

DISTRICT COURT, DOUGLAS COUNTY, COLORADO 4000 Justice Way, Castle Rock, CO 80109 720-437-6200	DATE FILED: December 4, 2019 12:05 PM
<p>Plaintiff: THE PEOPLE OF THE STATE OF COLORADO,</p> <p>v.</p> <p>Defendant: MAYA ELIZABETH McKINNEY, a/k/a ALEC McKINNEY.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> <p style="text-align: center;">—</p> <p>Case No.: 2019CR467</p> <p>Div.: 5</p>
<p>ORDER RE: MOTION FOR REVERSE TRANSFER</p>	

THIS MATTER comes before the Court on Defendant’s motion to transfer this case to the juvenile division of the district court. The preliminary hearing/reverse transfer hearing began on November 18, 2019 and concluded on November 27, 2019. At the conclusion of the preliminary hearing the Court found probable cause to bind over for trial the charges against the Defendant. The Court took under advisement its ruling regarding the reverse transfer motion. Now having considered the testimony presented, the exhibits that were introduced, the arguments of counsel, and the applicable law, the Court finds and orders as follows:

1. The Defendant, Alec McKinney, was 16 years of age at the time of the crimes described in the Complaint and Information. The alleged crimes occurred in Douglas County at the STEM School Highlands Ranch. The offenses included two counts of murder in the first degree (class one felonies), one count of conspiracy to commit murder in the first degree (a class two felony) and thirty-one counts of attempted first degree murder (class two felonies). Some of these counts allege the same victim and set forth alternative theories under which the charged crimes were committed, but there are twenty-seven different named victims. In addition, the parents of the co-defendant, Devon Erickson, are listed as victims of various property crimes and a charge of reckless endangerment alleges that McKinney’s actions created a substantial risk of serious bodily injury to students and staff present at the STEM school.

2. With certain exceptions, the juvenile court has exclusive jurisdiction of any person between the ages of ten and eighteen who is charged with violating a state law. §19-2-104(1), C.R.S. Age and the nature of the alleged offense determines whether a juvenile can be charged in the criminal division of the district court by the direct filing of an information. A case may be direct filed if the juvenile is sixteen years of age at the time of the commission of the offense and is alleged to have committed a class 1 or class 2 felony. §19-2-517(1)(a), C.R.S. The criteria for direct filing has been met in this case.

3. Once charges have been filed pursuant to the direct file statute, the juvenile may submit a

motion to transfer the case to juvenile court. Upon receipt of the motion, the court is to set the reverse-transfer hearing along with the preliminary hearing. § 19-2-517(3)(a), C.R.S. Under this statutory framework, the prosecution initially decides whether a juvenile is charged pursuant to the direct file statute in the criminal division or in juvenile court. The provision for a reverse transfer hearing acts as a check on this prosecutorial discretion to decide where the case is filed. The court can override the prosecution's decision, but only if the criteria set forth in the statute are met.

4. In making its decision, the court is to determine whether the juvenile and the community would be better served by adjudicative proceedings pursuant to article two of title 19 of the Colorado Revised Statutes (the Colorado Juvenile Justice System) or by proceedings under title 16 of the Colorado Revised Statutes (the Code of Criminal Procedure). § 19-2-517(3)(b), C.R.S. If the Court determines that the juvenile and the community would be better served by adjudicative proceedings pursuant to title 19, the court is to enter an order directing that the offenses against the juvenile be adjudicated in juvenile court pursuant to the provisions of article two.

5. Because of the serious nature of the crimes alleged here, there is little difference between the procedures that will govern the progress of the case irrespective of its assignment to adult or juvenile court. In either court, the defendant will have the opportunity to be tried by a jury of twelve, contest the introduction of evidence, raise all applicable defenses, etc. As the attorneys recognized in their arguments at the reverse transfer hearing, the essential difference between the adult and juvenile systems is the sentencing framework that has been created. With sentencing the focus, it is puzzling that the court is being asked to determine which sentencing scheme should apply even before the case has been tried and guilt determined. Normally, attention does not shift to what punishment or rehabilitative response is appropriate until the fact finder has heard the evidence and the defendant has been convicted of a crime. Nevertheless, the legislature has determined when the decision is to be made about which sentencing options will apply in the event of a conviction and it is not this court's role to second guess that decision.

6. Viewing the transfer decision from the standpoint of the juvenile alone, it is difficult to image a circumstance in which it would not be to his advantage to proceed pursuant to the juvenile code as opposed to the Code of Criminal Procedure. The Court is, therefore, mindful that the statute provides that the judge is to determine whether "the juvenile **and the community** would be better served" by juvenile court proceedings instead of district court criminal proceedings.

7. This Court is to consider numerous factors in making its decision. § 19-2-517(3)(b)(I)-(XI). Each of these factors will be addressed in turn. Again, it should be noted that this is not a trial nor a sentencing hearing. The issue for decision is whether the case should be transferred to the juvenile court and the findings the Court makes are based on the evidence that has been presented. The parties may well have tailored their presentations and the evidence they presented to the specific matters that were being addressed at the reverse transfer hearing. Additional evidence presented at the trial could result in findings different than the findings made here. The Court will highlight certain evidence, but will not address all the evidence that supports the findings that are made.

(I) The seriousness of the alleged offenses and whether the protection of the community requires response or consequence beyond that afforded by this article.

In her testimony, the defense expert, Dr. Christiaens, observed that the tragedy here is immeasurable.

The charged offenses are of the utmost seriousness. This assessment is based not only on the results, one person dead and at least five wounded, but the location and manner of the offenses. The acts occurred in a confined space, a classroom at the STEM school. The alleged perpetrators were positioned

at the two entrances to the room so the unarmed occupants were blocked from leaving when bullets were fired into the classroom. The normal sense of safety associated with a school was undermined for other students in the building as well as members of the community who were not at the STEM school that day.

The most serious offense charged in this case is the class one felony of first-degree murder. When a juvenile is convicted in the criminal division for a class one felony, the legislature has determined that he should be sentenced differently than an adult. It has recognized that juvenile brain development is less advanced than that of adults and, following a conviction, a juvenile is to be punished less harshly than an adult convicted of the same crime. § 18-1.3-401(4)(b)(I). Despite recognizing this distinction, the legislature has determined that this class of crime still requires severe punishment. *Id.*; § 19-2-517(6)(a)(II)(A).

A class one felony prosecuted in the juvenile court carries with it a maximum sentence of seven years in the Division of Youth Corrections (“DYC”).¹ If McKinney is convicted of a class one felony as a juvenile, DYC would be involved with him only until he reaches the age of twenty-one, less than four and one-half years from now. If he is convicted of other offenses, his confinement could extend for a longer period. The length of incarceration would depend upon the convictions and whether sentences were concurrent or consecutive. Additional confinement, beyond age twenty-one, would occur in an adult facility just as it would if the case is processed through the adult criminal court. The juvenile system provides less secure confinement facilities than the adult system.

The reasons these offenses were committed is unclear. The protection of the community involves deterring future behavior by anyone convicted of the charged crimes and others who might consider committing similar offenses. The general knowledge of heightened consequences is hopefully a disincentive to people who are planning acts of violence. Rehabilitation is an important consideration in any sentence, but what treatment or interventions are necessary in this case to insure future community safety is uncertain. Confinement affords protection to the community. The alleged offenses include first degree murder and the court finds that the seriousness of these offenses and the protection of the community require consequences beyond those afforded by article two of title 19.

(II) Whether the alleged offenses were committed in an aggressive, violent, premeditated or willful manner.

Again, the court will stress that no trial has occurred and no guilt has been proved. The evidence before the court at this stage of the proceedings, however, indicates that McKinney’s actions were not spontaneous, but purposeful and planned. Over many days he contemplated violent action, whether to frighten others or to cause them bodily harm. Guns were obtained from Devon Erickson’s home, concealed and brought to the STEM school. At the school those guns were used in a violent and aggressive manner.

(III) Whether the alleged offenses were against persons or property, greater weight being given to offenses against persons.

The offenses that give rise to the reverse transfer hearing, murder, attempted murder and conspiracy to commit murder, are crimes against persons. Additional crimes charged, notably those that occurred at Devon Erickson’s home, involve property crimes including arson, conspiracy to commit arson, criminal mischief and theft.

¹ This would necessitate that McKinney be charged and convicted as an aggravated juvenile offender. §§ 19-2-516 & 19-2-601. Such a charging decision by the prosecution would appear to be a foregone conclusion, if the case was transferred to juvenile court.

(IV) The age of the juvenile and the maturity of the juvenile as determined by considerations of the juvenile's home, environment, emotional attitude and pattern of living.

Alec McKinney is sixteen years of age (d.o.b. 4/14/03). He was a sophomore in high school at the time he was charged in this case. In elementary school he received individualized assistance in reading and math, otherwise he denies any history of difficulty with learning. He generally performed well in school, earning mainly A's and B's. He has been described as smart. He began to struggle academically in 9th grade, a fact which he attributed primarily to substance use.

McKinney had a part time job at Jersey Mike's sandwich shop for approximately ten months before the crimes alleged and had a good employment record. McKinney's father was deported when McKinney was young and his involvement in McKinney's life has been negative and limited. McKinney lived with his mother and his two siblings in various places and eventually moved into his grandparents home when he was in the eighth grade. At various times, eight to fourteen people lived in this five bedroom home and the crowded living conditions gave rise to stresses and tensions. Over several years, McKinney was regularly taxed with responsibility to babysit his brother and sister and, while he indicated that he hit his brother on occasion, he also reported that he had a positive and close relationship with the younger children and provided them with appropriate oversight and care. He advised that his family is supportive of him, notably in connection with the disclosure of his transgender status, and despite various conflicts with his mother over time, "she has been there for me." He reported that he had a small, close core group of friends with whom he felt he could be himself.

Beginning on September 16, 2019, Dr. Christianens conducted a psychological evaluation of McKinney that included the administration of various tests. One test was the Risk-Sophistication-Treatment Inventory (RSTI). She opined that McKinney's scores placed him in the "high" category for his sophistication-maturity level, when compared to male norms and in the middle category when compared to female norms. She described this scale as being used to assess a juvenile's overall level of autonomy, internal locus of control, decision making capacities, and degree of emotional attunement, both for themselves and others. She noted that McKinney, "understands behavioral norms and has the capacity to distinguish right and wrong, though he has difficulty anticipating consequences and places an emphasis on what he might gain when assessing the costs and benefits of a particular decision."

Clearly McKinney has engaged in risk taking behavior, especially in the area of drug usage. He does not have a history of violent or confrontational behavior, but on the contrary has displayed a tendency to avoid conflict and make efforts to get along with others. His level of maturity appears to be consistent with or higher than his stated age.

(V) The record and previous history of the juvenile in prior court-related matters.

McKinney's previous delinquency case involved providing a friend with Xanax, a prescription medication. That friend overdosed on the medication. The motivation for the delinquent act was apparently a misguided desire to help someone who was dealing with serious challenges in her life. When McKinney learned of the overdose, he expressed genuine remorse for what he had done and concern that he might have caused the friend's death. He was given an opportunity to participate in a diversion program, but that was not completed at the time of the incident in this case. Although outwardly compliant with the program, McKinney continued to buy and use drugs while on diversion.

It is of great concern that despite being involved in the juvenile justice system and seeing the potentially devastating consequences of his actions on another person's life, McKinney moved forward with a plan to cause harm to others.

McKinney has admitted to uncharged criminal behavior in the form of stealing drugs from his mother and grandmother, drug purchase and possession, and providing drugs to others.

(VI) The current and past mental health status of the juvenile as evidenced by relevant mental health or psychological assessments or screenings that are made available to both the district attorney and defense counsel.

McKinney has experienced serious trauma in his life. His father, Jose Quintana, was abusive to McKinney's mother, and McKinney witnessed domestic violence in the home. When he was approximately five years old his father forced his mother, McKinney, and his siblings into the family vehicle at knifepoint. Quintana was intoxicated or high. While driving, Quintana struck another vehicle and then fled from his car. Quintana was subsequently deported to Mexico in 2010. McKinney, his mother and siblings periodically visited him there until about 2013. McKinney recently reported that on one such visit, he was victimized by an unknown person.

Following the knife episode, McKinney attended play therapy for approximately a year. McKinney then engaged in individual and group therapy services from May 18, 2016 to July 19, 2016, but stopped attending treatment and was unresponsive to attempts for re-engagement. He received medication management for six months between October, 2018 and April, 2019. Although he was prescribed medication, he apparently did not take it consistently. He engaged in outpatient counseling services with Ashley Williamson from July 26, 2017 to April 26, 2019.

McKinney attended an intensive outpatient program for just over a month in early 2019. Records indicated that there was an improvement in his symptoms, and he was described as having participated well in each session of the program although one group therapy note, dated February 25, 2019 observed, that he tended to be influenced by his peers and that, "Pt does not present as authentic and often changes [his] responses based off of peer interactions."

McKinney has experienced recurrent depression. He has engaged in extensive cutting behavior. He has never received treatment for his drug usage, and he reported the belief that no one was aware of the extent of his problem. This general ignorance appears to be the result of his efforts at concealment. He described his drug usage, as a form of "self-medication." McKinney has experienced suicidal ideation. He was hospitalized on two brief occasions at two different inpatient facilities in connection with depression and suicidal ideation. He was seen in an emergency room setting four additional times. The history of suicidal ideation has been described as passive in that McKinney has generally reported no plan or intent to harm himself.

McKinney has reported hearing voices, but both Dr. Christiaens and Ashley Williamson attributed this to negative self-talk rather than to actual hallucinations. McKinney has consistently denied any homicidal ideation or plan. However, in his police interview following the incident charged here, he endorsed a history of homicidal ideation prior to the charged events.

McKinney was born biologically female, but identifies as male. He indicated to Christiaens that while the gender issue has been a factor, he does not believe it to be a major source of his depression. At an earlier time, during an evaluation on October 18, 2018, he reported that the dysphoria surrounding gender and body issues contributed significantly to his depressive symptoms. He reported to Christiaens that others, notably certain peers, made his sexual identification a basis for harassment, but the evidence conflicts as to whether he was subjected to significant bullying regarding this or any other matter.

(VII) The likelihood of the juvenile's rehabilitation by use of the sentencing options

available in the juvenile courts and district courts.

Krista Husak, program manager at DYC, testified that the goal of DYC is to get juvenile's back into the home.² Drug, mental health, and education services are available at DYC. As previously noted, the availability of juvenile system services has a maximum duration of age 21. Rehabilitation is also one of the purposes of the criminal code with respect to sentencing. §18-1-102.5(1)(d), C.R.S. If McKinney is convicted and sentenced to the Department of Corrections he would initially be placed in the Youth Offender System ("YOS") facility. That program also makes mental health, drug treatment, and education available. Participation in YOS could continue until McKinney reaches age twenty-five, contingent on McKinney's involvement and willingness to take advantage of the services available. Ultimately, the potential for rehabilitation in either the adult or the juvenile system depends upon the willingness of the individual to avail himself of the services that are offered.

Past performance does not provide persuasive evidence that McKinney will take advantage of services that are furnished. He frequently failed to attend classes at the STEM school. He did not disclose the extent of his drug usage to his mental health providers, nor was he candid and forthcoming about matters related to his mental health to his mother or to his service providers. There is encouragement in the fact that he has been compliant with the rules of the Foote Center, that he has been participating in the school program there, and that he has apparently availed himself of the limited mental health services the Foote Center provides.

Presently, the likelihood of McKinney's rehabilitation utilizing the sentencing options available through either the juvenile or the adult systems is uncertain.

(VIII) The interest of the community in the imposition of punishment commensurate with the gravity of the offenses.

This factor is vague. Sec. 18-1-102.5, C.R.S. sets forth the purposes of the criminal code with respect to sentencing. The first of those criteria is, "To punish a convicted offender by assuring the imposition of a sentence he deserves in relation to the seriousness of his offense." The legislative declaration for the juvenile justice system states in part that the intent of the article is to "protect, restore and improve the public safety by creating a system of juvenile justice that will appropriately sanction juveniles who violate the law..." § 19-2-102(1), C.R.S. These statute makes plain that the community generally has an interest in the imposition of punishment commensurate with the gravity of the crime. Presumably, the legislature's determination of the punishments available for various offenses reflects the community's determination as to the appropriate sanctions for particular acts.

This factor may be purposefully vague in order to allow the court to address unique circumstances presented by particular cases. For example, an offense may have occurred many years before it is reported or the perpetrator is discovered, and in that time the defendant may have led an exemplary life thereby lessening the communities' interest in the gravity of punishment as a response to the crime. In any event, the court finds that in this case the community does not have a decreased interest

² The legislative declaration regarding the intent of the Colorado Juvenile Justice System states, "The general assembly hereby finds that the intent of this article is to protect, restore and improve the public safety by creating a system of juvenile justice that will appropriately sanction juveniles who violate the law and, in certain cases, will also provide the opportunity to bring together affected victims, the community, and juvenile offenders for restorative purposes. The general assembly further finds that, while holding paramount the public safety, the juvenile justice system shall take into consideration the best interests of the juvenile, the victim, and the community in providing appropriate treatment to reduce the rate of recidivism in the juvenile justice system and to assist the juvenile in becoming a productive member of society." §19-2-102(1), C.R.S.

in the imposition of punishment commensurate with the gravity of the charged crimes.

(IX) The impact of the offenses on the victims.

One victim is dead. His family is distraught. Other victims sustained gunshot wounds and the physical pain and limitations associated with such wounds. The emotional and psychological impact of the offenses has included fear, anxiety, reluctance to return to school, decrease in trust of others, anxiety and depression. The impact on the victims has been extreme and continues more than six months after the shootings occurred.

(X) Whether the juvenile was previously committed to the department of human services following an adjudication for a delinquent act that constitutes a felony;

McKinney has not previously been committed to the department of human services.

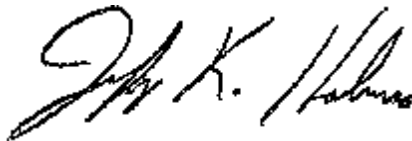
and (XI) Whether the juvenile used, or possessed and threatened the use of, a deadly weapon in the commission of the delinquent act.

It is unclear if this factor eleven is tied to the preceding factor ten and concerns use of a deadly weapon in the delinquent act that led to a department of human services commitment, or if it addresses the use of a deadly weapon in connection with the charged crimes. If referring to factor ten, the answer is no. If instead, the factor addresses the charged crimes, then McKinney possessed two handguns and used one of them to fire nine bullets at the STEM school.

8. The issue before the court is whether the juvenile and the community would be better served by adjudicative proceedings pursuant to title 19, C.R.S., or by proceedings under title 16. Based on the totality of the evidence before it, the Court finds that it is has not been proved that the juvenile and the community would be better served by transferring this case to juvenile court, instead it has been established that the case should proceed in the criminal division of the district court pursuant to title 16.

9. The motion to transfer the case to juvenile court is **DENIED**.

DONE AND SIGNED this 4TH day of December, 2019.



Jeffrey K. Holmes, District Court Judge