YOUNG LEE, AS VICTIM'S REPRESENTATIVE, v. STATE OF MARYLAND.	IN THE COURT OF SPECIAL APPEALS OF MARYLAND September Term 2022 No. 1291

STATE'S RESPONSE TO MOTION TO DISQUALIFY OFFICE OF THE ATTORNEY GENERAL AS COUNSEL FOR THE STATE OF MARYLAND OR STRIKE THE STATE AS A PARTY TO THE APPEAL

The State of Maryland, Appellee, by its attorneys, Brian E. Frosh, Attorney General of Maryland, and Carrie J. Williams, Assistant Attorney General, pursuant to this Court's October 12, 2022 order, hereby responds to Mr. Syed's motion to disqualify the Office of the Attorney General as counsel for the State of Maryland or strike the State as a party to the appeal and states as follows:

I. Introduction

On September 14, 2022, the Baltimore City State's Attorney's Office moved to vacate Adnan Syed's convictions for

first-degree murder and related charges under Section 8-301.1 of the Maryland Code's Criminal Procedure Article ("CP"), alleging newly discovered exculpatory evidence and the discovery of "two alternative suspects." (Motion to Vacate Judgment at 7-8). The timing and contents of the motion, the hearing on the motion, the subsequent dismissal of the charges, and the out-of-court statements of Baltimore City State's Attorney Marilyn Mosby raised red flags about the integrity and neutrality of the proceedings.

Among the concerns about the handling of the motion to vacate are the method and timing of the notice to the family of Hae Min Lee. As discussed in more detail, below, the State notified Young Lee, the victim's representative and Hae Min Lee's brother, of its intent to vacate Mr. Syed's convictions two days before the motion was filed. Two days after it was filed, the State gave Mr. Lee less than one business day's notice of the hearing scheduled on the motion and never advised him that he had the right to speak at the hearing.

Mr. Lee hired counsel and asked for a postponement so that he could attend the hearing in person. The State opposed the postponement and argued that it had fully complied with all victim notification requirements. Mr. Lee's motion to postpone was denied, the State's motion to vacate was granted, and Mr. Syed was immediately released from custody.

The irregularities surrounding the motion to vacate, including the treatment of Mr. Lee and his family, as well as statements made by Ms. Mosby to the press, prompted the Attorney General to state publicly that he believed there were "serious problems" with the motion to vacate.[1] Ms. Mosby responded by accusing the Attorney General's Office of making the "willful decision to sit on exculpatory evidence for the last seven

[1] Lee O. Sanderlin and Alex Mann, *War of words: Maryland AG Brian Frosh, Marilyn Mosby spar over evidence that led to Adnan Syed's release*, Baltimore Sun (Sept. 21, 2022), available at https://www.baltimoresun.com/politics/bs-md-pol-brian-frosh-marilyn-mosby-adnan-syed-20220921-lu7c7u7fuvfmrjwwuuzzug655y-story.html.

years[.]"[2] She offered no evidence to support her claim of an intentional *Brady*[3] violation.

Ten days after the motion to vacate was granted, Mr. Lee filed a notice of appeal. The only question that Mr. Lee, as the victim's representative, has standing to present to this Court is whether the circuit court was correct in finding that the State's Attorney's Office complied with the victims-rights law in its dealings with the Lee family.

The Attorney General is constitutionally designated to represent the State of Maryland in the appellate courts. Md. Const., art. V, § 3(a)(1). Pursuant to that duty, members of the Attorney General's Office began to consider the legal issue presented in Mr. Lee's appeal; namely, whether the State's Attorney's Office complied with the letter and spirit of the laws governing victims' rights. Despite Mr. Syed's claim to the contrary, no one from the Attorney General's Office "publicly expressed that

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[2] *Id*.

[3] *Brady v. Maryland*, 373 U.S. 83 (1963).

it intended" to argue that the circuit court erred in granting the motion to vacate. (Motion at 6). In fact, when asked, the Attorney General "declined to discuss his plans for the appellate courts[.]"[4]

Nevertheless, Mr. Syed filed a motion seeking to disqualify the entire Office of the Attorney General as counsel for the State of Maryland. Mr. Syed claims that the Attorney General's criticism of the State's Attorney and her office demonstrates a bias that requires the extraordinary remedy of preventing the Office of the Attorney General from performing its constitutional duty.

The Attorney General's Office, Mr. Syed argues, has "prejudged this case," "demonstrated an interest in this case separate and apart from the subject matter of the appeal," and "seeks to represent not the State of Maryland but itself before this Court." (Motion at 4, 7). For the reasons detailed below, this Court

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[4] Lee O. Sanderlin, *Family of Hae Min Lee to appeal Baltimore judge's decision to free Adnan Syed*, Baltimore Sun (Sept. 29, 2022), available at https://www.baltimoresun.com/news/crime/bs-md-cr-serial-adnan-syed-appeal-free-20220929-fvchaoynwbanthfuo6e442esta-story.html.

should deny Mr. Syed's motion to disqualify the Office of the Attorney General.

The Attorney General has an interest in the integrity of the criminal justice system and the public's trust in that system. The Attorney General's decision to call attention to the unorthodox and questionable conduct of Ms. Mosby and her office throughout the reinvestigation, vacatur, and dismissal of Mr. Syed's convictions was in service of that interest and does not demonstrate a bias against Mr. Syed. This is particularly true in a case where the only issue on appeal is whether the State complied with the laws governing the treatment of victims.

The Office of the Attorney General is not interested in using this appeal to litigate culpability for an alleged *Brady* violation.[5] Nor does it intend to argue the merits of the motion to vacate

[5] The alleged *Brady* violation is not being litigated in this appeal because it is irrelevant to whether the State complied with the law relating to victims in criminal cases. To be clear, the Attorney General vehemently denies Ms. Mosby's unfounded accusation that anyone in the Office hatched an intentional plot to "sit on" exculpatory evidence for seven years.

because it is not at issue in this appeal. As with any case, the position taken by the Office of the Attorney General before this Court is the result of considered legal analysis and in furtherance of the Attorney General's duty to advocate for the State.[6]

II. Statement of Facts and Procedural History

A. Mr. Syed's conviction and the 23-year history of this case.

In 2000, Mr. Syed was convicted of strangling his ex-girlfriend, Hae Min Lee, and sentenced to life in prison with the possibility of parole. His convictions were affirmed on direct appeal. Ten years later, right before the statutory deadline, Mr. Syed filed a petition for post-conviction relief. In January of 2014, Mr. Syed's petition was denied. He filed an application for leave to appeal, which was granted.

This Court remanded the case to the circuit court for additional fact-finding in 2015. After a hearing in 2016, the circuit

[6] Syed also argues that the State is not a proper appellee, citing *Antoine v. State*, 245 Md. App. 521 (2020). As discussed in Section IV, *Antoine* is distinguishable. The State is an adverse party to Mr. Lee's appeal and, as such, is a proper appellee.

court granted Mr. Syed a new trial. This Court granted the State's and Syed's applications for leave to appeal and, in a reported opinion in 2018, affirmed the judgment of the circuit court. *Syed v. State*, 236 Md. App. 183 (2018). The Court of Appeals granted certiorari, and on November 25, 2019, the Court of Appeals reversed this Court's decision and reinstated Mr. Syed's conviction.[7] *State v. Syed*, 463 Md. 60 (2019).

The Court of Appeals held that Mr. Syed's defense counsel's failure to investigate a potential alibi witness did not create a substantial likelihood of a different result at trial given the strength of the evidence supporting Mr. Syed's conviction. *Syed*, 463 Md. at 93. That evidence included:

- Jay Wilds's testimony that Mr. Syed lent Mr. Wilds his car on the day of Hae Min Lee's disappearance and that, on the way to school, Mr. Syed told Mr. Wilds that he was going to "kill that bitch," referring to Hae Min Lee. *Syed*, 236 Md.

[7] Mr. Syed's petition for writ of certiorari to the United States Supreme Court was denied. *Syed v. Maryland*, 140 S.Ct. 562 (2019).

App. at 197. Later in the day, Mr. Wilds met Mr. Syed at the Best Buy where Mr. Syed showed him Ms. Lee's body in the trunk of her car. *Id.* at 198-99.

- Mr. Wild's testimony that Mr. Syed told him Ms. Lee "was trying to say something to him like apologize" while he was strangling her and that she "had kicked off the turn signal in the car[.]" *Syed*, 236 Md. App. at 200. When police found Ms. Lee's car, the windshield wiper control was broken off. *Id*. at 200 n.11.
- Mr. Wilds's testimony that he helped Mr. Syed bury Ms. Lee's body in Leakin Park and then followed Mr. Syed, who was driving Ms. Lee's car, to the spot where Ms. Lee's car was abandoned. *Id*. at 202-04. Mr. Wilds led police to Ms. Lee's car, which police had been unable to find for weeks, after her body was found. *Syed*, 463 Md. at 93.
- Jennifer Pusateri's testimony that Mr. Wilds paged her around 8:00 p.m. and asked her to pick him up from Westview Mall. *Syed*, 236 Md. App. at 204. When she arrived, Mr. Wilds was with Mr. Syed. *Syed*, 463 Md. at 88.

When Mr. Wilds got into Ms. Pusateri's car, he blurted out that Mr. Syed had strangled Ms. Lee and that he had seen Ms. Lee's body in the trunk of a car. *Syed*, 236 Md. App. at 204. When Ms. Pusateri first relayed these statements to the police, it had not yet been reported that Ms. Lee was strangled. *Syed*, 463 Md. at 93.

- Mr. Syed's cell phone records corroborated Ms. Pusateri's and Mr. Wild's testimony about the calls made and received while Mr. Syed and Mr. Wilds were burying the body. *Syed*, 236 Md. App. at 202-03.
- Kristina Vinson's testimony that Mr. Wilds and Mr. Syed showed up at her apartment on the evening of Ms. Lee's disappearance and were acting strangely. *Id*. at 201. While they were there, Mr. Syed got a phone call after which he said, "they're going to talk to me," and "ran out of the apartment." *Id*. at 201-02. A police detective testified that he called Mr. Syed during the time that Ms. Vinson testified he was at her apartment. *Id*. at 201. Mr. Syed's phone records

corroborate Ms. Vinson's and the officer's testimony. *Id*. at 202.

- Mr. Syed told police on the night of Ms. Lee's disappearance that he was supposed get a ride home from Ms. Lee but got detained at school and assumed she left without him. *Syed*, 463 Md. at 90. Two weeks later, he told police that he drove his own car to school and had not arranged to ride with Ms. Lee. *Id*. A month later, Mr. Syed said he could not remember what he did on the day Ms. Lee disappeared. *Id*.
- Mr. Syed's palm print was found on the back cover of a map book recovered from Ms. Lee's car. *Id*. at 205. The page that depicted the Leakin park area was torn out of the book and found in the rear seat area of Ms. Lee's car. *Id*.

B. "Serial" brings international attention to Mr. Syed's case and all the people involved.

In October of 2014, the podcast "Serial," which chronicled the murder of Hae Min Lee and questioned Mr. Syed's guilt, was released. "Serial" gained enormous popularity and brought international attention to Mr. Syed's case. It turned millions of

people into amateur detectives and spawned multiple theories of alternate perpetrators.[8]

While many considered "Serial" entertainment, it had real-world consequences for the people involved. Jay Wilds was one of the alternative suspects identified by "Serial" fans. Mr. Wilds told The Intercept in 2014 that after "Serial" aired people began threatening him online and his home address was posted on Reddit.[9] Strangers showed up to his home and he could no longer let his children walk to school.[10] Despite this enormous pressure,

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[8] *See, e.g.*, Keith Phillips, *Five Theories About Who Killed Hae Min Lee*, Men's Health, (March 9, 2019), available at https://www.menshealth.com/entertainment/a26755907/hae-min-lee-serial-killer/.

[9] Natasha Vargas-Cooper, *Jay Speaks Part 3: The Collateral Damage of an Extremely Popular Podcast About Murder*, The Intercept, (Dec. 31, 2014), available at https://theintercept.com/2014/12/31/jay-speaks-part-3/.

[10] *Id*.

Mr. Wilds has never recanted his testimony that he helped Mr. Syed bury Ms. Lee's body.[11]

Don Clinedinst, Ms. Lee's boyfriend at the time she was murdered, was also targeted. Rabia Chaudry, a Syed family friend, has been vocal about her belief that police failed to properly investigate Mr. Clinedinst's alibi.[12] As recently as June of 2022, Ms. Chaudry suggested via tweet that Mr. Clinedinst's whereabouts the night of Ms. Lee's disappearance were unknown.[13] In fact, private investigators hired by HBO for its 2019 documentary, *The Case Against Adnan Syed*, concluded that it

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[11] Jen Pusateri has likewise never recanted her testimony that Mr. Wilds told her on the night of Ms. Lee's disappearance that Mr. Syed strangled Ms. Lee.

[12] Michael Gaynor, *Rabia Chaudry Thinks the Police Should Investigate Don: The DC lawyer behind* Serial *discusses her new book and her famous case*, Washingtonian, (July 28, 2016), available at https://www.washingtonian.com/2016/07/28/rabia-chaudry-serial-adnan-syed-police-should-investigate-don/.

[13] Rabia Chaudry (rabiasquared), "Gutierrez cross examining Don, Hae's boyfriend, at the trial in which Adnan was convicted. The police were told Hae had plans to meet him after school They couldn't contact him until 1am the night she disappeared. No one bothered to find out where he was all evening." June 12, 2022, 10:36 p.m. Tweet.

would have been "impossible" to retroactively alter the employee timecard that established that Mr. Clinedinst was at work that evening.[14]

The podcast also caused tremendous pain to Lee family. During the 2016 postconviction hearings, the family issued a statement expressing dismay at the number of Syed supporters who "learn[ed] about this case on the Internet" rather than by sitting through the entire trial.[15] More recently, as described below, Ms. Lee's brother has said that repeatedly reliving his sister's murder is "killing" him and his mother.

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[14] Tyler Maroney and Luke Brindle-Khym, *How We Reinvestigated the 'Serial' Murder for HBO*, wsj.com (March 11, 2019), available at https://www.wsj.com/articles/adnan-syed-hbo-documentary-serial-murder-case-11552313829.

[15] Justin Fenton, *Hae Min Lee's family says Syed hearings have 'reopened wounds few can imagine,'* Baltimore Sun, (Feb. 7, 2016), available at https://www.baltimoresun.com/news/crime/bs-md-syed-lee-statement-20160207-story.html.

C. The State's Motion to Vacate, the hearing, and the subsequent dismissal of Mr. Syed's charges.

On September 14, 2022, the State's Attorney's Office moved to vacate Mr. Syed's conviction under CP § 8-301.1, alleging newly discovered exculpatory evidence and the discovery of "two alternative suspects." (Motion to Vacate Judgment at 7-8). Several things about the reinvestigation into Mr. Syed's convictions, the timing and contents of the motion, and the subsequent hearing raised concerns about the integrity of the process.

First, although the motion claimed a "nearly year-long" joint investigation by the State's Attorney's Office and Mr. Syed's defense counsel, no one ever notified the Office of the Attorney General of the investigation or contacted anyone from the Office of the Attorney General who was involved in the prosecution of the case. This is particularly striking given that the Office of the Attorney General handled the post-conviction petition and subsequent appeals.

Remarkably, the State's Attorney's Office did not even speak with Kevin Urick, the author of the notes upon which the

allegation of the "egregious *Brady* violation" is based. Given that the notes were "difficult to read because the handwriting is so poor," (H. 9/19/22 29),[16] and are subject to multiple interpretations, it is hard to imagine how anyone could conduct a neutral and unbiased investigation without asking Mr. Urick for his recollections surrounding the notes or, at least, to interpret his own handwriting.

The content and timing of the Motion to Vacate also raised questions. The motion was bereft of details about the alleged newly discovered evidence and the two alternate suspects. It did not identify the alternate suspects or provide any information about why the State's Attorney's Office believed the alternate suspects could have committed the murder without Mr. Syed's involvement. Instead, the State's Attorney's Office said that because the re-investigation into the murder of Hae Min Lee is "ongoing," the

[16] A copy of the transcript of the September 19, 2022 hearing on the motion to vacate is appended hereto as Attachment A.

names of the suspects and the "specific details of the information obtained" would not be revealed. (Motion to Vacate at 7).

A motion made under CP § 8-301.1 must "state in detail the grounds on which the motion is based" and "where applicable, describe the newly discovered evidence." Md. Code Ann., CP § 8-301.1. The State's motion did neither. Nor did the motion explain why the State was moving to vacate Mr. Syed's conviction before the investigation was complete, thus preventing the State from complying with the pleading requirements of § 8-301.1.

Worse still, the motion selectively quoted one of the allegedly undisclosed notes describing the threat against Ms. Lee ("he would make her [Ms. Lee] disappear. He would kill her.") but did not quote the remainder of the note which suggested that the caller did not take the threat seriously and contained multiple inculpatory statements consistent with the evidence introduced against Mr. Syed at trial.[17]

[17] The Office of the Attorney General, at the urging of the parties, has not disclosed the contents of the note. As for the State's Attorney's Office's identification of another allegedly undisclosed

Also concerning was the State's Attorney's Office's assertion that William Ritz, one of the detectives who investigated Ms. Lee's murder, committed "misconduct in another case[.]" (Motion at 18). The proof of Detective Ritz's misconduct in the Malcom Bryant case consisted of a block quote summarizing the plaintiff's unproven claims in a federal lawsuit filed by the estate of Malcolm Bryant. (Motion at 18-19). Tellingly, the other document cited by the State's Attorney, the Report of the Baltimore Event Review Team on State v. Malcolm Bryant, did not find that Detective Ritz committed misconduct.[18]

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document "in which a different person relayed information that can be viewed as a motive for that same suspect to harm the victim[,]" the Attorney General's Office cannot find any document that fits that description. (Motion at 7).

[18] The report is the result of a collaboration between the State's Attorney's Office, the Baltimore City Police Department, the Maryland Office of the Public Defender, and the University of Baltimore Innocence Project. The Event Review Team performed an extensive review of the Malcolm Bryant case in order to discover the root causes of the erroneous conviction and make recommendations to improve the system. The report is available here: https://www.law.upenn.edu/live/files/8862-malcolm-bryant-exoneration.

Also worth noting, the interrogation in *Cooper v. State*, 163 Md. App. 70 (2005), the case in which this Court found that

The next unusual turn came when, two days after the motion was filed, the State's Attorney's Office announced that the Honorable Melissa Phinn had scheduled a hearing on the motion for Monday, September 19, 2022, the next business day. In a jurisdiction where postponements for want of courtroom space or an available judge are commonplace, a hearing scheduled within three business days of the filing of a motion is extraordinary.

The hearing itself was also filled with irregularities. The State has the burden of proof under § 8-301.1. Yet at the hearing on the motion to vacate, the State offered no evidence supporting the allegations in the motion or its belief that vacatur was in the interest of justice. The State introduced a single exhibit into evidence at the hearing—an affidavit signed by Becky Feldman, the prosecutor representing the State at the hearing, which

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Detective Ritz violated *Miranda* by using a two-step interrogation technique, took place before the Supreme Court's decision in *Missouri v. Seibert*, 542 U.S. 600 (2004). Detective Ritz would not have known at the time of the interrogation that his technique violated *Miranda*. Yet the State's Attorney's Office cites the reversal as proof of Detective Ritz's prior misconduct. (Motion at 18-19).

detailed how she came upon the notes that are the basis of the *Brady* claim. (H. 9/19/22 30-31).

The notes themselves were not introduced into evidence at the hearing nor shown to the court at the hearing. Instead, Ms. Feldman noted "for the record" that she "show[ed] the Court the two documents containing the *Brady* information in camera last week, meaning off the record." (H. 9/19/22 31). She did not move to admit the notes under seal. In granting the motion, the court relied upon the "in camera review of evidence" without explaining why the evidence could not be placed in the record, why the in camera review was warranted, or summarizing the contents of the evidence provided in secret. (H. 9/19/22 43).

The remainder of the State's argument in favor of the motion to vacate was a summary of the information contained in the motion itself with few, if any, additional details. (H. 9/19/22 31-41). When Ms. Feldman described the allegations of misconduct against Detective Ritz, however, she did not make it clear that she was citing the plaintiff's unproven claims from a federal lawsuit. Instead, she said that the State had "evidence of [Detective Ritz's]

past conduct that resulted in an innocent man serving 18 years in prison": "He made up his mind as to who he believed the perpetrator was and then manipulated the evidence to support his theory and hid evidence that did not support his theory." (H. 9/19/22 37-38). Ms. Feldman told the court that this "was a consideration" "as to the reliability of the investigation conducted in this case." (H. 9/19/22 36). She offered nothing to support her serious allegations of purposeful misconduct by Detective Ritz.

Based on this proffer by the State and the in camera examination of two poorly written notes, the circuit court granted the motion to vacate:

> Upon consideration of the papers, in camera review of evidence, proceedings and oral arguments of counsel made upon the record, the Court finds that the State has proven grounds for vacating the judgment of conviction in the matter of Adnan Syed.
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> Specifically, the State has proven that there was a *Brady* violation. Maryland Rule 4-263(d)(5) requires the State to disclose, without request, all material or information in any form, whether or not admissible, that tends to exculpate the defendant or negate or mitigate the defendant's guilt or punishment as to the offense charged.
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> Additionally, the State has discovered new evidence that could not have been discovered by due

> diligence in time for new trial under Maryland Rule 4-331(c) and creates a substantial and significant probability that the result would have been different.

(H. 9/19/22 43-44). The court ordered Mr. Syed released on his own recognizance and placed on home detention. (H. 9/19/22 44). The court ordered the State to schedule a new trial date or dismiss the charges against Mr. Syed within 30 days. (H. 9/19/22 44).

Two things, in addition to the lack of evidence upon which the ruling was based, are worth noting about the judge's ruling. First, the judge found a *Brady* violation. To establish a *Brady* violation three things must be proven: 1) the prosecutor suppressed or withheld evidence; 2) the evidence is exculpatory, mitigating, or impeaching; and 3) the evidence is material. *State v. Grafton*, 255 Md. App. 128, 144 (2022). Evidence is material if, had it been known and used by the defense, "the result of the proceeding would have been different." *Id.* (quotation omitted). The State presented no evidence of suppression. The only information relating to the issue of non-disclosure was Ms. Suter's proffer that copies of the documents do not appear in the defense

file and her proffer that Mr. Syed's post-conviction counsel would state that he had never seen the documents. (H. 9/19/22 42). The State did not endeavor to prove nor did the circuit court explain how the notes met the *Brady* materiality standard.

Second, the court found that the State discovered new evidence that created a substantial likelihood of a different result at trial. The court did not identify what evidence was newly discovered or why it created the possibility of a different result.

What happened next was the final anomaly of the hearing. The court ordered the sheriff's deputies to "remove the shackles from Mr. Syed" and he walked out of the courtroom. (H. 9/19/22 45). As several experienced defense attorneys told the Baltimore Sun, that is "completely atypical of how things normally go when a person is released from custody in Baltimore."[19]

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[19] Lee O. Sanderlin and Alex Mann, *Adnan Syed walked free from court after his conviction was vacated. Why can't others do the same?*, Baltimore Sun, (Sept. 20, 2022), available at https://www.baltimoresun.com/news/crime/bs-md-ci-cr-adnan-syed-hearing-differs-from-priveleges-afforded-other-defendants-20220920-yp5ul6xy3zagje6plrdkraaghu-story.html.

Ordinarily, the person is transported back to jail and released only after "processing" is complete, which could take several hours.[20] "I have never seen somebody who was locked up but then acquitted, exonerated or had their conviction vacated walk straight out of the courthouse," one of the longtime defense attorney is quoted saying.[21]

The irregularities continued after Mr. Syed's conviction was vacated. Despite insisting the day before that the investigation was ongoing and that the State's Attorney's Office was not ready to declare Mr. Syed innocent, on September 20, 2022, Ms. Mosby declared her intent to "certify that [Mr. Syed] is innocent" unless his DNA was found on items submitted for testing.[22] "If that DNA comes back inconclusive, I will certify that he's innocent[.] If it

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[20] *Id*.

[21] *Id*.

[22] Mike Hellgren, *Mosby says if DNA does not match Adnan Syed, she will drop case against him*, CBS Baltimore (Sept. 20, 2022), available at https://www.cbsnews.com/baltimore/news/mosby-says-if-dna-does-not-match-adnan-syed-she-will-drop-case-against-him/.

comes back to two alternative suspects, I will certify that he's innocent. If it comes back to Adnan Syed, the state is still in a position to proceed upon the prosecution."[23] Ms. Mosby did not explain why the absence of Mr. Syed's DNA would exonerate him.[24]

True to her word, on the morning of October 11, 2022, Ms. Mosby entered a *nolle prosequi* as to all charges against Mr. Syed. At a press conference later that day, she explained that she dismissed the charges because she learned on Friday, October 7th that Mr. Syed was excluded as a contributor to the DNA found on Ms. Lee's shoes.[25] Ms. Mosby did not offer any evidence that the perpetrator handled Ms. Lee's shoes or provide any other reason

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[23] *Id*.

[24] *See Edwards v. State*, 453 Md. 174, 199 n.15 (2017) (where there was no evidence that the perpetrator came into contact with the tested items, the absence of a defendant's DNA "would not tend to establish that he was not the perpetrator of th[e] crime").

[25] Alex Mann and Lee O. Sanderlin, *Baltimore prosecutors drop charges against Adnan Syed, as last-ditch DNA tests exclude him*, Baltimore Sun (Oct. 11, 2022), available at https://www.baltimoresun.com/news/crime/bs-md-ci-cr-adnan-syed-charges-dropped-20221011-r43q45csdnhi3abqygnhimqouq-story.html

to believe that the absence of Mr. Syed's DNA on Ms. Lee's shoes exonerated him.

D. The repeated failure by the State's Attorney's Office to treat Mr. Lee and the Lee family with the dignity, respect, and sensitivity required by the Maryland Declaration of Rights.

Despite claiming that it had been investigating Mr. Syed's conviction for nearly a year, the State's Attorney's Office did not reach out to the Lee family until two days before the motion to vacate was filed and did not actually speak with Mr. Lee until the day before the motion was filed. Even then, the State's Attorney's Office did not discuss the details of its investigation or disclose the identity of the two new suspects. Ms. Feldman spoke with Mr. Lee via telephone and followed up with an email attaching a draft of the motion to vacate, saying that it "outlines the information" about the alternative suspects and encouraging him to "reach out" to her with questions.[26]

[26] Copies of emails exchanged between Mr. Lee and Ms. Feldman are appended hereto as Attachment B.

Mr. Lee responded to the email by expressing disagreement with the State's decision to move to vacate the conviction and asking Ms. Feldman to try and "understand the emotional turbulence" the situation was causing the family. Ms. Feldman replied that she understood the family's position and apologized for the pain the situation was causing. She promised to keep Mr. Lee "updated with all new developments" and again encouraged him to "reach out with any questions."

The State's next contact with Mr. Lee was on Friday afternoon at 1:59 p.m. EST when Ms. Feldman emailed Mr. Lee to tell him that the court "just scheduled" an "in-person hearing" on the motion to vacate for the following business day: Monday, September 19, 2022. Ms. Feldman provided a Zoom link and told Mr. Lee that if he and the other members of his family wished to "watch" the proceedings, they could do so via Zoom. She did not ask Mr. Lee if he wished to attend the hearing in person or tell Mr. Lee that he had a right to speak or otherwise participate in the hearing.

Mr. Lee, who lives in California, wanted to attend the hearing in person but could not make travel arrangements on such short notice. He did not realize that he could request that the hearing be postponed until he spoke with an attorney on Sunday evening. He retained the attorney and, through counsel, asked the circuit court to postpone the hearing by seven days.

The motion to postpone was heard at the September 19th hearing. Judge Phinn began the hearing by asking the State's Attorney's Office whether the victim's family was notified. (H. 9/19/22 3). Ms. Feldman explained her contact with Mr. Lee the day before the motion to vacate was filed and her email to him the Friday afternoon before the Monday hearing. (H. 9/19/22 3-5).

Counsel for Mr. Lee argued that the State's notice was unreasonable:

> [T]he notion that giving a late afternoon notice to a family of Korean national immigrants on a Friday afternoon for a motion that has been contemplated for one year, according to the State's filings, is patently unreasonable, Your Honor. There is no opportunity there to be present.

(H. 9/19/22 7). "[S]uddenly," counsel said, after "a year of investigation [the State's Attorney's Office] make[s] a sudden turn, decide[s] that they're going to move to vacate giving my client less than one business day notice. That's not reasonable." (H. 9/19/22 8-9). Counsel emphasized that he was only seeking a seven-day postponement so that Mr. Lee could arrange to be at the hearing in person. (H. 9/19/22 9, 10).

Judge Phinn responded that she "was told that [the victim's representatives] lived in California and that they would attend the hearing by Zoom." (H. 9/19/22 10). She then expressed her misimpression that Mr. Lee agreed to the Monday hearing date and to participate via Zoom prior to the scheduling of the hearing, saying to Mr. Lee's counsel:

> Are you not aware that him—by him telling us on Friday that that he was going to appear via Zoom is why we set this hearing today? Because had we known that on Friday then, of course, we would have scheduled this hearing according to when he was going to arrive within a reasonable amount of time. So he didn't do that.

(H. 9/19/22 10-11).

Mr. Lee's counsel corrected the court's belief that Mr. Lee had agreed to the hearing date and to participate by Zoom before the hearing was scheduled. (H. 9/19/22 11-12). In fact, it was not until Sunday afternoon at 4:08 p.m. that Mr. Lee, not understanding that he might have other options, responded to a text message from Ms. Feldman and indicated that he did wish to watch the hearing via Zoom. (H. 9/19/22 12). Mr. Lee retained counsel two hours later and learned that he could ask to postpone the hearing. (H. 9/19/22 12).

The circuit court expressed the view that it was Mr. Lee's obligation to understand his rights and inform the prosecutor that he wished to attend the hearing in person: "[C]ounsel and I have been in close communication about this case procedurally since Friday. So had [Mr. Lee] told Ms. Feldman that he didn't wish to participate via Zoom and wanted to be in person, she would have communicated that to me and then we would have taken the appropriate steps." (H. 9/19/22 12). The court also ruled that there is no requirement that the notice to the victim's representative be "reasonable." (H. 9/19/22 13).

Mr. Lee's counsel also told the court that the State informed him that it was their position that Mr. Lee did not have a right to participate in this hearing. (H. 9/19/22 7). Counsel argued that this was incorrect and that CP § 11-403, Maryland Rule 4-333, and the Maryland Declaration of Rights give the victim's representative the right to be heard.[27] (H. 9/19/22 7-8, 15-16). A layperson reading Ms. Feldman's Friday afternoon email, counsel argued, would not understand that he could request to attend the hearing in person or request to be heard. (H. 9/19/22 8, 17).

More fundamentally, counsel argued, the State's Attorney's Office treated Hae Min Lee's family unfairly:

> I would submit . . . to Your Honor that it's impossible based upon these circumstances for my client to speak. First of all . . . based on the lack of reasonable notice and the lack of specificity in the State's motion, especially in light of the State's repeated more than 20 years taking the position and telling my client over and over again that this is a just and fair conviction. Now to reverse course and not explain it is unfair and it's unfair to give the victim—to put the victim on the spot and expect him to be able to address a motion which he has no idea what it's really about.

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[27] At the hearing, counsel mistakenly identified Rule 4-333 as Rule 4-345. (T. 9/19/22 8).

(H. 9/19/22).

The court was unmoved: "Well, I think he had plenty of time to seek an attorney when he was first told about the motion, you know, regardless of how we're going to proceed." (H. 9/19/22 18). The court denied the motion to postpone the hearing and instead told Mr. Lee's counsel that if Mr. Lee wanted an opportunity to address the court he needed to do so via Zoom immediately. (H. 9/19/22 18). When counsel protested that he could not advise his client because Mr. Lee was at work, the court said that if Mr. Lee wanted to address the court about the murder of his older sister and the man who was convicted of that murder, he had to do it that afternoon. (H. 9/19/22 19). The court ordered counsel to "call Mr. Lee and see what he wants to do and [the court will] wait for your response." (H. 9/19/22 19-20).

Counsel returned to the courtroom and said that Mr. Lee wished to speak but needed "30 minutes to get home from work and to a private place where [he] can participate." (H. 9/19/22 20). When court reconvened, Young Lee, the brother of Hae Min Lee, addressed the court:

THE COURT: You're here today to make a statement and the Court is ready to hear from you.

MR. LEE: Thank you, Your Honor. Thank you for giving this time to speak. I'm sorry if I -- sorry, my heart is kind of pounding right now.

THE COURT: That's fine.

MR. LEE: I apologize. There was some issues with Zoom. I personally wanted to be there in person, but Your Honor, it's—I've been living with this for 20 plus years and every day when I think it's over, when I look and think it's over or it's ended, it's over. It always comes back. And it's not just me, killing me and killing my mother and it's really tough to just going through this again and again and again.

I believe in the justice system, the Court, the State, and I believe they did a fine job of prosecuting Mr. Syed. And I believe the Judge did make the right decision, but just going through it again it's living a nightmare over and over again. It's tough.

And I am not—like I said before, I trust the court system and just trust in the justice system and I am not against—it's really—it was kind of—I was kind of blind sighted. I always thought the State was on my side, you know, but I don't know where—I hear that there's a motion to vacate judgment and I thought—honestly I felt honestly betrayed, why is my—I kept thinking to myself, why is the State doing this.

And I am not against an investigation or anything of that sort that Ms. Feldman is doing. I am not against it at all. It just— but the motion just to vacate judgment, it just—it's really tough for me to swallow, especially from—I am not an expert in legal matters, in law or anything like that, but I ask you, Judge, just to make a right decision that you see. But

> just this motion, I feel that it's unfair, especially for my family just to live through it all and knowing that there's somebody out there just free of killing my sister. It's tough.
>
> And I just wanted to say this in person, but I didn't know I had the opportunity, but I just—and it's tough. Yeah. It's tough, it's tough. This is not a (indiscernible)[28] for me, it's just real life, never ending after 20 plus years. Just on the thought that (indiscernible).
>
> I just want the judge to know like the stuff that we're going through, our family, it's killing us. And I ask, Judge, that you make the right decision. That's all, Your Honor.

(H. 9/19/22 21-23). After Mr. Lee finished speaking, the court thanked him and noted that "it is important to hear from the victim or the victim's representative," before finding "that all the requirements under Criminal Procedure 8-301.1 ha[d] been met by the State," and ordering the "hearing [to] commence." (H. 9/19/22 24).

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[28] As has been widely reported, Mr. Lee said: "This is not a podcast for me," referring to the Serial podcast that brought global attention to Syed's case. Aya Elamroussi and Sonia Moghe, *The family of Hae Min Lee requests Maryland court to halt legal proceedings in Adnan Syed's case*, CNN.com (Oct. 6, 2022), available at https://www.cnn.com/2022/10/06/us/adnan-syed-hae-min-lee-serial-case-family-motion.

The State's Attorney's Office's failure to fulfill its constitutional obligation to treat the Lee family with dignity, respect, and sensitivity continued after the motion to vacate was granted. On September 29, 2022, Mr. Lee noted an appeal to this Court challenging the court's ruling that the State had complied with the law relating to victim's rights. He filed a motion to stay the proceedings in the circuit court the same day. When the circuit court had not ruled on the motion by October 5, 2022, Mr. Lee filed a motion to stay in this Court. In that motion, Mr. Lee expressed concern that the State's Attorney's Office would take action that would moot his appeal and preclude him from vindicating his rights.

Before this Court ruled on the motion to stay, in the early morning hours of October 11, 2022, the State's Attorney's Office filed a *nolle prosequi* as to all of Mr. Syed's charges. In a press conference later that afternoon, Ms. Mosby explained that she dismissed the charges because she learned on Friday, October 7th that Mr. Syed was excluded as a contributor to the DNA found on Ms. Lee's shoes. Ms. Mosby also explained her attempts to contact

the Lee family to notify them of the development: "This morning, I personally reached out to the victim's attorney to inform Ms. Lee's family of the DNA findings and my decision to dismiss the case."[29] She further claimed that her office "attempted to wait until confirmation of notice before releasing anything publicly" but as of the time of the news conference, she had "still not heard anything from that attorney."[30]

The *nol pros* of Mr. Syed's charges was reported by the Baltimore Sun on October 11th at 9:25 a.m.[31] By 11:00 a.m., the State's Attorney's Office announced that Ms. Mosby would be

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[29] "Baltimore State's Attorney Marilyn Mosby explains the decision to drop charges against Adnan Syed," *YouTube*, uploaded by WBFF FOX 45 Baltimore (Oct. 11, 2022), available at youtube.com/watch?v=_W0Opd9YZZI.

[30] *Id*.

[31] The Baltimore Sun (baltimoresun), "Baltimore prosecutors on Tuesday dropped the charges against Adnan Syed, the man whose legal saga rose to international renown because of the hit podcast 'Serial.'" Oct. 11, 2022, 9:25 a.m. Tweet.

holding a press conference at 1:00 p.m.[32] It is unclear how early in the morning Ms. Mosby called Mr. Lee's attorney, but, at most, Ms. Mosby gave counsel only an hour or two to notify his client that the charges against the man whom he believed strangled his sister were going to be dismissed. Given that Mr. Lee lives in California, Mr. Lee's attorney would have had to deliver this news at 6:00 in the morning.

At that same press conference, when asked about the victim's appeal, Ms. Mosby said: "I've utilized my power and discretion to dismiss the case. There is no more appeal, it's moot."[33] When told that the victim's family learned of the dismissal in the media and pressed about her office's treatment of the Lee family, Ms. Mosby attacked Mr. Lee's attorney: "I think it's unfortunate, you know, that you have certain attorneys that try to exploit

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[32] Lee Sanderlin (LeeOSanderlin), "Marilyn Mosby is holding a 1pm press conference today about the decision to dismiss Syed's charges." Oct. 11, 2022, 11:00 a.m. Tweet.

[33] "Baltimore State's Attorney Marilyn Mosby explains the decision to drop charges against Adnan Syed," *YouTube*, uploaded by WBFF FOX 45 Baltimore (Oct. 11, 2022), available at youtube.com/watch?v=_W0Opd9YZZI.

families. So I think that's what's happening in this case."[34] In response to a reporter asking why she did not wait until she spoke with Mr. Lee's attorney before dismissing the case, Ms. Mosby said: "Why would I wait just so that I could appease someone who doesn't appear to be—and I'm not talking about the family, I'm talking about the attorney in the case—doesn't appear to be appeased."[35]

III. Mr. Syed's Motion to Disqualify the Attorney General is unfounded.

Mr. Syed offers two main bases for his motion to disqualify the Attorney General from representing the State in Mr. Lee's appeal: (1) that because the State's Attorney's Office has accused the Attorney General's Office of intentionally withholding *Brady* material in Mr. Syed's case, the Attorney General has a conflict of interest, (Motion at 4, 7); and (2) the Attorney General's Office has "prejudged this case and announced in advance that it will be siding with the appellant." (Motion at 7). Neither of these reasons

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[34] *Id*.

[35] *Id*.

holds water. As Mr. Syed himself acknowledges, the alleged *Brady* violations are "separate and apart from the subject matter of [Mr. Lee's] appeal." (Motion at 7). Ms. Mosby's baseless allegations of intentional misconduct are not at issue in this appeal.[36] As for the merits of Mr. Lee's appeal, the Attorney General's Office did not "prejudge" the case or "announce[] in advance" that it intended to concede error.

Given the extraordinary circumstances surrounding the motion to vacate and the *nol pros* of Mr. Syed's charges, the Attorney General's comments criticizing Ms. Mosby and the State's Attorney's Office were well founded. As the chief law enforcement officer in the State, the Attorney General has an interest in the integrity of the criminal justice system. Going on record as having "serious problems" with the State's Attorney's Office's motion to vacate and noting that nothing in the motion to

[36] Intentionally withholding exculpatory evidence is a violation of the Maryland Rules of Professional Conduct. Md. Rule 19-303.8 (2022). Publicly accusing attorneys in the Office of the Attorney General of making the "willful decision to sit on exculpatory evidence for the last seven years" without offering a shred of evidence supporting that serious allegation is reckless.

vacate, in his view, called Mr. Syed's conviction into question, does not demonstrate bias against Mr. Syed in Mr. Lee's appeal.

A. The alleged Brady violation is irrelevant to Mr. Lee's appeal and even if it were relevant, disqualification is not warranted.

Mr. Syed claims that the Attorney General's Office must be disqualified from representing the State because it seeks "to represent not the State of Maryland but itself before this Court." (Motion at 4). Mr. Syed's evidence for this claim is that the Attorney General issued statements "publicly criticizing the State's Attorney's Office's motivation for moving to vacate the conviction, defend[ing] the Office of the Attorney General regarding the *Brady* allegations, alleg[ing] that a *Brady* violation did not occur at all, and defend[ing] the underlying convictions." (Motion at 4).

Mr. Syed speculates that potential culpability for the *Brady* violations is the impetus for the public feud between Ms. Mosby and the Attorney General. (Motion at 7). In Mr. Syed's view, this potential culpability creates a conflict of interest for the entire

Office of the Attorney General and requires disqualification. (Motion at 7).

The most obvious problem with Mr. Syed's argument is that whether a *Brady* violation occurred, and, if so, who is responsible are irrelevant to the issue on appeal.[37] Mr. Lee has appealed Judge Phinn's ruling that the conduct of the State's Attorney's Office complied with their statutory and constitutional obligations to crime victims and victim representatives. That is the only issue Mr. Lee has standing to appeal. *See Antoine*, 245 Md. App. at 532-33. The alleged *Brady* violation has nothing to do with the notice given to the Lee family by the State's Attorney's Office so it cannot form a basis for disqualification. *See People v. Williams*, 80 N.Y.S.3d 814, 815 (N.Y. App. Div. 2018). (where the "scope of [the] hearing was limited to resentencing issues," and "did not directly implicate any purported *Brady* violations[,]" disqualification was not warranted).

[37] The Office of the Attorney General unequivocally rejects Ms. Mosby's baseless allegations that it intentionally violated its obligations under *Brady*.

Even if the *Brady* violation were at issue on appeal, a prosecutor's office defending itself against a claim of error is not a conflict of interest. An individual prosecutor is disqualified from participating in a criminal case if they have "any pecuniary interest or a significant personal interest in a civil matter which may impair [their] obligation in a criminal matter to act impartially toward both the State and the accused[.]" *Sinclair v. State*, 278 Md. 243, 254 (1976). The Court of Appeals in *Sinclair* found "nonfrivolous" allegations of prosecutorial conflicts of interest where the Kent County State's Attorney and the Deputy State's Attorney represented parties that stood to gain financially in a civil suit against the defendant. 278 Md. at 260. Nothing like that exists here.

Several out-of-jurisdiction courts have rejected claims that *Brady* violations require prosecutorial disqualification. In *Commonwealth v. Brown*, 141 A.3d 491, 497 (Pa Super. Ct. 2016), for example, the defendant argued that the entire Office of the Attorney General should be disqualified because he alleged in his post-conviction petition that an attorney within that office violated

Brady. The defendant claimed that the OAG attorneys' "personal interest in ensuring his *Brady* claim fails," conflicts with their "professional obligation to expose any *Brady* violations." *Id*.

The Pennsylvania appellate court rejected the claim, noting that, like here, the defendant "points to no authority for the proposition that allegations of a *Brady* violation warrant disqualification of an entire prosecutorial office." *Id*. The court cited with approval *State v. Marshall*, 690 A.2d 1, 99 (N.J. 1997), where the Supreme Court of New Jersey rejected a defendant's request to disqualify the entire Office of the Attorney General because he alleged prosecutorial misconduct. "[D]efendant does not cite any legal authority for the proposition that he may compel the disqualification of the State's counsel on [post-conviction review] because the same counsel represented the State earlier in the proceedings." *Id*. "The fact that defendant alleges misconduct in prior proceedings cannot entitle him to disqualify counsel for the State." *Id*. *See also Huggins v. State*, 889 So.2d 743, 768 (Fla. 2004) (where defendant's conviction was reversed due to a *Brady* violation, disqualification of the prosecutor on retrial was not

required; defendant suffered no actual prejudice from prosecutor's continued participation); *McGraw v. State*, 405 S.E.2d 53, 60 (Ga. Ct. App. 1991) (where there was a "complete failure to show any intentional attempt by the district attorney or his office to suppress information," disqualification was not required).

Like the defendants in *Brown* and *Marshall*, Mr. Syed offers no authority supporting the proposition that an entire office must be disqualified based upon an allegation of a *Brady* violation. Disqualification is particularly unwarranted where, as here, the alleged violation is irrelevant to the nature of the proceedings.

B. The Attorney General's Office did not prejudge the merits of Mr. Lee's appeal or "publicly express[]" that it intended to concede error.

The other ground for Mr. Syed's motion to disqualify is an allegation that the Attorney General's Office "prejudged this case and announced in advance that it will be siding with the appellant." (Motion at 7). The Office did no such thing.

In support of his argument that the Attorney General's Office prejudged the merits of Mr. Lee's appeal, Mr. Syed quotes a

Baltimore Sun article citing "people familiar with the attorney general's plans but who are not authorized to speak publicly" as saying that the Office "is expected to file a brief arguing that [Judge] Phinn erred when she overturned Mr. Syed's conviction[.]" (Motion at 6). Mr. Syed fails, however, to quote the very next sentence of the article, which reads: "[Attorney General] Frosh declined to discuss his plans for the appellate courts other than to say his office would be handling filings on behalf of the prosecution."[38] Mr. Syed's selective quotation is misleading. His claim that the Attorney General's Office has "announced in advance that it will be siding with the appellant" is incorrect.

Unnamed sources in a newspaper article are not proof. Particularly when the Attorney General himself declined to confirm what those unnamed sources reported. And particularly when those unnamed sources got a critical fact wrong—the

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[38] Lee O. Sanderlin, *Family of Hae Min Lee to appeal Baltimore judge's decision to free Adnan Syed*, Baltimore Sun (Sept. 29, 2022), available at https://www.baltimoresun.com/news/crime/bs-md-cr-serial-adnan-syed-appeal-free-20220929-fvchaoynwbanthfuo6e442esta-story.html.

propriety of Judge Phinn's order vacating Mr. Syed's conviction is not at issue in the appeal; the only issue in this appeal is whether the State's treatment of the Lee family complied with Maryland law.

The position likely to be taken by the Office of the Attorney General was not "announced in advance" and was not a result of improper prejudgment. After reviewing the record in this case and the applicable law, the Attorney General's Office concluded that the State, represented below by the Baltimore City State's Attorney's Office, failed to comply with the statutory and constitutional rights of the victim and victim's representative.

The rights of crime victims are enshrined in the Maryland Constitution. Article 47 of the Maryland Declaration of Rights reads:

> (a) A victim of crime shall be treated by agents of the State with dignity, respect, and sensitivity during all phases of the criminal justice process.
>
> (b) In a case originating by indictment or information filed in a circuit court, a victim of crime shall have the right to be informed of the rights established in this Article and, upon request and if practicable, to be notified of, to attend, and to be heard at a criminal

> justice proceeding, as these rights are implemented and the terms "crime", "criminal justice proceeding", and "victim" are specified by law.
>
> (c) Nothing in this Article permits any civil cause of action for monetary damages for violation of any of its provisions or authorizes a victim of crime to take any action to stay a criminal justice proceeding.

Md. Decl. of Rts., art. 47.

The General Assembly has passed a number of statutes designed to enforce these constitutional guarantees. Title 11 of the Criminal Procedure Article contains most of these provisions. For example, CP § 11-102 states that a victim or victim's representative "has the right to attend any proceeding in which the right to appear has been granted to a defendant." Md. Code Ann., CP, § 11-102(a). CP § 11-403 requires a court, if practicable, to allow a victim or victim's representative to address the court in any hearing where an "alteration of a sentence" is considered. Md. Code Ann., CP, § 11-403(a). If a victim or victim's representative does not appear at such a hearing, the prosecutor is required to put on the record why proceeding is justified. Md. Code Ann., CP, § 11-403(e)(1). If the court is not satisfied with the prosecutor's

statement, the hearing may be postponed. Md. Code Ann., CP, § 11-403(e)(2).

CP § 8-301.1, the statute governing motions to vacate, also requires notification of the victim or victim's representative and provides "the right to attend a hearing" on a motion filed under § 8-301.1. Md. Code Ann., CP, § 8-301.1(d)(2). Maryland Rule 4-333 governs motions to vacate under CP § 8-301.1 and requires the State's Attorney to state on the record efforts made to notify a victim or victim's representative. Md. Rule 4-333(h)(1). The Rule cross-references CP § 11-403 regarding the right of a victim or victim's representative to address the court. *Id*.

Reading the constitutional and statutory rights of crime victims together, after review of the record in this case, the Attorney General's Office determined that the State failed to comply with the law and the circuit court erred in finding otherwise. Primary in the Office's analysis was the constitutional mandate that victims "shall be treated by agents of the State with dignity, respect, and sensitivity during all phases of the criminal justice process." Md. Decl. of Rts., art. 47. The conduct of the

State's Attorney and her office throughout the reinvestigation, filing of the motion to vacate, and its aftermath did not live up to this constitutional guarantee. The circuit court's comments and rulings during the hearing on the motion to vacate likewise fell short. *See Lopez v. State*, 458 Md. 164, 176 (2018) (noting that Article 47 communicated the "strong public policy that victims should have more rights and should be informed of the proceedings, that they should be treated fairly, and in certain cases, that they should be heard") (quotation omitted); *Antoine*, 245 Md. App. at 546-47 (discussing the importance of appropriately considering the impact of crime upon the victims).

Several organizations have created guidelines for victim notification during a conviction integrity review. Healing Justice, a nonprofit organization dedicated to restorative justice and justice reform, joined forces with the Department of Justice to provide post-conviction services and support for crime victims and survivors.[39] One of the publications that resulted from this

[39] *See* Post-Conviction Survivor Resources, available at https://www.survivorservices.org/.

collaboration provides eight guiding principles for notifying and supporting crime victims involved in post-conviction claims of innocence and exonerations.[40] The eight guiding principles are:

1. Establish contact with the victim early.
2. Provide victims with choice and respect victims' rights.
3. Convene a multidisciplinary notification and support team.
4. Address victims' safety, privacy, and confidentiality concerns.
5. Offer referrals to emotional and psychological support services.
6. Be prepared to address media coverage.
7. Be truthful and don't overpromise.
8. Stay informed and knowledgeable about cultural, physical, and other diversity.[41]

The State's Attorney's Office did not follow any of these guiding principles. Healing Justice provides more detailed

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[40] Available at https://www.survivorservices.org/media/ks4jbced/practitioner-resources_guiding-principles_final.pdf.

[41] *Id*.

guidelines in a separate document.[42] They advise notification to be done as early as possible to minimize "re-victimization and re-traumatization."[43] "No victim should learn about an impending exoneration and prisoner release at the last minute or after exoneration and release have already occurred, and every measure possible should be taken to ensure that notification about exoneration and release occurs at least 30 days prior to the exoneration and release."[44]

Healing Justice also recommends initial notification by letter or phone call with a follow-up meeting in person, if amenable to the victim. Notification should be done by "at least two people," with one being a victim advocate, and should include interpreters

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[42] Available at https://www.survivorservices.org/media/isioowtd/practitioner-resources_practitioner-guidelines_final.pdf.

[43] *Id*. at 1. The document makes clear that "victim" includes family members and close friends of a murder victim. *Id*. at 2. Part of an appropriate victim notification procedure includes identifying the appropriate people to notify and whether information should be delivered individually or to the group. *Id*.

[44] *Id*.

where necessary.[45] The guidelines provide a list of information that prosecutors should be prepared to provide, including a "[c]omplete explanation of the victim's rights," strategies for managing media coverage, detailed information about what to expect and any possible outcomes, and "complete and unbiased information about the status of the case."[46] Follow-up should include developing a plan for regular check-ins with the victim and a commitment to ensure that the victim's rights are protected throughout the process.[47]

While these guidelines constitute best practices, and the State is not suggesting that any failure to comply with best practices is a violation of law, the fact that the communications with the Lee family fell so shockingly short of best practices is illuminating. Calling a victim's family two days before a motion to vacate a conviction is filed, notifying them Friday afternoon of a

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[45] *Id*. at 3.

[46] *Id*.

[47] *Id*. at 4.

Monday hearing taking place across the country from where they reside, requiring them to proactively learn of their rights in order to assert them, providing their counsel with less than two hours' notice that the case would be dismissed, and then denigrating their counsel in a public press conference violates the Maryland Constitution and statutory law.

The Office of the Attorney General did not prejudge the merits of Mr. Lee's appeal. It came to the legal conclusion, after reviewing the record and relevant law, that the State's conduct did not comply with the law.[48] Unfortunately, the State's Attorney's decision to *nol pros* the charges against Mr. Syed while Mr. Lee's appeal was pending likely renders the appeal moot and potentially robs Mr. Lee of his opportunity to vindicate his rights in this Court. That Ms. Mosby seemed to recognize this is all the more unfortunate.

[48] To the extent that Mr. Lee's appeal implicates the order vacating Syed's conviction, his concern that "no party will be left defending the order" is resolved by this Court's denial of the State's motion to strike. (Motion at 8).

IV. If the appeal is not dismissed as moot, the State is a proper Appellee because it was adverse to Mr. Lee in the circuit court and at the time of the notice of appeal's filing.

Finally, Mr. Syed asks this Court to strike the State as a party to Mr. Lee's appeal. (Motion at 8-9). This Court's decision in *Antoine*, Mr. Syed argues, requires it. (*Id.*). Mr. Syed is wrong.

Maryland Rule 8-111(a) designates "the party first appealing the decision of the trial court" as the appellant. Md. Rule 8-111 (2022). "[T]he adverse party shall be designated the appellee." *Id.* Rule 8-111(c) allows a victim or victim's representative the right to "participate in the same manner as a party regarding the right of the victim or victim's representative." *Id.*

In *Antoine*, the State sided with the victim in the circuit court. At a hearing where the victim was not present, the circuit court "undercut the prosecution's plea offer" and negotiated "directly with the defendant." 245 Md. App. at 537-38 (alterations omitted). That prompted this Court to find that the State was not an "adverse party" and, thus, not a proper appellee. *Id.* at 538 n.4. "One who seeks to attack, modify, reverse, or amend a judgment is

required to appeal or cross appeal from that judgment[.]" *Id.* (cleaned up).

The State asked the Court to reconsider the determination that the State was not a proper appellee, arguing that it "may have implications for its ability to confess error in other cases." *Id.* This Court clarified "that it does not." *Id.* Although Rule 8-111 contemplates that there will be adverse parties with respect to the issues on appeal, "an appellee is always permitted to concede that it cannot defend all or part of a court's ruling[.]" *Id.* Where a party "seeks to attack a judgment, however, 'the only method of securing review by the Court of Special Appeals is by the filing of a notice of appeal within the time prescribed by Rule 8-202.'" *Id.* (quoting Md. Rule 8-201(a)).

In this case, it was the State's Motion to Vacate Judgment that reopened Mr. Mr. Syed's case and brought it before the circuit court. At the hearing on the State's motion to vacate, the State opposed Mr. Lee's motion to postpone and argued that the State's notice to Mr. Lee was compliant with the law. When Mr. Lee noted his appeal, the State did not seek to attack the judgment. Only

when the Office of the Attorney General examined the record and determined that it could not defend the court's ruling regarding victim notification was it decided that a concession would likely be necessary.

The State is the adverse party on appeal. The decision to concede error in this case is no different than decisions to concede error partially or completely in countless other cases handled by the Office of the Attorney General. *See, e.g. Wallace v. State*, 475 Md. 639, 659 (2021) (State conceded that counsel's performance was deficient in ineffective assistance of counsel claim); *State v. Carter*, 472 Md. 36, 57 (2021) (State conceded that defendant was seized for purposes of the Fourth Amendment, despite circuit court's ruling to the contrary); *Coley v. State*, 215 Md. App. 570, 572 (2013) (Court rejected State's concession that circuit court erred in denying defendant's motion to suppress); *Holmes v. State*, 209 Md. App. 427, 456 (2013) (State conceded that sentences for use of a handgun in a crime of violence and wearing, carrying, or transporting a handgun must merge). The State is a proper appellee in this case. If Mr. Lee's appeal is not moot, this Court

should deny Mr. Syed's motion to strike the State as a party to the appeal.

CONCLUSION

The Office of the Attorney General should not be disqualified. There is no conflict of interest, and the Office has not prejudged the merits of Mr. Lee's appeal. Moreover, if Mr. Lee's appeal was not rendered moot by the *nol pros* of Mr. Syed's charges, the State, as an adverse party, is a proper appellee. This Court should, accordingly, deny Mr. Syed's motion.

Dated: October 25, 2022

Respectfully Submitted,

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CERTIFICATION OF WORD COUNT AND
COMPLIANCE WITH THE MARYLAND RULES.

This filing was printed in 13-point Century Schoolbook font; complies with the font, line spacing, and margin requirements of Md. Rule 8-112 and contains 10,453 words.

/s/ Carrie J. Williams

CARRIE J. WILLIAMS
Assistant Attorney General
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CERTIFICATE OF SERVICE

In accordance with Maryland Rule 20-201(g), I certify that on this day, October 25, 2022, I electronically filed the foregoing "State's Response to Motion to Disqualify Office of the Attorney General as Counsel for the State of Maryland or Motion to Strike the State as a Party to the Appeal" using the MDEC System, which sent electronic notification of filing to all persons entitled to service, including Steve Kelly, counsel for Mr. Lee and Erica Suter, counsel for Mr. Syed.

/s/ Carrie J. Williams

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Attachment A

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

STATE OF MARYLAND,

Case No.: 199103046

vs.

ADNAN SYED,

Defendant.
_____/

OFFICIAL TRANSCRIPT OF PROCEEDINGS
(MOTIONS HEARING

Baltimore, Maryland

Monday, September 19, 2022

BEFORE:

HONORABLE MELISSA PHINN, JUDGE

APPEARANCES:

For the State:

ERIN MURPHY, ESQ.
BECKY FELDMAN, ESQ.

For the Defendant:

ERICA SUTER, ESQ.

For the Victim:

STEVEN KELLY, ESQ.

Electronic Proceedings Transcribed by: Sheila Orms and Penny Skaw

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C O N T E N T S

STATE'S EXHIBITS	FOR IDENTIFICATION	IN EVIDENCE
1 - Affidavit	27	31

DEFENDANT'S EXHIBITS	FOR IDENTIFICATION	IN EVIDENCE
1 - Letter	43	43

P R O C E E D I N G S

(2:09 p.m.)

THE CLERK: All rise.

(Call to Court)

THE COURT: Good afternoon. Thank you and you may be seated.

(Pause)

THE COURT: All right. To members of the public who are joining us virtually, welcome to the Circuit Court of Baltimore City. My name is Melissa Phinn and I will be the presiding judge this afternoon.

(Pause)

THE COURT: All right. Thank you, Officers. Good afternoon, Mr. Syed. Let's remove the handcuffs please.

(Pause)

THE COURT: All right. We're here today on the State's motion to vacate the judgment of the conviction of Adnan Syed, pursuant to Criminal Procedure 8301.1. I will hear from the State as to whether the victim's family has been notified.

MS. FELDMAN: Good afternoon, Your Honor, Becky Feldman for the State. Yes, the victim's family has been notified of the hearing today. And they indicated to me yesterday that they would be present by the Zoom link that we provided for them.

THE COURT: All right. Can you tell the Court specifically what notice the State gave to the victim's family in this case?

MS. FELDMAN: Yes, Your Honor. We -- counsel and I met with you on Friday and the hearing was scheduled for today. When I got back to my office, it was about 2 o'clock p.m. on Friday, the first e-mail I sent was to Young Lee, that is the victim's brother who I have been communicating with and I advised him of the hearing date and I asked him -- and I notified him that we would also have a Zoom link available for him if he would like to attend.

I did not get a response back from him, so I texted him yesterday to make sure he got the e-mail and was aware of the hearing. And he responded that he was aware and that he would attend via Zoom link.

THE COURT: All right. So in filing this motion, did the State send Mr. Young -- I mean, Mr. Lee a copy of the motion and --

MS. FELDMAN: Yes --

THE COURT: -- go over -- I need you to put all that on the record, ma'am.

MS. FELDMAN: Yes, Your Honor. I did contact Mr. Lee and I sent him a copy of the motion prior to its filing.

THE COURT: And when exactly did you do that?

MS. FELDMAN: Let's see, I called him on Monday.

We were able to -- Monday of the -- last week of the filing, I don't have the date with me, we were able to conduct --

THE COURT: All right. Can you get the date, let's get the date, let's make a record.

MS. FELDMAN: Yes. If I could turn on my phone to pull up my calendar, sorry, Your Honor?

THE COURT: Yes, that's fine.

MR. KELLY: Your Honor, my name is Steve Kelly, I represent the family of the victim. I just wanted to let you know that I'm in the courtroom and I would like to be heard.

THE COURT: Thank you, sir.

MS. FELDMAN: Okay. Thank you, Your Honor. I contacted Mr. Lee by telephone on the 12th. We have --

THE COURT: 12th of what?

MS. FELDMAN: Of September. And we were able to connect on the 13th, that's when we spoke via telephone and then I provided -- and let him know what was happening, what information we had developed. I went through the motion a bit with him and I sent him a copy of the motion that day. And then the motion was filed on the 14th of September.

THE COURT: All right. And you told him the time and the location of the hearing today as you did on Friday?

MS. FELDMAN: Yes.

THE COURT: All right. And what section of the

statute were you relying on for your notice?

MS. FELDMAN: So the notice is in the vacature statute, 8301.1 of the Maryland Criminal Procedure Article. It requires -- let me find the exact section.

Okay. It is Section (d)(1), before a hearing on a motion filed under this section, the victim or victim's representative shall be notified. A victim or victim's representative has the right to attend a hearing on a motion filed under this section.

THE COURT: All right. Now, attendance, as far as your understanding from the victim's family, the attendance was going to be done how?

MS. FELDMAN: So I did not know until he texted me back yesterday whether he was going to attend via Zoom and he indicated that he would. He had not indicated to me that he wished to travel to be here today.

THE COURT: All right. Thank you.

Is Mr. Young Lee on the Zoom? If so, unmute yourself and identify yourself for the record, sir.

(No response)

THE COURT: No response. Counsel, I'll give you an opportunity to speak. You can step over here to the trial table. You can stand in the middle if you like. State your name for the record.

MR. KELLY: Thank you, Your Honor. My name is

Steve Kelly, I represent Young Lee, who is the victim representative for Hae Min Lee, the family of the decedent in this case.

THE COURT: And you'd like to say what to the Court?

MR. KELLY: Well, Your Honor, the State has focused on the notice requirement and the presence requirement. First of all, as to the presence requirement I would refer Your Honor to Criminal Procedure Section 11-102, which states that the victim has the same right to be present at proceedings as the defendant.

So the notion that giving a late afternoon notice to a family of Korean national immigrants on a Friday afternoon for a motion that has been contemplated for one year, according to the State's filings, is patently unreasonable, Your Honor. There is no opportunity there to be present.

The other issue is, the State stated to me and I learned for the first time today that the State takes the position that the victim of a crime in Maryland has no right to meaningful participate in this proceeding. That's news to me. I've been doing this work for over 20 years, and as far as I know, all of the contrite statutes, including specifically, Your Honor, 11-403, Maryland Law 3-43 -- 345 contemplate the victim having a meaningful opportunity to

participate.

THE COURT: What was that, Maryland what? Maryland dash?

MR. KELLY: I'm sorry, Your Honor, which one, Your Honor, the rule that --

THE COURT: You said Maryland 4- -- I couldn't understand the last statute or rule you quoted.

MR. KELLY: Sure, Your Honor, it's Maryland Rule 4-345. So these are as to the right of the victim to meaningful participate.

You know, the victim's statute is admittedly untested and new, but to suggest that the State's Attorney's Office has provided adequate notice under the circumstances is outrageous.

The State's Attorney, in my opinion, misadvised my client that he had no right to meaningful participate. Whatever my client may or may not have said to the State's Attorney, when -- before I was retained I can't speak to it. My client was not available to be here. He has to work. And he also wants to, as I think he deserves under Maryland law for a case that's been going on for 22 years, which this office has repeatedly represented to the family and again to the public, that this is a just conviction.

Now, suddenly after quote/unquote a year of investigation they make a sudden turn, decide that they're

going to move to vacate giving my client less than one business day notice. That's not reasonable.

And failing also to give any kind of notice as to what it is that has caused the concern on the part of the State's Attorney's Office. I mean, the motion -- so I -- I'm not prepared to address nor do I want to address the merits of the motion, Your Honor. I'm here strictly as a matter of victim's rights. Strictly on the issue of the right of this family to meaningfully participate.

And, Your Honor, I would respectfully refer you to our brief and the Canton v State (ph) case, in which the Maryland Appellate Courts are recognizing that there are real consequences to excluding victims from proceedings like this.

And so, you know, I realize that everybody is here and that the parties are prepared to present argument. I also realize that there are real liberty issues at stake for Mr. Syed and that's why we have asked for, what I believe is a very reasonable amount of time, seven days for our client to be able to get here and to publicly -- to attend in person which I think he has the right to do under Maryland law --

THE COURT: Well I guess --

MR. KELLY: -- and to meaningfully participate.

THE COURT: I'm sorry. I guess that's the issue.

What is attendance, what is presence? Since the COVID in 2020, we have been conducting Court in a lot of jurisdictions around the country via Zoom.

So as far as the Maryland rules is concerned, 4-231(e), electronic proceedings are allowed in the Circuit Court for any Circuit Court. And we do them here every day.

So if Mr. Lee, as he informed Ms. Feldman, intended to attend the hearing today, his presence would be known here today on the Zoom. I was aware that he lived in California and that's what I was told that they lived in California and that they would be present by Zoom.

Now, it appears that since Friday, Mr. Lee has changed his mind. And for some reason, at least is given the appearance today that he wishes to be present here in Baltimore City for this hearing.

I'll also point out to you, counsel, that I looked at all the statutes and the rules that you quoted in your petition and nothing in there, as far as this motion to vacate, indicates that the victim's family would have a right to be heard.

Now, of course, if Mr. Lee was present today on the Zoom and he wanted to speak, I would allow him to speak. But are you saying to the Court that Mr. Lee is going to travel here to Baltimore in seven days for this hearing?

MR. KELLY: Yes, Your Honor.

THE COURT: Okay. And are you --

MR. KELLY: And, Your Honor, if I may -- I'm sorry.

THE COURT: Wait a minute. Are you not aware that him -- by him telling us on Friday that he was going to appear via Zoom is why we set this hearing today? Because had we known that on Friday then, of course, we would have scheduled this hearing according to when he was planning to arrive within a reasonable amount of time. So he didn't do that.

MR. KELLY: Your Honor, may I just be heard on that issue?

THE COURT: Yes.

MR. KELLY: First of all, Your Honor, he did not state on Friday at any time that he would participate. He -- according to what counsel has said, and I have not seen this text exchange.

THE COURT: Can you show the counsel the text please?

MR. KELLY: But according to what she has indicated --

THE COURT: Let's do this first, do one thing at a time.

MR. KELLY: It was Saturday as far as I know.

THE COURT: We'll do one thing at a time.

MR. KELLY: Okay.

(Pause - counsel confer)

MR. KELLY: So, yes, this was 4:08 p.m. yesterday, Your Honor, shortly before I was retained in this matter at approximately 6 p.m. yesterday.

And, Your Honor, I would just for the record state that my client did not -- you know, is not a lawyer and he has every right to be counseled by an attorney as to his rights and then to act accordingly.

He has been trying ever since he got notice from the State to find an attorney. We connected and he was able to retain me late in the evening yesterday. Which I apologize for the last minute filing and for not having a chance to confer with --

THE COURT: Well, you did see the confusion? Because obviously your motion what about 30 minutes ago in my chambers and then Mr. Lee told the State through text that he would participate by Zoom.

Now, counsel and I have been in close communication about this case procedurally since Friday. So had he told Ms. Feldman that he didn't want to participate via Zoom and wanted to be in person, she would have communicated that to me and then we would have taken the appropriate steps.

MR. KELLY: Your Honor, I submit that that's not

adequate notice under Maryland law. I mean, if Your Honor --

THE COURT: Nothing says that it has to be a participate time period. It says notice.

MR. KELLY: Your Honor, reasonable notice and --

THE COURT: Where -- point it out to me.

MR. KELLY: And quite frankly, Your Honor, I'm not going to --

THE COURT: No, this is what -- no, we want to make the record clear.

MR. KELLY: Yeah, right.

THE COURT: In 8-301.1, which is the statute for motion to vacate it says notice. It doesn't have anything about reasonable notice.

MR. KELLY: Your Honor, that reasonableness is a standard that's been long applied by the Maryland Supreme Court as we now must call it, and, Your Honor, I would be happy to brief that issue. But I can -- you know, I don't believe that one day's notice is adequate.

He was trying to get counsel. He was told by the State's Attorney's Office that he didn't have the right to meaningful participate in this hearing. So he didn't know any better, he's a layman. But he now is represented by counsel. He has a very legitimate stake in these proceedings and I don't believe that there's, quite frankly,

Your Honor, any appellate court that would find this notice reasonable.

So if Your Honor is inclined to deny the motion, I would just ask that this matter be stayed pending appellate review.

THE COURT: Ms. Feldman, did you tell Mr. Lee that he was not able to participate in this hearing?

MS. FELDMAN: No, I didn't say that and I would never say that and I just want to be clear. It is not the position of the State's Attorney's Office that we would object in any way to someone being present and participating if they wanted to.

And we were just pointing out that the statute just requires notice and attendance. But certainly if he were here, and that is why -- that is why I asked this to be by Zoom, because this is an in-person hearing and I came to you and said, can we make this arrangement in case he would like to be -- to observe the hearing. And you thankfully made that happen. So this is kind of a bifurcated proceeding.

And as soon as I got back to my office, knowing what the new date was, I sent him that e-mail. The e-mail was at 2 o'clock p.m. Friday. So I would never tell a victim ever that they did not have the right to attend or make a statement.

THE COURT: When you spoke to Mr. Lee early on about the actual motion and that there would be a hearing, did he ever indicate to you that he would like to fly to Baltimore?

MS. FELDMAN: No, he did -- I said that there would be a hearing in this matter, would he like, you know, to be notified. He said, absolutely, you know, let me know if there's a hearing. I did not ask, nor did he state that he would be present physically.

THE COURT: Okay. All right. Thank you.

MR. KELLY: Your Honor, if I just may just clarify a couple of things for the record. First of all, I don't believe it's discretionary under the -- I'm sorry, this --

(Audio problems)

THE COURT: I don't know why it's doing that.

MR. KELLY: It doesn't like me.

THE COURT: Let's just see if we can correct that.

(Pause)

MR. KELLY: Your Honor, first of all, I'd just state that the victim's right to be present -- first of all in terms of the right to be present and notified, et cetera, that's all set forth in Article 47 of the Maryland Declaration of Rights, which does contain broad statements about the need to grant fairness and treat victims fairly and with respect.

But in addition to that, Your Honor, Section 11-102 specifically contemplates hearings to vacate sentences. There's nothing in the vacature statute that supersedes that in any way.

In addition, under 11-403 the victim does have the right to speak at a hearing. I would submit --

THE COURT: Well --

MR. KELLY: -- to Your Honor that it's impossible based on these circumstances for my client to speak. First of all --

THE COURT: Your client --

MR. KELLY: -- based on the lack of reasonable notice and the lack of specificity in the State's motion, especially in light of the State's repeated more than 20 years taking the position and telling my client over and over again that this is a just and fair conviction. Now to reverse course and not explain it is unfair and it's unfair to give the victim -- to put the victim on the spot and expect him to be able to address a motion which he has no idea what it's really about.

THE COURT: Well, let me just first address 11-403. That has to do with sentencing or disposition hearings. That's not what this is. And you're addressing that as the victim's rights. This is a motion to vacate.

So -- well, this is what I'm going to say to you,

counsel -- let me ask Ms. Feldman this question first.

When is the first time you spoke to Mr. Lee about this -- the State's filing a motion to vacate this judgment of conviction?

MS. FELDMAN: Yeah, so actually if I could give a little bit more context. The State jointly filed a motion for DNA testing back in March. And I contacted then and I did not get a response.

When it came time when we decided that we were going to pursue -- file this motion to vacate I contacted him on that Monday that I referred to. I had not spoken to him during that period.

But I would state that when I talked to him on Tuesday, not only did we talk, and I sent him a copy of the motion, I gave him my cell phone number, my e-mail, and my office number and invited him to please contact me any time by text, call, e-mail with any questions. And I even followed that up with an e-mail telling him please contact me at any time.

THE COURT: Okay. You have -- last word, counsel.

MR. KELLY: Your Honor, I would just say and I didn't mean to accuse counsel of misrepresenting the law, but I would say that for a lay person reading her e-mail message concerning the Zoom when it just says that you can watch the Zoom, it doesn't say anything about what would

happen if you wanted to speak or be heard, there's no -- you know, the State's Attorney has an affirmative obligation as the attorney to advise the victim of their rights. That's, you know, fundamental in the statutes all the way -- going all the way back to the victim's rights notification request form and the whole array. So that clearly was not done.

My client did not understand that he had a right to participate in the hearing beyond observing. So that was what his acquiescence.

I would just note again yesterday at 4:08 p.m. shortly before he reached out to me and retained me, he responded to a text message indicating that he would participate, not understanding what that meant, that he would attend, not understanding what that meant or what his rights were.

And, Your Honor, I believe that that -- not only I believe, under Maryland law, you know, he has every right to exercise his rights once they've been explained to him by an attorney.

THE COURT: Well, I think he had plenty of time to seek an attorney when he was first told about the motion, you know, regardless of how we're going to proceed.

So, counsel, at this time, I'm going to deny your motion. What I will give you time to do is to get Mr. Lee and have him join this Zoom. I think he has the link and if

he wants to speak, I will allow him to speak first.

So we will give you that opportunity.

MR. KELLY: Your Honor, I'm not able to advise my client. My client is at work at this point.

THE COURT: Okay.

MR. KELLY: And if Your Honor is going to that position, I would submit that --

THE COURT: Well, the reason why I'm taking that position, sir, is that because your client indicated that he would participate via Zoom. I don't think Zoom is foreign anymore. I think everybody knows what Zoom is. Participate, you know, we do victim's rights, I do it every day on Zoom and the victims come on and they give their victim impact statements. And it's recorded and it's recorded in the courtroom with this blue man here, which is CourtSmart.

So they have every opportunity to participate. And I'm giving your client, your client the opportunity to participate now via Zoom and if he's like to speak I will hear from him.

So what I think you should do before you make the decision on your own, is to go out and call Mr. Lee and see what he wants to do and I'll wait for your response.

MR. KELLY: Your Honor --

THE COURT: You may step back, counsel, and call

your client and I will wait for your response.

MR. KELLY: Thank you, Your Honor.

THE COURT: You're welcome.

(Pause)

THE COURT: Counsel.

MR. KELLY: Apologies for the delay, Your Honor.

THE COURT: No problem.

MR. KELLY: I was able to reach my client. He is at work, but he would just request 30 minutes to get home and to a private place where we can participate.

THE COURT: That's fine.

MR. KELLY: Your Honor, we would just reserve all objections and the papers and took a notice of adequacy, but with that said, you know, he would just respectfully request a half hour to get into position to be on the Zoom.

THE COURT: Very well, thank you.

MR. KELLY: Thank you, Your Honor.

THE COURT: The Court's going to have to recess for 30 minutes. We'll bring Mr. Syed back up in about 30 minutes.

(Pause)

THE COURT: Court will stand in recess for 30 minutes.

THE CLERK: Please rise.

(Recessed at 2:44 p.m.; reconvened at 3:35 p.m.)

THE COURT: Call the case for the record.

MS. FELDMAN: Thank you, Your Honor. Calling State versus Adnan Syed, Case No. 199103042 through 046, Becky Feldman for the State. And with me is Erin Murphy who is chief counsel at my office.

MS. SUTER: Good afternoon, Your Honor, Erica Suter on behalf of Adnan Syed who's present in the courtroom to my left.

THE COURT: All right. Thank you. You can have a seat, counsel.

All right. Mr. Young Lee, are you with us on the Zoom, sir?

MR. LEE: Yes, I am, Your Honor.

THE COURT: All right. Good afternoon, sir.

MR. LEE: Good morning.

THE COURT: You're here today to make a statement and the Court is ready to hear from you.

MR. LEE: Thank you, Your Honor. Thank you for giving this time to speak.

I'm sorry if I -- sorry, my heart is kind of pounding right now.

THE COURT: That's fine.

MR. LEE: I apologize. There was some issues with Zoom. I personally wanted to be there in person, but Your Honor, it's -- I've been living with this for 20 plus years

and every day when I think it's over, when I look and think it's over or it's ended, it's over. It always comes back. And it's not just me, killing me and killing my mother and it's really tough to just going through this again and again and again.

I believe in the justice system, the Court, the State, and I believe they did a fine job of prosecuting Mr. Syed. And I believe the Judge did make the right decision, but just going through it again it's living a nightmare over and over again. It's tough.

And I am not -- like I said before, I trust the court system and just trust in the justice system and I am not against -- it's really -- it was kind of -- I was kind of blind sighted. I always thought the State was on my side, you know, but I don't know where -- I hear that there's a motion to vacate judgment and I thought -- honestly I felt honestly betrayed, why is my -- I kept thinking to myself, why is the State doing this.

And I am not against an investigation or anything of that sort that Ms. Feldman is doing. I am not against it at all. It just -- but the motion just to vacate judgment, it just -- it's really tough for me to swallow, especially from -- I am not an expert in legal matters, in law or anything like that, but I ask you, Judge, just to make a right decision that you see. But just this motion, I feel

that it's unfair, especially for my family just to live through it all and knowing that there's somebody out there just free of killing my sister. It's tough.

And I just wanted to say this in person, but I didn't know I had the opportunity, but I just -- and it's tough. Yeah. It's tough, it's tough. This is not a (indiscernible) for me, it's just real life, never ending after 20 plus years. Just on the thought that (indiscernible).

I just want the judge to know like the stuff that we're going through, our family, it's killing us. And I ask, Judge, that you make the right decision. That's all, Your Honor.

THE COURT: All right. Thank you, Mr. Lee.

The Court is mindful how difficult this day is for you and I understand it's a very emotional day for you. And I appreciate you joining the Zoom this afternoon to make this statement because it is important to hear from the victim or the victim's representative. And I thank you for doing that this afternoon, sir.

MR. LEE: You're welcome, Your Honor. Thank you for hearing me.

MR. KELLY: Your Honor, may I just say a couple of sentences?

THE COURT: Who's speaking?

MR. KELLY: This is Steve Kelly, Your Honor, I represent Mr. Lee in this proceeding.

THE COURT: No, I don't think that's appropriate at this time, sir. We've heard from the victim and I heard from you earlier. Thank you.

All right. The Court is satisfied that all the requirements under 8 -- Criminal Procedure 8-301.1 has been met by the State, therefore, the hearing will commence now. I'll hear from you, Ms. Feldman.

MS. FELDMAN: Thank you, Your Honor.

I have quite an amount of information I'd like to put on the record. Would it be okay if I sat during this?

THE COURT: Yeah, that's fine.

MS. FELDMAN: Thank you, Your Honor.

I know this Court is very familiar with ruling on motions to vacate filed by the State, as well as the statute permitting this motion remedy. And we are proceeding under the second standard of the statute, which is that the State's Attorney's Office received new information after judgment of conviction that calls into question the integrity of the conviction and that the interest of justice and fairness justifies vacating the conviction.

What is unusual in this case, unlike all of the other motions to vacate my office has filed in the past, is that should this motion be granted, we will be continuing

our investigation and we will not be asking the Court to dismiss the case at this time. Instead, we are requesting that a trial be set in.

The State's ultimate decision to proceed with a new trial or ultimately dismiss the case is contingent upon the results of the ongoing investigation. However, the State is requesting the defendant be released on his own recognizance, pending the investigation, should the Court grant this motion.

So why are we doing this now, I think a brief time line of the investigation would be helpful. The review of this case began in my office in October of 2021. We had some concerns after that review and requested DNA testing to be conducted on the victim's clothing, specifically touch DNA testing that had not been previously done before in March of 2022.

Brady material was discovered in June of this year and it was immediately turned over to Ms. Suter the same day. Uncovering this information was a pivotal moment in this case, but we decided not to file any motions at that time because we were still waiting for DNA results. And we also ended up conducting a fairly and lengthy investigation of this suspect based on those notes.

I cannot go into the details of the additional information we received at that time, but the information

satisfied the State that this person was a credible alternative suspect with a motive.

In July we received the DNA results orally and in August, we received the final report. In August after accessing all the information that we had, we believe that we had a duty to act.

You know, I've spent four weeks tracking three different motions because we had issues that were ineffective assistance, we had issues of newly discovered evidence, we have new evidence. So, you know, there's a lot that has been uncovered and we ultimately landed on pursuing a motion to vacate. Because in our opinion, based on what I'm going to present today that was the most appropriate motion to pursue.

I should also add that the defense was an active collaborative partner with us during this process.

There is an abundance of issues that give the State overwhelming cause for concern, including Brady violations, regarding an alternative suspect, new evidence regarding two alternative suspects, as well as serious reliability issues regarding the evidence presented at the original trial.

The first significant issue of concern is the discovery of documents in the State's trial file that the State concedes is Brady material. And for the public's

information, Brady material is evidence that is suppressed by the State, which is favorable to the defendant, either as to guilt or punishment, and the evidence was material, meaning that there was a reasonable probability that the result of the proceeding would have been different.

And generally the failure to turn over information received regarding an alternative suspect can constitute a reversible Brady violation.

I have drafted an affidavit and I provided it to Ms. Suter and I would like to offer it as an exhibit at this time for the Court as State's Exhibit 1. If I may approach your clerk.

THE COURT: Yes.

(Whereupon, State's Exhibit No. 1 was marked for identification)

MS. FELDMAN: And I'm just going to read a few of the most relevant portions of this affidavit to discuss how I came about the Brady material.

THE COURT: Okay.

MS. FELDMAN: I do not have personal knowledge as to how or where the State's Attorney's trial file was maintained from 1999 through the time it was delivered to the Attorney General's Office.

I also do not have personal knowledge as to when the trial file was delivered to the Attorney General's

Office. However, when I began reviewing the case in October of 2021, the file was still in possession of the Attorney General's Office.

On May 12th, 2022 I requested the trial file, specifically I requested copies of any reports regarding the investigation, cell phone reports and records, and witness interviews.

After several more communications, I ended up going on June 22nd, 2022 to review the files. The entirety of the trial file, as well as the post-conviction appellate files was contained in approximately 17 boxes.

It appeared that the first seven boxes or so mainly contained the trial file. The remainder of the boxes contained the post-conviction and related appeals file.

On June 22nd I was able to go through several of the boxes and photocopy various documents. Later that day, I scanned the documents and sent them to defense counsel. It was at this time it was discovered that two of the documents I scanned contained potential Brady material.

Without going into details that could compromise our investigation, the two documents I found are documents that were handwritten by either a prosecutor or someone acting on their behalf. It was something from the police file.

The documents are detailed notes of two separate

interviews of two different people contacting the State's Attorney's Office with information about one of the suspects.

Based on the context, it appears that these individuals contacted the State directly because they had concerning information about this suspect.

One of the interviews relayed that one of the suspects was upset with the victim and he would make her disappear, he would kill her. Based on other related documents in the file, it appears that this interview occurred in January of 2000. The interview note did not have an exact date of the interview.

In the other interview with a different person, the person contacted the State's Attorney's Office and relayed a motive toward that same suspect to harm the victim. Based on other related documents in the file, it appears that this interview occurred in October of 1999. It did not have an exact date of the interview.

The documents were difficult to read because the handwriting was so poor. The handwriting was consistent with a significant amount of the other handwritten documents throughout the State's trial file.

Based on the information in these interviews, defense counsel and the State conducted a fairly extensive investigation into this individual which remains ongoing.

The State would note that based on the investigation that resulted from finding this information, the State believes this motive, that the suspect had motive, opportunity and means to commit this crime.

Ms. Suter has possession of the defense attorney's trial file. According to Ms. Suter those Brady documents were not in the file, nor were there any notes that resembled in any way the information that was contained in the State's notes.

The information was also not contained in any of the disclosures made by the State during the trial. And I think it is fair to characterize that we were both shocked to see these documents.

To date, the trial file is still in the possession of the Attorney General's office; however, I was given access on multiple occasions upon my request to review the files and make photocopies of the documents contained in the boxes.

I understand that many attorneys and advocates have reviewed this file or portions of this file over the years. I do not have personal knowledge as to what parts of the file remain available to them. I also do not know why these documents were not previously discovered.

And, at this time, I would move this affidavit into evidence.

THE COURT: All right. Any objection?

MS. SUTER: No objection, Your Honor.

THE COURT: All right. So received.

(Whereupon, State's Exhibit No. 1 was admitted into evidence.)

MS. FELDMAN: Thank you, Your Honor.

I would also note, at this time, for the record, that I did show the Court the two documents containing the Brady information in camera last week, meaning off the record.

Based on the failure to disclose this information alone, we believe that the Defendant is entitled to a new trial.

The State concedes that this information about an alternative suspect would have been favorable to him and it was material because it would have helped substantiate an alternative suspect defense.

Next is the new evidence about the location of the victim's car. That was an investigation done by myself reviewing property records from the State Department of Assessments and Taxation in the Edgewood Road area where the victim's car was ultimately found. And, through other media, I was able to link a house that had been owned for many years was -- belonged or was owned by a person related to the family of one of the suspects.

This person had owned the home for many years and he had lived at that location in 1999.

This is new information. I think it can be considered newly discovered information and the State believes it would have provided persuasive support substantiating the defense that another person may be responsible for the victim's death.

The next few pieces of information that I wrote in the motion about various arrests and aggressive behaviors, I did that for a very specific reason. I don't -- I did not love having to disclose any information about our suspects but I thought it was important for the Court to have some information to see that these suspects are credible, viable suspects.

It's not just some random, you know, note that we found that -- of a person that has nothing to do with this case. This is leading down a path.

For example, one of the suspects attacked a woman in her vehicle unprovoked. This occurred after the trial. He was arrested and he was convicted for the -- that offense.

In another instance, one of the suspects engaged in serial rape and sexual assaults. This also occurred after the trial. This person was arrested and convicted.

One of the suspects engaged in violence against a

woman known to him, threatened her life and falsely confined her. These event happened prior to the trial of -- I'm sorry, prior to the trial in this case but we think that this is consequential information that needs to be reviewed further.

Next, and this goes to the reliability of the investigation conducted by the police, one of the suspects, as it turns out, was not properly cleared as a suspect based on the incorrect use of a polygraph examination.

Obviously, the results of lie detector tests are not admissible at trial but the issue goes to the credibility and reliability of the investigation, which is a factor that we took into consideration when reviewing this case.

It is also a factor in determining whether one of our suspects is, indeed, still a viable suspect.

In the first polygraph test, he failed it and it indicated that there was deception in whether he was involved in the death of the victim. But the police allowed him to come back and take another test because he claimed he was anxious.

According to our expert that we have consulted, in the case of a distracted examinee, test results will tend to be shifted toward the direction of inconclusive rather than deception. So the suspect's excuse for why there were

deceptive results does not track with the science.

Also the expert indicated that a recommendation for a re-test is not a normal practice.

Even more concerning is that the police then improperly cleared the suspect using a peak of tension test. Our expert said the following: he is not aware of any U.S. school that would support a polygraph result of deception indicated or no deception indicated when a KEOT test was employed as a stand alone test.

The test results reported in this session were no deception indicated. As such, it places the examiner's conclusion firmly outside of standard polygraph practices.

So the suspect should have never been cleared using that test.

The police relayed to the prosecution that the suspect passed that test with flying colors. So there was no further investigation into the suspect.

Moving on to the cell site evidence. The cell site records were a critical piece of information at trial and attempt to link the Defendant to the burial site and it was an attempt to corroborate the co-defendants statements.

There has already been a lot of litigation concerning the incoming call evidence so I'll try to condense it for the Court.

The incoming calls were not reliable. AT&T said

so in a disclaimer that the prosecutor withheld from its own experts.

The post-conviction court, Judge Welsh, granted the Defendant a new trial based on this issue alone but the appellate courts declined to address the issue on the merits.

The State has come to learn that this information is not reliable and should not have been presented at trial. The office believes that this is the proper course of inquiry rather than pursuing an investigation of ineffective assistance of counsel.

The State and the defense jointly consulted with an expert. And then I consulted two -- with two additional experts who are not named because of the confidential nature of their positions.

All of the experts consistently opined that the location of the actual phone during incoming calls can not be conclusively determined with the information that was offered into evidence.

The evidence offered at trial was sufficient to state specific infrastructure service to particular calls. But this information, alone, was inadequate to reach a conclusion where the phone was located.

Additional information, such as loading on the GSM network, signal strength indications or power measurements

would have been necessary to make this kind of finding. Therefore, this evidence should not have come in.

When the incoming call evidence is excluded, the strength of the State's original case is greatly weakened because there's no other reliable evidence placing the Defendant at the burial site.

And before I get into that additional information, I want to discuss Detective William Ritz's past misconduct.

Detective William Ritz was one of the detectives on this case. We are not making any claims or assertions, at this time, regarding his investigation into this case. However, evidence of past conduct that resulted in an innocent man serving 18 years in prison was a consideration in our calculation as to the reliability of the investigation conducted in this case.

Malcolm Bryant was wrongfully convicted of murder in 1999 and served 17 years before his exoneration. The City settled the case so there were no admissions of guilt or judicial findings. But the allegations made in the complaint were that Detective Ritz obtained a misidentification from the only eyewitness.

He failed to disclose evidence about a second eyewitness whose account contradicted and undermined the first eyewitness. He failed to disclose incriminating evidence pointing to the true perpetrator.

He used direct or indirect suggestions to manipulate the composite sketch to make it more closely resemble the person he suspected, Malcolm Bryant.

He also used a suggestive photo -- photographic lineup consisting of six individuals, including Malcolm Bryant.

He never interviewed or conducted any follow up investigation regarding any of the individuals who could have provided an alibi for Mr. Bryant.

He failed to investigate evidence of Bryant's whereabouts on the night of the murder and he did not disclose to Mr. Bryant or his counsel or the prosecutor some of the evidence he obtained about -- that incriminated another suspect.

It was also alleged that police received three 9-1-1 calls on the night of the murder; one of which was from a potential eyewitness that contradicted the other eyewitness's account. Detective Ritz did not investigate this witness's report and never disclosed the report to Mr. Bryant.

Also critical evidence obtained from the crime scene was never tested for DNA.

So Detective Ritz did not act as an objective investigator in that Bryant case. He made up his mind as to who he believed the perpetrator was and then manipulated the

evidence to support his theory and hid the evidence that did not support his theory.

He stated Malcolm Bryant sued the Baltimore Police Department and, in 2022, the City approved an $8 million settlement to the Bryant estate.

Regarding the reliability of Jay Wilds. Wilds' various versions of his statements, over time, presented a huge credibility issue for the State at trial. That is why the cell phone records and a few of the corroborating witnesses was so important.

The State has reviewed all of the statements to police, the ones that were recorded; the trial testimony at both trials; his subsequent statements to various media outlets. And the most concerning discrepancy is -- and there were quite a few, but we narrowed it down to the ones that we thought were the most concerning.

He gave two different accounts to the police about where he saw the victim's body. In February of '99, he told them it was in a trunk on Edmondson Avenue. In March, he changed it to the Best Buy and in 2014 he reported to the media that he saw it at his grandmother's house.

It should also be noted -- I'm sorry.

Oh, one other thing. The State's theory is that the victim was killed sometime after school, you know, around the 2:30 time frame and that the Defendant called

Wilds to pick him up at the Best Buy at 2:36.

However, Wilds testified that the Defendant did not call him until after 3:45 altering the State's time line significantly.

It should also be noted that Wilds received no prison time for his alleged involvement in the crime. He pled guilty to accessory after the fact and received a suspended sentence.

So it is extremely difficult for us to rely on his testimony alone without sufficient corroboration.

There is new information that I wrote in the motion about Christina Vincent (ph) and she was used to corroborate Jay Wilds' and the Defendant's whereabouts at some point during the day on January 13th. However, after being presented with new information with her -- of her class schedule in a 2019 documentary, her reaction was rather compelling when she realized that she's been wrong all these years and had the wrong date. So the events that she testified to could not have happened on January 13th. And I think there could be -- being incorrect about this date is also a possible scenario with the testimony of another corroborating witness, Jennifer Pusentary (ph).

When asked how she recalled the events, that they indeed occurred on January 13th, she responded because the police told her the phone calls occurred on the 13th. In

other words, she did not have an independent recollection of that date.

So this testimony is not enough to restore the faith, the State's faith, that these events did occurred as related by Wilds.

So, for all the reasons detailed in the State's motion to vacate and recounted before this Court, this case has an abundance of issues that give the State overwhelming cause to question the reliability of the Defendant's conviction.

The State's duty, in this case, was to ensure the person or persons responsible for Ms. Lee's death were brought to justice. The State's defective investigation of Ms. Lee's murder failed to properly rule out at least two suspects who had motive and opportunity to kill Ms. Lee.

The faulty investigation also developed evidence against the Defendant that was not reliable.

The State's motion to vacate acknowledges justice has been denied to Ms. Lee and her family by not ensuring the correct assailant was brought to justice.

I understand how difficult this is but we need to make sure we hold the correct person accountable. Our solemn duty, as prosecutors, is to seek justice over convictions. The Office of the State's Attorney believes that we are morally and ethically compelled, at this moment,

to take affirmative action to rectify the justice that was denied to Mr. Syed.

The State has lost confidence in the integrity of his convictions and believes that it is in the interest of justice and fairness that his convictions be vacated.

It is our promise that we will do everything we can to bring justice to the Lee family. This means continuing to utilize all available resources to bring a suspect or suspects to justice and hold them accountable.

Thank you, Your Honor.

THE COURT: All right. Thank you, Ms. Feldman. Ms. Suter.

MS. SUTER: Your Honor, first, my client and I would like to express our deepest sympathy to the family and loved ones of Hae Min Lee.

I would also like to state, for the record, that while I understand the State's position, my client is innocent.

Your Honor, I'd like to read from a letter that was Exhibit B to the defense reply, a January 6th, 2000 letter from Ms. Gutierrez, trial counsel to the State.

This letter is to once again request any and all Brady material in the above referenced matter. Despite the Defendant's multiple requests for disclosure of such material, exculpatory or mitigating information within the

State's possession continues to come to light as this case proceeds.

She goes on to state Maryland Rule 4-263 requires the State to disclose, without request, any material or information tending to negate or mitigate the guilt or punishment of the Defendant as to the offense charged.

Your Honor, Brady violations like the one that we are talking about in this case are an affront to any sense of justice and fair play. I proffer to the Court that the documents that the State now concedes are Brady were not in the defense file.

I further proffer that previous post-conviction counsel in this case would also state to the best of his knowledge and recollection, he has never seen these documents.

Mr. Syed's conviction was built on a flawed investigation and rests on the evolving narrative of an incentivized cooperating 19-year old co-defendant propped up by inaccurate and misleading cell phone location date. This was so in 1999 when Mr. Syed was a 17-year old child. It remains so today.

We agree with the State that Mr. Syed's sentence and conviction should be vacated.

THE COURT: All right.

MS. SUTER: I thank the Court for its

consideration.

THE COURT: Thank you. Did you want to admit the letter from Ms. Gutierrez into evidence?

MS. SUTER: Yes, Your Honor.

THE COURT: Defense 1, please.

(Pause)

THE COURT: Any objection from the State?

MS. FELDMAN: No objection, Your Honor.

MS. SUTER: Your Honor, I've marked it Defense Exhibit 1 and I would offer it.

(Whereupon, Defense Exhibit No. 1 was marked for identification.)

MS. SUTER: May I approach?

THE COURT: Yes.

(Whereupon, Defense Exhibit No. 1 was admitted into evidence.)

THE COURT: Anything else from the State?

MS. FELDMAN: Nothing else, Your Honor.

THE COURT: Okay.

(Pause)

THE COURT: Upon consideration of the papers, in camera review of evidence, proceedings and oral arguments of counsel made upon the record, the Court finds that the State has proven grounds for vacating the judgment of conviction in the matter of Adnan Syed.

Specifically, the State has proven that there was a Brady violation. Maryland Rule 4-263(d)(5) requires the State to disclose, without request, all material or information in any form, whether or not admissible, that tends to exculpate the defendant or negate or mitigate the defendant's guilt or punishment as to the offense charged.

Additionally, the State has discovered new evidence that could not have been discovered by due diligence in time for new trial under Maryland Rule 4-331(c) and creates a substantial and significant probability that the result would have been different.

It is this 19th day of September, 2022, by the Circuit Court for Baltimore City ordered that in the interests of justice and fairness, the State's motion to vacate judgment of conviction in the matter of Adnan Syed as to Indictment 199103042 Count One, murder in the first degree; Indictment No. 199103043 Count One, kidnaping; Indictment 199103045 Count One, robbery; and Indictment 199103046, false imprisonment is hereby granted.

And it is further ordered that the Defendant will be released on his own recognizance and placed on home detention with GPS monitoring with Alert, Inc.

And it is further ordered that the State shall schedule a date for a new trial or enter a nolle pros of the vacated counts within 30 days of the date of this order.

That is the order of the Court.

At this time, we will remove the shackles from Mr. Syed, please.

(Pause)

THE COURT: All right. Ladies and gentlemen, it is my understanding that the State and all counsel will hold a press conference outside the courthouse this afternoon.

So I will, at this time, will excuse the press to go down first.

If you're not a member of the press, you must remain seated.

(Pause)

THE DEPUTY: May we proceed, Your Honor?

THE COURT: Let me --

THE DEPUTY: May we proceed?

THE COURT: Let me know when the elevators are clear and the press has gotten on the elevator and the hall is clear. Then I'll release the spectators.

(Pause)

THE COURT: Mayor, how many people are in the hall waiting for the elevator? Is the hall clear?

THE DEPUTY: Yes, ma'am. The hall is clear.

THE COURT: I'm sorry.

THE DEPUTY: The hallway is clear, ma'am.

THE COURT: Oh, I told you to let me know.

THE DEPUTY: Yes, ma'am. (Indiscernible - 4:20:27).

THE COURT: Oh, okay. All right. So we're going to excuse this side of the room. Thank you.

(Pause)

THE DEPUTY: Okay, Your Honor.

THE COURT: All right. Center group and whoever else on the -- to my right, who wants to leave now, you may leave.

(Pause)

THE COURT: Mr. Syed's family may wait and leave with him. Anybody else who's not family, please leave the courtroom.

(Pause)

THE COURT: All right. So, Mr. Artee (ph), I assume these are lawyers from the public defender here.

UNIDENTIFIED SPEAKER: Yes.

THE COURT: Okay. And then the family.

Did the sketch artist, did you all want to leave now?

UNIDENTIFIED SPEAKER: We could. I mean I -- I'm not saying.

THE COURT: You can leave now.

UNIDENTIFIED SPEAKER: Before I leave?

THE COURT: No. The hearing's concluded, so

you're free to go.

UNIDENTIFIED SPEAKER: Okay.

(Pause)

THE COURT: Mr. Slout (ph), can you approach the bench, please.

MR. SLOUT: Yes, Your Honor. Leave this here?

THE COURT: Yeah, that's fine.

(Pause)

(Court confers)

THE COURT: All right. Mr. Syed, if you would turn around so that Mr. Slout could apply the ankle transmitter. He's going to come right to you.

You can stay where you are. He's going to come to you.

(Pause)

THE COURT: All right. We're finished, Mr. Slout? We're all done?

MR. SLOUT: I am for now, Your Honor, I'm finished.

THE COURT: Okay. Thank you.

MR. SLOUT: We're going to do the paperwork later.

THE COURT: Okay.

(Pause)

MR. SLOUT: May I be excused, Your Honor?

THE COURT: Yes. Thank you.

MR. SLOUT: Thank you.

THE COURT: All right. Mr. Syed, you're free to join your family.

(Pause)

THE COURT: For the people on the phone, this hearing is concluded. Thank you. Have a good day.

(Proceedings concluded at 4:34 p.m.)

* * * * *

TRANSCRIPTIONIST'S CERTIFICATE

I do hereby certify that the proceedings in the matter of State of Maryland v. Adnan Syed, Case No. 199103046, heard in the Circuit Court for Baltimore City on September 19, 2022, were recorded by means of electronic sound recording.

I further certify that, to the best of my knowledge and belief, page numbers 1 through 48 constitute a complete and accurate transcript of the proceedings as transcribed by me.

I further certify that I am neither a relative to nor an employee of any attorney or party herein, and that I have no interest in the outcome of this case.

In witness whereof, I have affixed my signature this 30th day of September, 2022.

_____

SHEILA ORMS

Attachment B

From: Becky Feldman [redacted]
Date: September 16, 2022 at 10:59:31 AM PDT
To: Young Lee [redacted]
Subject: RE: New suspects

Mr. Lee,

The court just scheduled an in-person hearing for **Monday, September 19th** at 2:00 PM (EST). It's an in-person hearing, but I asked the court for permission for you and your family to watch the proceedings virtually (if you would like). So, if you would like to watch, the link is below. Please let me know if anybody from your family will be joining the link, so I will make sure the court lets you into the virtual courtroom.

https://mdcourts.zoomgov.com/j/1601160942?pwd=clpETlozYU1qU0ZFTEFEa0Z4R3VmZz09

Please let me know if you have any questions.

Becky

From: Becky Feldman
Sent: Wednesday, September 14, 2022 12:47 PM
To: Young Lee [redacted]
Subject: RE: New suspects

Dear Mr. Lee,

I very much understand your family's position. I am so sorry for the pain this case is causing you.

I promise to keep you updated with all new developments. In the meantime, please don't hesitate to reach out with any questions.

Becky

From: Young Lee [redacted]
Sent: Tuesday, September 13, 2022 11:51 PM
To: Becky Feldman [redacted]
Subject: Re: New suspects

Mrs. Feldman,

Thank you for the email.

To be clear, As a family we disagree with your course of action and stand against the motion to vacate judgement. We believe that there is overwhelming evidence, and the court convicted the right person.

I hope you understand the emotional turbulence this trial is causing us. It seems there is never an end to it. But we understand your position as an attorney to do due diligence and cover all possibilities.

Sincerely,
Young Lee

On Tue, Sep 13, 2022 at 1:37 PM Becky Feldman [redacted] wrote:

> Hi Mr. Lee,
>
> Thank you again for contacting me today. Again, I am sorry that it is under these circumstances.
>
> Attached is a draft of the motion that we are likely filing tomorrow. The motion outlines the information we uncovered about the alternative suspects. I am happy to share with you the status of the investigation as we move forward. Of course, if you have any questions, please do not hesitate to reach out to me at any time.
>
> Sincerely,
>
> Becky K. Feldman
>
> Chief, Sentencing Review Unit
>
> Office of the State's Attorney for Baltimore City

120 E. Baltimore Street, 9th Floor

Baltimore, MD 21202

[redacted]