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May 05 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions
The Honorable William H. Seals, Circuit Court Judge

THE STATE, RESPONDENT,

v.

MICAH PRESSLEY, APPELLANT

FINAL BRIEF OF RESPONDENT
Appellant Case No. 2023-001799

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1. Did the trial judge err in sentencing Appellant, who was fifteen years old at the time of the offense, to forty years in prison for murder without conducting an individualized sentencing hearing to consider the mitigating factors of youth required by *Aiken v. Byars,* 410, S.C. 534, 765 S.E.2d 572 (2014), in violation of the Eighth Amendment's prohibition against cruel, corporal, or unusual punishment?
2. Did the family court judge err in refusing to grant a continuance in order to meet the statutory requirement of a full investigation when mental health records were not obtained prior to the waiver hearing and not provided to the evaluator?
3. Did the family court judge err in transferring jurisdiction to the general sessions court when the record fails to support the judge's finding that the "possibility of rehabilitation does not overcome the overwhelming evidence which favors transferring the charges to general sessions?"

RESPONDENT'S COUNTER-STATEMENT OF ISSUES ON APPEAL

1. Did the trial judge err in sentencing Appellant, who was fifteen years old at the time he committed the offense to a forty-year period of incarceration without a hearing pursuant to *Aiken v. Byars* when the court clearly had no intention of sentencing the Appellant to a life sentence without parole?
2. Did the family court judge err in not granting a continuance when the full investigation was completed and the records that were not provided to the evaluator would not have made a difference in her conclusions?
3. Did the family court err in the transfer of jurisdiction when the family court clearly considered each of the *Kent* factors and applied each factor to this case and each factor was satisfied; thereby lawfully allowing this case to be transferred to General Sessions Court?

STATEMENT OF THE CASE

On May 29, 2022, Micah Pressley (Appellant) and his co-defendant Fanottti Nacier Neal (co-defendant) shot to death Joshua McPherson. The Appellant, as well as his co-defendant, were later arrested for the offenses of murder and burglary in the first degree (burglary 1st).

Due to fact the Appellant was a juvenile at the time this crime occurred, his case was initially placed in Family Court. The Solicitor's office petitioned the Family Court to have Appellant's case transferred to General Sessions. A waiver hearing was held before Family Court Judge Melissa M. Frazier on January 27, 2023. During this hearing the State called to testify Matthew Dowdell, principal of West Florence High School; Miracle Griffith, County Director Horry County Department of Juvenile Justice (DJJ); Allan Higgins, of the City of Conway Police, who was the lead investigator in this case; Ginger Pop, Fifteenth Circuit Solicitor's Office investigator; Robert Benjamin Price, City of Conway policeman, who assisted in the search of the Appellant's home; Paul Greer, firearms examiner of the South Carolina Law Enforcement Division (SLED) and Michele Akers-Woody, DJJ Community Psychologist. The Appellant called to testify, Brenda Wilson, DJJ therapist, and Appellant's grandmother, Ms. Maxine Pressley Bradley.

At the conclusion of the hearing the Family Court judge decided to take the case under advisement. On February 7, 2023, the Family Court Judge issued an eleven-page order, ordering that the jurisdiction of the Family Court be transferred to General Sessions. (R. p. 294).

On November 6, 2023, both defendants appeared before the Honorable William H. Seals to be tried simultaneously for the above referenced offenses. During trial both defendants requested a directed verdict for burglary 1st. The trial court granted a directed verdict only for that offense. (R. p. 1005 l. 11-12). After four days of testimony a jury of their peers found both defendants guilty of murder. (R. p. 1071 l. 20 – p. 1072 l. 3). After the reading of the verdicts, both defendants

appeared before the trial court for sentencing. The trial judge proceeded to sentence both defendants to a forty (40) year period of incarceration for the offense of murder. (R. p. 1083 l. 6-14).

While serving his sentence the Appellant filed a timely notice of appeal before this Court. The Initial Brief of the Respondent follows.

STATEMENT OF FACTS

On May 29, 2022, Ms. Charrel Floyd (Floyd) borrowed her sister's car in Florence and drove the two defendants, her cousin Ky'Lisha Mack (Mack) and a person named Shi to the Coastal Club Apartments in Conway. (R. p. 893 l. 13-15; p. 895 l. 1-18). After they arrived, everyone entered the apartment; however, Floyd, Mack and Shi left the apartment. (R. p. 903 l. 1-6).

When they entered the apartment, the victim was sleeping on the couch. The victim's friend, Marion Robinson, was sitting in a chair sleeping as well. (R. p. 496 l. 15-19). After Appellant entered the apartment Robinson woke up and gave the co-defendant a "fist bump," (R. p. 493 l. 9-10), Robinson then went back to sleep. (R. p. 493 l. 10). Robinson then heard the sound of people "tussling." He opened his eyes, and he saw the Appellant shooting the victim. Appellant then ran out the door. (R. p. 493 l. 10-13). They got back into Floyd's car and returned to Florence. Floyd dropped everyone off at Shi's house and returned the car to her sister. (R. p. 908 l. 1-14).

When the police arrived, they found one shell casing on the kitchen floor. (R. p. 430 l. 11-12). They did not find a second shell casing. (R. p. 431 l. 18-20). They did discover the victim who had two gunshot wounds. (R. p. 410 l. 19-20). When Detective Allan Huggins arrived, he spoke to Robinson in the apartment parking lot. (R. p. 576 l. 20-24). Robinson told Detective Huggins that he went out with some friends to celebrate a birthday. (R. p. 577 l. 16-17). They returned to the residence roughly around 3:00am after eating at the Waffle House. (R. p. 577 l. 17-19). Robinson

told him that he and the victim were sleeping in the living room when he was woken up by the co-defendant giving him a "dap." (R. p. 577 l. 20-23). Robinson told Detective Huggins that he heard a scuffle then a gunshot. (R. p. 577 l. 25 – p. 578 l. 1). Robinson further told Detective Huggins that he saw an individual in the corner wearing a black hoodie with a black gun. (R. p. 578 l. 2-3).

Law enforcement later obtained apartment surveillance video. This video revealed Appellant wearing the hoodie as described by Robinson. (R. p. 512 l. 13-20). The video also revealed a black gun in the Appellant's hand. (R. p. 514 l. 17-19). In this video the Appellant and his co-defendant are seen running out of the apartment. The video reveals Appellant running with a gun. (R. p. 515 l. 15-19; p. 515 l. 25 – p. 516 l. 4).

Law enforcement was later able to obtain a search warrant for the Appellant's house. (R. p. 649 l. 24 – p. 650 l. 3). During the search, law enforcement was able to find a tan Glock 19x in the living room. (R. p. 653 l. 3-9). Inside the Appellant's bedroom, law enforcement found a bookbag, and inside the bookbag was a black Glock 19 and thirty-two (32) live rounds. (R. p. 653 l. 20-22). Detectives also found a black Nike hooded sweatshirt. (R. p. 654 l. 5-7). These items were collected and sent to SLED for identification.

During trial SLED agent Paul Greer testified. Agent Greer was found qualified as an expert in firearms identification. (R. p. 739 l. 12-17). Agent Greer testified that one bullet was recovered from the victim's chest, and another was recovered from the victim's spine. Agent Greer also stated that the two bullets were fired by two separate guns. (R. p. 741 l. 11-16). Agent Greer also found out that one of the guns, the black Glock 19 had missing components. After the bullet was fired the shell casing would not eject, getting caught in the gun. (R. p. 747 l. 16-19). The tan Glock 19x never malfunctioned. (R. p. 750 l. 6-8). Agent Greer testified that the only gun that could have fired the bullet found in the victim's spine was from the black Glock 19. (R. p. 782 l. 6-13).

During the trial, Allan Higgins of the City of Conway Police Department, also testified. Mr. Higgins was qualified as an expert in the field of analysis of phone records, as well as cellular extractions. (R. p. 791 l. 17-21). Mr. Higgins obtained access to the cell phone of the co-defendant. Mr. Higgins reviewed the co-defendant's phone records. The co-defendant's phone records revealed that at 4:00am he traveled from Florence to Conway arriving at the Cove Apartments at 5:30am. They stayed there for about ten to twelve minutes. (R. p. 804 l. 23 – p. 805 l. 11). During her testimony, Ms. Charrel Floyd stated that they left the apartment complex around 5:45am. (R. p. 902 l. 8-10). Mr. Higgins testified that once they left, they took a different route back to Florence, arriving at 7:00am. (R. p. 805 l. 12-17).

Forensic pathologist Dr. Ellen Riemer also testified. She was found qualified as an expert in the field of forensic pathology. (R. p. 969 l. 7-12). Dr. Riemer performed the autopsy on the victim. (R. p. 969 l. 16-17). Dr. Riemer testified that the victim had two gunshot wounds to the chest. One over the sternum, and the other on the left side near the lower part of the ribcage. (R. p. 970 l. 18-25). Dr. Riemer also testified that the bullet entered the sternum then traveled left hitting the victim's heart, left lung, and ended up in his back. (R. p. 971 l. 15-18). The other bullet went through the diaphragm, liver, stomach, intestines, aorta, and ended up in his spinal cord. (R. p. 972 l. 14-20). In Dr. Riemer's opinion, both shots were fatal. Both could have played a role in the victim's death. (R. p. 979 l. 13-15). Dr. Riemer determined that the cause of death was two gunshot wounds to the chest. (R. p. 979 l. 7-10).

ARGUMENTS

1. **The trial judge did not err in sentencing the Appellant, who was fifteen years old at the time of the offense, to a forty-year period of incarceration without a hearing pursuant to *Aiken v. Byars*. The trial court had no intention of sentencing the Appellant to a sentence of life without parole which is required for *Aiken v. Byars* to be considered.**

Relevant Facts

After the jury's verdict, Appellant along with his co-defendant appeared before the trial judge for sentencing. At sentencing the trial judge made the following statement:

> "In reference to Fanotti Neal, the sentence of the Court is that the defendant is committed to the State Department of Corrections for a term of 40 years. In reference to Micah Pressley the sentence of the court is he is committed to the State Department of Corrections for a term of 40 years." (R. p. 1083 l. 6-14).

Since the Appellant was fifteen years old at the time of the offense, Appellant now argues that the trial judge violated the South Carolina Supreme Court decision of *Aiken v. Byars.* The Appellant argues that the trial court should have conducted an individualized hearing in order to consider the mitigating factors of youth. Respondent argues that it is clear that the trial court did not sentence Appellant to a life without parole sentence; therefore, *Aiken v. Byars* did not apply.

The *Aiken* factors are only applicable when the trial court is considering giving a juvenile a sentence of life without the possibility of parole. This is not applicable in the present case. The trial judge gave the Appellant the identical sentence as his co-defendant, forty years. Since there was no life sentence without parole given, *Aiken v. Byars* does not apply.

Standard of Review

In criminal cases the appellate court sits to review errors of law only. *State v. Wilson,* 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). On appeal, the trial court ruling will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law. *State v. Smicklevich,* 268 S.C. 411, 234 S.E.2d 230 (1977). An abuse of discretion occurs when a trial court's decision is unsupported

by the evidence or controlled by an error of law. *State v. Bryant,* 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007). When considering whether a sentence violates the Eighth Amendment's prohibition on cruel and unusual punishment, the appellate court's standard of review extends only to the correction of errors of law. *State v. Finley,* 427 S.C. 419, 423, 831 S.E.2d 158, 160 (Ct. App. 2019).

<u>*Discussion*</u>

In *Miller v. Alabama,* the United States Supreme Court held that a mandatory life sentence without the possibility of parole for a juvenile offender violated the Eighth Amendment prohibition against cruel and unusual punishment. *Miller v. Alabama,* 567 U.S. 460, 470, 132 S.Ct. 2455, 2460, 2463 (2012). *Miller* specifically states:

> **Mandatory life without parole** for a juvenile precludes consideration of his chronological age and its hallmark features – among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him – and from which he cannot usually extricate himself – no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth – for example his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys.

Miller, 567 U.S. at 478, 132 S.Ct. at 2468 (emphasis added).

In the decision of *Aiken v. Byars,* the South Carolina Supreme Court applied the *Miller* factors to South Carolina juveniles sentenced to life without parole sentences. In *Aiken* the South Carolina Supreme Court determined, "whether their sentence is mandatory or permissible, any juvenile offender who receives a sentence of **life without the possibility of parole** is entitled to the same constitutional protections afforded by the Eighth Amendment's guarantee against cruel

and unusual punishment. *Aiken v. Byars,* 410 S.C. 534, 544, 765 S.E.2d 572, 577 (2014)(emphasis added).

The Appellant argues that the trial court erred in not conducting an individualized hearing in order to consider the *Aiken* factors prior to sentencing. The *Aiken v. Byars* decision is clear. These factors are only mandatory prior to the sentencing of a juvenile to a life without parole sentence. *Miller* requires that before a **life without parole sentence** is imposed upon a juvenile offender, he must receive an individualized hearing where the mitigating hallmark features of youth are fully explored. *Aiken,* 410 S.C. at 545, 765 S.E.2d at 578 (emphasis added). In this case, it is clear the trial judge had no intention of sentencing Appellant to a life sentence without parole. If the judge intended to sentence the Appellant to life without parole the trial judge would have given that sentence. The trial court intended that both defendants receive the identical sentence. Both of their actions caused the victim's death. So, he sentenced each defendant to a forty-year period of incarceration, not a life without parole sentence. If he sentenced the Appellant to a life without parole sentence, then *Aiken v. Byars* would apply. However, he sentenced the Appellant to a forty-year sentence; *Aiken v. Byars* does not apply.

In reviewing all juvenile cases decided by the United States Supreme Court prior to *Aiken* relating to juveniles and the Eight Amendment, they all have life sentences without the benefit of parole or the death penalty. *Roper v. Simmons,* 543 U.S. 551, 125 S.Ct. 1183(2005)(sentencing a juvenile to death is a violation of the Eighth Amendment); *Graham v. Florida,* 560 U.S. 48, 130 S.Ct. 2011(2010)(The Eighth Amendment prohibits a sentence of life without parole for a juvenile convicted of a nonhomicidal offense); *Miller v. Alabama,* 567 U.S. 460, 132 S.Ct. 2455 (2012)(a juvenile cannot be sentenced to a mandatory term of life imprisonment without the possibility of parole until the sentencing court considers the hallmark features of youth). In *Aiken v. Byars* the

South Carolina Supreme Court applied the logic of *Miller* and the criteria that must be considered before a trial judge sentences a juvenile to a life sentence without the possibility of parole. All of the referenced cases refer to a life sentence without parole, they say nothing about other sentences with the possibility of parole and by extension, the possibility of being released in the future.

In *State v. Smith* the South Carolina Supreme Court ruled that the sentencing statute, imposing a mandatory minimum sentence of thirty years' imprisonment on those convicted of murder regardless of whether they are a juvenile or an adult, does not violate the Eighth Amendment.[1] *State v. Smith,* 428 S.C. 417, 836 S.E.2d 348 (2019). The South Carolina Supreme Court in *Smith* made this finding:

> It is clear neither the Eighth Amendment nor *Miller* speaks directly to the issue of the constitutionality of mandatory minimum sentences. In so holding we join the overwhelming majority of jurisdictions that have found mandatory minimum sentences constitutional under the Eighth Amendment and *Miller*.

Smith, 428 S.C. at 421, 836 S.E.2d at 850.

Seven months prior to the *Smith* decision the South Carolina Supreme Court decided *State v. Slocumb.* Conrad Lamont Slocumb is currently serving a one-hundred and thirty (130) year sentence for two counts of criminal sexual conduct in the first degree, burglary in the first degree, armed robbery, kidnapping and attempted escape. Each of these crimes was committed when Slocumb was still a juvenile. Slocumb argued that the United States Supreme Court decisions of *Miller* and *Graham* did not allow de facto life sentences. In *Slocumb* the South Carolina Supreme Court decided.[2]

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[1] The Appellant Terrell Artieth Smith was sentenced to thirty-five years for murder.
[2] In *Slocumb* the South Carolina Supreme Court followed the rationale found in the Sixth Circuit United States Court of Appeals case of *Bunch v. Smith.* In *Bunch* the Sixth Circuit wrote, "At what number of years would the Eighth Amendment become implicated in the sentencing of a juvenile: twenty, thirty, forty, fifty, some lesser or greater number? Would gain time be taken into account? Could the number vary from offender to offender based on race, gender, socioeconomic

> We decline to extend *Graham's* explicit holding based solely on the general rationale underlying the opinions without further input from the Supreme Court as to how the Eighth Amendment applies to situations where a juvenile nonhomicide offender commits multiple crimes against multiple victims and multiple points in time.
>
> Rather than predict what the Supreme Court may or may not do, we believe the proper course is to respect the Supreme Court's admonition that lower courts must refrain from extending federal constitutional protections beyond the line drawn by the Supreme Court.

State v. Slocumb, 426 S.C. 297, 312, 313, 827 S.E.2d 148, 156 (2019).

It is clear that the South Carolina Supreme Court did not wish to intrude into the decision of the United States Supreme Court in *Graham* and *Miller.* Conrad Slocumb's projected release date is 2109, 84 years from now. The Appellant has received a forty-year sentence, he will be fifty-five when he is released from incarceration. If the South Carolina Supreme Court does not wish to infringe on the United States Supreme Court regarding de facto life sentences, the same holds true for cases where the juvenile did not receive a life sentence, but a sentence where he would be able to be released at some point and time.

There exists no violation in the court to imposing a forty-year sentence without the benefit of an *Aiken v. Byars* hearing, when the South Carolina Supreme Court is clear that these hearings are only required prior to a life without parole sentence. The Appellant did not receive a life without parole sentence, so *Aiken* simply does not apply. The trial judge did not commit error, this sentence should be upheld.

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class or other criteria? Does the number of crimes matter? There is language in the *Graham* majority opinion that suggests that no matter the number of offenses or victims or type of crime, a juvenile may not receive a sentence that will cause him to spend his entire life incarcerated without a chance for rehabilitation, in which case it would make no logical difference whether the sentence is "life" or 107 years. Without any tools to work with, however, we can only apply *Graham* as it is written. *State v. Slocumb,* 426 S.C. 297, 312-13, 827 S.E.2d 148, 156 (2019), *quoting, Bunch v. Smith,* 685 F.3d 546, 552 (6th Cir. 2012).

2. **The family court judge did not err in not granting Appellant a continuance when a full investigation had been completed. The witness testified that records not provided would not have changed her opinion, and there was ample evidence presented for the Family Court to make an informed decision regarding the change of jurisdiction.**

<u>*Relevant Facts*</u>

During the waiver of jurisdiction hearing, Ms. Miracle Griffith was called to testify. Ms. Griffith was the county director at the Horry County Department of Juvenile Justice. Ms. Griffith testified that she was familiar with the Appellant's case and confirmed he was evaluated by DJJ. Ms. Griffith acknowledged that records were forwarded to Dr. Akers-Woody to assist with the Appellant's evaluation. Those records included form five, court orders, the juvenile petitions for offenses, police reports, juvenile school records from 2019-2020, and the DJJ intake release forms. (Waiver Hearing R. p. 56 l. 9 – p. 66 l. 21). The Appellant's mother gave consent for DJJ to provide all school, medical, and substance abuse records. (Waiver Hearing R. p. 67 l. 14-21). Ms. Griffith testified that based on the information provided they requested records from Circle Park and Peedee Mental Health, but the Appellant was not a client in either of those facilities. Dr. Akers-Woody did not have records where Appellant and family disclosed. (Waiver Hearing R. p. 69 l. 17-24). During his past probation for a burglary offense, Appellant was ordered to see a therapist. Appellant's mother confirmed that he was seeing a therapist, but they did not have any records for this therapy.

At this time Appellant's trial counsel moved to postpone the hearing since the evaluator made an evaluation without all of the available records. The family court judge denied the motion suggesting that Appellant's counsel could just cross-examine the evaluator regarding the additional records.

Standard of Review

It is well settled in South Carolina that a trial court's denial of a motion for continuance will not be disturbed absent a clear abuse of discretion. *State v. McKennedy,* 348 S.C. 270, 280, 559 S.E.2d 850, 855 (2002).

Discussion

The Appellant claims that the family court erred in not granting a continuance in order to allow a full investigation. The Respondent argues that a full investigation was completed, and sufficient information was provided to Dr. Michele Akers-Woody for her to make an informed evaluation of the Appellant.

Dr. Michele Akers-Woody, community psychologist at DJJ, was called to testify. Dr. Akers-Woody testified that she completed an evaluation which included two in-person meetings two days in a row, on August 3-4, 2022. (Waiver Hearing R. p. 182 l. 20-21). She also spoke to Appellant's mother. During her testimony Dr. Akers-Woody determined that Appellant overall treatment amenability fell in the middle to high range compared to other juvenile offenders. (Waiver Hearing R. p. 204 l. 14-16). During her testimony Dr. Akers-Woody stated that any additional records from the school or mental health would not have changed her evaluation. (Waiver Hearing R. p. 208 l. 17 – p. 209 l. 5).

The Appellant claims that a full investigation was not made, however, there is no evidence that any of these records would have made a difference in the final decision. There were numerous records and reports previously listed that were used in the Appellant's evaluation. If the Appellant cannot show the difference the reports that were not provided would have made, he was not entitled to a continuance. The Court has consistently upheld denials of motions for continuances where

there is other evidence introduced on behalf of the defendant, if more time had been granted, but the additional evidence does not change the outcome. *Id.*

It was clear from the testimony of Dr. Akers-Woody that her opinion would not have changed if any other records were provided. A reversal for a denial of a continuance is very difficult, because the granting or refusal of a motion for continuance is within the sound discretion of the trial judge and this disposition will not be reversed unless it is shown there was an abuse of discretion. *State v. Lytchfield,* 230 S.C. 405, 409, 95 S.E.2d 857, 859 (1957). Reversals of a refusal of a continuance are about as rare as the proverbial hen's teeth. *Id.*

The Appellant has not revealed to the court that there was not a sufficient investigation or that the records not provided would have made any difference. Since Dr. Akers-Woody testified that her opinion would not have changed, the Appellant has revealed no prejudice, so this conviction should be affirmed. "The trial court's refusal of a motion for continuance in a criminal case will not be disturbed absent a clear abuse of discretion resulting in prejudice to the applicant." *State v. Nelson,* 431 S.C. 287, 303, 847 S.E.2d 480, 489 (Ct. App. 2020), *quoting, Morris v. State,* 371 S.C. 278, 283, 639 S.E.2d 53,56 (2006).

3. **The family court judge within her order clearly followed the *Kent* factors prior to deciding to waive this case up to General Sessions Court. This case satisfied each of the *Kent* factors; therefore, no error exists in waiving this case up to General Sessions Court.**

<u>*Relevant Facts*</u>

The Appellant, at the age of fifteen, was charged with murder, and burglary 1st. Both are classified as A-Felonies which carry a penalty of thirty years or more.[3] According to South Carolina law,

[3] A person who is convicted of or pleads guilty to murder must be punished by death, or by a mandatory minimum term of imprisonment for thirty years to life. S.C. Code Ann. §16-3-20

> If a child fourteen, fifteen, or sixteen years of age is charged with an offense which, if committed by an adult, would be a Class A, B, C or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more, the court after full investigation and hearing, may determine it contrary to the best interest of the child or the public to retain jurisdiction. The court, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offenses if committed by an adult.

S.C. Code Ann. §63-19-1210(5)(1976).

The Solicitor's office filed a petition for transfer pursuant to Section 63-19-1210(6) of the South Carolina Code of Laws.[4] On January 27, 2023, a hearing was held before the Honorable Melissa M. Frazier, to determine if the Appellant's case should be waived to general sessions court. At the conclusion of this hearing the family court judge issued an eleven-page order. Within that order her conclusion was:

> "The Court has considered all of the factors and all of the evidence offered at the waiver hearing. The Court finds that the seriousness of these offenses, the violence and loss of life, the juvenile Defendant's prior record, together with the protection of the public would be of great concern if Family Court retained jurisdiction and the Juvenile Defendant was given an indeterminate sentence not to exceed his 22nd birthday. Additionally, the other co-defendant charged with murder in this case is being tried in General Sessions.
>
> Based upon the foregoing and all of the evidence offered, I find that jurisdiction of this Court is waived and the charges against Micah Pressley referenced herein shall be waived or transferred to the Court of General Sessions immediately." (Waiver order pg. 11).

(2018). Burglary in the first degree is a felony punishable by life imprisonment. For purposes of this section "life" means until death. The court, in its discretion, may sentence the defendant to a term of not less than fifteen years. S.C. Code Ann. §16-13-311(1985).

[4] In accordance with the jurisdiction granted to the family court pursuant to Sections 63-3-510, and 63-3-520, and 63-3-530, jurisdiction over a case involving a child must be transferred or retained as follows. . . (6) Within thirty days after the filing of a petition in the family court alleging the child has committed the offense of murder or criminal sexual conduct, the person executing the petition may request in writing that the case be transferred to the court of general sessions with a view of proceeding against the child as a criminal rather than as a child coming within the purview of this chapter. S.C. Code Ann. §63-3-19-1210(6)(2018).

Standard of Review

The decision to transfer jurisdiction of a minor accused of criminal activity lies within the discretion of the family court. The appellate court will affirm the family court's decision absent an abuse of discretion. *State v. Pittman,* 373 S.C. 527, 559, 647 S.E.2d 144, 162 (2007). The trial court's decision will not be disturbed on appeal absent a clear showing of an abuse of discretion. *Mitchell Supply Co. v. Gaffney,* 297 S.C. 160, 162-63, 375 S.E.2d 321, 322-23 (Ct. App. 1988). An abuse of discretion occurs when the trial court's order is controlled by an error of law or when there is no evidentiary support for the trial court's factual conclusions. *Stokes – Craven Holding Corp. v. Robinson,* 416 S.C. 517, 536, 787 S.E.2d 485, 495 (2016).

Discussion

In order to make this determination, the Court had to consider what are called the eight *Kent* factors. In order to waive a case to general sessions court the family court must consider the following factors:

> (1) The seriousness of the alleged offense; (2) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner; (3) Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted; (4) The prosecutive merit of the complaint; (5) The desirability of trial and disposition of the entire offense in one court; (6) The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living; (7) The record and previous history of the juvenile, including previous contacts with law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation, or prior commitments to juvenile institutions; (8) The prospects for adequate protection of the public and the likelihood or reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available.

State v. Jones, 392 S.C. 647, 651, 709 S.E.2d 696, 699 (2011), *citing, Kent v. U.S.,* 383 U.S. 541. 566-67, 86 S.Ct. 1045 (1966).

Within her order the Family Court judge acknowledged each of the *Kent* factors and listed in his or her order how they apply to the present case. Within her order the Family Court judge revealed these reasons the *Kent* factors applied.

FACTOR ONE: *The seriousness of the alleged offense to the community and whether protection of the community requires transfer* – The alleged offenses are of a violent and serious nature resulting in the death of an individual. There was no dispute about this at the hearing. There is also no doubt for the need to protect the community and public from such senseless acts of violence. If Micah Pressley's charges remain in the Family Court and he is convicted here, he would face an indeterminate sentence not to exceed his 22nd birthday. His parole guidelines are 36-54 months. If not released under his guidelines, he would remain detained until his 22nd birthday. If he is convicted in the Court of General Sessions for the most serious charge of murder, he would be subject to a sentence of 30 years to life in prison. The Court finds that, if convicted, adequate protection of the public would be problematic if Micah Pressley were released from the Department of Juvenile Justice upon his 22nd birthday, or sooner under his guidelines.

FACTOR TWO: *Whether the alleged offense was committed in an aggressive, violent premediated or willful manner* – The alleged offenses were committed in an aggressive, violent and willful manner. It is concerning to the Court that Micah Pressley and other individuals drove from Florence to Conway, arriving at the apartment in the early morning hours with a gun. The individuals that were involved gave conflicting statements regarding their motive in making this trip and there is evidence that indicates there was a plan in place that involved violence.

FACTOR THREE: *Whether the alleged offense was against persons or property, greater weight being given to offenses against persons especially if personal injury resulted* – The alleged offenses in this case were committed against a person. The victim suffered two gunshot wounds to the chest, the first of which went through the heart and left lung and the second went through various organs, with the bullet being recovered in the victim's lumbar vertebral column. According to the Forensic Autopsy Report, the victim's death was a result of two gunshot wounds to the chest and the coroner deemed the manner of death a homicide.

FACTOR FOUR: *The prosecutive merit of the complaint i.e. whether there is evidence upon which a grand jury may be expected to return an indictment.* – Law enforcement's investigation of the fatal shooting of the victim resulted in Micah Pressley being identified on video as a participant in the alleged crimes. Micah Pressley admitted to being at the location with a pistol and is seen fleeing from the location after the shooting took place. Two pistols were found at the juvenile defendant's residence, one of which could not be ruled out as the murder weapon. Additionally, one of the pistols malfunctioned and would not eject the spent shell casing. At the scene, one of the shell casings was not recovered. Therefore, it is extremely likely that the grand jury would return an indictment in this matter.

FACTOR FIVE: *The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults.* – While this is not a controlling factor, it is nevertheless a factor worth consideration. The other co-defendant charged with Murder is an

adult and is being tried in General Sessions. Additionally, three other co-defendants are charged with Burglary 1st and Accessory after the fact to Murder, two of which are adults with charges in General Sessions and the other is a juvenile. Based on the current facts, this juvenile defendant and the adult co-defendant charged with Murder will most likely point to the other as the person who shot the victim. It would be beneficial to have both alleged murder charges heard in the same court.

FACTOR SIX: *The sophistication and maturity of the juvenile as determined by consideration of his home, environment situation, emotional attitude and pattern of living.* – The court reviewed in detail all of Micah Pressley's psychological and intellectual testing results as contained in evaluation. Defendant's intellectual testing revealed that he is in the very low to low average in most areas. The evaluator suggested that this testing may underestimate his ability due to his ADHD and not taking medication for the ADHD at the time of testing. Micah Pressley had an IEP as well as a behavior modification plan at his school. Micah Pressley has an extensive school disciplinary summary from 2014 to 2022, with charges including inappropriate behavior, disrupting class, bullying, a weapon violation, sexual harassment, refusal to obey, hit/kick/punch, cutting class, disrespect, etc. He was also involved in an incident while housed at DJJ on the current charges in September 2022. According to the behavior report, the offense was an assault and battery and references that he was not calm, and he was not cooperative when given directives. Micah Pressley's psychological testing revealed that he presented himself in an extremely positive light, denying many minor faults and shortcomings. According to the evaluator, this is not uncommon for those undergoing a court ordered evaluation. His overall level of sophistication-maturity fell within the middle range, with typical maturity for his age. Micah Pressley's level of criminal sophistication and dangerousness appeared relatively low and his psychopathic features fell within the middle range. His tendency to act in a violent and aggressive manner was comparable to other youths within the juvenile system, while his planned and extensive criminality fell within the low range. The evaluator reported that Micah Pressley was amenable to treatment and his motivation to change fell in the middle range or slightly higher than other adjudicated youth. He exhibits both negative and positive factors regarding the likelihood of reasonable rehabilitation. His prior DJJ experiences did not deter him from poor decision making and engaging in high risk and dangerous behaviors. The evaluator reports that he is at risk for further engagement in impulsive and potentially dangerous behaviors. He also associates with negative peers and may continue to gravitate toward negative individuals. The evaluator stated that Micah Pressley reported a willingness to receive mental health treatment and that he has a supportive and loving mother. Unfortunately, his mother committed suicide after the evaluation, but prior to this hearing. Micah Pressley's grandmother did testify that she is supportive of him. His father passed away in 2018 following an accident.

FACTOR SEVEN: *The record and previous acts of the juvenile* – Micah Pressley's criminal record indicates that he was charged with Burglary 3rd Degree on October 17, 2019, when he was only 12 years old and was placed on probation which expired on June 16, 2020. He had another Burglary 3rd Degree charge within a month from the first one, but that charge was Nolo Prossed when he pled to the first one. Subsequently, Micah Pressley was charged with Assault & Battery 3rd Degree on March 11, 2020, and that charge was still pending at the time of the current crimes, but was subsequently dismissed on June 3, 2022, after Murder and Burglary 1st Degree petitions were filed. As previously mentioned, Micah Pressley has an extensive school discipline summary going back

to the 2014/15 school year. He also was involved in an assault and battery while confined at DJJ on September 21, 2022, where it was reported that he was not cooperative.

FACTOR EIGHT: _*The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile*_ – With regard to adequate protection of the public, as stated in the evaluation, the current offenses are serious and involve the loss of life. If Micah Pressley is found guilty, the charges indicate a disregard for others and as such, there is a need for caution and concern when considering the protection of the public. If Micah Pressley's charges remain in Family Court and he is convicted there, he would face an indeterminate sentence not to exceed his 22nd birthday. His parole guidelines are 36-54 months. If not released sooner, he would remain detained until his 22nd birthday. If he is convicted in the Court of General Sessions for the most serious charge of murder, he would be subject to a sentence of 30 years to life in prison. Inasmuch as the evaluation provided valuable information about Micah Pressley, the evaluators can only highlight the negative and positive factors related to the waiver issue. In regard to the issue of protection of the public, we must look at his actions up to this point. By his own admission, Micah Pressley continues to involve himself with negative peers. He did not learn from his prior involvement with the juvenile justice system, in fact, his behavior only became more serious. Therefore, any member of the public could be at risk of harm by the Juvenile Defendant based upon his circumstances and who he chooses to associate himself with at the time. The Court considered the testimony of Micah Pressley's current counselor and her opinion that he is doing well in his current structured environment. She testified that altercations in the facility are commonplace due to the close quarters that they share, and she was not concerned about the one incident which took place in September 2022. While the evidence presented suggest that Micah Pressley can benefit from further treatment efforts, this Court is concerned that these treatment goals cannot be accomplished prior to his 22nd birthday. The possibility of rehabilitation of Defendant does not overcome the other overwhelming evidence which favors transferring the charges to general sessions. (Waiver order R. pp. 294-304).

In the order, the family court judge revealed that all of the *Kent* factors were considered and the reasoning as to why this case should be subject to waiver to the general sessions court. This order was sufficient to demonstrate that the statutory requirement of a full investigation had been met, and that the issue has received full and careful consideration by the family court. The eleven-page order went extensively into the information that was revealed during the hearing that was a result of the investigation by law enforcement, but also the result of the juvenile record of the Appellant, revealing his past discretions with the law and his attitude while being incarcerated within DJJ. The order also revealed the findings of a psychologist, who examined the Appellant in

order to present his mental state at the time these offenses occurred, as well as his home life and surroundings prior to his offense.

The Appellant was accused of murder, and there was sufficient evidence presented revealing that he committed this offense. The fact that this was such a serious crime has to be taken into consideration by the Family Court judge. The serious nature of the offenses is a major factor in the transfer decision. *Sanders v. State,* 281 S.C. 53, 56, 314 S.E.2d 319, 321 (1984). There was ample evidence presented when applied to the *Kent* factors revealing that jurisdiction should have been waived to General Sessions Court. This decision was proper and should not be subject to reversal by this Court. Jurisdiction of the family court over juveniles is a privilege rather than a matter of right. *Id.*

CONCLUSION

The Respondent argues that decisions made by the trial court were lawful and should be affirmed by this Court.

Respectfully submitted,

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May 5, 2025

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