

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Aiken County

Honorable Jennifer B. McCoy, Circuit Court Judge

KAYLA MOORE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001249

APPENDIX

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1 State of South Carolina)
) In the Court
2 County of Aiken) Of General Sessions

3
 Indictment No.: 2018GS0201067

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6 State of South Carolina,)
) Plaintiff.)
7)
) vs.) Transcript of Record
8)
9)
10 Kayla Nicole Moore,)
) Defendant.)

11
12
13 July 26, 2018
 Aiken, South Carolina

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15
16 B E F O R E:
17 The Honorable Doyet A. Early III, Judge.

18
19 A P P E A R A N C E S:
20 Samuel B. Grimes, Assistant Solicitor
 Attorney for the State
21
22 C. David Hayes, Public Defender
 Attorney for the Defendant

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25 Brenda J. Sigwald, Circuit Court Reporter
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(REPORTER'S NOTE: There were no exhibits
entered during this hearing.)

1 **GUILTY PLEA**

2 MR. GRIMES: Kayla Moore.

3 KAYLA MOORE, was duly sworn

4 THE CLERK: She's been sworn, Your Honor.

5 MR. GRIMES: Your Honor --

6 THE COURT: Hold on one second.

7 (There was a pause in the proceedings.)

8 MR. GRIMES: Prior to the plea, the defendant has
9 been evaluated by the Department of Mental Health in
10 November of 2017. I believe defense counsel gave you a
11 copy of that evaluation indicating that she's competent to
12 stand trial. I just wanted to address that issue prior to
13 us beginning the plea.

14 THE COURT: You have the report --

15 MR. GRIMES: I have a copy of it.

16 MR. HAYES: Your Honor, I gave you two copies this
17 morning. And I have a copy of both the M'Naghten and Blair
18 here.

19 THE COURT: She's looking for the copies you gave
20 me back there.

21 MR. HAYES: Judge, we can make them a part of the
22 record. I did highlight on mine. I was intending to make
23 another copy for our record.

24 THE COURT: All right. We have had or received a
25 report dated -- a transmittal dated November 21, 2017 from

1 Kelly Godfrey PhD, Clinical Director of the Forensic
2 Outpatient Services in Columbia with the Department of
3 Mental Health. Two reports. One that I signed issuing and
4 one that Judge McMahon signed for competency to stand trial
5 and one for criminal responsibility.

6 On the criminal responsibility, she was evaluated
7 on November 8, 2017 by Dr. Gaskins, a clinical
8 psychologist. And they were of the opinion that the
9 defendant had the capacity to conform her behavior to the
10 requirements of the law pursuant to 17-24-20. Examination
11 and conclusions and finds are all set forth in the 8 page
12 report of Dr. Gaskins.

13 Question, does the State or the defendant have
14 anything that contradicts the findings set forth in this
15 report?

16 MR. HAYES: No, sir.

17 MR. GRIMES: Your Honor, I'm not sure I've even
18 seen the M'Naghten report, but we do not contest her
19 competency.

20 THE COURT: Then likewise, Judge McMahon ordered a
21 competency to stand trial evaluation and that was conducted
22 on November 8, 2017 by the same physician and the report
23 was generated and it was the opinion of the physician that
24 Ms. Moore has a sufficient factual and rational
25 understanding of her charges and has the capacity to

1 assist her defense attorney in the preparation of the
2 defense. It is their opinion that she has the capacity to
3 stand trial pursuant to State v. Blair.

4 My question, either of you gentlemen have anything
5 that -- contrary to the conclusion set forth in that
6 report?

7 MR. HAYES: No, sir.

8 MR. GRIMES: No, Your Honor.

9 THE COURT: Mr. Hayes, I'm going to hand these back
10 to you. We need to make these a part of the record.

11 MR. HAYES: I have no objection to those, Judge, I
12 just highlighted on that when I was reading it. The
13 cleaner copies are yours.

14 THE COURT: We'll just make those a part of the
15 record.

16 (Court's Exhibit Number 1 and Number 2 were entered
17 into evidence.)

18 THE COURT: Y'all ready to proceed?

19 MR. HAYES: Yes, sir.

20 THE COURT: Mr. Hayes, do you represent Kayla
21 Nicole Moore in Indictment 18GS021067? This is an
22 indictment that has been true billed by the Aiken County
23 Grand Jury for the offense of murder?

24 MR. HAYES: I do, Your Honor.

25 THE COURT: Have you advised her on these charges?

1 MR. HAYES: I have.

2 THE COURT: This offense is classified as violent
3 and most serious. Have you informed your client of that?

4 MR. HAYES: Yes, sir.

5 THE COURT: Have you informed your client of the
6 effect of a violent classification?

7 MR. HAYES: Yes, sir.

8 THE COURT: Have you informed your client that most
9 serious, now there's at least one strike against her and
10 what the enhancement laws mean?

11 MR. HAYES: Yes, sir.

12 THE COURT: Have you advised her that the minimum,
13 mandatory minimum sentence is 30 years and I have the
14 discretion to sentence her anywhere between 30 years and
15 the balance of her natural life?

16 MR. HAYES: Yes, sir, as well as what that means?
17 It is day for day, treated by SCDC.

18 THE COURT: In other words, she gets a 30 year
19 sentence, a 40 year sentence, or a life sentence, no parole
20 and she serves it day for day.

21 In your opinion does she understand the charges,
22 the possible sentence, the classification of violent and
23 most serious and the fact that she'll serve whatever
24 sentence she receives day for day?

25 MR. HAYES: Very much so.

1 THE COURT: Have you advised -- informed your
2 client of her right to trial by jury?

3 MR. HAYES: I have, Your Honor.

4 THE COURT: And how does she indicate to you she
5 wishes to plea?

6 MR. HAYES: To waive any potential defense and
7 proceed forward and plea today.

8 THE COURT: Do you agree with her decision?

9 MR. HAYES: Yes, sir.

10 THE COURT: Ms. Moore, good afternoon.

11 THE DEFENDANT: Good afternoon.

12 THE COURT: As I understand from the sentence
13 sheet, you're 19 years of age; is that correct?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Could you please tell me how far you
16 have attended school.

17 THE DEFENDANT: Willow Gray Military School. I
18 have my GED, sir.

19 THE COURT: I'm sorry?

20 MR. HAYES: She attended military school at Willow
21 Gray and got a GED.

22 THE COURT: You understand what we're doing here
23 today?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You have been indicted by the Aiken

1 County Grand Jury for the offense of murder. You
2 understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Under our current law, you can be
5 sentenced anywhere from 30 years in jail for the balance of
6 your natural life. Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And it is a no parole sentence, which
9 means that whatever sentence you receive, you serve it day
10 for day. You get no credit for good time early release.
11 It's day for day.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: This offense is classified as violent,
14 so it will have some effect on where and how you are housed
15 in the department of corrections. Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: It is also classified as a most
18 serious, which means you now have one strike under South
19 Carolina's two or three strike law, which means that if you
20 become involved in criminal activity if and when you are
21 released, it is classified as most serious, that would be
22 two strikes that way or two more serious charges, that will
23 be three strikes that way and you would be suggesting
24 yourself to life in prison without parole. Do you
25 understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You have any questions about what
3 you're charged with, the potential sentence, the
4 day-for-day requirement, classification of violent and most
5 serious?

6 THE DEFENDANT: No, sir.

7 THE COURT: Understanding all of that, how do you
8 wish to plea to these charges? Not guilty or guilty?

9 THE DEFENDANT: Guilty.

10 THE COURT: Ma'am, when you plead guilty, you will
11 give up certain of your constitutional rights. One is your
12 right to remain silent. You will have to admit to me the
13 allegations contained in the indictment. Do you understand
14 that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You will give up your right to a jury
17 trial. Obviously, if you pled not guilty the State would
18 provide a jury trial, at which time you would have the
19 right to confront and cross-examine everyone who testifies
20 against you. You would have the right to present your
21 defense, tell your side of the story. You could do that by
22 calling witnesses, introducing relevant exhibits and
23 getting on the witness stand yourself and tell your side of
24 the story, defend yourself.

25 If you exercised your constitutional right to

1 remain silent, I would tell the jury they could not hold
2 the fact that you did not testify against you in any manner
3 whatsoever and I would instruct them that they could not
4 even consider the fact that you did not testify when they
5 deliberated your guilt or innocence. You would be presumed
6 innocent throughout the trial unless the State is able to
7 prove to the jury your guilt beyond a reasonable doubt.

8 And in order for the jury to convict you, all
9 twelve jurors would have to unanimously agree that you
10 were, in fact, guilty. And even if you were convicted you
11 would still have the right to an appeal. Now, do you
12 understand your rights to trial by jury?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Understanding those rights do you still
15 wish to plead guilty?

16 THE DEFENDANT: Yes, sir, I do.

17 THE COURT: Has anybody promised you anything, held
18 out any hope of reward or threatened you in any manner in
19 order for you to plead guilty?

20 THE DEFENDANT: No, sir.

21 THE COURT: Are you satisfied with the services
22 rendered to you by Mr. Hayes?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: In your opinion, has he had enough time
25 to spend with you, to research the law and investigate the

1 facts so that he could properly represent you here today?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Is there anything else you want him to
4 do for you today before we move forward, other than speak
5 up on your behalf.

6 THE DEFENDANT: No, sir, I do not.

7 THE COURT: And I ask you once again, Ms. Moore,
8 are you totally and completely satisfied with his
9 representation?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Ms. Moore, are you today under the
12 influence of alcohol, drugs, or prescription medication?

13 THE DEFENDANT: No, sir.

14 THE COURT: Ma'am, are you today aware of any
15 mental, nervous, or emotional conditions which would keep
16 you from understanding these proceedings or my questions?

17 THE DEFENDANT: No, sir.

18 THE COURT: Have you understood all of my
19 questions?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you have any questions you would
22 like to ask of me?

23 THE DEFENDANT: No, sir.

24 THE COURT: Do you have any complaints you would
25 like to make of anyone?

1 THE DEFENDANT: No, sir.

2 THE COURT: Ms. Moore, are you pleading guilty to
3 the offense of murder of your own free will and accord?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Ma'am, did you here in Aiken County on
6 or about April 22, 2017, willfully and with malice
7 aforethought participate in the murder of David Mackey,
8 wherein he died in Aiken County as a result of the beating
9 that he received from you or your codefendant?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: You're pleading guilty because you are,
12 in fact, guilty?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: I find your decision to plead guilty to
15 be freely, voluntarily, and intelligently made. You've had
16 the representation of an excellent lawyer, Mr. Hayes, with
17 whom you say you're satisfied. And I accept your plea.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: If you disagree with these proceedings,
20 you have ten days from today's date to file a notice of
21 intent to appeal. Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 MR. GRIMES: Your Honor, I'm going to address the
24 basis for the -- the factual basis for the murder plea at
25 this time, Your Honor.

1 THE COURT: Thank you.

2 MR. GRIMES: On April --

3 THE COURT: Hold on a second. Mr. Bailiff let the
4 clerk in, please.

5 MR. GRIMES: On April 22nd, 2017, law enforcement
6 was notified regarding a fire that occurred in New
7 Ellenton, South Carolina, wherein a person was found
8 deceased in that fire. New Ellenton Fire Department had
9 responded to this structure fire. It was a home. It was a
10 mobile home that belonged to David Mackey. And at the time
11 that fire occurred, the defendant was living in that mobile
12 home. But upon fighting this fire, they located a body, so
13 they notified law enforcement. Law enforcement responded
14 and began an investigation.

15 It wasn't too long into the investigation that they
16 noted the condition of the body of the victim in this case.
17 It was apparent that a homicide had occurred and they began
18 investigating that homicide. They learned that the
19 defendant had lived in that home. The home actually
20 belonged to the victim in the case, but he lived elsewhere
21 on the property, so the victim was living there in that
22 home by herself.

23 The victim, Mr. Mackey's, car was not at the
24 incident location and through their investigation, that
25 night, they actually located that vehicle in Georgia. They

1 put out an alert for that vehicle. They were notified by
2 law enforcement in Georgia that the vehicle had been
3 located in Georgia. It was located on the interstate. And
4 ultimately, the vehicle was located on the interstate in, I
5 believe it's Newton County Georgia. An officer had seen
6 the defendant and codefendant in this case walking down the
7 interstate. They had left this vehicle. I think it had
8 actually quit working. They left the vehicle and began
9 walking. An officer picked them up. They had a story and
10 he essentially took them -- they were headed to Atlanta,
11 they told him they were headed to Atlanta.

12 And he took them to, I believe it was the Newton
13 County Georgia line where it meets Rockdale County Georgia
14 and left them at a Waffle House or a Flying J Truck Stop.
15 The -- when law enforcement in Aiken learned of the
16 location of the vehicle, they contacted Newton County
17 Sheriff's Office who located the vehicle, stayed with the
18 vehicle. Ultimately they found out from the deputy that
19 had taken them to the Newton County line and the Rockdale
20 County Sheriff's Office actually responded to that location
21 and located the defendant and codefendant that night.

22 All of this happened really quickly. It was very
23 good police work by investigators and investigators from
24 Aiken County Sheriff's Office were in Rockdale County
25 Georgia interviewing the codefendant in this case that

1 following morning. So a lot of the information in this
2 case developed very, very quickly.

3 When they interviewed the codefendant, Jason Miles,
4 who is a similar age of this defendant, what they learned
5 is he's essentially a friend of the defendant's. He
6 initially indicated to law enforcement that he wasn't
7 really aware of what had occurred in the, in the mobile
8 home the night that this occurred and then his story kind
9 of developed and as his interview progressed, his
10 admissions progressed to the point where he -- he
11 eventually indicated that essentially Kayla had planned on,
12 he called, "getting" the victim in this case for some
13 period of time; that she had talked about it; that
14 essentially he had, the victim in this case had pills that
15 he would get and the codefendant indicated that he wouldn't
16 take the pills like he was supposed to, to essentially sell
17 the pills.

18 They believed he had some pills. And I don't know
19 whether -- they may have gotten pills from him, they may
20 not have gotten pills from him. But it appears from the
21 information that we have that that was at least a
22 motivation that he might have some pills that they could
23 get and/or sell; and that, he indicated that she had been
24 planning it, that she had threatened him and that he
25 reluctantly participated, but he also described the fact

1 that he's the person that initially struck Mr. Mackey at
2 this defendant's behest. In fact, he indicated that she --
3 that they, I believe both had hammers, but that when they
4 were discussing this outside, Mr. Mackey was inside
5 actually watching TV and they were discussing this outside
6 prior to it occurring; and that she indicated that if he
7 didn't go hit Mr. Mackey, that she would and then she would
8 hit him.

9 So -- that's, I'm referring to the hammer, so
10 ultimately he indicated that he went into the house, he hit
11 the victim with the hammer a few times, that he gave up on
12 that and began striking the victim with what's called an
13 air soft gun. It's not a real gun, it's a toy gun, but
14 it's in the shape of a gun, so -- and then ultimately, the
15 defendant assaulted the victim.

16 It appears from the facts that the victim didn't
17 die right away and that he was ultimately struck, I
18 believe, I'll just describe it from the coroner's report;
19 that he was -- beg the Court's indulgence for just one
20 moment.

21 (There was a pause.)

22 MR. GRIMES: There were 19 wounds to the head.
23 There were, it was a stab wound in the neck. And a number
24 of wounds to the chest.

25 Following that occurrence the codefendant indicated

1 in his confession that she instructed him to get the gas
2 can that was there at the house already and pour it around
3 the house and ultimately the house was lit on fire prior to
4 them leaving.

5 They left in the victim's car and when the car was
6 located, there was a hammer in it, there was a air soft gun
7 in it and there was a knife in it, all of which appeared to
8 have blood on them and the victim -- and the defendant in
9 her interview with law enforcement indicated that that
10 knife belonged to her. She didn't indicate that she used
11 it in her interview, but it appears from the facts that
12 ultimately that's what, what took place.

13 The mobile home was set on fire, and, Your Honor, I
14 do have a few photographs from those. I just -- defense
15 counsel has all of the photographs in the case, these are
16 just a few of them to kind of depict for the Court the
17 severity of what occurred.

18 (The Court looking at the photographs.)

19 MR. GRIMES: Your Honor, I think -- for the record,
20 I'll finish.

21 The coroner -- the pathologist report indicates
22 that the manner of death is homicide and the probable cause
23 and mechanism of death is blunt and sharp force injuries to
24 the head and neck within an interval of minutes.

25 Your Honor, this is a severe situation. The

1 allegations are egregious. The nature of this assault,
2 that the defendant's -- the victim's age, he was 74 years
3 old when this occurred, and a number of other factors, I
4 think will weigh heavily on sentencing.

5 I would like to reserve advocacy on sentencing for
6 a later date as I understand it's likely that the defendant
7 will be ordered for a presentencing report, but -- and the
8 victims would have a presentation for the Court at that
9 time, Your Honor.

10 THE COURT: What's the disposition of the
11 codefendant?

12 MR. GRIMES: His case is still pending.

13 THE COURT: She have a record?

14 MR. GRIMES: She has a prior strong-armed robbery
15 from 2016 in Richland County.

16 Your Honor, the -- just briefly, the victim in this
17 case, I kind of -- they're not family, but he was familiar
18 with her mom. It's my understanding that --

19 THE COURT: He was familiar with the defendant's
20 mom?

21 MR. GRIMES: That's correct. And it's my
22 understanding that when she got in Richland County and was
23 released on YOA, he basically went up there and got her and
24 gave her a place to live and she was living there in his
25 mobile home until this occurred. So it's not a -- it's not

1 a -- he's not a stranger to her.

2 MR. HAYES: May it please the Court, Judge, Ms.
3 Moore wants to waive the sentencing report and go forward
4 with sentencing today, if Your Honor would be so inclined.
5 I guess based on the ruling on that would be how far I'm
6 getting ready to go.

7 THE COURT: Well she's an awfully young lady, 19
8 years of age. This is a very brutal murder. You don't see
9 very often females involved, particularly at this age,
10 she's had two mental evaluations on her which we referred
11 to earlier.

12 I think I would feel more comfortable with a
13 pretrial sentence report, presentencing report, to see what
14 in the world is going on here. And not only for the State,
15 but for her mainly. Certainly the type of crime it is, it
16 can very well warrant a life sentence and I am cognizant of
17 her age; and obviously the case law is being developed for
18 people this age and a little younger as we go along.

19 So I think to protect her and the record and
20 everyone else. So let's get that done ASAP so I'll be sure
21 that I can perhaps do a correct sentencing.

22 MR. HAYES: Judge, just a couple of things for the
23 record while we're doing this. I, in all my years, have
24 never done one where I have not contacted a single family
25 member and told them what was happening. Her father had

1 been interested in what was going on. I had several
2 meetings with her father at my office when we were
3 discussing entering this plea. It was instructed to me not
4 to contact family, that the relationship had not -- the
5 relationship that is there is not one of parent figure but
6 more curious bystander as to what's happening, that the two
7 visits that she has had in the last 448 days, was he had
8 talked to me and was prying for information.

9 The only other visitor she has had in that time
10 frame was one friend that went to high school with her and
11 that was on her birthday of last year that she got that
12 visit. Her position was that if he did not care that no
13 such support, I -- she did not want them present. I've
14 never done a plea with such seriousness without having
15 other people that were interested in here supporting my
16 client and the only reason I have not made those phone
17 calls is her per her request.

18 As to the presentencing report, we did have a
19 discussion about that. She wanted to waive it against my
20 advice and I did discuss with her that the Court would have
21 discretion to do what it feels is appropriate, but she
22 wanted to go forward and be sentenced today.

23 THE COURT: Concerning the current state of law
24 dealing with defendants of this age, the way it's
25 progressing, I feel a presentencing report is necessary not

1 only to protect her, but to protect the record and
2 ultimately to protect her.

3 MR. HAYES: Yes, sir.

4 * * * * * END OF TRANSCRIPT * * * * *

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1 State of South Carolina)
2 County of Aiken) **Certificate of Reporter**

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6 I, Brenda J. Sigwald, Official Court Reporter for
7 the Second Judicial Circuit of the State of South Carolina,
8 do hereby certify that the foregoing is a true, accurate,
9 and complete Transcript of Record of the proceedings had
10 and evidence introduced in the trial of the captioned case,
11 relative to appeal, in the Court of General Sessions in and
12 for the State of South Carolina on the 26th day of July
13 2018.

14 I FURTHER CERTIFY that I am neither kin, counsel,
15 nor of interest to any party hereto.

16 IN WITNESS WHEREOF, I have hereunto set my hand and
17 seal at Aiken County, this 22nd day of August, 2019.

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Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020

The State of South Carolina,)
Plaintiff,)
)
vs.)
) Transcript of Record
Kayla Moore,)
Defendant.)
)
)

December 13, 2018

Aiken, South Carolina

B e f o r e:

The Honorable Doyet A. Early, Judge

A p p e a r a n c e s:

Samuel B. Grimes, Esquire,
Attorney for the Plaintiff

C. David Hayes,
Attorney for the Defendant.

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

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E X H I B I T S

-- NO EXHIBITS ENTERED --

1 KAYLA MOORE, having been first
2 duly sworn, testifies as follows:

3 THE COURT: Mr. Hayes, you represent Kayla Nicole
4 Moore, 18-GS-02-1067. This is an indictment for murder.
5 I have taken her plea; have I not?

6 MR. GRIMES: Yes, Your Honor. She's pled guilty.
7 Your ---

8 THE COURT: Seven ---

9 MR. GRIMES: --- Honor ordered ---

10 THE COURT: 7 of 26, '18?

11 MR. GRIMES: Yes. Your Honor ordered a pre-sentence
12 investigation. I don't believe the Defense has presented
13 mitigation. The State reserved advocacy regarding
14 sentencing 'til this time.

15 THE COURT: All right. Hold on a second. When we --
16 you've gone through the facts.

17 MR. GRIMES: Yes, your honor.

18 THE COURT: Put the facts on ---

19 MR. GRIMES: And I -- I -- and I can go through those
20 again for Your Honor. But we --

21 THE COURT: Well, I'm familiar with them.

22 MR. GRIMES: We've gone through the facts, Your
23 Honor, and you've gone through the plea colloquy with the
24 Defendant and accepted the plea.

25 THE COURT: All right. But I -- and I did order a

1 pre-sentencing evaluation, which I received from
2 probation, EPP, whatever, and have read it. Basically it
3 was a recitation of the facts as presented. It was as
4 recitation of Ms. Moore's account of what happened. It
5 was a rehash of her evaluation and some prior record of a
6 strong arm robbery in the past. But I've read it and it's
7 been made available to me. So for whatever that's worth.

8 It actually didn't shed a whole lot of light on
9 anything. So Mr. Hayes, I guess the way we'll do it is to
10 hear from you, and then I'll hear from you -- you and/or
11 your victims, however you want to do it.

12 MR. GRIMES: Yes, Your Honor.

13 MR. HAYES: May it please the Court. Your Honor, Ms.
14 Moore has been incarcerated in Aiken County for the last
15 588 days. In dealing and going to see her and going over
16 everything she's always had a very somber, very serious
17 demeanor look. After entering the plea in June -- July --
18 in July, I've seen her a couple times since at the jail,
19 and even this afternoon spoke with her in the back and she
20 had moments where she was smiling. I think that ---

21 THE COURT: She's been before me a number of times:
22 On a bond hearing and on the plea and today, and I think
23 probably -- perhaps maybe a couple of other times. I'm
24 not sure.

25 MR. HAYES: And if I recall, Judge, I'm don't believe

1 she smiled once ---

2 THE COURT: She never does.

3 MR. HAYES: --- at any of those. She's been very
4 serious and very somber at every one of those meetings.

5 After entering the plea, though, I've met with her
6 and I've met with her today and she told a story about her
7 mother that she does not wish me to -- to share the
8 information about, but it gave her some pleasure and she
9 smiled and she was mood-appropriate for the -- for the
10 time.

11 I wish she had been able to present that during the
12 meetings and ---

13 THE COURT: Well, the pre-sentence report dealt with
14 the psychological evaluation which may explain some of her
15 lack of showing any emotion, whether it be smile or frown
16 or whatever. But it found that she had some type of anti-
17 social personality or disorder. May well be the reason
18 for her -- for her flat affect.

19 MR. HAYES: Yes, sir. I guess where I'm -- where I'm
20 trying to go with it is is, Judge, I see the appropriate
21 mood and the personality is in there. It's just a lot --
22 I think her life, getting to this point, the experiences,
23 the mental health with the anti-social personality
24 disorder, anti-personal traits that go along with it
25 sometimes overshadow the good that I see in her at times.

1 THE COURT: Well, this is a very, very -- obviously
2 as serious as you can get. The facts are horrible.
3 Brutal death, and -- and there's really no explanation as
4 to why that I could find in reading the pre-sentence
5 report. Fleeing the scene and fleeing the state
6 afterwards.

7 And -- and the manner of death was -- and the -- was
8 brutal, as I said. And the number of wounds all the way
9 from broken ribs on both sides to bashing in of the chin,
10 all the blunt force objects about the head and the -- and
11 the laceration of the blood vessels and the arteries. And
12 it's just as 'bout as brutal as you want to see in the --
13 in the courtroom and it's very troubling.

14 MR. HAYES: Yes, sir. Judge --

15 THE COURT: And it's troubling that she's a 19-year-
16 old young lady, and you know, she's -- has pled guilty to
17 murder. She's got a -- I've got the discretion of between
18 30 years and life; and I suspect, from a pre-trial
19 discussion in chambers between you and Mr. Grimes, that
20 the State's going to be asking that I give her a life
21 sentence. And I suspect you're going to be asking that I
22 give her a 30-year sentence which is not unusual under
23 these circumstances, and I'll just -- I have to look at --
24 and balance out a lot of stuff and sentence either what
25 they want or what you want or somewhere in between.

1 MR. HAYES: Yes, sir. Judge, hopefully I can shed a
2 little bit of ---

3 THE COURT: It's not a pleasant task.

4 MR. HAYES: No, sir. Maybe I can shed a little bit
5 of light about her demeanor. As of May of last year was
6 the only visit she had with her father. The only other
7 visit, up until the time we entered our plea last year --
8 or in July, was a friend from middle school came to see
9 her last year on her birthday.

10 Since then, another inmate from Aiken County had
11 since gotten out of Aiken County, and that's only been her
12 other visit the whole entire time she's been in
13 incarceration other than myself.

14 She attended South Aiken and Aiken High School and
15 ultimately, after having issues with her family, her
16 mother, not being a mother, being sent to live with her
17 father, not getting along with her father and her step-
18 mother was sent to West Columbia to Wil Lou Gray. She
19 excelled there for what I was able to get from the family,
20 and got her GED in either 2015 or 2016. I think it says
21 '16 in the mental health report; she tells me '15.

22 As to her mother, her mother introduced her to
23 marijuana at the age five when she gave her and her
24 brother a marijuana cigarette. Her mother was also
25 addicted to methamphetamine and harder drugs, and she

1 never did any harder drugs because she lost her mother due
2 to the drugs and she did not want to be that way.

3 She started drinking at age 13 or sometime maybe even
4 a little bit younger. She -- if you -- I know you read
5 the report, and I believe I said about it before, she had
6 her arm broken by her brother and other issues with her
7 brother and her cousin as a result of no supervision. She
8 had a medical issue where she had seizures until she was
9 age of seven, and then for some reason they just stopped.

10 Her mother would take her and her brother to a hotel
11 room or a motel room, drop them off, and leave them and go
12 do whatever she wanted to do with no supervision. And
13 they would have to lock their self in the room to be safe.

14 Her dad, she says, was not around because she
15 believes that he was in and out of jails while she was
16 younger. And then her mother was running around on him,
17 and he wouldn't come around because he was getting picked
18 on by friends that were around them at the time.

19 At 14 she had what appears -- what I'm reading in the
20 mental health report -- a mental breakdown and started
21 crying to the point she could not stop and was taken to
22 the hospital, and that's when they diagnosed her with the
23 anti-personality disorder and traits.

24 In preparing for entering our plea, I've always had
25 family. Judge, I -- I know you've seen me many a times

1 with very serious charges, and I've always had family,
2 clergy, anybody that I can get my hands on to speak well
3 of my client and try to mitigate the damage and have them
4 here to support their family members and friends. Her
5 answer to me was -- is she -- she originally gave me
6 permission to talk with the father, but after the -- the
7 -- it became apparent that he was only collecting
8 information and not being there to support her, she
9 withdrew my permission to speak with him or any other
10 member of the family, and she did not want anybody here.
11 She didn't -- does not -- and today still does not want
12 anybody here, and the reason she did that was she would
13 write him, he wouldn't write back. She -- he wasn't
14 supporting her, and she felt that if he was only wanting
15 information, he didn't need it if that was all he was
16 doing. She just tells me that the relationship is not
17 there.

18 And as to the rhyme or reason, only thing I can tell
19 Your Honor is we've had many discussions about the
20 possibility of going to trial and arguing mere presence.
21 And we went over -- and I believe I put it on the record
22 before, but we understand we're waiving any of that now in
23 entering a sentence -- a plea.

24 We -- from the day that she was arrested and the time
25 that she did speak with Invest -- Investigator Egan, and

1 our -- my first meetings with her, she always maintained
2 that she was having a conversation with Mr. Miles. She
3 indicated Mr. Miles -- that she heard that there may have
4 been an allegation of some inappropriate behavior of the
5 victim from years and years ago, and that Mr. Miles then
6 left and committed a heinous act. That he then threw her
7 items out into the yard and she was told to load the car
8 and she did so.

9 While she was loading the vehicle, he -- the --
10 killed him and set him on fire and then they left. The
11 reason she did not tell on him and ended up going with him
12 and from what she had been telling me the whole time is
13 that she has been friends with him since ninth grade.
14 They met at South Aiken High School. He knew that she was
15 gay and that there was never any kind of relationship
16 between the two, but they were really good friends and she
17 could not betray him, I guess, is the way that it was
18 being looked at.

19 Judge -- and -- and you put it on record and what we
20 talked about. I would ask you to consider a 30-year
21 sentence. She's been incarcerated for 588 days here. She
22 was 18 at the time, if I'm doing my math correctly and can
23 recall correctly.

24 THE COURT: Yeah.

25 MR. HAYES: She's very, very, young. I believe that

1 a sentence here that she's going to do a day-for-day of --
2 there's no good time, there's no good credits, there's no
3 work release -- she will not be able to leave South
4 Carolina Department of Corrections until 30 years if that
5 is the sentence you give her. Later she will be much
6 older, much wiser, and hopefully be able at that point to
7 be able to string together a meaningful life at that
8 point, become a productive member of society.

9 And something that I consider, in whether I'm going
10 to trial or trying to enter a plea and making a decision
11 on a case of this nature is -- one of the things to me
12 would be I do not want to die in prison ever. The
13 opportunity to die free and have lived life I think is a
14 special thing, and I would like to be able to tell her at
15 the end of this that she would have that opportunity. And
16 we would ask Your Honor to consider that as a possibility.

17 If you do not deem 30 years appropriate, we would ask
18 for mercy based on the items that we have put before you.

19 THE COURT: Thank you. Ms. Moore, anything you'd
20 like to tell me?

21 THE DEFENDANT: No, sir.

22 MR. GRIMES: Your Honor, I'm going to hand Your Honor
23 up some photographs. At the guilty plea, I know you
24 recall those. There's one in particular I'm going to hand
25 up because it relates to the presentation the State's

1 going to make regarding what went on with this case, Your
2 Honor.

3 But just to briefly go back over what we're -- what
4 we're here about on April 22, 2017, officers -- or
5 firefighters from New Ellenton Fire Department showed up
6 at a structure fire which was at the residence where the
7 victim was living -- or the Defendant was living at that
8 time. They located -- they put out the fire and they
9 located a body of the victim in this case in the bedroom.
10 And you can see that, it's what Your Honor has a picture
11 of. In particular is his position in that picture, and
12 I'll get to that later. But they found him in that room,
13 his arms crossed on his chest, and a gas can on the body.

14 The victim's daughter indicated to law enforcement
15 that the Defendant lived there and that she had asked for
16 a ride to Atlanta, which the victim's daughter declined to
17 give her. The victim's neighbor, Mr. Guy Thompson, had
18 indicated that a young male, Mr. Miles, the co-defendant
19 in this case, Jason Miles, was standing on his porch at
20 approximately 8:30 that night when he got home and that he
21 had gotten an airsoft gun.

22 I don't know if Your Honor's familiar with that or
23 not, but it's basically a toy gun I think would
24 essentially probably appear to look like a real gun, but
25 it's actually a toy gun that is used in a game involving

1 shooting little plastic BBs.

2 But nevertheless, that he got this gun from Mr.
3 Thompson's son and was going to give it to Moore to fix
4 it.

5 He later saw Jason Miles when he was at a Chinese
6 food restaurant in New Ellenton. This was about 9:30, and
7 he gave Mr. Miles a ride back to the incident location
8 where Ms. Moore was -- and dropped him off there and Ms.
9 Moore was there at the time. So not too long after that,
10 New Ellenton Fire Department would show up at the house to
11 extinguish the fire.

12 Your Honor, investigators learned pretty quickly that
13 the -- that the victim's vehicle was missing from the
14 incident location, and ultimately put out a "be-on-the-
15 lookout" for the vehicle and were notified by Morgan
16 County Sheriff's office at approximately -- right around
17 three o'clock in the morning that they had located the
18 vehicles on the side of the road and -- and were
19 ultimately able to give them some more information that
20 Morgan County Sheriff's deputy actually located the people
21 that were walking down the road that had been reported and
22 gave them a ride to the Newton County line. And the
23 Newton County Sheriff's Office met them and gave them --
24 and transported them to Rockdale County, Georgia, and I
25 believe he left them at a Waffle House, if I'm not

1 mistaken.

2 Ultimately, once they had all this information, law
3 enforcement was able to get a warrant in relation to the
4 vehicle and actually have Rockdale County Georgia
5 Sheriff's Office go out and get them there from the
6 restaurant and -- and place them into custody.

7 And later on that same morning, Investigator Egan,
8 present here in court, and Lieutenant McFlurry, went to
9 Rockdale County, Georgia, and met with the co-defendant,
10 Jason Miles, in this case and interviewed him in which --
11 I'll discuss what he said in a few minutes.

12 They ultimately got a confession from him. They did
13 briefly speak to the Defendant in the case who didn't
14 indicate she wanted to talk at that time. But later, when
15 she was back in Aiken, she did give an interview with the
16 Sheriff's Office.

17 They located the vehicle and they -- and they located
18 a number of items in the vehicle to include the hammer
19 that was involved in this incident as well as a knife and
20 actually, since the guilty plea in this case, SLED has
21 analyzed the DNA results from the hammer, and they
22 indicated that it was -- it matched the DNA profile of the
23 victim in this case with a probability of 1 in 3400
24 million, which I think is probably the biggest number that
25 I recall seeing. That's occurred since the guilty plea in

1 this case, Your Honor.

2 But they located a number of items in the vehicle and
3 a number of items on the Defendant's person and the co-
4 defendant's person which are significant.

5 So the -- the things I think that are particularly
6 telling regarding sentencing in this case is -- well,
7 first and foremost, in regards to the Defendant's
8 contention that this was the co-defendant's idea, that he
9 just went into the house and -- and did this while she
10 waited outside, which I think is -- was reflected in her
11 interview and essentially reflected in her mitigation, it
12 just -- it doesn't comport with the facts of the case. It
13 doesn't comport with the evidence in the case.

14 Your Honor, the co-defendant's interview in this
15 incident indicated that the two of them had essentially
16 planned this. And he indicated specifically that Kayla
17 had been the one planning it initially, and that she had
18 -- and this is from the incident report which I think is
19 at least pretty close to what's in the interview, Your
20 Honor -- that (as read): "Kayla had been planning to get
21 him" -- that would be the victim -- "for, like, a really
22 long time. And he always gets different shipments. So
23 he'll sell pills and stuff like that that he had
24 prescribed to him. He wouldn't really take them like he
25 was supposed to. He would sell them and Kayla has a

1 vendetta against a lot of people in New Ellenton."

2 He indicated that she just kept planning and planning
3 and planning.

4 He indicated that he didn't really want to go through
5 with it, but he was afraid of her; and that she indicated
6 that -- essentially threatened him, that he was going to
7 hit the victim in this case or that she was going to hit
8 him.

9 He tells a story, ultimately, that kind of changes
10 over time during this interview, but I think it probably
11 boils down to that he admitted walking into the bedroom
12 where the victim was watching television. This is Jason
13 Miles, the co-defendant. He sat across from him -- and
14 this is the way it's described in the incident report --
15 placing the hammer on the bed; and that Moore would've --
16 would've come in and been behind the victim in the case.

17 And that Moore would have motioned for Miles to
18 strike the victim, and he -- he then did strike the
19 victim. He goes, in his interview, I think kinda back and
20 forth on how many times that occurred.

21 Essentially, I think, indicates that he did it a few
22 times, and then he tried to hit the victim -- or he did
23 hit the victim with the airsoft gun; and ultimately, as
24 it's described here I think, he indicated that he struck
25 the victim about eight times, including in the back of the

1 head, and that -- and that Moore, who also had a hammer --
2 there were two hammers involved and a knife -- commenced
3 to assault the victim. And she then told Jason Miles to
4 go get the gas can while she continued to assault the
5 victim. He describes her telling him to put gas in the --
6 in the mobile home and -- and he did, and then he was
7 outside when she lit the fire.

8 Your Honor, the victim in this case was struck --
9 make sure I get this as close as possible -- 19 times to
10 the head and 8 times to the chest. There are -- the way
11 it's described in the examiner's report is the hammer
12 strikes to the chest are on one side of the chest, I
13 believe the right side of the chest, and the ribs on the
14 left side of the chest are actually broken.

15 So the other thing I wanted to discuss, in regards to
16 the fact that this wasn't unplanned, is Jason Miles's
17 description of the fact that -- of these pills that the
18 victim would've had, Your Honor.

19 And the Defendant had two phones that were taken by
20 law enforcement. Search warrants were executed on those
21 phones, and they actually did an extraction on the phones,
22 and we can see what was going on with the phone and trying
23 to piece back together what the defendants in this case --
24 maybe what they were thinking and what was going on.

25 On April 22, that's the day that this occurred, at

1 around 8:04 p.m. -- 8:03/8:04 p.m., there are a number of
2 internet searches and they're for pills: 4241 pill that's
3 searched, it looks like, a couple of times. Watson 853.
4 and then MP85 which I searched online and it appears to be
5 just an inscription, Your Honor, on the pills that
6 identify them.

7 That was searched for on her phone just after eight
8 o'clock on the day that this occurred, Your Honor. In
9 addition -- and there's a KIK Messenger -- that's K-I-K
10 Messenger -- account that's on -- or message --
11 conversation that's on one of the phones that was
12 extracted. This is a conversation between two people that
13 appears -- that occurs between February 28 and March 17.
14 There's -- it appears to be a conversation between
15 somebody with the screen name "Kaotic Beauty" -- that's K-
16 a-y-o-t-i-k b-e-a-u-t-y -- and another person named
17 "Official Scooby." And ---

18 (Brief pause.)

19 MR. GRIMES: It's my understanding from the incident
20 report that co-defendant's aliases -- alias would be
21 Scooby. But anyway, in this conversation, they refer to
22 each other as "Jason" and "Kayla." So they appear to
23 identify each other.

24 But nevertheless, it's a conversation that occurs in
25 March 10, 2017, and it appears that the co-defendant was

1 in the hospital. And it goes back and forth, the
2 Defendant asking what's going on, and he's essentially
3 talking about what's going to happen when he gets out the
4 hospital. This is -- appears to be, from the context, a
5 continuation of a prior conversation; but nevertheless, he
6 indicates that -- that he's going to move, and there's a
7 person named "Melanie" that doesn't want to be here
8 anymore, and that he's going to, I believe, move to
9 Arizona. But this would be on March 10th, approximately
10 4:17 p.m.

11 This conversation continues, and this would be from
12 Official Scooby, which appears to be the co-defendant in
13 this case (as read): "If we hit that lick with the
14 fucking crowbar ..." and it goes on talking about, like,
15 (as read): "Imma bust that shit with a crowbar", and
16 continues going on talking about hitting somebody.

17 He describes (as read): "Like, critical condition.
18 I'm not waiting on no heat no more", which appears to be,
19 from context and just from information from prior cases,
20 that maybe he's talking about getting a gun.

21 Kayotic Beauty would say (as read): "Well, what do
22 you want to do?" And the response was (as read): "Imma
23 try and get this heat, man", and which it would be a
24 response, (as read): "IGI -- I-G-H-T", believed to be
25 "ight." And then continues on (as read): "And whenever I

1 get it, we're going to rest up for a day, and the next
2 night we're going to smack that shit hard." And then the
3 response says (as read): "Ight, bro. T-H-W-S, thws
4 [phonetic] plan."

5 And then the co-defendant would respond (as read):
6 "I-g-h-t - Ight Word. Whenever we snag that car, we're
7 going to find a random car, change the license plates, go
8 get that bitch spray painted and go to a chop shop." And
9 appears to be the end of that conversation, Your Honor.

10 But that occurred March 10th, which would be weeks
11 before this ever occurred. This is a conversation that
12 appears to be between this Defendant and the co-defendant,
13 and it particularly lays out their plan to commit a
14 robbery, at the very least, with a crowbar or a gun and
15 steal a car and leave town, which is essentially pretty
16 similar to what happens here, Your Honor.

17 And this was weeks before any of this ever happened.
18 So the story that she didn't know what was going to happen
19 just doesn't appear to ring true. In other words, she's
20 pleading guilty kind of on the theory that although she
21 wasn't going to murder him and stayed outside, which
22 doesn't appear to comport with the facts, that she would
23 be guilty, nevertheless, just because she was present at
24 the time of the crime and that she helped, kinda, cover it
25 up and leave town with the proceeds of -- of the murder.

1 And quite frankly while that -- some of that may be
2 true, that's -- doesn't comport with the evidence that
3 exists in the case, and it certainly mitigates her own
4 behavior far beyond what we -- we think is appropriate in
5 this case.

6 And also, this doesn't appear to be what could be
7 thought of as a "means to an end." It kinda seems like,
8 again, there are a number of things that were found by law
9 enforcement when -- when they located this vehicle, Your
10 Honor. And when they located these two persons in the
11 vehicle, they located a number of things, but in
12 particular: A gas can; a red-in-color, wood-handled 16
13 ounce hammer with blood on it; a black-handled, fixed-
14 blade knife with blood on it -- which the Defendant later
15 admitted to law-enforcement in her interview that was her
16 knife -- and a black-in-color airsoft gun.

17 There was another airsoft gun that was recovered
18 from, I believe, Jason Miles's person when he was
19 arrested. Then later when they arrested -- I think this
20 is from Kayla Moore. She has a bag with a number of
21 things in it to include iPhone, a case, some books, a
22 bandana, a knife case, envelope, a blue clock, some
23 scissors.

24 There were some things that were located with Jason
25 Miles which was another black airsoft pistol I mentioned

1 earlier, silver and black mask, a horse mask, a number of
2 other items.

3 And then there were also, I believe, located with Mr.
4 Miles a number of clothing items which may have been the
5 clothes he was wearing at the time. There was additional
6 -- just quite a few items, stuff that people might take
7 with them if they were planning on leaving town, to
8 include a set of dice, some rosary, a camo bandana, a
9 black pocket knife, some cologne, phone charges; this
10 Defendant's photo ID, Nokia phone, notebooks, ink pens,
11 Secret deodorant, Axe deodorant, a bottle of wine, pink
12 flashlight, another bag, black spray paint, tent spray
13 paint, a pink toothbrush, another pair of dice, a
14 notebook, an inhaler, a number of other items. Quite
15 frankly, they were packed and ready to leave town. This
16 isn't something that just occurred and then they -- and
17 they ran and jumped in the car and took off.

18 These items -- the fire department responded to this
19 fire, they put out the fire. A deputy from the Sheriff's
20 Office was there, I think, when the fire department was
21 there. They were already gone. These items would've been
22 packed and ready to go before any of this occurred. So
23 the idea of this just kind of occurred and she didn't know
24 that it was going to happen, again, doesn't comport with
25 the evidence that's available.

1 The other things that's kinda telling about those
2 items are the fact that there were two airsoft guns, two
3 masks, a hammer and a knife that were all packed, some of
4 which were in the car, some of which were on her person.

5 This was not the end. They left town with
6 approximately \$50/\$55 they had taken from the victim and a
7 car that broke down before they even reached Atlanta.

8 They were planning on funding their trip somehow.
9 They didn't need masks for the crime that they had already
10 committed because they had killed the victim in this case.
11 But yet they had masks and they had what appeared to be
12 guns and they left town in a car. I think it's safe to
13 presume that they had intended to continue to fund their
14 trip, Your Honor.

15 This also wasn't a crime of desperation. The victim
16 in this case gave the Defendant a place to live. She
17 wasn't destitute, she was staying in a house that he was
18 letting her stay in.

19 This is an individual -- I think you can tell from
20 the picture -- that was elderly. He was not particularly
21 big. These were two, young, able-bodied persons. If they
22 wanted to take anything from him, they could've taken
23 anything from him and there's probably nothing he could've
24 done to stop it. It was entirely unnecessary for them to
25 kill him. He was already giving her a place to stay. If

1 she needed something, he might've given her something
2 else; but the idea that they would need to kill him in
3 order to take this vehicle, I don't think he would've been
4 able to stop them if they took that vehicle regardless of
5 ...

6 The other thing that's kind of particularly telling
7 in this case is the force and the closeness and the
8 repetitive nature of the attacks. The person striking the
9 victim in this case, this was not something that happened
10 remote. They would be close enough. They were right
11 there. They could see the results of every strike and
12 every blow.

13 As I stated before, he had 19 strikes to the head, 8
14 strikes to the chest that appeared to be hammer strikes.
15 He was also, what appears to be, stabbed in the neck and
16 the carotid artery. So that would've occurred with the
17 knife which the Defendant has admitted was hers. And
18 these are all things that are at a distance where you see
19 the result of every single impact, and yet they continued.
20 His arms were folded across his chest, and a gas can was
21 placed on him.

22 If -- quite frankly, if she could do this to a person
23 that's that close to her, that's giving her a place to
24 stay, I don't know what would keep her from doing this to
25 any other person, particularly someone she didn't even

1 know.

2 It was planned, as I stated before. It's not a crime
3 of desperation. She told investigators in an interview
4 that the victim was close to her mom, and that she and him
5 were cool. That's -- would be her and the victim. And
6 essentially that's -- her and her mom were arguing, so she
7 went to stay; and the victim had let her stay there for a
8 few months.

9 Prior to this incident, she had just been convicted
10 of robbery in July of 2016. She was on probation for that
11 crime when this incident occurred.

12 And -- and I think you touched on it earlier, Your
13 Honor, but there's really no significant motivation. They
14 took roughly \$50 to \$55, I think, was what was described
15 from the -- from the victim. I -- she was familiar with
16 the victim, she knew what his means were. I don't think
17 she could've expected anything more than that to be a
18 result from this.

19 They took a car. I think it's a 1985 Ford that they
20 took.

21 There wasn't any significant motivation for this,
22 maybe some pills. And for that to be the motivation to
23 brutally murder somebody that you're familiar with, that's
24 providing you a place to live, it just doesn't -- it just
25 doesn't add up and it just doesn't make sense and it makes

1 her a very dangerous person.

2 Your Honor mentioned her age a little while ago, and
3 -- and I think that is significant in this case, but
4 creates a unique problem. Ordinarily we might think of
5 somebody that's young and hasn't had as many life
6 experiences, you might think of them as somebody that you
7 wa nt to be lenient on; however, in this case, it's the
8 opposite. This Defendant has proven herself to be
9 extremely dangerous, she has a prior conviction for
10 robbery, and she murdered this victim whom was close to
11 her; and she just hasn't displayed any regard at all for
12 life and pain and suffering, and that makes her somebody
13 that we need to keep away from other people for as long as
14 possible.

15 And I know Mr. Hayes mentioned that she -- her age
16 when this occurred, but quite frankly, if you haven't
17 learned regard for those other folks's lives by the time
18 you become an adult, you're just not going to have a
19 regard for other folks's lives.

20 And there really isn't a number that can make it a
21 safe situation: 30, she'd be 48; 40, she'd be 58. And
22 even if she got a 50-year sentence, she'd be 68. So just
23 -- all of those are too young. She hasn't displayed
24 remorse, she's a repeat offender, she hasn't shown any
25 mercy, and isn't deserving of any. And the Court should

1 sentence her to life in prison.

2 THE COURT: Anything else?

3 MR. GRIMES: Your Honor, the victims in this case are
4 present here in the courtroom, and three of them would
5 like to speak to Your Honor. And Investigator Egan is
6 also here in the courtroom.

7 THE COURT: Be glad to hear them in whatever order
8 you deem appropriate.

9 MR. HICKS: Darnell Hicks.

10 THE COURT REPORTER: Darnell? Spell your first name,
11 please.

12 MR. HICKS: D-a-r-n-e-l-l.

13 Your Honor, it's a whole lot of things I could say
14 about my father, and I'd probably be up here all day. But
15 for 19 years of my life, he's taught me everything I know.
16 Always been there for me, and loved everybody. Took --
17 made sure everybody had something, even if it was -- even
18 if it was his last.

19 And as I think back of the day, last time I spent
20 with him, it was -- I was out, and he called me to bring
21 him some light bulbs. And I drove out there and bring him
22 some light bulbs and he said he would come home. But due
23 to the things that happened, he never came home.

24 And things that's been keeping me ahead and afloat,
25 is support from family and friends keeping me all

1 together.

2 And things that happened to him shouldn't have
3 happened to him. And I -- just both of the people that
4 did some of it deserve life with no parole. That's all.

5 THE COURT: Thank you.

6 MR. SCRIVENS: Joseph Scrivens.

7 THE COURT REPORTER: I'm sorry. Say your last name
8 again?

9 MR. SCRIVENS: Scrivens.

10 THE COURT REPORTER: Spell it.

11 MR. SCRIVENS: S-c-r-i-v-e-n.

12 Your Honor, Mr. Mackie was my brother, and he
13 shouldn't have died this way. Now, I don't know Kayla, I
14 don't think I -- I've ever met her, but for him to give
15 her a place to stay and feed her, he shouldn't have died
16 this way. She shouldn't have did it. And all I can say
17 is that she knew she want some place to stay, I ask you, I
18 beg you, give her a place to stay in the state
19 penitentiary for the rest of her life. Thank you.

20 THE DEFENDANT: That was cute.

21 THE COURT: What did she say?

22 DEPUTY: She said, "That was cute", Your Honor.

23 THE DEFENDANT: Yeah.

24 THE COURT: You think It was cute?

25 THE DEFENDANT: (No response.)

1 THE COURT: Ma'am?

2 THE DEFENDANT: (No response.)

3 THE COURT: You want to answer me?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: You thought what he said was cute?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Why's that?

8 THE DEFENDANT: It was.

9 THE COURT: Ma'am?

10 THE DEFENDANT: It was.

11 THE COURT: It was?

12 THE DEFENDANT: Yeah.

13 MS. GARY: Nadira Gary.

14 THE COURT REPORTER: Spell your name.

15 MS. GARY: N-a-d-i-r-a.

16 THE COURT REPORTER: Last name?

17 MS. GARY: Gary, G-a-r-y.

18 Your Honor, I am the step-daughter. That man has
19 been in my life since I was eight years old. For someone
20 to hurt him this way is just -- it's terrible. He wasn't
21 only good to her and her mom, but our community.

22 When people needed a ride to work, he was there for
23 them. If they needed food, anything, like, he would give
24 it to them. He didn't have much, but he shared with
25 everybody. Black, white, orange, and blue. He didn't --

1 it didn't matter.

2 And to get off and witness his trailer on fire and
3 all these terrible things that happened is just -- I can't
4 answer it in my mind. Like, why would you do this? He
5 took you in, gave you a place to stay.

6 You took a father. My brother is 19 years old. He's
7 in the military, he is a good man, and he learned
8 everything from his father, everything. You always seen
9 my -- my brother and his dad together, and he served in
10 the military. He's a humble man and he loved his father.

11 We all loved David Mackie. The community loved him.
12 And just to -- for you to do this, it's -- it's horrible,
13 and not even show remorse to even say you're sorry?

14 That -- you said life is precious, but you took a
15 life from us. He has grandchildren.

16 She deserves life with no parole.

17 THE COURT: Thank you.

18 MS. DAVISON: Lakesha Davison.

19 (Brief pause.)

20 MS. DAVISON: My name's Lakesha Davison. David
21 Mackie, Jr. was my step father. I loved him very much.
22 He taught me how to drive, he taught me how to establish
23 credit. He was a good man. I loved him. The whole
24 community loved him.

25 He treated Kayla just like she was his child. He

1 tried to help her. She took this man's kindness for
2 weakness.

3 My step-father was 74 years old and I would never
4 imagine in a million years that he would've went out this
5 way. Since I was a little girl, David Mackie took people
6 in. He tried to help people. I would've never thought in
7 a million years his life would have been taken this way.
8 He didn't deserve it.

9 And I'm just hope, on behalf of the Mackie family,
10 that justice is served. This girl ain't go no remorse,
11 she ain't got no soul. She didn't even say that she's
12 sorry. And I just hope and pray, on behalf of our family,
13 that justice is served. This something we won't never get
14 over.

15 That day that she killed him was one of the worst
16 days of my life, and I won't ever forget it. My step-dad
17 didn't get the change to meet my daughter that's 10 months
18 old. It's heart breaking, it's a tragedy, and it's still
19 a nightmare. I won't ever forget it.

20 It's something that my family won't never get over.
21 We won't never get David Mackie back, and this girl got no
22 remorse and she deserve life with no parole. Her life of
23 tragedy had nothing to do with my step-father life. He
24 did not deserve to die this way at 74 years old. She
25 deserve life with no parole.

1 THE COURT: Thank you, ma'am.

2 Anyone else?

3 (Brief pause.)

4 MR. HAYES: If I may?

5 THE COURT: Hold on a minute. We got one more.

6 MR. HAYES: Oh, I'm sorry.

7 MS. PATTERSON: My name is Carrie Patterson.

8 THE COURT REPORTER: Please spell your first name.

9 MS. PATTERSON: Carrie, C-a-r-r-i-e.

10 THE COURT REPORTER: Thank you.

11 MS. PATTERSON: And that's my brother.

12 Me and him was together Friday, and we stayed
13 together all day long Friday. And when I don't have no
14 problem -- when I don't have no way to doctors, he make
15 sure that his sister get to doctors. He'll make sure that
16 his son or somebody else in the family will take me to my
17 -- to where I got to go.

18 So that's about -- the last -- Joseph Scrivens is the
19 last brother, and it's hard to see that -- how he was
20 murdered. That stayed with me for awhile, but I asked the
21 Lord to take it away from me. He did.

22 And I loved my brother. I loved my brother, David.
23 He would do anything for your. Anything he would do for
24 you. He didn't discriminate nobody. He loved them all.

25 And only thing I say is she didn't have -- she didn't

1 say I'm sorry what happened or anything.

2 I never met her, but I want her to have life without
3 parole. Young folks have got to learn. Y'all got to
4 learn this stuff. I got five children coming up. They
5 grown. My five are grown. I had one did time, but he
6 learned his lesson. He learned his lesson, Leon
7 Patterson. Oh, yeah. He -- my baby learned his lesson.
8 You ain't got to worry 'bout him getting in no trouble.
9 He learned his -- he learned his lesson. So that's all I
10 got to say.

11 THE COURT: Thank you, ma'am.

12 INVESTIGATOR EGAN: Thank you, Your Honor. I
13 appreciate you letting me talk. I'm Investigator Brendan
14 Egan, B-r-e-n-d-a-n.

15 Your Honor, in regards to a law enforcement view
16 here, I heard the Defense kinda shine as good a light as
17 they can on the Defendant. "Serious" is not the adjective
18 that has ever been used in my office to describe the
19 Defendant. I would say cold-hearted, remorseless.

20 I've been doing this for 11 years, and in my
21 experience, the most cold-hearted which Your Honor should
22 not take lightly. And we've all seen horrendous things in
23 our line of work, and when we say actually the most cold-
24 hearted, that should stand in and of itself about being
25 exceptional.

1 I know she stands before you right now accepting
2 legal responsibility for this crime, but there's no moral
3 accountability on her part here. Every time I've dealt
4 with her, had to listen to her jail calls, there's never
5 evidence of remorse or empathy for -- on the part of the
6 victims coming from Ms. Moore. I just don't see her as
7 being a remorseful person. Hope Your Honor would consider
8 that before you pass judgement and think about a person
9 this young having that lack of remorse, empathy for her
10 fellow human beings.

11 As Solicitor Grimes said that's only going to evolve
12 as she goes down the road and through the system. It's
13 not something that's going to get better. So I ask Your
14 Honor to think on that. Thank you, Your Honor.

15 MR. GRIMES: That's all from the State, Your Honor.

16 THE COURT: Mr. Hayes, you said you wanted to say
17 something?

18 MR. HAYES: Yes, sir. As to the story from the co-
19 defendant, she tells me that it is actually physically
20 impossible the way the room was laid out to actually come
21 up behind somebody sitting on the bed.

22 Judge, also as to the statement from the co-
23 defendant, he started out telling the police and
24 Investigator Egan that it was all part of a Cartel plan.
25 As Investigator Egan got -- started questioning him more

1 and more and very skillfully and very tactfully was able
2 to make him confess and the -- more and the more about his
3 role and started implicating my client.

4 As to the text messages, Judge, I'd ask you not to
5 consider them. They're over a month prior to the
6 incident. All the -- the seven messages implicating a
7 crime of hitting somebody with a crowbar are all from the
8 co-defendant. Not even ---

9 THE COURT: I won't consider it.

10 MR. HAYES: Not even a response from my client.

11 THE COURT: I won't consider it.

12 MR. HAYES: Yes, sir. As well as to getting a card.
13 Only response to ---

14 THE COURT: I told you I wasn't going to consider
15 them.

16 MR. HAYES: Yes, sir.

17 THE COURT: All right. Ma'am, anything you want to
18 say other than what one witness -- what one victim said
19 was cute? Anything else you want to tell me?

20 THE DEFENDANT: Uh-huh....

21 (Mr. Hayes confers with the defendant briefly.)

22 THE COURT: Ma'am? No, ma'am. Anything you want to
23 tell me, not what your lawyer's telling you to say.

24 THE DEFENDANT: He didn't say anything.

25 THE COURT: Ma'am?

1 MR. HAYES: Your Honor ---

2 THE DEFENDANT: He didn't tell me to say anything.
3 I don't have nothing to tell you.

4 THE COURT: You don't have nothing to say?

5 THE DEFENDANT: No. I mean, what do I have to say?

6 THE COURT: Ma'am?

7 THE DEFENDANT: What is there to say?

8 THE COURT: What should you say?

9 THE DEFENDANT: What is there to say.

10 THE COURT: What is there to say?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: I don't know, ma'am. I've never been in
13 that situation that you're in, but I can think of a
14 thousand things I would say.

15 THE DEFENDANT: (No response.)

16 THE COURT: Anything you want to tell this family?

17 THE DEFENDANT: No.

18 THE COURT: Thank you. As to indictment 18-GS-02-
19 1067 -- and ma'am, I've been doing this a long time. I
20 practiced law for 30 years. I defended six people who
21 were having the death penalty sought against them. I
22 defended numerous murderers. I've been on the bench 15
23 years, and I've had more murder cases than I can imagine.

24 And I have never had a person stand before me as cold
25 as you are.

1 The sentence of this Court is that you be committed
2 to the State Department of Corrections for the natural
3 period of your life. Good luck to you.

4 THE DEFENDANT: Thank you.

5 (Off the record at 3:17 p.m.)

6 **-- END OF TRANSCRIPT OF RECORD --**

CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Second Circuit Court for Aiken County, South Carolina, on the 13th day of December, 2018.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.

e/Bonnie H. Kelly

Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

January 27, 2019

WITNESSES

Aiken County Sheriff

Brendan P Egan

Law Enforcement Case #: 17-023311

SBG

ARREST WARRANT NUMBER

2017A0210900054

REC'D 10 May 18

[Signature]
CLERK OF COURT

[Signature]
Deputy Clerk

ACTION OF GRAND JURY

True Bill

[Signature]

Foreperson of Grand Jury

Date: May 10, 2018

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2018GS0201067

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

MAY TERM 2018

THE STATE

vs.

KAYLA NICOLE MOORE

CDR #: 0116

Indictment for

MURDER

§ 16-03-0010; 16-03-0020

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
MURDER

§ 16-03-0010; 16-03-0020

At a Court of General Sessions, convened on May 14, 2018, the Grand Jurors of Aiken County present upon their oath:

That **KAYLA NICOLE MOORE** did, or along with another did, in Aiken County on or about April 22, 2017, feloniously, wilfully and with malice aforethought, murder [REDACTED] by means of beating the victim and that the victim did die in Aiken County at 1018 Cedar Road as a proximate result thereof on April 22, 2017. All in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Aiken
STATE VS.

Kayla Nicole Moore

AKA:

Race: Black Sex: F Age: 19
DOB: 1998 SS#: [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018GS0201067A/W#: 2017A0210900054Date of Offense: 4/22/2017S.C. Code §: 16-03-0010; 16-03-0020CDR Code #: 0116SENTENCE SHEET 30 years - lifeCDL Yes ☐ No ☒ CMV Yes ☐ No ☒ Hazmat Yes ☐ No ☒In disposition of the said indictment comes now the Defendant who was
TO: Murder / Murder☐ CONVICTED OF or ☒ PLEADSin violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY:

Samuel Davis 77509 [Signature] [Signature] 77834
Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of life days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDOP.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ <u>3.75</u>

TOTAL

\$ 128.75Clerk of Court/ Deputy Clerk [Signature]Court Reporter: Bonnie Kelly

SCCA/217 (04/2018)

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.Presiding Judge [Signature]Judge Code: 2136Sentence Date: Dec 13, 2018

Plea Taken 7-26-18 - Pre Sentencing Eval. Crt Rpt: Brenda Sigwald

RECEIVED

FORM 5

2019CP0201306

MAY 15 2019

STATE OF SOUTH CAROLINA)

County of Aiken)Kayla Nicole Moore 378681)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

SC SUPREME COURT
IN THE COURT OF COMMON PLEAS

FILED

5-28 2019 8:30 PM

Robert L. White
CCCP & G.S.Shadell Hicks
Deputy Clerk

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention SC Department of Corrections
2. Name and location of Court which imposed sentence Aiken County General Sessions
3. Name(s) of co-defendant(s) (if any) ~~Ray~~ Jayson Miles
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2016 GS 0201667 - 2017A0210900054
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) DEC 14, 2018 → Natural Life
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓ open plea
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
no yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. General Sessions
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Dec 2018
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) ineffective assistance of counsel
- (b) involuntary guilty plea
- (c) incomplete discovery material / newly discovered material
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) deficient performance
- (b) not knowing b/c of missing discovery
- (c) forensics
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) this is first PCR
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? yes
 (b) your trial, if any? —
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
yes

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. David Hayes - Aiken Co. Public Defender

 ii. _____

 iii. _____

 (b) the proceedings at which each such attorney represented you:
 i. plea, sentencing

 ii. _____

 iii. _____

19. State clearly the relief you seek in filing this application:

new trial

20. Are you now under sentence from any other court that you have not challenged?

no

STATE OF SOUTH CAROLINA)

County of Aiken)

VERIFICATION

I, Kayla Nicole Moore, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

x Ky N. Moore

SWORN to and subscribed before me this 8th
day of May, 2019.

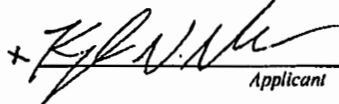
Kanana Robinson (L.S.)
Notary Public

My Commission Expires: 8/5/2024

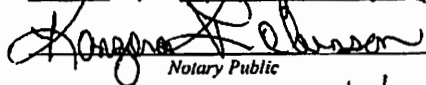
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Kayla Nicole Moore, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

+ 
Applicant

SWORN or affirmed to and subscribed before me this
8th day of May, 2019.


Notary Public

My Commission Expires: 8/5/2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	FOR THE SECOND JUDICIAL CIRCUIT
	)	
Kayla Nicole Moore, #378681	)	2019-CP-02-01306
Applicant,	)	
	)	RETURN, MOTION FOR MORE
v.	)	DEFINITE STATEMENT
	)	
State of South Carolina,	)	
Respondent.	)	
_____	)	

The State (Respondent), making its Return to the application for post-conviction relief filed on May 28, 2019, would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. During the May 2018 term, the Aiken County Grand Jury indicted Applicant murder (2018-GS-02-01067). Assistant Public Defender C. David Hayes (Counsel) of the Second Circuit Public Defender's Office represented Applicant. Assistant Solicitor Samuel B. Grimes of the Sixteenth Circuit Solicitor's Office prosecuted the case. On July 26, 2018, Applicant appeared before the Honorable Doyet A. Early and pled guilty as indicted. Judge Early ordered a presentencing report prior to sentencing Applicant. On December 13, 2018, Applicant again appeared before Judge Early. At that time, Judge Early heard mitigation from Counsel, a review of the facts from the State, and victim impact testimony from Victim's family. At the conclusion of the hearing, Judge Early sentenced Applicant to life imprisonment. Applicant filed a notice of appeal on December 27, 2018. The South Carolina Court of Appeals subsequently dismissed Applicant's appeal pursuant to Rule 203(d)(1)(B)(iv), SCACR, because Applicant failed to provide a sufficient explanation. The Remittitur was issued on March 1, 2019.

II. Factual History

On April 22, 2017, the fire department in New Ellenton, South Carolina, responded to a fire at David Mackey's (Victim) residence. (GP Tr. 13.) Officers were notified about the fire after Victim's deceased body was found inside the residence. (GP Tr. 13.) Based on the condition of the body, it was clear to officers that this was a homicide. (GP Tr. 13.) Victim's car was not at his residence, so officers put out an alert for the vehicle, which was located in Georgia. (GP Tr. 13-14.) Victim's vehicle was located on the interstate, and Applicant her co-defendant, Jason Miles (Miles), were observed walking down the interstate. (GP Tr. 14.) An officer picked them up, unaware of the investigation in South Carolina, and was told by Applicant and Miles they were heading to Atlanta. (GP Tr. 14.) The officer took them to the county line near Rockdale County and dropped the duo off at a Waffle House or Flying J Truck Stop. (GP Tr. 14.) When officers learned of the vehicle's connection to the South Carolina investigation, a deputy with Newton County located the vehicle and stayed with the vehicle. (GP Tr. 14.) Another deputy responded to the location where Applicant and Miles were dropped off and were able to take them both into custody. (GP Tr. 14.)

Officers interviewed Miles and he told officers Applicant planned on "getting" Victim for some period of time. (GP Tr. 15.) Miles told officers Applicant was targeting Victim in order to get his pills. (GP Tr. 15.) Miles told officers Applicant threatened him and he reluctantly participated in the murder. (GP Tr. 15.) Miles said he was the one who initially struck Victim with a hammer at the behest of Applicant. (GP Tr. 16.) Miles said he hit Victim with the hammer a few times, then he gave up on that and began striking Victim with an air soft gun. (GP Tr. 16.) Victim did not die right away, and, according to the coroner's report, Victim sustained nineteen wounds to his head, a stab wound to his neck, and "a number of wounds to the chest." (GP Tr. 16.) Miles said Applicant instructed him to get the gas can that was already at Victim's house and pour it around the house. (GP Tr. 17.) Victim's house was lit on fire prior to Applicant and Miles

leaving the residence. (GP Tr. 17.) The duo left in Victim's vehicle, and when it was located, the knife, hammer, and air soft gun were inside. (GP Tr. 17.)

III. Current Application

In her application for post-conviction relief, Applicant alleges that she is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "deficient performance"
2. "Involuntary Guilty Plea"
 - a. "Not knowing because of missing discovery"
3. "Incomplete Discovery / newly discovered evidence"
 - a. "forensics"

Attached to this Return and incorporated by reference are the records of the Aiken County Clerk of Court records regarding Applicant's convictions, Applicant's records from the South Carolina Department of Corrections, plea transcript, sentencing transcript, appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

IV. Response to Allegations of Ineffective Assistance of Counsel

Applicant asserts Counsel was constitutionally ineffective based on vague allegations listed in her application. Applicant has wholly failed to state with any specificity facts to support her general allegations. Based on this, it is impossible for Respondent to discern how exactly Applicant believes Counsel was ineffective. Respondent moves for Applicant, through counsel, to amend this allegation to include sufficient, specific facts to support her claim of ineffective assistance of counsel.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286

S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland, 466 U.S. 668. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, the applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989.) Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690.) The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690.) The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985.)

As discussed above, it is impossible for Respondent to adequately respond to Applicant’s allegation of ineffective assistance of counsel because Applicant has completely failed to provide any specific allegations or facts to support such claims. Respondent requests Applicant, through counsel, provide specific claims and facts to support this vague allegation.

V. Response to Involuntary Guilty Plea

Applicant further alleges her guilty plea was involuntary because “of missing discovery.” However, Applicant has failed to provide any indication as to what “missing discovery” she is referring to or how that “missing discovery” would have impacted her decision to enter a guilty plea. Although Applicant has failed to provide any specific facts to support this allegation, Respondent submits this allegation is without merit. In post-conviction relief cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing: (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel’s errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that her guilty plea was induced by ineffective assistance of counsel must prove that counsel’s advice was not “within the competence demanded of attorneys in criminal cases.” Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why she should be allowed to depart from the truth of those statements. Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant’s plea. At the outset of Applicant’s guilty plea, information was introduced regarding Applicant’s criminal responsibility and competency. Both the State and Counsel agreed the reports show Applicant had the capacity to conform her behavior to the requirements of the law and she has the capacity to stand trial. (GP Tr. 4-5.) Additionally, Applicant testified she understood her charge and sentence and wanted to plead guilty. (GP Tr. 9.) Applicant further testified she was not threatened her to enter her plea and she was pleading guilty voluntarily. (GP Tr. 10, 12.)

Applicant has failed to provide any facts that give rise to this allegation regarding ineffective assistance of counsel and the voluntariness of the plea. This allegation is wholly without merit and completely refuted by the record. Respondent requests Applicant, through counsel, amend her application to provide specific claims and facts to support this vague allegation.

VI. Brady Violation

Respondent interprets Applicant's allegation of "incomplete discovery material" as being an allegation of prosecutorial misconduct for failing to comply with Brady and/or Rule 5. Respondent submits this allegation is without merit and should be summarily dismissed for failing to make a *prima facie* showing.

A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing United States v. Bagley, 473 U.S. 667 (1985)). "The question is not whether petitioner would more likely have been acquitted had this evidence been disclosed, but whether, without this impeachment evidence, he received a fair trial 'resulting in a verdict worthy of confidence.'" Riddle v. Ozmint, 369 S.C. 39, 45, 631 S.E.2d 70, 73 (2006)

The requirements of Rule 5, as opposed to the constitutional dictates of Brady, are judicially created discovery mechanisms for use in criminal proceedings. State v. Gullledge, 326 S.C. 220, 487 S.E.2d 590 (1997). Rule 5(a)(1)(C) requires:

Upon request of the defendant the prosecution shall permit the defendant to inspect and copy books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control

of the prosecution, and which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the defendant.

Id. The definition of “material” for purposes of Rule 5 is the same as the definition used in the Brady context. Fradella v. Town of Mount Pleasant, 325 S.C. 469, 482 S.E.2d 53 (Ct. App. 1997). In order for Applicant to prevail on a Rule 5 claim, he must show not only an actual violation, but also that he suffered prejudice as a result. State v. Wilkins, 310 S.C. 81, 425 S.E.2d 68 (Ct. App. 1992); State v. Trotter, 322 S.C. 537, 473 S.E.2d 452 (1996).

Since Applicant has failed to provide any information regarding this allegation it is impossible for Respondent to adequately respond. Respondent requests Applicant, through counsel, provide specific claims and facts to support this vague allegation.

VII. Motion for More Definite Statement

In her application, Applicant fails to set forth with specificity the facts and circumstances upon which her claims of ineffective assistance of counsel and involuntary guilty plea are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must “. . . specifically set forth the grounds upon which the application is based.” Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965).

Applicant has failed to state with any specificity the specific facts giving rise to these allegations. Additionally, these allegations are not supported by any other additional information in the application. Respondent moves pursuant to Rule 12(e), SCRCP, to require Applicant to provide a more definite statement of her allegations of ineffective assistance of counsel. The Uniform Post-Conviction Procedure Act requires applicants to “specifically set forth the grounds upon which the application is based.” S.C. Code Ann. § 17-27-50 (1985) (emphasis added).

Furthermore, Rule 8(a), SCRCP, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.” Therefore, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the application.

VIII. Any Future Amendments and Invocation of Discovery Process

Applicant must specify any claims she intends to raise at the evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

IX. Response to Any and All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

X. Request for an Evidentiary Hearing

WHEREFORE, having made its return, the State requests applicant, through her counsel, amend the application to provide the required specificity for her allegation of ineffective assistance of counsel, involuntary guilty plea, and Brady violation. Until Applicant files an amended application, Applicant has not shown sufficient cause to warrant an evidentiary hearing on this application and requests a hearing not be schedule until after an amended application is so filed.

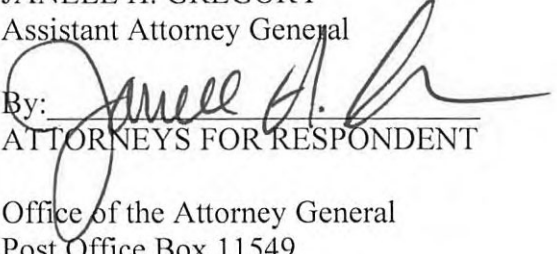
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JANELL H. GREGORY
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
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Telephone: (803) 734-3737

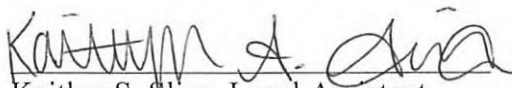
August 29th, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	
	)	2019-CP-02-01306
	)	
KAYLA NICOLE MOORE, #378681,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion for a More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Nancy C. Fennell, Esquire
Post Office Box 2176
Irmo, South Carolina 29063

DATED this the 29th day of August, 2019.


Kaitlyn S. Slice, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	CASE NO. 2019-CP-02-01306
	)	
	)	
Kayla Nicole Moore, #378681	)	AMENDMENT TO PCR
	)	APPLICATION
Applicant,	)	
	)	
v.	)	
	)	
State of South Carolina	)	
	)	
Respondent.	)	
_____	)	

The Applicant, by and through appointed counsel below, hereby amends her PCR application filed on May 28, 2019, to add the following grounds and/or facts on which Applicant bases her allegations that she is being held in custody unlawfully:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

Ineffective assistance of counsel for failure to adequately investigate all available defenses.

Ineffective assistance of counsel for failure to adequately investigate all available defenses including any available defense related to the fact that Applicant lived at the location of the alleged incident.

Ineffective assistance of counsel for failure to discuss with her any available defenses.

Ineffective assistance of counsel for failing to request a change of venue in response to the media exposure regarding Applicant's charges.

Ineffective assistance of counsel for failure to provide Applicant with her discovery motion.

Ineffective assistance of counsel for failing to request a speedy trial.

The above deficiencies prejudiced Applicant in that there is a reasonable probability that, but for counsel's errors, Applicant would not have plead guilty and would have insisted on going to trial.

Respectfully submitted,

____s/ Nancy C. Fennell_____
Nancy C. Fennell
Law Office of Nancy C. Fennell, LLC
P.O. Box 2176
Irmo, South Carolina 29063
(803) 553-1772
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SC Bar No. 69729
Attorney for Applicant

Columbia, SC
September 24, 2020

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this Amendment to PCR Application was served upon the following this 24th day of September, 2020 via email to:

Brianna Schill
Assistant Attorney General
briannaschill@scag.gov
P.O. Box 11549
Columbia, SC 29211

____s/ Nancy C. Fennell_____
Nancy C. Fennell
Attorney for Applicant

1 STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS NONJURY
2 COUNTY OF AIKEN)

3

4	KAYLA MOORE,	)	TRANSCRIPT
		)	
5	APPLICANT,	)	OF
		)	
6	VS.	)	RECORD
		)	
7	THE STATE OF SOUTH CAROLINA,	)	2019-CP-02-1306
		)	
8	RESPONDENT.	)	

9

10 June 3rd, 2021
Aiken, South Carolina

11

12

13 B E F O R E:

14 THE HONORABLE JENNIFER B. McCOY, Judge.

15

A P P E A R A N C E S:

16

17 NANCY FENNELL
ESQ.
Attorney for the Applicant

18

19 MEGAN HARRIGAN JAMESON
20 ASSISTANT ATTORNEY GENERAL
Attorney for the State

20

21

22

23

23 Transcribed by Pamela E. Green, from
24 DCRP, Digital Courtroom Recorder Project

24

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1 P R O C E E D I N G S

2

3 THE COURT: -- with your PCR attorney, Ms. Nancy
4 Fennell, is joined us. We've also got Ms. Jameson from the
5 South Carolina Office of the Attorney General and we have
6 Mr. Hayes here with Ms. Davis that you see is our court
7 reporter. Mr. Neubauer you see is also with the Attorney
8 General's Office and the -- Hayden Grooves, that's my law
9 clerk just so you know who, who all everybody is.

10 okay?

11 THE APPLICANT: Are they on camera right now?

12 THE COURT: Three of them are not cause they're not
13 participating. They're just like assistants. So, yeah,
14 they won't be speaking today.

15 All right. But I just -- people sometimes want to know
16 what -- who the names are. So that's -- well, I try to go
17 through and tell you who everybody is.

18 My name's Jennifer McCoy. I'm a Circuit Court Judge in
19 South Carolina. So, I'm gonna be hearing this PCR this
20 afternoon. Thanks for joining us by video and I understand
21 you're across the country right now. So, I appreciate
22 everybody getting on eastern time and joining us promptly.

23 So we'll get started here. I'm gonna ask the attorneys
24 who are participating for both the petitioner and the State
25 just to introduce themselves on record and tell us who they

1 represent.

2 we'll start with the Petitioner.

3 MS. FENNEL: Thank you, Your Honor.

4 My name is Nancy Fennell and I am here representing
5 Applicant, Kayla Moore.

6 THE COURT: Thank you.

7 MS. JAMESON: Hi. I'm Megan Jameson on behalf of the
8 State of South Carolina.

9 THE COURT: All right. And, Ms. Moore, obviously
10 you're here. If -- you need to state your name for the
11 record.

12 THE APPLICANT: Kayla Moore.

13 THE COURT: All right. Thank you very much.

14 Okay. Well, Ms. Fennell, I have reviewed this most
15 recently filed amendment to the PCR application. It looks
16 like it was filed back in September of last year but I'm
17 happy to, to hear from you or if you'd rather me hear from,
18 procedurally, from the State first. We can do it either
19 way.

20 MS. FENNEL: If the State wants to go into the
21 procedural -- set it up procedurally and then we'll go
22 into---

23 THE COURT: That's fine.

24 MS. FENNEL: ---to the current issue.

25 THE COURT: Sounds goods.

1 All right. Ms. Jameson, let us know what's happened to
2 date.

3 MS. JAMESON: Thank you.

4 May it please the Court.

5 As Your Honor stated, this is Kayla Moore versus the
6 State. Common Pleas Number 2019-CP-02-1306.

7 On April 22nd, 2017, Miss Moore and one of her
8 friends brutally beat to death a 74 year old man who was
9 allowing them to live on -- allowing her to live on his
10 property. He was attacked with a hammer and then set his
11 home on fire before fleeing the state in his car. They were
12 apprehended in Georgia and Applicant's codefendant gave a
13 statement implicating them in the crime.

14 In May of 2018 she was subsequently indicted by the
15 Aiken County Grand Jury for murder, was represented by David
16 Hayes.

17 On July 26th of that same year she appeared before
18 Judge Early and pled guilty to murder without any
19 negotiations or recommendation. Judge Early found the plea
20 was knowingly, voluntarily, and intelligently entered and
21 accepted the plea and then, at the State's request, and over
22 defense objection, Judge Early deferred sentencing and
23 ordered a presentencing report be prepared.

24 On December 13th of 2018 the hearing was reconvened
25 for a sentencing proceeding, and following the presentation

1 by the -- both the State and defense, Judge Early sentenced
2 Miss Moore to life imprisonment without the possibility of
3 parole. Hence, upon Applicant's request, Mr. Hayes filed a
4 notice of appeal on her behalf, and following the submission
5 of Miss Moore's 203 response, the Court of Appeals dismissed
6 the appeal based on failure to provide sufficient
7 explanation as to why the appeal from the plea should go
8 forward and a remittitur was issued on March 1st of 2019.

9 She then filed this incident PCR action on May 28th,
10 2019, asserting she was entitled to relief based on vague
11 claims of ineffective assistance of counsel, involuntary
12 guilty plea, incomplete discovery, and newly discovered
13 evidence. In reply, the State made a return and requested a
14 more definite statement of the allegations.

15 Thereafter, through her appointed counsel, Ms. Fennell,
16 she served an amended application asserting claims of
17 ineffective assistance of counsel for failure to have it
18 fully investigated and discuss all available defenses
19 including that she lived at the incident location,
20 ineffective assistance of counsel for failing to request a
21 change of venue in response to media exposure regarding the
22 charges, ineffective assistance of counsel for failure to
23 provide her the discovery, and ineffective assistance of
24 counsel for failing to request a trial, and I believe those
25 are the allegations that we'll be going forward on today.

1 THE COURT: Okay. Ms. Fennell, well I'm happy to hear
2 from you at this time.

3 (WHEREUPON, there was no audible response at this
4 time.)

5 THE COURT: Can you hear me?

6 MS. FENNEL: Thank you, Your Honor.

7 At, at this time I -- yeah, my Internet is a little --
8 I can, I can hear you now. I'm having just a little bit of
9 issues today.

10 But, at this time, I would call Kayla Moore to the
11 stand.

12 THE COURT: All right. So, Miss Moore, obviously we
13 are not in a courtroom. You take the stand but you just
14 stay where are you. I'll swear you in.

15 If you don't mind raising your right-hand for me.

16 KAYLA MOORE, being first duly
17 sworn, testified as follows:

18 THE COURT: All right. Thank you very much. Then take
19 a minute now -- you've already stated your name for the
20 record. So I'll let Ms. Fennell go ahead with the
21 questioning.

22 MS. FENNEL: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MS. FENNEL:

25 Q Now, Miss Moore, you and I have had opportunity to

Kayla Moore - Direct examination
By Ms. Fennell

1 discuss and you have heard the allegations that the State
2 just set forth that we put in your amendment to your
3 application.

4 Are those the allegations that you want to move forward
5 on today?

6 A Yes, ma'am.

7 Q And are you ready to move forward with your hearing
8 today?

9 A Yes, ma'am.

10 Q Okay. Where are you currently being housed?

11 A In Key Harbor (phonetic) in Washington.

12 Q Okay. And how long have you been there?

13 A I don't know.

14 Q Okay. And what, what sentence are you currently
15 serving?

16 A Life without parole.

17 Q And was that the result -- I'm sorry. Go ahead.

18 A For the murder case I guess.

19 Q Okay. Was that -- is that sentence the result of a
20 guilty plea?

21 A Yes, ma'am.

22 Q Okay. And when did you plead guilty?

23 A When did I plead or when I was sentenced?

24 Q Well, when, when did you plead?

25 A I, I think it was July. June or July.

Kayla Moore - Direct examination
By Ms. Fennell

- 1 Q of --?
- 2 A '18.
- 3 Q Okay. And so when, when were you actually sentenced?
- 4 A In December.
- 5 Q Of the same year?
- 6 A Yes, ma'am.
- 7 Q Okay. And how old were you when you were sentenced?
- 8 A I was 20.
- 9 Q Okay. And what did you plead guilty to?
- 10 A Murder.
- 11 Q Okay. And after your guilty plea and sentencing, did
- 12 you file an appeal?
- 13 A Yes.
- 14 Q And what happened with that appeal?
- 15 A They denied it.
- 16 Q And why was it denied?
- 17 A They say my grounds didn't have any merit.
- 18 Q Okay. Okay. Did, did you file any other type of
- 19 motion to reconsider your sentencing or anything after,
- 20 after you were sentenced?
- 21 A I did not.
- 22 Q Okay. Is that something that you discussed with your
- 23 trial counsel?
- 24 A I talked to him about it. He told me about the appeal
- 25 process but I filed the appeal and they denied it and I

Kayla Moore - Direct examination
By Ms. Fennell

1 didn't know how to go or where to go after that.

2 Q Okay. So then, then you filed this Post-Conviction
3 Relief Application?

4 A Yes, ma'am.

5 Q And, and how did you know to file this Post-Conviction
6 Relief Application?

7 A From other inmates in Camille in South Carolina, the
8 prison there. People were helping me out and I actually got
9 help filling out the application.

10 Q Okay. And in, in filing this Post-Conviction Relief
11 Application, what relief are you seeking?

12 A Retrial.

13 Q So, you would like -- you would like to go to trial?

14 A Yes, ma'am.

15 Q Okay. And who was the attorney who represented you on
16 the murder charges?

17 A David Hayes.

18 Q And was he appointed to represent you?

19 A Yes, ma'am.

20 Q And do you recall when -- when, when were you arrested
21 on these charges?

22 A April 23rd of 2017.

23 Q Okay. And when -- do you recall when he was appointed
24 to represent you?

25 A The actual date I don't know but it was that year.

Kayla Moore - Direct examination
By Ms. Fennell

1 Q Okay. And so you were incarcerated for a little over a
2 year before you pled guilty?

3 A Yes, ma'am.

4 Q Okay. And during that time that you were incarcerated,
5 did you have an opportunity to meet with Mr. Hayes?

6 A Yes, ma'am, we met on several occasions.

7 Q Okay. And when you met with him, what did you-all
8 discuss?

9 A The possible sentence ranges. That's pretty much it.

10 Q So, so you, you only discussed the possible sentence
11 ranges that you could get?

12 A Yes, ma'am.

13 Q Okay. And what, what did he tell you the possible
14 sentence range was?

15 A That I could get a word or a number and that he would
16 try to get me as close to 30 as possible.

17 Q Okay. Can you repeat that -- the first part of that
18 answer because I didn't, I didn't understand that?

19 A A word, that's what he said. I -- and I quote. "A
20 word or a number."

21 Q That -- he told you that the potential sentence you
22 could get is a word or a number?

23 A Yes, ma'am.

24 Q Okay. And so -- and was, was he explaining to you the
25 potential sentence on the charge of murder?

Kayla Moore - Direct examination
By Ms. Fennell

1 A A word or a number.

2 Q Okay. And so when he told you that, what did you take
3 that to mean?

4 A Being a word, he didn't say which word. So, it was
5 life or death but he can't even say. So I wasn't sure.

6 Q Okay. So, when you, when you went in to plead guilty
7 in July of 2018, what did you think the sentencing range was
8 at that point in time?

9 A David told me that he was gonna try to get me as close
10 to 30 as possible but that didn't happen.

11 Q Okay. And, again, you're serving a life sentence?

12 A Yes, ma'am.

13 Q Okay. What did you think -- what did you think was the
14 worst case scenario when you went in and pled guilty in July
15 of 2018?

16 A The worst case scenario was the plea of guilty. That
17 was the worst case scenario.

18 Q Okay. But as far as the sentence you would get as a
19 result of pleading guilty, what was the worst case scenario
20 you thought at that point in time?

21 A I didn't hear you.

22 Q You thought the most you could get was 30 years?

23 A Yes, ma'am, because I know and being that I swore to
24 God to tell the truth, I know that God knows what I did and
25 what I didn't do. So, I don't understand how life in prison

Kayla Moore - Direct examination
By Ms. Fennell

1 could be a possibility with no evidence condemning me.

2 So, I didn't think about the life sentence. He said he
3 would get me -- David Hayes said he would get me as closest
4 to 30 as possible. So, 30 was in my mind. Still I didn't
5 deserve that but that's what he said. So, that's what I
6 went with.

7 Q Okay. If, if you had known you could get a life
8 sentence, would you have wanted to plead guilty?

9 A No, I didn't want to plead in the first place.

10 Q Okay. And what do you mean you didn't want to plead in
11 the first place?

12 A I didn't want to do no life away from nothing when I
13 didn't do anything but (indiscernible).

14 Q Did you discuss with Mr. Hayes the fact that you didn't
15 want to enter into a guilty plea?

16 A I asked him for a speedy trial once and he never got---

17 Q And what happened when you asked---

18 A Sorry.

19 Q Go ahead. I'm sorry. I interrupted you.

20 A I asked David Hayes to file for a speedy trial on two
21 separate occasions and he never filed it for me.

22 Q And why, why did you want him to file for a speedy
23 trial?

24 A Because, one, I know I didn't do anything. And even
25 from the information in the motion that I had, not even the

Kayla Moore - Direct examination
By Ms. Fennell

1 part that he failed to give me, but the part that I had
2 didn't (indiscernible).

3 Q So, if, if you -- when you requested him to request a
4 speedy trial, what happened in that timeframe between the
5 time you asked him that and the time that you went in and
6 entered a guilty plea?

7 A Say that again, ma'am. I'm sorry.

8 Q I'm sorry.

9 what -- from the time period between when you asked him
10 to request a speedy trial and the time period where you went
11 in and entered into a guilty plea, what happened during that
12 time that led you to decide to plead guilty?

13 A I, I started asking him a lot of questions that he
14 refused to answer like why don't I have any forensics lab
15 testing in my motion and I asked him for them, and he
16 changed the subject to something else, and I asked him
17 again. well, he'd change the subject.

18 So, I felt like he wasn't, he wasn't trying to help me
19 and then I also talked to him about the Moroccan Empire
20 Treaty for Peace and Friendship with the -- with America.
21 He say he didn't know what that was.

22 Q Okay.

23 A And that -- I'm sorry. And I felt like with, with
24 David not helping me when he's the only person to speak, I
25 didn't have family helping me, you know, and I didn't -- I

Kayla Moore - Direct examination
By Ms. Fennell

1 wasn't educated in this area of, of law.

2 So, I personally didn't know how to defend myself. And
3 with him giving me no hope, I feel like there was no other
4 choice. Like when, when if I might arrive when I can prove
5 my innocence and the Court can not prove my guilt at all.
6 He gave me no hope for winning. No hope. So, I just bit
7 the bullet I guess.

8 Q Okay. And did you ever discuss with Mr. Hayes any
9 defenses that you could raise if you did go to trial?

10 A He said there was no defense.

11 Q And that was the only discussion you had with him about
12 potential defenses?

13 A Yes, he didn't -- I'm sorry. I'm sorry.

14 Q No, go ahead.

15 A He said that they would fight -- the Court would fight
16 hands of one the hands of all and/or mere presence.

17 Q Okay. Do you think that there were potential defenses
18 that you could have raised at trial that Mr. Hayes did not
19 discuss with you?

20 A Yes, ma'am, the fact that -- the actual fact that my
21 handprints aren't on anything and my or the defendant, cause
22 I'm the codefendant here, the defendant, all of his stories
23 don't add up.

24 Q And did you ever discuss the, the coded -- your -- the
25 defendant, your codefendant's, statements when you were

Kayla Moore - Direct examination
By Ms. Fennell

1 talking with Mr. Hayes?

2 A Yes, we actually sat down and watched some of the
3 videos of his interviews, Jason's interviews, and I told him
4 that the way that the room is designed, it is impossible for
5 his story to be true. And if you look at the pictures in
6 the motion, it shows that the layout of the room is exactly
7 how I described it.

8 So, it is impossible for Jason's story to be true
9 saying that I came in the doorway behind the victim and
10 motioned for Miles to hit him when the doorway was behind
11 Miles and the victim was facing the doorway.

12 Q And so you, you and Mr. Hayes discussed that particular
13 video and the pictures and, and the inconsistency of the
14 codefendant's statement based on that?

15 A Yes.

16 Q And what did Mr. Hayes tell you regarding the validity
17 of that defense at trial?

18 A It wouldn't matter.

19 Q Okay. And even though you had seen that information,
20 was it Mr. Hayes opinion that it wouldn't matter, is that
21 what led you to decide to enter into a guilty plea?

22 A Yes, ma'am, I had no hope. Every, everything that I
23 gave him to show him the effectiveness of any evidence
24 against me he disregarded.

25 Q Okay. And other than the inconsistency of, of your

Kayla Moore - Direct examination
By Ms. Fennell

1 codefendant's statements and the evidence, were there any
2 other defenses that you thought Mr. Hayes should raise if
3 you were to go to trial?

4 A The fact that my handprints aren't on anything. Miles
5 stated that he used the hammer and that I used one. But
6 only one hammer has blood on it and Jason is the only one
7 who said he used one.

8 So, he confessed to it, to the murder, and added me in
9 it but there's no proof of me being in it. So, for David
10 Hayes to be my attorney and to be fighting for me, not
11 against me, for me, that should of been something he paid
12 attention to but he did not.

13 Q Okay. And did you discuss with Mr. Hayes the issue of
14 mere presence?

15 A I, I didn't understand at the time that mere presence
16 couldn't be used against me if I lived at the
17 (indiscernible) until after I was imprisoned and other
18 inmates that were telling me and showing me on case law
19 that, if I lived there, mere presence couldn't be used
20 against me but David Hayes never informed me of that.

21 Q Okay. And just to go into the background, what do you
22 mean you lived there?

23 kind of explain for the Court what you mean about that.

24 A I lived where the crime happened. I lived in that
25 house, in that mobile home.

Kayla Moore - Direct examination
By Ms. Fennell

1 Q Okay. Did the victim live there as well?

2 A That was his second home.

3 Q Okay. Where did he live in relation to the -- where
4 the incident occurred?

5 A About, about 10 miles away.

6 Q Okay. And when you were discussing these potential
7 defenses with Mr. Hayes, did he, did he provide you with
8 your discovery motion?

9 A Portions of it, yes.

10 Q Okay. And when did he first provide you with that?

11 A I want to say September of '17. I want to say but
12 I'm -- I can't accurately recall.

13 Q Okay. But he provided it to you for you-all to discuss
14 prior to you entering a guilty plea?

15 A But -- yes, but everything was (indiscernible).

16 Q Okay. And so what was not in the discovery motion that
17 he provided you?

18 A The forensics lab testing and the text messages that
19 created the conspiracy charge.

20 Q Okay. And so how did you become aware of, of that
21 evidence?

22 A The text messages was during my sentencing and it, it
23 may be on the record. I asked David what's this, I haven't
24 seen this, this wasn't in my motion. He said shush, don't
25 worry about it.

Kayla Moore - Direct examination
By Ms. Fennell

1 Q So, you questioned him during your sentencing about
2 those messages?

3 A Yes, ma'am, during it.

4 Q Okay. And that was the first time you had become aware
5 of, of those messages?

6 A Yes, ma'am.

7 Q And I believe are you referring to kick (phonetic)
8 messages --

9 A Yes, ma'am.

10 Q -- that were messages between you and the codefendant?

11 A Yes, ma'am.

12 Q And so if you had known about those messages, how would
13 that have affected your decision to enter into a guilty
14 plea?

15 A That issues more of a knocking a charge out of the way
16 with, with the actual charge of the murder that we pled to,
17 the text messages, they tried to incorporate me into
18 conspiring and murder but that was the one thing that he
19 actually believed -- that he actually paid attention to in
20 court and was like my client only responded with one word
21 answers and did not conspire with Miles. That's the only
22 thing he actually -- that's the only defense he ever gave.

23 Q Okay. And that was during the, the sentencing, not the
24 guilty plea hearing?

25 A It might of been. It might of. I don't remember. I

Kayla Moore - Direct examination
By Ms. Fennell

1 just know it was in Court.

2 Q Okay. And then you mentioned -- well, let me ask you
3 this.

4 Did you ever receive a copy of the messages, the kick
5 messages, that were discussed during the sentencing phase?

6 A No, ma'am.

7 Q So, so, to this day, you've never seen a copy of those?

8 A No, ma'am.

9 Q Okay. So, the only reason you're aware of those is
10 because they were brought up during sentencing?

11 A Yes, ma'am.

12 Q Okay. And you, you mentioned that you didn't receive
13 forensic testing or DNA testing results from Mr. Hayes?

14 A That's correct. I didn't receive it.

15 Q Did you ever receive the DNA results?

16 A After three months in prison.

17 Q Three months after you were sentenced?

18 A Yes.

19 Q And how did you come to get that information at that
20 time?

21 A I asked again for my motion because the county jail
22 didn't allow me to take it with me for some reason. So, I
23 asked the Clerk of Court for my motion again and
24 miraculously that was first thing I seen when I opened it
25 and---

Kayla Moore - Direct examination
By Ms. Fennell

1 Q And the---

2 A (Indiscernible) anything.

3 Q And so that was the first time you, you saw that
4 information?

5 A Yes, ma'am.

6 Q And had you ever discussed that with Mr. Hayes?

7 A Yes, ma'am, I asked him where are the forensics lab
8 testing to say that my fingerprints are on any of the
9 weapons and he bypassed that whole question and ignored it.

10 Q So, he just avoided the question and, and that was it?

11 A Yes, ma'am.

12 Q And during, during your plea hearing, was this DNA, DNA
13 testing brought up?

14 A No. No.

15 Q Okay. And the first -- so, again, the first time you
16 became aware that it existed was three months after you were
17 sentenced?

18 A Yes, ma'am.

19 Q So, if you had been aware previously that there, that
20 there were -- was no DNA testing done and, and no
21 fingerprint of yours connecting you to the alleged crime,
22 how would that have affected your decision on whether to
23 enter into a guilty plea?

24 A It would of never happened. Never. Never.

25 Q And so you're saying -- go ahead.

Kayla Moore - Direct examination
By Ms. Fennell

1 A Excuse me. In my mind I know the truth but the
2 forensics lab testing hasn't been (indiscernible) right.
3 So, with that paper, I feel like I could defend myself
4 because it shows that my handprints aren't on anything.

5 So, how can you, how can you tie me to that?

6 How can I, how can I be found guilty, you know?

7 Q And after you received the discovery motion from -- you
8 said you received it from the Clerk of Court?

9 A Yes, ma'am.

10 Q Did you reach out to Mr. Hayes to discuss this?

11 A No, I was angry.

12 Q Okay. Okay. So, you said that basically what you
13 discussed with Mr. Hayes was the range of sentencing you
14 would receive and now you've, you've also mentioned that you
15 discussed some of the evidence that was included in your
16 discovery motion.

17 Did you ever tell Mr. Hayes that you wanted to go to
18 trial?

19 A Yes, ma'am.

20 Q And when did you tell him that?

21 A The actual day I don't know but this was leaning toward
22 the beginning and in the middle after the timeframe that I
23 was in the county jail and to arrest date and to the guilty
24 plea, in, in the middle of that area is when I started
25 losing hope because he didn't give me any even though I, I

Kayla Moore - Direct examination
By Ms. Fennell

1 knew I didn't do it. But everything he was saying never
2 gave me the slightest encouragement or belief that I could
3 win. Everything that I thought would help me he
4 disregarded.

5 Q Okay. And you were relying on his expertise in
6 providing you guidance on, on what decision to make?

7 A Yes, ma'am.

8 Q And, again, how old were you at that time?

9 A At that time I was 18.

10 Q Okay. Did you and Mr. Hayes ever actually start
11 preparing to go to trial?

12 A No.

13 Q Okay. And how many times do you think that you met
14 with him while you were incarcerated before you entered into
15 the guilty plea?

16 A How many times?

17 I think the max eight.

18 Q Okay. And those -- you would meet with him in person?

19 A Yes, ma'am, through the glass.

20 Q Okay. If you're -- if Mr. Hayes had provided you your
21 entire discovery file, how would that have changed your
22 decision to enter into a guilty plea?

23 A I would of never taken the guilty plea and I, I, I
24 would of been a bit more assertive with him to argue for me
25 and fight for me, you know. But he's, all in all, I think

Kayla Moore - Direct examination
By Ms. Fennell

1 he's -- he didn't do anything on my case. It's, it's hard
2 to describe it cause it's emotional and I haven't really
3 learned the patience yet to express myself that way but --.

4 Q And you, you had mentioned that, at one point in time,
5 you requested that you be appointed a different attorney?

6 A Yes, ma'am, I called the, the attorney's office and
7 asked them if I could request a new attorney. They told me
8 I'm not allowed to request one at that time.

9 Q And why did you want to request another attorney?

10 A Because he was ineffective. He wasn't helping me at
11 all.

12 Q Okay. Okay. Now, we've also included an allegation
13 that Mr. Hayes failed to request a change of venue.

14 why, why do you think that was important in your case?

15 A Because the media was slandering me and I was given a
16 bad name from the beginning and I thought they was innocent
17 until proven guilty but it's not about that. I'm not trying
18 to be a, a conspiracy theorist or antigovernment but it's
19 the truth. And I feel like it wasn't fair because everybody
20 who attended court and who plays a role in the decision of
21 my sentence made a biased decision because of what they
22 thought and what they heard from the media when it wasn't
23 true.

24 Q And when did you discuss with Mr. Hayes your desire to,
25 to change venue?

Kayla Moore - Direct examination
By Ms. Fennell

1 A Early in 2018.

2 Q Okay. And what was his response when you brought up
3 that issue?

4 A He doesn't see a reason to.

5 Q Okay. And that was all the discussion you had about
6 that?

7 A I knew he just shut me down. So, I, I didn't really
8 know how to argue that.

9 Q Okay. And I -- just to pause for a moment. I don't
10 see Mr. Hayes on the screen.

11 A I wonder why.

12 THE COURT: We don't need the commentary.

13 He probably had a -- let's bring him back over cause
14 this was -- somehow ended back in the attendee list. So,
15 bring him back over. Hold on.

16 MS. FENNELL: Okay. Thank you.

17 Now, other than, other than talking to Mr. Hayes about
18 the potential sentencing that could result from the murder
19 charge, did you discuss with him in any way the potential
20 outcome of a trial if you did go to trial?

21 A He said if we lose you could get the maximum. That's
22 it.

23 Q He said if you lose you could get the maximum?

24 A Yes, ma'am, the maximum sentence.

25 Q Okay. And, again, what was your understanding of the

Kayla Moore - Direct examination
By Ms. Fennell

1 maximum sentence?

2 A Life or death.

3 Q So, when you said life or death, what do you mean by
4 that?

5 A Life in prison or death.

6 Q Okay. So, he told you that you could be sentenced to
7 death if you went to trial?

8 A Those words he didn't say but he -- that was my
9 understanding of what he said. He said the maximum and then
10 this goes back to the -- you can get a word -- like, like
11 there's only two words but it's multiple words.

12 Q Okay. And when you were talking to Mr. Hayes and, and
13 trying to make a decision about, about how to move forward,
14 did he ever go over with you what the State would have to
15 prove to, to prove that you were guilty?

16 A No.

17 Q Okay. So, you went in and entered into a guilty plea
18 without having the knowledge and advice of an attorney
19 regarding what the State would have to prove?

20 A Yes, ma'am, I was unaware of that when I made the plea.

21 Q Okay. And if you had known what they had to prove,
22 would that have affected your decision to enter into a
23 guilty plea?

24 A Yes, ma'am.

25 Q Okay. All right. Other than what we have already

Kayla Moore - Direct examination
By Ms. Fennell

1 discussed, is there, is there anything else that you think
2 you should tell the Court?

3 A Not that I can think of at this moment.

4 Q So you believe we've, we've covered everything that,
5 that you believe Mr. Hayes did wrong in, in representing you
6 and leading you into entering a guilty plea?

7 A I think so, yes, ma'am.

8 Q Okay. Please answer any questions that Ms. Jameson has
9 for you.

10 MS. JAMESON: May it please the Court.

11 CROSS-EXAMINATION

12 BY MS. JAMESON:

13 Q Miss Moore, you were living in a trailer on the
14 victim's property at the time of his death, correct?

15 A Yes, ma'am.

16 Q And he wasn't living in that trailer with you, was he?

17 A No, ma'am.

18 Q And you, you testified he was living about 10 miles
19 away.

20 Was it on that same piece of property?

21 A No.

22 Q And you've known your codefendant for quite a while,
23 correct?

24 A Yes.

25 Q Since middle school I believe?

Kayla Moore - Cross-examination
By Ms. Jameson

- 1 A Yes, ma'am, related.
- 2 Q How are you related?
- 3 A I'm not sure. I think (indiscernible).
- 4 Q There was some discussion about text messages that you
- 5 first learned about at the sentencing proceeding, correct?
- 6 A (Indiscernible).
- 7 Q The text messages showed you and your codefendant
- 8 discussing plans to beat someone with a crowbar, correct?
- 9 A No.
- 10 what did I say?
- 11 Q well, what did they show then?
- 12 what did, what did the State allege they showed at your
- 13 sentencing?
- 14 A They showed me saying okay, okay.
- 15 Q Okay in response to what?
- 16 A To what he wanted to do in retaliation to somebody
- 17 robbing him. That wasn't even about the crime that was
- 18 committed.
- 19 Q And Mr. Hayes objected at sentencing and asked Judge
- 20 Early not to consider those text messages, correct?
- 21 A Yeah.
- 22 Q And Judge Early said he would not give any
- 23 consideration to those text messages, correct?
- 24 A Yeah.
- 25 Q And the victim's DNA was found on a hammer in his car,

Kayla Moore - Cross-examination
By Ms. Jameson

1 correct?

2 A Uh-huh. (Affirmative).

3 Q And that was a car that you and your co -- codefendant
4 were found in Georgia, correct?

5 A It wasn't found by the car, no. It wasn't found in the
6 car.

7 Q Law enforcement found you pretty close to the car on,
8 on a highway in rural Georgia, correct?

9 A To my knowledge, no, they didn't.

10 Q How did you get to rural Georgia about a mile away from
11 his car?

12 A My feet.

13 Q You didn't take the car there?

14 You walked all the way from Aiken?

15 A You said how did I get --?

16 Q To Georgia.

17 How'd you get to Georgia?

18 A In the passenger's seat.

19 Q Of the victim's car?

20 A Yes.

21 Q And after the victim was beaten to death, the home was
22 set on fire, correct?

23 A That's what it say.

24 Q That's what the evidence showed, correct?

25 A That's what the report says, yes.

Kayla Moore - Cross-examination
By Ms. Jameson

1 Q And I think you testified Mr. Hayes was appointed some
2 time in 2017 to represent you?

3 A Correct.

4 Q And you met with him around eight times you think?

5 A Yes.

6 Q And you were indicted in May of 2018, correct?

7 A I'm not sure.

8 Q You pled guilty in July of 2018, correct?

9 A Yeah.

10 Q And I believe you testified you wanted a change of
11 venue out of Aiken County since the media was portraying you
12 unfairly, correct?

13 A Yes.

14 Q And you asked Mr. Hayes to file a change of venue,
15 correct?

16 A Yes, ma'am.

17 Q And specifically what did he tell you in response to
18 that?

19 A There's no reason to.

20 Q Was that the only time you brought it up with him?

21 A Yeah. If he said there's no reason to I feel like he
22 was educated in his job and he knew what he was doing. He
23 said there's no reason to. So, there's no reason to. But
24 now I know there's a lot.

25 Q And that was the only reason you wanted a change of

Kayla Moore - Cross-examination
By Ms. Jameson

1 venue was cause of the media attention?

2 A And because of the Moroccan Empire of Peace and
3 Friendship, the Treaty of Peace and Friendship, that I
4 talked to him about about me being Amosh (phonetic) American
5 and being tried in a Federal Court. But he said he didn't
6 know what that treaty was.

7 Q So, your concern wasn't to have venue moved out of
8 Aiken County to another county in South Carolina. It was
9 that you wanted your charges prosecuted by the federal
10 government.

11 A Yeah, (indiscernible).

12 Q Do you remember your guilty plea proceeding before
13 Judge Early in July of 2018?

14 A Yeah, I think so.

15 Q Do you remember telling Judge Early you understood what
16 you were doing at that plea hearing?

17 A I understood that I was pleading guilty, yes.

18 Q Do you recall Judge Early discussing the possible
19 sentences you could get with you?

20 A Yes, the same thing David Hayes said.

21 Q Well, Judge Early didn't just say number or word.
22 Judge Early explicitly said that you could be sentenced
23 anywhere from 30 years in jail for the balance of your
24 natural life and he told you 30 years to life.

25 Correct?

Kayla Moore - Cross-examination
By Ms. Jameson

1 A Yes, a number or a word.

2 Q And so you knew, when you entered that plea before
3 Judge Early, that you could get 30 years up to life
4 imprisonment without parole, correct?

5 A Yeah.

6 Did I---

7 Q Do you recall---

8 A ---know why or how that could happen?

9 No.

10 Q Do you remember Judge Early telling you that this was a
11 no parole offense and so you'd have to serve your full
12 sentence?

13 A Yeah, I do.

14 Q Do you remember Judge Early asking you if you had any
15 questions for him about what you were being charged with or
16 the sentences or any of those classifications?

17 A Murder is murder. I know what murder is. So, I didn't
18 ask questions about that.

19 Q Well, do you recall telling him that you didn't have
20 any questions for him about the sentencing or the elements
21 or anything?

22 A Yeah.

23 Q And you told Judge Early that you did want to
24 acknowledge your guilt and enter a guilty plea, correct?

25 A Yeah.

Kayla Moore - Cross-examination
By Ms. Jameson

1 Q Do you recall Judge Early going over your
2 constitutional rights with you?

3 A No.

4 Q Do you recall Judge Early telling you you had a right
5 to a jury trial and to present witnesses and challenge the
6 State's evidence?

7 A That, yes, based on all of my constitutional rights.

8 Q Do you recall him reviewing your right to remain silent
9 and that might not be used against you?

10 A No.

11 Do I remember?

12 No.

13 Q Do you remember telling Judge Early that you hadn't
14 been threatened or promised anything to get you to plead
15 guilty?

16 A Threatened?

17 Q Threatened.

18 A No.

19 Q And you weren't threatened to plead guilty, were you?

20 A There's nothing -- threatened to nothing.

21 Q Okay. No.

22 Do you recall Judge Early asking you if you were
23 satisfied with Mr. Hayes and his representation of you?

24 A Yeah.

25 Q And you told Judge Early you were satisfied with Mr.

Kayla Moore - Cross-examination
By Ms. Jameson

1 Hayes, correct?

2 A Yeah, and that's what he told me to say.

3 Q And you went beyond that and told Judge Early that you
4 had enough time with Mr. Hayes to go over -- research the
5 law with him, investigate the facts, and he had properly
6 represented you, correct?

7 A I had enough time to realize what his capabilities were
8 I guess.

9 Q But at the time of the plea you were satisfied with
10 Mr. Hayes, correct?

11 A That's what I said.

12 Q You testified that you saw some of the evidence before
13 your plea but you didn't see the forensics, correct?

14 A Correct.

15 Q Did you have any discussions with Mr. Hayes that
16 reports from the South Carolina Law Enforcement Division had
17 not been completed yet and that if you were entering your
18 guilty plea you wouldn't be able to see those until
19 afterwards?

20 A No.

21 Q You've never had those conversations with Mr. Hayes?

22 A No.

23 Q You testified you did watch videos of your
24 codefendant's interview with law enforcement with Mr. Hayes,
25 correct?

Kayla Moore - Cross-examination
By Ms. Jameson

1 A Partially, yes.

2 Q When you say partially, what portions did you not
3 watch?

4 A I don't know what I didn't watch cause I didn't watch
5 it. But the video started to skip and he, he used a term
6 saying some -- something was wrong with it and then he just
7 moved on to some of Jason's phonecalls.

8 Q So, you listened to phonecalls from your codefendant
9 with Mr. Hayes as well?

10 A Yes, ma'am.

11 Q You testified that you tried to discuss defenses with
12 Mr. Hayes and he disregarded that, correct?

13 A Yeah.

14 Q What evidence did you show him or what defenses did you
15 give him that he disregarded specifically?

16 A One, I told him for a fact my handprints wasn't on
17 anything because I didn't do it. Two, none of Jason's
18 stories add up. Everything he said in his video could not
19 put me in the crime, could not put a weapon in my hand, and
20 could not convict me of any of the five charges that I was
21 charged with.

22 Q When you say that Jason's story doesn't add up, it, it
23 couldn't -- I think you said put a weapon in your hand
24 before how?

25 A Because Jason Miles stated that he himself had a hammer

Kayla Moore - Cross-examination
By Ms. Jameson

1 and that I had one allegedly but only one hammer has blood
2 on it, and he is the only one who said he used one, but he
3 said I used one too, which means two should have blood on it
4 but only one does. So, there has to be a lie.

5 where is it?

6 The lie is where I was put in because I wasn't involved
7 in that.

8 Q Okay. And, after, after the meeting, the evidence did
9 show the house was set on fire, correct?

10 A Yeah, that's what evidence shows.

11 Q Do you recall the sentencing proceeding before Judge
12 Early in December of 2018?

13 A Yes, ma'am.

14 Q Do you recall that the victim's family members were
15 given an opportunity to address the Court?

16 A Yeah.

17 Q Do you recall that, after one of the victim's family
18 members addressed the Court, you said his comments were
19 cute?

20 A Yeah, that was sarcastic.

21 Q And Judge Early asked you about that, correct?

22 A Yeah.

23 Q And then he gave you several opportunities to address
24 the Court or the victim's family, correct?

25 A To address them?

Kayla Moore - Cross-examination
By Ms. Jameson

1 Q To apologize or show some sort of remorse, correct?

2 A Remorse from being slandered?

3 Remorse for being lied on?

4 I will not.

5 Q And you asked for Mr. Hayes to file an appeal on your
6 behalf, correct?

7 A Yes, ma'am.

8 Q And he did do that, correct?

9 A Yes, ma'am.

10 Q And one of your allegations is you wanted him to
11 investigate more.

12 what specifically did you want him to investigate?

13 A The, the photographs of the crime scene, the weapons of
14 the crime scene, the fact that I am being accused for what's
15 being accused of not only murder but arson and robbery and
16 grand larceny and conspiracy. But the only one he defended
17 me for was conspiracy.

18 MS. JAMESON: Okay. I don't have any additional
19 questions, Your Honor.

20 THE COURT: Any redirect?

21 MS. FENNELL: No, Your Honor.

22 THE COURT: None.

23 Okay. All right. Well, I appreciate that and, Miss
24 Moore, any other witnesses that the Applicant would like to
25 call at this time?

David Hayes - Direct examination
By Ms. Jameson

1 MS. FENNEL: No, Your Honor.

2 THE COURT: Okay. And, Ms. Jameson -- do you have any
3 witnesses it wishes to call?

4 MS. JAMESON: Yes, the State would call lead counsel,
5 David Hayes.

6 THE COURT: All right. Mr. Hayes, likewise I'll ask
7 you to raise, raise your right-hand please, sir.

8 DAVID HAYES, being first duly
9 sworn, testified as follows:

10 THE COURT: All right. State your full name. Spell
11 your last please.

12 THE WITNESS: Charles David Hayes. H-A-Y-E-S.

13 DIRECT EXAMINATION

14 BY MS. JAMESON:

15 Q Good afternoon, Mr. Hayes.

16 When were you appointed to represent Miss Moore?

17 A I was appointed on 5/8/2017. The case was opened on
18 5/11/2017.

19 Q So within a few weeks of her arrest you were appointed?

20 A Yes.

21 Q Do you recall how many times you met with Miss Moore?

22 A Eleven. On the face, four by phonecall. Before she
23 revoked permission to talk with her father, I talked with
24 her father on August 17 it looks like and then she revoked
25 permission.

David Hayes - Direct examination
By Ms. Jameson

1 Q Can you explain what you mean by revoked permission to
2 speak with the father?

3 A She had given me permission to speak with her father on
4 her behalf. After a while she told me that her father was
5 just digging for information, wasn't on her side, and wasn't
6 supporting her, and she revoked my permission to discuss
7 with him anything about her case.

8 Q Did that include discussing when the plea and
9 sentencing were going to be and asking them to come to
10 those?

11 A It, it was everything. I was---

12 Q As to the---

13 A I was---

14 Q I'm sorry.

15 A I was specifically instructed not to. She did not want
16 him there.

17 Q And did you inform Judge Early of that at the plea and
18 sentencing?

19 A I did.

20 Q Did you receive discovery in this case?

21 A I did.

22 Q And can you review what some of the evidence you
23 received from the State was?

24 A The first would of been the, the reports and then we
25 had autopsy, photographs, crime scene. The text messages

David Hayes - Direct examination
By Ms. Jameson

1 that y'all are referring to I believe came later. The DNA
2 y'all are referring to from SLED had not been processed and
3 sent back in at the time. It came later. The videos,
4 statements, the lamp -- the police report from Georgia
5 finally came in that we were aware of, Chris Johnson, an
6 investigator in Aiken, when they found the car and they
7 retrieved it.

8 Q You, you said that you received some videos of
9 statements.

10 Were those from the codefendant?

11 A Yes.

12 Q And did those implicate Miss Moore?

13 A They did.

14 Q Did, did it implicate both of them?

15 Did the codefendant deny involvement in the crime or
16 did he say that both of them would be involved in the crime?

17 A Implicated both.

18 Q Did Miss Moore ever give any statements to law
19 enforcement?

20 A I believe she gave one later but she did not talk to
21 them while they were in Georgia.

22 Q In that statement did she implicate herself---

23 A I don't---

24 Q ---in the crime?

25 A I don't recall.

David Hayes - Direct examination
By Ms. Jameson

1 Q You mentioned that texts came in later and DNA came in
2 later.

3 Can you elaborate a little more on the timeline---

4 A Right.

5 Q ---you received them---

6 A It would of been at---

7 Q ---for---

8 A I don't remember if it was between the plea and the
9 sentencing. I believe that's the case for the text messages
10 and I believe the DNA was -- had to be turned over to me
11 later when the codefendant was going to trial, and that
12 would of been October of '19.

13 Q Did you explain to Miss Moore that the DNA was still
14 pending SLED completion of the testing?

15 A I don't recall. I do know we had explicit discussion
16 about what it would show and that, in my opinion on it, is
17 that it would not help or hurt us.

18 Q Can you explain why?

19 A And her story is that they were at the house. She had
20 told Mr. Miles about a story of the victim of being
21 supposedly a rapist back years past with a softball team.
22 And once that was said, that Mr. Miles got up and said
23 that's all he needed to know, went into the trailer, and
24 came out and was throwing her stuff out. The gas can was
25 there. They picked the gas can up or he picked the gas can

David Hayes - Direct examination
By Ms. Jameson

1 up. She loaded the car and he set the trailer on fire and
2 they left to Atlanta.

3 Now, some of the other videos that came in were videos
4 from the gas station on the way where you could see that
5 they actually separated away from each other. I believe he
6 was pumping gas and she went into the store.

7 Now, what we discussed in that was mere presence or
8 being in the duress that she had an opportunity to call
9 police and separate herself from Mr. Miles but that wasn't
10 the case and she then got back in the car and continued home
11 with him. No -- and we discussed that that's what we'd have
12 to argue at trial, and that whether or not they believed
13 Mr. Miles or whether they believed Miss Moore is a jury
14 question that goes to the fact.

15 Q So, you discussed those two possible defenses, duress
16 and mere presence, and how you would present those to a jury
17 if she wanted to go forward with a trial?

18 A Yes.

19 THE APPLICANT: No.

20 Q And what sort of investigation did you do in this case?

21 A I pulled all of her school records. I tried to talk
22 with her family until that was revoked. I looked at all the
23 information that was given, spoke with the investigators,
24 held a prelim.

25 Q Did Miss Moore give you any leads that she wanted you

David Hayes - Direct examination
By Ms. Jameson

1 to investigate?

2 A No.

3 THE APPLICANT: That's your job.

4 Q Did she give you any witnesses that she wanted you to
5 contact?

6 A No, she specifically revoked any permission to talk to
7 anybody.

8 Q So, that revocation to speak with anyone went beyond
9 her father?

10 A Yes, it was a total (indiscernible). She didn't want
11 me to discuss her case with anybody. She felt that they
12 were just digging for information.

13 Q So, she never gave you any information that she wasn't
14 present at the scene of the crime, that she was somewhere
15 else, or anything that would give rise to an alibi defense
16 or some defense like that?

17 A No, she specifically said she was there. She denied
18 having any involvement in the actual killing, that she was
19 outside, that she was loading the vehicle.

20 Q You mentioned that you represented her at a preliminary
21 hearing?

22 A Yes.

23 Q Do you know when that was?

24 A I'd have to look at my notes.

25 Q She was indicted in May of 2018, correct?

David Hayes - Direct examination
By Ms. Jameson

1 A I, I don't recall. It was on the trial list
2 June 11th week, June 15th week, June 25th week,
3 June 29th week or the 19th -- the week of 1/20/18 and I
4 have (indiscernible) at some point with the prelim.

5 Q She pled within a few months of indictment though,
6 correct?

7 A Oh, yes, the solicitor was gearing up to try it.

8 Q Did you explain that to Miss Moore?

9 A Yes. As of Nov -- as of early as November 2nd, 2017,
10 I was sent a letter from Miss Moore stating that she wanted
11 to work out a plea deal and right there she specifically
12 said she wanted 40 years for involuntary. I then had a jail
13 visit after and discussed that that wasn't an option.

14 I then again, in January 8th of 2018, received a faxed
15 over form from the jail that's called a guilty plea request
16 form that the jailors give clients and in that they can
17 write down their charges and say that they request to go
18 forward with a plea.

19 After receiving that, I went and spoke with Miss Moore
20 and I was told that she did not want to sit and wait for a
21 trial, that she wanted to go forward and work out a plea,
22 and then she also asked about speedy trial. Speedy trial
23 was filed.

24 Q So, you testified that in early 2018 you got a guilty
25 plea request form from Miss Moore in jail. You spoke with

David Hayes - Direct examination
By Ms. Jameson

1 her and she wanted you to hurry up and work out a plea deal
2 rather, rather than waiting for trial?

3 A I believe the specifics is is I'm tired of sitting, go
4 work it out.

5 Q And then you did file a speedy trial motion.
6 When was that?

7 A I did. Give me a second I'll find it. The computer
8 shut down on me.

9 THE APPLICANT: I looked and work it out.

10 A It was filed, a speedy trial for Miss Moore,
11 April 30th, 2018. It was drafted. It was clocked in on
12 May 2nd, 2018.

13 Q And then she pled in July, correct?

14 A Yes, and it was on the trial list already.

15 Q I think you said it was on the---

16 THE APPLICANT: You didn't tell me that.

17 Q ---trial docket for almost every week in June, correct?

18 A Yes.

19 Q Did you ever think to move for a change of venue out of
20 Aiken County?

21 A I would of moved for change of venue after attempting
22 to try to pick the jury and not being able to successfully
23 do so. Until that point, that motion's not ripe.

24 Q Did you explain that to Miss Moore?

25 A Yes.

David Hayes - Direct examination
By Ms. Jameson

1 THE APPLICANT: I do.

2 Q You knew that she lived on the victim's property,
3 correct?

4 A Yes.

5 Q Did you think this would give rise to any sort of
6 viable defense?

7 A We, we discussed mere presence as probably one of the
8 few defenses as well as duress. However, they were
9 imperfect.

10 THE APPLICANT: He didn't tell me that either, the
11 imperfect.

12 Q Did you see any sort of defense based on stand your
13 ground or anything based on her living at the property?

14 A No.

15 Q And when she was indicted for murder, did you review
16 that offense of murder with her?

17 A I reviewed the elements of murder with her on the very
18 first visit. Her first visit would of been 6/7 of '17. It
19 was a general visit. I discussed with her murder. I went
20 over the fact that it was most serious, violent. It's a day
21 for day charge. It carried 30 years to life.

22 we then discussed arson was violent, serious, 85
23 percent, not less than three, not more than 25 years.

24 Armed robbery is violent, most serious, 85 percent, and
25 it's 10 to 30 years.

David Hayes - Direct examination
By Ms. Jameson

1 Conspiracy, under 16-17-410, was five years or 5,000.

2 We then went over 6-16-160, which is violent and
3 nonviolent. We went over 17-25-45 serious and most serious
4 as well as any combination thereof to equal three would be
5 subject to life imprisonment. We went over the fact that it
6 was a no parole under 24-13-100 and that's any charge that
7 carries 30 years or more.

8 Q And Miss Moore had some evaluations done pursuant to
9 (indiscernible) for criminal responsibility and competency,
10 correct?

11 A Yes. If I remember right, I believe the State asked
12 for that.

13 Q And was she found competent?

14 A Yes.

15 Q And was she found to be criminally responsible at the
16 time, right?

17 A She was found to have anti-personality traits,
18 antisocial disorder, and to be criminally responsible.

19 Q Did you discuss how mental health could be used in her
20 case with her?

21 A I did. We sat down and discussed the reports when they
22 came in at a jail visit.

23 Q Did you discuss how they could be related to possible
24 mitigation in her case?

25 A I believe that would of been done in a jail visit when

David Hayes - Direct examination
By Ms. Jameson

1 we went over the reports.

2 Q And you did inform Judge Early of this after plea and
3 sentencing, correct?

4 A Yes, I normally make a copy a Court Exhibit if -- and I
5 think you were telling me earlier that you did you -- not
6 have a copy.

7 Q In retrospect, are there any defenses that you feel you
8 should of investigated that you didn't?

9 A No.

10 Q After the plea, did you explain to her why sentencing
11 was deferred and what would happen?

12 A We discussed that even beforehand as to the deferment.
13 She specifically told me that she did not want the deferred
14 sentencing. I put it on my notes that when the Court
15 completed that she wanted me to object to that. She wanted
16 to be sentenced immediately and I believe I did so.

17 Q And, over your objection---

18 A Over my---

19 Q ---Judge Early---

20 A Over my objection it was deferred for a presentencing
21 report.

22 Q Prior to sentencing did you ever meet with Judge Early
23 and the State to discuss potential sentencing throughout a
24 range?

25 A We did.

David Hayes - Direct examination
By Ms. Jameson

1 Q What sort of indication did the Court give as to a
2 range?

3 A We met with Judge Early in chambers prior to doing the
4 plea. During that meeting the solicitor laid out the fact
5 and, and Judge Early would not give a specific number. He
6 looked at the State and told the State he probably wasn't
7 gonna give her life due to her age. He looked at me and
8 told me I know you're gonna ask for the minimum but I'm
9 probably not gonna give the minimum.

10 He then talked about a sentencing that he did as a
11 trial or a plea years before he took the bench, and the
12 judge in that case either sentenced 40 or 45 years to his
13 client. That story included about how he was upset about
14 that for his client but after again reflecting that, after
15 he got home, that that was probably more appropriate.

16 I gleaned from that that I was looking at somewhere
17 between 40 and 45 years and that the State wasn't gonna get
18 what they were gonna ask for and that we weren't gonna get
19 what we were gonna ask for.

20 Q Did you convey that to Miss Moore?

21 A No, I did not put the specifics as to what Judge Early
22 had said. I just told her that I was trying to get her as
23 close to the minimum as possible.

24 Q And you asked for as close to the minimum as possible
25 during sentencing, correct?

David Hayes - Direct examination
By Ms. Jameson

1 A I would have to look back at the transcript but I
2 believe I did.

3 Q Did Miss Moore make any comments during sentencing that
4 you think impacted her sentence?

5 A Several. The first one that comes to mind is, after
6 the victim's brother asked for a sentence of life in prison,
7 she turned to him and sarcastically said ain't that cute.
8 Judge Early quickly latched on to that and asked her to
9 repeat it. I don't believe he actually heard it in full and
10 she did so.

11 At that point I moved her from my right side to my left
12 side and put me between her and the victim's family even
13 though the bench and the bar in Aiken there is long
14 enough -- there's a lot of room. I still put her there to
15 try to stop any further comment.

16 I look -- then later there was testimony from the
17 deputy where I think she cussed the Court or something like
18 that and the deputy was -- maybe come back on the record and
19 testify about that. That would of been---

20 THE DEFENDANT: In the record (indiscernible).

21 Q Do you think her comments affected her sentence?

22 A I believe that it did and then when she was asked by
23 Judge Early if there was any comment, the response, the
24 response was (indiscernible) and I believe he, he went into
25 a narrative in the end of the Court about, in his

David Hayes - Direct examination
By Ms. Jameson

1 experience, her being one of the coldest people that she
2 (sic) has ever seen beforehand as well as that he's had
3 multiple death penalty and murder cases that he defended as
4 well as sentenced and then he sentenced her to life.

5 MS. JAMESON: Moments indulgence, Your Honor.

6 (Pause.)

7 MS. JAMESON: I have no additional questions at this
8 time.

9 THE COURT: All right. Cross-examination.

10 MS. FENNEL: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MS. FENNEL:

13 Q Now, Mr. Hayes, did you ever actually tell Miss Moore
14 that DNA results would be forthcoming?

15 A I believe that would of been in our discussions and I
16 believe I have it in my notes as to pleading. One of the
17 notes that I have, when pleading, she is saying I did it.
18 we're waiving a jury trial. we're waiving our right to
19 confront any accuser. we're waiving any defenses and the
20 right to remain silent. we're eliminating the burden onto
21 the State and it will be no need for a trial because they no
22 longer have to prove it is one of my notes.

23 The next note is we're waiving any defenses which are
24 mere presence. we're waiving presentence -- we -- we were
25 wanting to waive presentencing against my advice. My advice

Kayla Moore - Cross-examination
By Ms. Fennell

1 to her would of been to have the presentencing. However, I
2 was told to object to that. She wanted to be sentenced that
3 day.

4 Q Did you ever advise her that you thought that she
5 should wait until all the evidence was in before moving
6 forward?

7 A I believe there was a discussion when we discussed that
8 I didn't believe that the evidence that was coming forward
9 would of had any more mutual benefit to us. That is the --
10 changing the outcome of a trial.

11 Q Okay. And did she ever express to you views that were
12 different from that?

13 A No.

14 Q Okay. And, at this point in time, how old was she?

15 A Nineteen, twenty.

16 Q And do you think that, that her age affected her
17 ability to understand?

18 A No.

19 Q Okay. And, and what -- and what makes you believe
20 that?

21 A She was very well written and very well spoken when she
22 wants to be. We had good communication. We had multiple
23 communications and none of those arose to any question in my
24 mind along the fact of the nature of the charge.

25 Q Okay. And did you, in your investigation, other than

Kayla Moore - Cross-examination
By Ms. Fennell

1 reviewing the discovery motion, did you, did you do any
2 further investigation on your own?

3 A As in --?

4 Q As in did, did you -- did you interview anyone?

5 A I would have to look at my notes.

6 Q Okay.

7 A My investigator worked on the case. One of his notes
8 is that he reviewed the case for a confession I believe by
9 both defendants although minimizing rules and blaming the
10 other. The sequence of events and failed opportunities to
11 vacate their actions are unbelievably overwhelming. Met
12 with the Investigator Egan (phonetic). They were having
13 issues at that time with trying to get some of the CDs for
14 Court. We had the investigators come to the office and help
15 us get them up and running.

16 Q Now, after that time that you were having issues with
17 watching the videos, did, did you ever, at a later point,
18 ever go through them in their entirety with Miss Moore?

19 A Yes, we went through -- we actually had a full day.
20 According to my notes, we sat down and looked at pictures.

21 THE APPLICANT: That was the same day.

22 A We went over the autopsy. We went over the car search.
23 It was a hammer and a knife used. We listened to the
24 phonecalls from the defendant. Talked with -- I talked with
25 a girlfriend. We discussed about the polygraph, witness

Kayla Moore - Cross-examination
By Ms. Fennell

1 protection, and take the police and I have detailed notes of
2 that.

3 We watched over the videos from the Flying J Gas
4 Station, the video of Hawkins. I have 13 different points
5 that I noted on that and then later that day -- now that
6 note was done at 3:47 or completed.

7 The next note was at 5:17PM when it was completed. We
8 sat down and watched the interview with the codefendant,
9 Detective Egan, and as well as Investigator Flurry, and we
10 took notes -- I took notes of that. That was a two part
11 video.

12 She then discussed with me that they stopped for gas at
13 the J Way in Greensboro. They got food at Wal-Mart on
14 whiskey Road after the killing and then they had stopped at
15 10:39 on the video I believe.

16 Q Okay. And in your conversations with, with Miss Moore,
17 did you express your professional opinion to her regarding
18 the evidence there was against her?

19 A Yes, we had extensive discussions about trial and that
20 it would be a fact finding issue of who they believed, that
21 we would have mere presence and hand of one, hand of all
22 being an issue, as well as she wanted to argue duress.

23 Q And did you express an opinion on -- as far as the
24 strength of those defenses?

25 A I believe they were imperfect.

Kayla Moore - Cross-examination
By Ms. Fennell

1 Q Okay. And, and you expressed that to her?

2 A Yes.

3 Q Okay. And you said that you met with Judge Early
4 regarding the possible sentences is that you thought that
5 she would get 40 to 45 years.

6 Isn't it true that you told her that if she, if she
7 chose to go to trial that she could be sentenced to that?

8 A No, in our first meeting I told her that this case
9 could be eligible for a death penalty or a capital case,
10 yes. Not later. Later I was informed that they were not
11 going death penalty. However, that were going to be seeking
12 a life sentence.

13 Q Okay.

14 A We kept asking for a deal and the State would not offer
15 up anything better if she'd plea open, that she could ask --
16 that we could ask what we wanted. They were gonna ask for
17 life.

18 Q Okay. I don't believe I have any additional questions.
19 Thank you.

20 THE COURT: Any redirect?

21 MS. JAMESON: No.

22 THE COURT: Oh, okay. Any return -- any objection to
23 this witness being dismissed from this hearing?

24 MS. FENNELL: No.

25 MS. JAMESON: No.

1 THE COURT: All right. Thank you, Mr. Hayes. You're
2 free to leave in this case.

3 All right. Any other witnesses from the State?

4 MS. JAMESON: No, Your Honor.

5 THE COURT: Okay. All right. Any other
6 (indiscernible) witnesses from the Applicant?

7 MS. FENNEL: No, Your Honor.

8 THE COURT: Okay. All right. Well, I'll hear from the
9 State first and then I'll -- we'll finish up with Ms.
10 Fennell in this case.

11 MS. JAMESON: Thank you, Your Honor.

12 The State would submit that Miss Moore has not met her
13 burden of truth -- burden of proof as to any of these
14 allegations.

15 Regarding her first allegation, ineffective assistance
16 of counsel for failure to adequately investigate and discuss
17 available defenses, we have credible testimony from
18 Mr. Hayes that he thoroughly reviewed all evidence with Miss
19 Moore, discussed available defenses including mere presence
20 and duress, and why these were imperfect defenses that they
21 can present to the jury, but there's no (indiscernible) that
22 would come with these defenses, and that ultimately she
23 decided she wanted to plead guilty rather than present these
24 defenses at trial.

25 She has also failed to present what benefit could be

1 gleaned from any additional investigation. So, it would be
2 speculative at this point. I don't think, think she
3 speculated as to what additional investigation revealed. At
4 this point it would be speculative and not enough to meet
5 her burden of proof. So, we'd ask the Court deny that
6 allegation.

7 Regarding the allegation that comes with ineffective
8 assistance for failing to request a change of venue in
9 response to media exposure, Mr. Hayes testified that they
10 discussed this and he explained to her that any sort of
11 motion would be premature until a jury was picked, and, at
12 that time, if the media exposure would not allow them to
13 pick a fair and impartial jury, then, at that point, the
14 motion should be made and that she couldn't understand that.
15 And instead of going forward and trying to pick a jury, she
16 elected to enter a guilty plea. So, we'd ask that that
17 allegation be denied in that she has failed to meet her
18 burden in regards to that.

19 Regarding the allegation that counsel failed to provide
20 her with her discovery, there's been conflicting testimony
21 from Miss Moore on that. First she testified that she
22 didn't review any of the evidence with Mr. Hayes, and then
23 later testified that she did review the evidence with
24 Mr. Hayes including statements, jail calls, and whatnot but
25 had not reviewed the DNA evidence or the text messages until

1 later.

2 Miss Moore testified that that stuff was not available
3 at the time of the guilty plea. They discussed it and she
4 still wanted to enter her guilty plea at that time. The
5 state would submit that she's not met her burden of proof in
6 regards to that allegation.

7 And then in regards to the allegation that Mr. Hayes
8 failed to request a speedy trial, we have testimony from
9 Mr. Hayes that he did indeed file such a motion in May.
10 After he filed that motion, this case was consistently on
11 the trial docket for the whole month of June and then
12 immediately thereafter, in July, she pled guilty. And so
13 there is no merits to that allegation.

14 So, the State would request you deny each of these
15 applications, excuse me, each of these allegations and the
16 application in full.

17 THE COURT: All right. Ms. Fennell, I'll hear a
18 response from you.

19 MS. FENNEL: Thank you, Your Honor.

20 I believe the testimony, you know, presented by Miss
21 Moore indicates that, you know, based on, on her belief,
22 and, and the situation at the time that she entered into the
23 guilty plea, by virtue of the fact that not all the
24 discovery was available at that time, that that, in and, in
25 and of itself, indicates that not all defenses were

1 investigated or discussed and, and well thought out with her
2 because of that missing information. And I think her
3 testimony to the effect that, that had she had that
4 information available to her at that time would have
5 impacted and changed her decision on whether to enter into a
6 guilty plea.

7 I think, based on that, she does meet her burden of
8 proof on the allegations regarding failure to adequately
9 investigate all available defenses, failure to discuss with
10 Miss Moore all available defenses, and, in addition, failure
11 to provide her with her discovery for this and because the,
12 the, the testimony by Mr. Hayes and Miss Moore indicates
13 that, at the time that she entered into the guilty plea, she
14 did not have all of the evidence available to her.

15 As far as the allegation regarding ineffective
16 assistance of counsel for failing to request a speedy trial,
17 Miss Moore asserts that she, she, she did not know that,
18 that a, a request -- such a request was made other than
19 Mr. Hayes testimony that, that that request was made.
20 Evidently it, it indicates that not everything was
21 thoroughly discussed with Miss Moore prior to her, her
22 decision to enter into that guilty plea.

23 I don't believe, I don't believe, you know,
24 Miss Moore's age and all of the considerations, the
25 seriousness of the offense, her testimony that there was an

1 indication that she thought that the death penalty was, at
2 some point, on the line and her testimony today that she,
3 she thought that was a potential outcome of this case, I
4 mean all of that together indicates that, at the time that
5 she entered into that guilty plea, she, she was relying on
6 his, his expertise and opinion and, and, and, and rightfully
7 so in entering into that, that guilty plea and that is all.

8 THE COURT: Okay. well, you know, I'll certainly look
9 at this. I think your strongest ground frankly deals with,
10 you know, whether or not she was aware that it was -- other
11 evidence was outstanding and that it -- I was a little
12 unclear there on the communication between her and her
13 attorney regarding going forward with the plea knowing there
14 was outstanding discovery, you know, out there. I guess,
15 you know, whether that misled, yeah, I'm sure, you know, at
16 the time.

17 So, that's -- I'll explore that ground certainly more
18 thoroughly. That's one of the strongest ones I've heard
19 thus far. But I'll look at this and, honestly, if I need
20 any proposed form order, I will reach out to your respective
21 offices and request that in the next couple weeks. And if
22 you need anything else in the meantime from my office, don't
23 hesitate to reach out.

24 All right.

25 MS. JAMESON: Thank you, Your Honor.

1 THE COURT: Sure. Thanks for joining us today and good
2 luck, everybody.

3 MS. FENNEL: Thank you.

4 THE COURT: All right.

5

6 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Aiken County, South Carolina, on the 3rd day of June, 2021.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

December 23rd, 2021



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Kayla Moore, SCDC # 378681¹,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Case No.: 2019-CP-02-01306

ORDER OF DISMISSAL

FILED

9-27-20 4:30 SP

Robert J. Harte
C.C.P. & G.S.
Shadell Parks
Deputy Clerk

This matter comes before this Court by way of an application for post-conviction relief filed by Applicant Kayla Moore on May 28, 2019, asserting various claims of ineffective assistance of counsel, involuntary guilty plea, and newly discovered evidence based on purportedly missing discovery. In response, Respondent the State of South Carolina filed a return, motion for a more definite statement, and requested an evidentiary hearing once the application was amended to include specific allegations with supporting facts. Thereafter, Applicant, though counsel Nancy C. Fennell, served an amended application on Respondent with specific claims of ineffective assistance of counsel.

An evidentiary hearing on this action was convened June 3, 2021, before this Court utilizing the virtual courtroom on the Cisco WebEx platform. Applicant appeared virtually along with her counsel. Respondent was represented by Senior Assistant Deputy Attorney General Megan Harrigan Jameson of the South Carolina Attorney General's Office. Applicant proceeded forward on the claims raised in her amended application. This Court heard testimony from Applicant and her trial counsel, C. David Hayes. At the conclusion hearing, this Court to the matter

¹ Applicant is currently house in the Washington State Department of Corrections at the WA Corrections Center for Women.

STATE OF SOUTH CAROLINA
I, Robert J. Harte, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina, do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

SEP 27 2021

Robert J. Harte
C.C.P. & G.S., Aiken County, S.C.
Shadell Parks
Deputy Clerk

SP

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under advisement.

Following the hearing, this Court undertook a thorough review of the record, the evidence and testimony presented at the evidentiary hearing. This Court now finds Applicant has failed to establish any constitutional violations or deprivations entitling her to relief and, accordingly, denies and dismissed this action with prejudice. Specific findings of fact and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 are set forth below:

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently incarcerated following her guilty plea and sentence in Aiken County. On April 22, 2017, Applicant and one of her childhood friends brutally beat a seventy-four-year-old man who has been letting Applicant live on his property rent-free to death with a hammer and then set his home on fire before fleeing the state in the victim's car. Applicant and her co-defendant were found in Georgia wandering on the road near the victim's abandoned car, and a search of the car revealed a hammer covered in the victim's blood. After being apprehended in Georgia, Applicant's co-defendant gave a statement implicating both of them in the crime.

In May of 2018, Applicant was subsequently indicted by the Aiken County Grand Jury for murder (2018-GS-02-01067) Applicant was represented by Assistant Public Defender C. David Hayes of the Aiken County Public Defender's Office. Assistant Solicitor Samuel B. Grimes of the Second Circuit Solicitor's Office prosecuted the case. During pre-trial proceedings, the Honorable Doeyt A. Early, III, and the Honorable R. Knox McMahon issued orders that Applicant be evaluated for competency and criminal responsibility. Applicant underwent evaluations at the South Carolina Department of Mental Health to determine if she was competent to stand trial and

was criminally responsible. The evaluations revealed she was both competent and criminally responsible.²

On July 26, 2018, Applicant appeared before Judge Early and pled guilty to murder without any negotiations or recommendations. Following a thorough colloquy with Applicant, Judge Early found the plea was knowingly, voluntarily, and intelligently entered and accepted the guilty plea. At the State's request and over defense objection, Judge Early deferred sentencing and ordered a pre-sentencing report be prepared.

On December 13, 2018, all parties reconvened for a sentencing proceeding. Following presentations by the State and defense counsel, Judge Early sentenced Applicant to life imprisonment without the possibility of parole.

Upon Applicant's request, plea counsel filed a notice of appeal on her behalf. Following Applicant's submission of a Rule 203, SCACR, response, the South Carolina Court of Appeals dismissed the appeal based on failure to provide a sufficient explanation as to why the appeal from the plea should go forward pursuant to Rule 203(d)(1)(B)(iv), SCACR. The remittitur was issued on March 1, 2019.

Applicant then initiated this action with the filing of her pro se application for post-conviction relief on May 28, 2019.

CURRENT PROCEEDING

In her *pro se* application for post-conviction relief filed on May 28, 2019, Applicant asserted the following

1. "Ineffective Assistance of Counsel"
 - a. "deficient performance"

² Reports from these evaluations were entered as Court's Exhibit No. 1 and No. 2 at Applicant's guilty plea proceeding before Judge Early on July 26, 2018.

2. "Involuntary Guilty Plea"
 - a. "Not knowing because of missing discovery"
3. "Incomplete Discovery / newly discovered evidence"
 - a. "forensics"

As relief sought, Applicant stated she was seeking a new trial.

Nancy C. Fennell, Esquire, was thereafter appointed by the Aiken County Clerk of Court to represent Applicant.

In response to the application, Respondent filed a return and motion for a more definite statement, requesting Applicant file an amended return with specific allegations and supporting facts to comply with filing requirements as set forth in the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-50, and the Rule 8(a) of the South Carolina Rules of Civil Procedure. Attached to this return and before this Court are the records from the Aiken County Clerk of Court regarding Applicant's underlying general sessions matter, the transcripts from Applicant's guilty plea and sentencing proceedings, the records from Applicant's direct appeal, Applicant's inmate records from the South Carolina Department of Corrections, and the records from this current action.

On September 24, 2020, Applicant, through counsel Fennell, filed an amended application, setting forth the following additional claims:

- Ineffective assistance of counsel for failure to adequately investigate all available defenses.
- Ineffective assistance of counsel for failure to adequately investigate all available defenses including any available defense related to the fact that Applicant lived at the location of the alleged incident.
- Ineffective assistance of counsel for failure to discuss with her any available defenses.
- Ineffective assistance of counsel for failing to request a change of venue in response to the media exposure regarding Applicant's charges.
- Ineffective assistance of counsel for failure to provide Applicant with her discovery motion.

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- Ineffective assistance of counsel for failing to request a speedy trial.

A hearing on was convened June 3, 2021, before this Court. At the hearing, Applicant proceeded forward on the claims set forth in her amended application. Testimony was taken from Applicant and plea counsel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged various claims of ineffective assistance of plea counsel and asserts that as a result of counsel's purported errors, she is entitled to have her guilty plea undone and proceed back to the court of general sessions for a new disposition of her case.

This Court has thoroughly reviewed the record in its entirety, including the plea and sentencing transcripts, the appellate records, and the records for this current action. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented at the evidentiary hearing, which allowed the Court to scrutinize the credibility of all witnesses presented. Based on this comprehensive review, this Court finds Applicant has failed to meet her burden of proof as to any of her allegations and finds this action must be denied and dismissed with prejudice. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Plea Counsel

All of Applicant's claims for relief as set forth in her amended application pertain to ineffective assistance of counsel. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, post-conviction relief allegations are centered upon an

allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in post-conviction relief actions). The allegation of denial of such representation sets forth a prima facie violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel's performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, "does not guarantee perfect representation[—]only a 'reasonably competent attorney.'" Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466

U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities." Harrington, 562 U.S. at 110.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 6 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Id. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional

assistance.” Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Reviewing courts “must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed at the time of counsel’s conduct.” Strickland, 466 U.S. at 690. An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment.” Id. The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” Id.

The Strickland standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel’s representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or “prejudice” prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant

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must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. Thus, it is not enough "to show the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to deprive the defendant of a fair trial." Id. at 687 (emphasis added).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel." Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel's performance was deficient; and second, evidence that counsel's deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. 52.

The analysis of counsel's performance under the first prong of Strickland remains unchanged—the applicant must show counsel's representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56.

The second, or "prejudice" prong, however, "focuses on whether counsel's constitutionally

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ineffective performance affected the outcome of the plea process.” *Id.* at 58–59. Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” *Id.* at 59. This inquiry “focuses on a defendant’s decisionmaking” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. *Lee v. United States*, 582 U.S. ___, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. *Padilla*, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. *Turner v. State*, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

Surmounting *Strickland*’s high bar is never an easy task, and the strong societal interest in finality has “special force with respect to convictions based on guilty pleas.” *Lee*, 582 U.S. ___, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); *cf. Hill*, 474 U.S. at 58 (“[R]equiring a ‘prejudice’ showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel ‘will serve the fundamental interest in the finality of guilty pleas.’”). Reviewing “[c]ourts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney’s deficiencies. *Lee*, 582 U.S. ___, 137 S. Ct. at 1967. Rather, judges should “look to contemporaneous evidence to substantiate a defendant’s expressed preferences. *Id.* In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge

must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the PCR hearing. Harres, 282 S.C. at 134, 318 S.E.2d at 361.

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” Id. at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” Id. at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

This Court finds Applicant cannot meet her burden as to any of her claims of ineffective assistance of counsel. Each specific claim is addressed below:

Ineffective assistance of counsel for failure to adequately investigate all available defenses

As first, second and third allegations in her amended application,³ Applicant asserts plea counsel was ineffective for failing to adequately investigate all defense available, including any available defense related to the fact that Applicant lived at the location of the alleged incident, and then failed to discuss these defenses with her.

In support of this allegation, Applicant testified she felt she had viable defenses because she lived at the property and was not involved when her co-defendant killed the victim, essentially arguing she was merely present at the scene. She also asserted she was under duress due to fear of

³ Because the first three allegations set forth in the amended application overlap and cover the same conduct, this Court addresses them together.

her co-defendant. She testified her handprints were not found anywhere at the scene, but acknowledged that the crime scene was set on fire, which would have destroyed physical evidence like handprints. She testified her co-defendant's statements were filled with inconsistencies that did not match the crime scene. She testified she discussed all of these things with counsel, but counsel told her that none of these things would lead to a viable defense. She testified he explained she would still likely be convicted if she went to trial. She felt like counsel disregarded what she told him. Despite failing to present any additional evidence, she asserts that counsel should have investigated her case more, including more investigation into the crime scene and murder weapon. She also stated she wanted counsel to investigate a Moroccan peace treaty.

However, when he testified, counsel Hayes explained all the reasons why these defenses and others would not have been viable. He testified the evidence did not support that Applicant was merely present but, rather, that she was an active participant in the murder, including the statement from Applicant's co-defendant, the fact that they set the home on fire and fled the State together, and were apprehended together near the victim's abandoned car in rural Georgia with the murder weapon containing the victim's DNA in the car. He similarly testified this was the same reason a duress defense would not likely be successful, as the evidence established Applicant had numerous opportunities to separate herself from her co-defendant and never did. He referenced a surveillance video from a gas station that showed Applicant had ample opportunity to separate herself from her co-defendant if she truly was under duress but she did not do so.

Counsel testified that had Applicant wished to proceed to trial, he would have presented these defense to the jury, but does not believe they would have been successful. Counsel similarly testified the dearth of forensic evidence tying Applicant to the crime scene was not exculpatory

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because the house where the murder was committed was set on fire immediately after the murder. Counsel testified Applicant was also evaluated for criminal responsibility due to a history of mental health issues, but this did not lead to a viable defense as she was found criminally responsible. Counsel testified he used his office investigator to assist with this case, which included reviewing the various statements given by Applicant and her co-defendant. He testified they also reviewed all photographs and videos, all available reports, and other evidence provided. Counsel testified he does not believe there was any additional investigation or work he could have done that would have led to a viable defense. He also testified Applicant did not provide any witnesses or other leads to investigate. He elaborated Applicant also refused to let him talk to her family members or anyone else about the case, which hamstrung his ability to defend her.

This Court finds Applicant has failed to meet her burden of proof as to this allegation. Initially, this Court notes that other than her own testimony, Applicant did not present any additional evidence or witnesses to support her claim that counsel was ineffective for failing to adequately investigate her case to develop viable defenses. The testimony Applicant did present does not establish that there were any viable defenses counsel failed to investigate, uncover, or discuss with her. Counsel credibility testified he thoroughly reviewed the evidence, investigated any possible defenses, and determined none yielded a viable defense. This Court agrees and finds that this allegation must be denied and dismissed with prejudice.

Ineffective assistance of counsel for failure to request a change of venue

Next, Applicant asserts plea counsel was ineffective for failing to request a change of venue in response to the media exposure regarding Applicant's charges. Applicant elaborated she believes change of venue was necessary due to the local media slandering her, which she believes

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led to the public having a pre-determined, tainted opinion of her. She testified she requested counsel move to change of venue in early 2018, but counsel replied that he did not see a reason to request a change of venue. She conceded on cross-examination that she agreed with counsel's decision not to seek a change of venue at the time, but now, following her conviction, she believes it was error for counsel to fail to move to change venue. Applicant did not provide this Court with any evidence of excessive media coverage, let alone unduly negative media coverage that would have impacted her ability to select a fair and impartial jury.

In response to this allegation, counsel testified that any motion to change venue would be premature until the parties attempt to pick a jury, so he would not have made such a motion until after the jury selection process.

This Court agrees with trial counsel that any motion to change venue would have been premature before jury selection had been attempted. Additionally, this Court notes Applicant has failed to provide any evidence of excessive media coverage that would have impacted her ability to select a fair and impartial jury. This Court finds this allegation must be denied and dismissed with prejudice.

Ineffective assistance of counsel for failure to provide Applicant with full discovery

Applicant also asserts plea counsel was ineffective for failing to provide her with all discovery prior to her guilty plea. She testified she was not provided with reports from the South Carolina Law Enforcement Division (SLED) until after her plea. She testified she recalled discussing with counsel that these reports were not yet available when she pled guilty and she pled guilty despite knowing SLED had not completed its analysis. However, despite discussing this with counsel before her plea and electing to go forward with her plea despite the on-going SLED

analysis, Applicant now asserts she would not have pled guilty had she seen these reports. She failed to offer these reports into evidence or otherwise state what in these reports would have led to a viable defense.

Counsel testified that Applicant wanted to resolve her case as quick as possible, which was evidenced by the filing of a speedy trial motion. He testified that Applicant wanted to plead guilty as soon as possible, despite knowing all the SLED analysis was not complete. Counsel testified he discussed that the SLED analysis was not complete, specifically noting that the DNA analysis had not been finished, but Applicant still wanted to pled guilty. Counsel testified any additional evidence that came from SLED following the plea was not exculpatory. He testified he reviewed all available discovery with Applicant thoroughly prior to her plea.

This Court finds Applicant cannot meet her burden of proof as to this allegation. This Court finds counsel and Applicant both testified that they discussed that additional analysis from SLED had not been completed, but despite this, Applicant wished to plead guilty to resolve her case as quickly as possible. The transcript from the sentencing proceeding supports counsel's testimony that the DNA report had not been complete at the time of the plea but was at the time of sentencing and was not exculpatory. (Dec. 13, 2018 Tr. 15-16). This Court finds counsel properly reviewed all available discovery with Applicant prior to her plea, discussed that SLED analysis was still forthcoming, and that following this review and discussion, Applicant made a decision to enter a knowing, voluntary, and intelligent guilty plea. This Court finds this allegation must be denied and dismissed with prejudice.

Ineffective assistance of counsel for failure to request a speedy trial

Finally, Applicant asserts plea counsel was ineffective for failing to request a speedy trial

to resolve her case as expeditiously as possible. She testified she asked Applicant to file a motion for a speedy trial and ended up pleading guilty because she wanted to resolve her charges as soon as possible.

Regarding this allegation and the speed with which Applicant's charges were resolved, counsel testified that Applicant pled guilty within a few months of the Aiken County Grand Jury indicting her for murder, although Applicant had been incarcerated at the local detention center since she was detained in Georgia and brought back to South Carolina. He testified that the Solicitor's Office was actively gearing this case up for trial, and when he communicated this to Applicant, she replied she wanted counsel to obtain a plea deal for four years of imprisonment to the lesser-included offense of involuntary manslaughter. He testified the State rejected this proposal. He testified Applicant told him she did not want a trial and wanted to plead guilty. He testified he discussed the right to a speedy trial with Applicant and she asked him to file a motion for a speedy trial on her behalf in an attempt to resolve the case as quickly as possible. He testified he served a motion for a speedy trial on April 30, 2018, it was filed on May 2, 2018. He elaborated that Applicant's case was then on the trial docket every term in June until she pled guilty.

This Court finds this allegation is without merit. Counsel credibility testified he discussed the right to a speedy trial with Applicant, filed a motion for a speedy trial at her request, and then her case was on the trial docket within a month and remained on the trial docket until she pled guilty. This credible testimony is supported by the records from Applicant's general sessions file, which establish that counsel filed a motion for a speedy trial on May 2, 2018. This Court finds this allegation must be denied and dismissed with prejudice.

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CONCLUSION

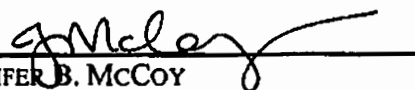
Based on all the foregoing, this Court finds Applicant has not established any other constitutional violations or deprivations that would require this Court to grant her application for post-conviction relief. Therefore, this application for post-conviction relief is denied and dismissed with prejudice.

This Court notes that if Applicant wishes to appeal this order, Applicant, though her counsel of record, must file and serve a notice of appeal within thirty days from the receipt of this Order. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant Kayla Moore shall remain remanded to the custody of the State of South Carolina.

AND IT IS SO ORDERED this 21 day of September, 2021.


 JENNIFER B. MCCOY
 Presiding Judge
 Second Judicial Circuit

Charleston, South Carolina

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