that he is sorry that he killed the baby, initially he expressed that he did not regret the killing of Christianson. In the more recent Presentence Investigation report, he indicated that he is sorry for what happened and hopes the family can find closure. It is not clear whether he is referring to the infant or Christianson or both.

CONCLUSION

The State has not proven that Defendant is "irreparably corrupt" or "permanently incorrigible." Although a review of the evidence might suggest that rehabilitation would be difficult, the evidence regarding brain development, appropriate treatment options for him, and his ability to be successful in some situations, leads to the conclusion that he is not necessarily "irreparably corrupt," but could be rehabilitated with the right combination of treatment provided and initiative taken by Defendant to change. Therefore, sentencing Defendant to life without possibility of release (LWOR) would be inappropriate under *Miller v. Alabama*, et al.

JMR

Reding, Jeannice

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APPENDIX C

Page

Trial Court's Oral Ruling Imposing Consecutive Sentences C1-C19

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STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

State of Minnesota Court File 27-CR-16-26893

Vs, Court of Appeals A20-0492

Jquan Leearthur McInnis

TRANSCRIPT OF PROCEEDINGS

Sentencing

The above entitled matter came duly on for hearing before the Honorable Judge Jeannice Reding, one of the Judges of the above named Court, at the Hennepin County Government Center, Minneapolis, Minnesota, on the 2nd day of January, 2020.

Suzanne Schultz
C-8 Government Center
300 S. Sixth Street
Minneapolis, Minnesota 55487
(612)348-6693

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APPEARANCES

Mark Griffin, Esq., and Darren Borg, Esq., 300 South Sixth Street, C2000, Minneapolis, Minnesota 55487, appeared on behalf of the State of Minnesota.

Elizabeth Hogan, Esq., and L, Esq., 701 Fourth Avenue South, Suite 1400, Minneapolis, Minnesota 55415, appeared with and on behalf of Jquan McInnis.

PROCEEDINGS

THE COURT: This is State of Minnesota versus Jquan LeeArthur McInnis. The court file number is 27-CR-16-26893. Counsel, please identify yourselves.

MR. GRIFFIN: Good afternoon, Your Honor. Mark Griffin, Assistant Hennepin County Attorney.

MR. BORG: And also Darren Borg on behalf of the state.

MS. HOGAN: Elizabeth Hogan for Mr. McInnis, Your Honor.

MS. BALDWIN: Laura Baldwin for Mr. McInnis.

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THE COURT: All right, thank you, counsel.

As counsel knows I am filing a memorandum today to support the sentencing decisions made today. We had a *Miller* sentencing hearing on November 21 and 22 at which time there were witnesses and a significant number of exhibits. I think it's about maybe 12 inches of exhibits. For the record, I have reviewed all of those exhibits. I also have reviewed everything necessary to make this decision regarding the *Miller* issue.

So again the issue is, under *Miller versus Alabama*, whether imposition of a sentence of life without possibility of release is unconstitutional as applied to the defendant because he was a juvenile at the time of this offense. The memorandum is extensive, I'm just going to read a few portions of it to briefly explain my decision at this time.

One of the considerations, of course, is the defendant's chronological age because he was a juvenile and the hallmark features, including immaturity, impetuosity, and failure to appreciate risks and consequences at that age. There was credible evidence that full brain maturity does not occur until the mid 20's and up until age 30, and

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prefrontal cortex which controls impulsivity, strategy formation, planning, anticipating and weighing consequences, insight, and empathy is one of the last parts of the brain to fully develop. Defendant's history, as outlined in detail in the record, and in some detail in this order, may have contributed to affect his brain development including likely prenatal drug and alcohol exposure, chronic childhood trauma, stress and neglect, heavy drug and alcohol use during childhood himself, and his diagnosed mental health conditions.

Defendant's intellectual capacity at the time of the offense was not an issue as he had sufficient intellectual capacity.

Defendant's mental, emotional and psychological health at the time of the offense did affect this matter. There was credible evidence that the trauma he experienced in his life negatively affected him, and there was a repetitive and persistent pattern of behavior where he violated the basic rights of others.

Dr. Rebecca Reed opines that his complex developmental trajectory was impacted by trauma, probable neurobiological impacts from prenatal

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substance exposure, immersion in youth gang culture, inconsistent schooling, erratic participation in treatment, etcetera, that these affected his cognitive capacities, emotional functioning, and independent thinking and contributed to his delinquency and criminal behavior.

There was also a credible and sufficient evidence that probably not all but maybe some of the treatment programming offered to him was insufficient to meet his needs, particularly as it related to in-home treatment where there was an inability or unwillingness in the home to follow through with the treatment modalities that were offered for him.

Mr. McInnis's family history and home environment is, again, extensively documented in the record. He was subject to chronic maltreatment, a significant lack of family involvement and support. He was provided with a multitude of mental health interventions and school services. However, members of his family remained minimally involved in treatment and did not follow through on recommendations for interventions.

Part of the consequence for that was that

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a Mr. McInnis unfortunately spent a lot of his time unsupervised in the streets and he learned ways of coping in the streets which were inappropriate ways of coping, to say the least, and certainly included using violence as a way of conflict resolution.

At times when he was in appropriately structured and stable environments and regularly taking his medications he was able to stabilize his behaviors and make improvements and he appeared motivated to change and make progress. However, at other times he had difficulty maintaining any positive behavior and controlling his behavior.

The nature and circumstances of this offense including mitigating and/or aggravating factors and the extent of defendant's participation in the offense. It is clear, obviously, that he was the sole participant in this offense and that the homicides committed by him were, in my opinion, brazen and heartless.

I did not find any mitigating factors with regards to the offense. I did believe that there were aggravating factors, including the presence of other people in the area and particularly the shooting of the infant child in front of his father.

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The extent of his participation in the conduct. Again, he was the only participant, he obtained a firearm with the purpose of assaulting the adult victim, and in the end did execute that crime.

The nature and extent of his delinquency and criminal history is extensive. Again, it is detailed in great detail in the record. I don't need to go into that in any significant detail. It may be important to note that he was on probation for first degree aggravated robbery where he was certified as adult shortly before this incident.

He, of course, had many, many out of home placements including extensive placement at Red Wing. And I would not be able to overstate the amount of services provided to Mr. McInnis. I have never served in the Juvenile Court but I would be surprised if there are many cases where more services, more resources, more financial assistance has been provided to somebody. It's extensive starting from literally infancy and more in grade school and then throughout his entire life and almost consistently.

Effects of the family and peer pressure on defendant. Unfortunately there are indications

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that he was either, consciously or subconsciously, pressured by what became his familial street gang members and that did affect his, I believe that affected his decisions in terms of what he thought he had to do.

He did not have any inability to deal with police officers or prosecutors and, in fact, was somewhat sophisticated in that regard due to his experience in the court system and the legal system and law enforcement system.

The incompetencies of youth were discussed above. He was 17 years, 7 months at the time of this offense, I believe had not reached full brain development, as it would not certainly be expected scientifically until later, and did display indications that he had immaturity, impulsivity, and lacked full cognitive reasoning skills.

Possibility of rehabilitation. It was very important to me that both of the professionals who testified indicated that the defendant, Mr. McInnis is capable of rehabilitation. I do think that the standard under the *Miller* hearing, or the *Miller* case, that he be shown to be irreparably corrupt or chronically incorrigible is an extremely high standard and that standard was not met here.

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The experts indicated that with expected maturity from aging and expected growth and intelligence, again, from simply becoming older, he would be able to, could be able to, form more prosocial attachments and respond to treatments if appropriate treatments are provided to him, including work on his underlying traumas, and he takes advantage of that and makes the decisions to make better choices and to rehabilitate, and as he becomes medication compliant that those things could happen and he could be rehabilitated.

It was also important to me that the experts who looked at this did not see any glaring factors suggesting that he is irrevocably corrupt in terms of sort of the kind of features that we might see in somebody who would not be able to have any kind of rehabilitation.

The record also has indicated that defendant has a lot of good qualities that he could draw on to help him rehabilitate. He has been consistently described as smart, creative, engaged, and having a good sense of humor, he had good social interaction skills at times, and he actually exhibited quite a good amount of leadership. Unfortunately sometimes that was good, sometimes

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that was negative. But he has shown he has been able to be a leader.

I was troubled by the fact that despite the amount of programming and assistance provided to him he was not able to learn socially acceptable methods of problem solving and that he consistently reacted with planned aggression direct towards others. There are notes that they are concerned about the temptation to continue to use his street survival skill set, negate efforts to correct his behavior. I think that's been consistent in the record and, again, whether Mr. McInnis makes that change or not I think that's probably up to him.

I was also concerned about what I perceived as a limited amount of empathy or sympathy for the victims. Initially he indicated that he was sorry for killing the baby and did not intend to kill the baby but did not express regret about killing Mr. Christianson. In the presentence investigation he does indicate some sorrow and that he hoped the family can find closure. However it was not clear to me which family or both that he was talking about.

Again, I think that rehabilitation here would not be easy, would not come quickly, and

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might not happen, but neither professional could give a timeline or say for sure that he could not be rehabilitated and indicate that had he could be. So I think under the *Miller* standards he has not been shown to be irreparably corrupt or permanently incorrigible, therefore sentencing him to life without parole or possibility of release is inappropriate.

Because it is not appropriate to impose the harshest sentences possible in the State of Minnesota for these crimes, that of life in prison without the possibility of parole, it is appropriate therefore to impose sentences of life in prison with the possibility of parole after 30 years.

The final consideration for the Court is whether concurrent or consecutive sentences would be imposed. Consecutive sentences are permissible in certain circumstances such as when there are multiple victims or when the convictions are for first degree murder.

I do want to add here that I reviewed, that we did receive victim impact statements, I think it was in May. There were a significant number of victim impact statements and, for the

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record, I reviewed those at this time since it was a while since I had seen those.

The court must consider whether consecutive sentences would be disproportion to the offense or unfairly exaggerate the criminality of defendant's conduct. Imposing consecutive sentences would not unfairly exaggerate the criminality of defendant's conduct in this case.

First, Mr. McInnis was not a young teen at the time of these homicide but at the time was 17 years 7 months old. He was only five months away from these convictions resulting in two mandatory life-without-release sentences. A fair amount of the case law discussing these issues has younger and certainly even less brain-developed teenagers.

Mr. McInnis's crime was brazen and purposeful, not accidental or under other circumstances which might mitigate the conduct of a youthful offender. He had the driver of his vehicle park a few blocks away and he approached the scene furtively, cutting through yards and alleys. He attempted to conceal his identity with his hoodie, he approached his victims in broad daylight and in the presence of others who were in

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close proximity and in the presence of many, many more individuals, including children who were at the park immediately across the street.

The evidence is clear that Mr. McInnis knew that other people were nearby as he acknowledged seeing Jayden's father, and there were other references in statements and discussions where he was aware of other people in the area. And, in fact, when the shooting began other people fled the very immediate area, with one person even abandoning his bicycle on the nearby sidewalk very close to the scene. So it was obvious that people were nearby.

His actions showed planning and purpose. He walked straight up to Mr. Christianson and shot him at close range six times in the upper torso and chest and arms. These shots were meant to kill and they did.

Defendant argues that he did not intend to kill the baby and did not know the baby was there. While that might be true, that defendant did not know that particular child was in that particular seat, he knew or should have known that he was potentially endangering other people in the area. He saw Jayden's father and it is reasonable to

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think there might have been others in the car or in the near vicinity.

The defendant also stated that the last shot was not intended for Mr. Christianson but for Jayden's father whom he thought might be reaching for something or for whomever he thought might be chasing him. He knew Jayden's father was in the immediate vicinity and, based on one of his explanations, and there were multiple explanations here so it's a little bit difficult to follow, he indicated that he believed that Jayden's father might be shooting at him, so he was aware that people were in the area and could be harmed by his shots. It was a natural and probable consequence that his actions would endanger people other than the person he was shooting at.

While I did determine in the verdict and findings that defendant did not intend to kill Jayden because he was unaware of Jayden's presence, he was aware of the others. Having just brutally murdered Mr. Christianson, he was aware of the awesome power of his shots and fired that last shot intentionally to avoid apprehension.

Mr. Christianson was already mortally wounded and was not following him. The last shot was intended

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to dissuade and/or harm anyone else who might have been coming after him, i.e., another victim. Mr. McInnis knew that Jayden's father was directly on the other side of Mr. Christianson because he acknowledged seeing him as he walked up to the car. He reasonably could have anticipated that that last shot could have hit him instead of Jayden, or any others in the background, depending on the direction of the shot.

Further, defendant used means likely to cause harm to several persons. It's very important to consider that the shot that killed Jayden was not an errant shot from the shots that he had fired directly at Mr. Christianson at close range at the side of the car which had limited possibility of hitting others. He had completed his murder of Mr. Christianson and was rushing to leave the scene. As he left the scene, in a separate act of violence, he turned back and fired another shot at the car. He explained that he fired the shot because he saw the front seat occupant duck down, possibly to get a gun, so he took the shot in an attempt to harm someone that might pursue him. He alternately stated he shot to stop anyone from pursuing him.

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Mr. Christianson killed Mr.- I'm sorry. Mr. McInnis killed Mr. Christianson at age 25, in the prime of his life. I believe he was 25; I'm sorry I didn't check that. Mr. McInnis killed Jayden at age seven months, not even giving him a chance to grow up, and shattering his parents and family. The killing of Jayden took place in the presence of his father.

Defendant has a significant juvenile criminal history, one adult conviction, and a very long history of ingrained criminogenic thinking and behaviors and there are significant concerns for public safety here given the extensive assaultive history he has.

I believe the Minnesota Sentencing Guidelines which require the Court to consider punishment which is proportional to the severity of the offense and the offender's criminal history supports imposition of consecutive sentences in this case. Imposition of one sentence of life with possibility of parole, or two concurrent sentences for the two counts, would be insufficient punishment for these most serious of crimes. Imposition of consecutive sentences is not disproportionate to the offenses and does not

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unduly exaggerate the criminality of the offenses.

At this time I would ask the defendant, Mr. McInnis, and his counsel to please stand for sentencing.

Anything else from counsel before I sentence?

MS. HOGAN: No, Your Honor.

THE COURT: Mr. McInnis, you have the right to make a statement before I sentence you. Is there anything you would like to say?

THE DEFENDANT: No.

THE COURT: Jquan LeeArthur McInnis, having been found guilty of the crimes of Count One, Murder in the 1st Degree - Premeditated, and Count Two, Murder in the 1st Degree - Premeditated, as set forth in the Complaint before the Court in violation of Minnesota Statute Section 609.185(a)(1), therefore standing convicted and adjudicated of said crimes, on Count One you are committed to the custody of the Commissioner of Corrections for a period of life in prison with the possibility of release after a minimum of thirty years. On Count Two you are committed to the custody of the Commissioner of Corrections for a period of life in prison with a possibility of

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release after a minimum of thirty years. The sentence on Count Two shall be served consecutive to the sentence on Count One. You shall be given 1,117 days credit against the time in price for the time you have spent in confinement between arrest and sentencing in connection with this offense.

Are there any requests for restitution here?

MR. GRIFFIN: I believe there was one filed. Your Honor, I do have a request for restitution. I can forward that to Counsel and the Court. Can we just reserve that for thirty days, Your Honor?

THE COURT: The issue of any restitution owed is reserved for thirty days. You will be notified if a request for restitution is made.

You are ordered to pay the mandatory minimum fine of $50 and the mandatory surcharge of $78.

You have the right to appeal the judgement of conviction or the sentence or both. If you are unable to pay the costs of appeal you can apply for the services of the State Public Defender's Office.

You must provide a DNA sample as directed, you are not allowed to use, possess, or receive any

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firearms, ammunition, or explosives, and you are not allowed to vote or register to vote until your sentence has been completed and your civil rights are fully restored.

Do you have any questions about the sentence?

THE DEFENDANT: (Shaking his head.)

THE COURT: All right, thank you. Good luck.

MR. BORG: Your Honor, on the issue of the credit.

THE COURT: Yes.

MR. BORG: If I heard the court correctly, the court said 1,117 days credit.

THE COURT: That's the number I have.

MR. BORG: It's 1,177.

THE COURT: My apologies. I will fix that. 1,177 days credit. All right. I have a copy of this for him. For the record, he has received a copy of his order in the courtroom. I will not make him, I will not have him sign it.

(These proceedings were adjourned.)