STATE OF MINNESOTA

IN SUPREME COURT

A20-0492

Hennepin County — Anderson, J.

State of Minnesota,

Respondent,

vs.

Filed: August 11, 2021
Office of Appellate Courts

Jquan Leearthur McInnis,

Appellant.

Keith Ellison, Attorney General, Saint Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Nicole Cornale, Assistant County Attorney, Minneapolis, Minnesota, for respondent.

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

S Y L L A B U S

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.

Affirmed.

O P I N I O N

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, 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, 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."

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[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.

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.[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

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[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

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 (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

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release for *juveniles*. 567 U.S. 460, 479 (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 (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 (2021).

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 *Michigan v. Mosley*, 423 U.S. 96, 104 (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 (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.

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; *see also Miranda*, 384 U.S. at 473–74 ("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.

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 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. 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 (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 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

[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.

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 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 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 six

[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.

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 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 *Al-Naseer*, 788 N.W.2d at 473). We "will not overturn a conviction based on circumstantial evidence 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 *consecutive* sentences of life imprisonment with the possibility of release after 30 years.

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[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.

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 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 (2012), and applied retroactively in *Montgomery v. Louisiana*, 577 U.S. 190, 212 (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; *Williams*, 862 N.W.2d at 703, but raises the argument to preserve it "for potential further litigation." For the reasons explained in those decisions, we reject McInnis's argument.

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.