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 CIRCUIT COURT OF
 CULLMAN COUNTY, ALABAMA
 LISA MCSWAIN, CLERK

IN THE CIRCUIT COURT OF CULLMAN COUNTY, ALABAMA

STATE OF ALABAMA)
)
 V.) Case No.: CC-2015-000066.00
)
 MAYNOR JAY CEE)
 Defendant.)

ORDER

Jay Cee Maynor is charged in two separate indictments. Case number CC2015-66, consists of two counts. In count one of that indictment, Maynor is accused of attempting to murder James Michael Thomas Criscoe, while count two alleges that Maynor committed the offense of reckless endangerment by "firing a weapon in the direction of James Michael Thomas Criscoe and other patrons of Berlin Quick Stop." Based on testimony at an earlier bail hearing, the "other patrons" are alleged to have included several six year old children who were attending a birthday party at the store. In Case number CC2015-67, count one alleges that Maynor intentionally murdered Raymond Earl Brooks and count two charges Maynor with intentionally shooting or discharging a firearm into an occupied dwelling. The cases have been consolidated for trial.

Before his jury trial began, Maynor, acting by and through his then appointed trial attorney, negotiated a plea agreement with the District Attorney's Office. On November 14, 2016, Maynor waived his right to a jury trial and pleaded guilty to murder and attempted murder and was sentenced pursuant to his negotiated agreement to serve 40 years imprisonment for the murder offense and 20 years on the attempted murder offense. The sentences were ordered to run concurrently with one another and the remaining two charges against Maynor were dismissed as

a part of the plea agreement. On or about December 6, 2016 the court received a notice of appeal, dated November 30, 2016, which the court treated as a motion to withdraw his guilty pleas and motion for new trial. The court allowed Maynor's original counsel who negotiated the plea agreements to withdraw from the cases and appointed new counsel to represent Maynor for purposes of this motion.

The right to a trial before a jury of one's peers is among our most fundamental and cherished rights as American citizens. However, the right to a jury trial can be waived and once a valid waiver has been made and a knowing, intelligent and voluntary plea of guilty has been entered, a criminal defendant cannot simply change his mind and decide he wants to set aside his plea.

In his motion, Maynor argues his pleas were not knowingly, intelligently and voluntarily made and alleges several grounds for setting aside his guilty pleas. He argues that he should be permitted to withdraw his guilty pleas because: (1) he did not understand the consequences of pleading guilty, (2) he was "under extreme pressure and duress" to the extent that his plea was not knowingly, intelligently and voluntarily made, (3) he received ineffective assistance of counsel during plea negotiations and (4) because of newly discovered evidence that was unavailable to him at the time of his guilty plea.

The claims that Maynor did not understand the consequences of his pleas and that he received ineffective assistance of counsel

After hearing all evidence presented, the court finds no basis for Maynor's claim of ineffective assistance by his original trial counsel or his claim that he failed to understand the consequences of his guilty plea. The court conducted a complete and lengthy colloquy with Maynor and clearly he understood the consequences of pleading guilty.

The claim of newly discovered evidence

To establish a right to a new trial or to withdraw a guilty plea based on newly discovered evidence, a defendant must show all of the following: (1) that the evidence will probably change the result if a new trial is granted; (2) that the evidence has been discovered since the trial; (3) that it could not have been discovered before the trial by the exercise of due diligence; (4) that it is material to the issue; and (5) that it is not merely cumulative or impeaching. See Clements v. State, 521 So.2d 1378, 1381 (Ala.Crim.App.1988).

In support of this claim, Maynor argues that he should be allowed to withdraw his guilty pleas because he only discovered that his daughter was willing to testify at his trial *after* he entered his pleas of guilty. Maynor submits that if he had been aware his daughter would testify, that he would not have entered his guilty pleas. However, Maynor has failed to present sufficient evidence as to exactly what testimony his daughter would present at trial that would be material to his cases. Further, Maynor has not shown that such information could not have been discovered before he entered his guilty plea by the exercise of due diligence on his part. The court finds no reason to set aside Maynor's plea based on newly discovered evidence.

The claim of Duress or Extreme Pressure

Deciding whether to accept a plea agreement offered by the State that would result in a significant prison sentence or deciding to opt for a trial that could result in an acquittal or an even longer sentence is almost always a stressful circumstance that creates "extreme pressure" for every criminal defendant confronted with such a choice. However, the question is not whether Maynor was under pressure, but whether his free will was so overborne that his decision to enter his guilty pleas could not be considered freely and voluntarily made.

In this case, Maynor argues that he only pleaded guilty to avoid having his daughter go through the additional trauma of testifying about an incident of past sexual abuse at his criminal

trial. The man Maynor is alleged to have murdered, Raymond Earl Brooks, was found guilty of sexually abusing Maynor's daughter several years ago and was sentenced to a term in prison for that crime. Brooks was later released by the Alabama Department of Corrections after serving a portion of his sentence. Essentially, Maynor argues that he pleaded guilty not because he was guilty, but merely to spare his daughter from the trauma of testifying. Consequently, he argues, his guilty pleas were not freely and voluntarily entered.

A desire to protect one's child from additional trauma that could result from her having to testify about an incident of sexual abuse is certainly commendable, but Maynor's position with respect to this claim is inconsistent with his earlier argument made on to his claim of newly discovered evidence. The two arguments cannot be easily reconciled. Either Maynor knew his daughter was going to testify and wanted to spare her from the ordeal or he had no idea that she was going to testify until after he entered his guilty pleas. Further, while a desire to shield his daughter might have some bearing on Maynor's decision to plead guilty to the murder charge, it is difficult to understand how such a motivation would influence his decision to plead guilty to the unrelated charge of attempted murder of another individual.

In this case there is a paucity of evidence to support the withdrawal of Maynor's guilty pleas based on his claim of duress or extreme pressure. However, because the right to jury trial is such a sacred and precious thing that forms the very cornerstone of American jurisprudence, any review of a motion to withdraw a plea of guilty that surrenders that right must be carefully examined. It is not the responsibility of the court to determine the wisdom of a defendant's request to withdraw his guilty pleas, but only whether he is entitled under the law to such a withdrawal.

"In a proper case, the discretion of the court should be freely exercised to allow a

withdrawal of a plea of guilty; it should be liberally exercised especially in capital cases, in favor of life and liberty or innocence and liberty; and, as the law favors a trial on the merits, the court should resolve all doubts and exercise its discretion in favor of such a trial.

“....

“... Where the evidence as to whether the plea was entered through fear, duress, misunderstanding, or improper influence is in hopeless conflict, the better practice is to permit the plea to be withdrawn. Indeed, any doubt as to the plea's being voluntary should be resolved in accused's favor.” (Footnotes omitted.) *Griffith v. State*, 545 So.2d 236, 237 (Ala.1989), quoting 22 C.J.S. Criminal Law § 421(3) (1961).

The court finds it significant in this case that Maynor filed his motion to set aside his guilty pleas within a relatively short time after he pleaded guilty. After reviewing the evidence presented at the hearing on the motion to set aside his plea of guilty, the court finds, under the unique facts of this case, that any substantial doubts ought to be resolved in favor of allowing a jury trial. The court finds that the interest of justice are best served by allowing Maynor to set aside his guilty pleas and permitting the cases to be presented to a jury for consideration. It is therefore ORDERED that Maynor's guilty pleas in the above referenced cases are set aside and the cases shall be returned to the active jury trial docket.

DONE this 24th day of January, 2017.

/s/ GREGORY A NICHOLAS
CIRCUIT JUDGE