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**JUDGMENT, U.S. COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
(MARCH 26, 2025)**

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

HONG THU NGUYEN,

Petitioner-Appellant,

v.

CHRIS MCBEE, WARDEN,
CHILLICOTHE CORRECTIONAL CENTER;
ANDREW BAILEY,
ATTORNEY GENERAL STATE OF MISSOURI,

Defendants-Appellees.

No: 25-1041

Appeal from U.S. District Court for the
Western District of Missouri - Kansas City
(4:24-cv-00432-SRB)

Before: GRUENDER, SHEPHERD, and KOBES,
Circuit Judges.

JUDGMENT

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. The appeal is dismissed.

March 26, 2025

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Susan E. Bindler

**ORDER DENYING 59(B) MOTION
[TEXT ORDER]
(DECEMBER 19, 2024)**

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Subject: Activity in Case 4:24-cv-00432-SRB
 Nguyen v. McBee et al
 Order on Motion to Alter Judgment

Case Name: Nguyen v. McBee et al

Case Number: 4:24-cv-00432-SRB <https://ecf.mowd.uscourts.gov/cgi-bin/DktRpt.pl?177581>

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Docket Text:

Before the Court is Petitioner’s Motion to Alter or Amend Judgment, or in the Alternative for a Certificate of Appealability. (Doc. #[24].) “Rule 59(e) motions serve the limited function of correcting manifest errors of law or fact or to present newly discovered evidence” and these motions “cannot be used to introduce new evidence, tender new legal theories, or raise arguments which could have been offered or raised prior to entry of judgment.” *United States v. Metro. St. Louis Sewer Dist.*, 440 F.3d 930, 933 (8th Cir. 2006).

Here, Petitioner plainly admits that much of her argument regarding the Supreme Court decision in *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024) “could have been raised in her reply[.]” (Doc. #24, p. 9.) As such, and upon review of all of Petitioner’s arguments, the Court finds no basis to alter or amend its judgment. Further, the Court finds no basis to issue a certificate of appealability as Petitioner failed to show that the “issues [raised] are debatable among reasonable jurists, a court could resolve the issues differently, or the issues deserve further proceedings.” *Cox v. Norris*, 133 F.3d 565, 569 (8th Cir. 1997).

Therefore, Petitioner’s Motion (Doc. #[24]) is DENIED. Signed on 12/19/2024

Stephen R. Bough
District Judge

**JUDGMENT, U.S. DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
(NOVEMBER 22, 2024)**

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

HONG THU NGUYEN,

Petitioner,

v.

CHRIS MCBEE,
Warden of the Chillicothe Correctional Center, et al.,

Respondents.

Case No. 24-cv-00432-SRB

JUDGMENT IN A CIVIL CASE

X Decision by Court. This action came before the Court. The issues have been determined and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that

As for the reasons stated in this Court's prior Order (Doc. #22), Petitioner's *Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus* (Doc. #1) is DENIED, Petitioner's request for an evidentiary hearing is DENIED as moot, and a certificate of appealability is DENIED. No certificate of appealability has been or

App.6a

will be issued in this matter. This case is DISMISSED
WITH PREJUDICE.

Paige Wymore-Wynn
Clerk of Court

/s/ Tracey D. Peters
(by) Deputy Clerk

Date: November 22, 2024

**ORDER, U.S. DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
(NOVEMBER 21, 2024)**

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

HONG THU NGUYEN,

Petitioner,

v.

CHRIS MCBEE,
Warden of the Chillicothe Correctional Center, et al.,

Respondents.

Case No. 24-cv-00432-SRB

Before: Stephen R. Bough,
United States District Judge.

ORDER

Before the Court is Petitioner Hong Thu Nguyen's ("Petitioner" or "Nguyen") Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus ("Petition"). (Doc. #1.) For the reasons set forth below, the Petition is DENIED.

I. FACTUAL BACKGROUND

The following facts are primarily taken from the parties' briefs and exhibits, without further quotation or attribution unless otherwise noted.¹ Only those facts necessary to resolve the Petition are discussed below, and those facts are simplified to the extent possible. Additional facts are discussed in Section III.

A. The Underlying Case

In October 2015, a fire occurred at 2608 Independence Avenue in Kansas City, Missouri. That location contained multiple business on the ground floor, including LN Nails and Spa, and sixteen apartments on the second and third floors. While firefighters worked to stop the fire, a side wall collapsed, and two firefighters were killed and two more were seriously injured. The Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") ultimately determined that the fire started in a storage closet at LN Nails and Spa and that the fire was intentionally set. Nguyen had restocked the supply closet with approximately eight gallons of acetone and isopropyl alcohol earlier in the day, and was the last person to leave the salon before the fire started. Nguyen was taken into custody and while in a holding cell told another individual that she started the fire. Additionally, during the investigation, authorities learned of another fire in July 2013 at another nail salon run by Nguyen in Lee's Summit, Missouri. Ultimately, an ATF forensic auditor determined that Nguyen owned, operated, or had

¹ All page numbers refer to the pagination automatically generated by CM/ECF.

control of five nail salons, each of which suffered a catastrophic insurance event and closed.

In 2017, the State of Missouri (the “State”) filed a superseding indictment against Petitioner in the Circuit Court of Jackson County (the “Underlying Case”). The charges against Petitioner were as follows:

- Count I: Causing Catastrophe (Mo. Rev. Stat. § 569.070);
- Count II: Arson 1st Degree – Causing Serious Physical Injury or Death (Mo. Rev. Stat. § 569.040);
- Count III: Murder 2nd Degree – Felony Murder – During Perpetuation/attempted Perpetuation/flight from Perpetuation of a Felony, A Person Dies (Mo. Rev. Stat. § 565.021);
- Count IV: Murder 2nd Degree – Felony Murder – During Perpetuation/attempted Perpetuation/flight from Perpetuation of a Felony, A Person Dies (Mo. Rev. Stat. § 565.021);
- Count V: Assault 2nd Degree (Mo. Rev. Stat. § 565.060);
- Count VI: Assault 2nd Degree (Mo. Rev. Stat. § 565.060);
- Count VII: Arson 1st Degree (Mo. Rev. Stat. § 569.040).

Petitioner retained attorneys Molly Hastings and Alexandra Thanh Nguyen to defend her in the Underlying Case. A five-day long bench trial began on

July 16, 2023. On July 23, Jackson County Circuit Judge Joel P. Fahrenstock issued a verdict finding Petitioner not guilty on Count I and guilty on Counts II through VII.

On September 21, 2018, Judge Fahrenstock presided over a sentencing hearing, and ultimately sentenced Petitioner to a total of seventy-four years imprisonment.

B. Post Conviction Proceedings

As further discussed in Section III, Petitioner then unsuccessfully sought post-conviction relief from Missouri state courts. Petitioner explains that:

[She] appealed to the Missouri Court of Appeals in case no. WD85341. The court's opinion affirming the denial of post-conviction relief was issued June 27, 2023. No post-hearing motions were filed. The mandate of the court of appeals was issued on July 19, 2023. The opinion is published at 670 S.W.3d 256.

(Doc. #1, p. 3).

C. The Pending Petition

On June 28, 2024, Petitioner filed the pending Petition for habeas relief under 28 U.S.C. § 2254.² The Petition raises four grounds for relief:

- Ground One: Ms. Nguyen was denied due process of law under U.S. Const. amend. XIV

² The parties appear to agree, and the Court finds, that Petitioner timely filed the Petition.

when she was convicted of the offense of arson on legally insufficient evidence.

- Ground Two: Ms. Nguyen was denied due process of law under U.S. Const. amend. XIV when evidence from a forensic auditor, which was more prejudicial than probative, was admitted into evidence against her . . . objection.
- Ground Three: Ms. Nguyen was denied due process of law and her right to present a defense under U.S. Const. Amends. VI and XIV when her counsel was denied the right to argue that another person committed the crime.
- Ground Four: Ms. Nguyen was denied her right to effective assistance of counsel at sentencing under U.S. Const. Amend. VI when trial counsel failed to present to the sentencing court full information about her background.

(Doc. #1, pp. 20, 24, 27, 28.)

Respondents are Chris McBee (“McBee”) and Andrew Bailey (“Bailey”) (collectively, “Respondents”). McBee is the warden of the Chillicothe Correctional Center and Bailey is the Attorney General of the State of Missouri. Respondents oppose the Petition, and the parties’ arguments are addressed below.

II. LEGAL STANDARD

Under section (d) of the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), 28 U.S.C. § 2254, when a claim has been adjudicated on the

merits in state court, an application for a writ of habeas corpus shall not be granted unless the state court adjudication:

- (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
- (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

Johnson v. Dormire, No. 4:02CV1957CDP, 2005 WL 2298185, at *2 (E.D. Mo. Sept. 21, 2005) (quoting 28 U.S.C. § 2254(d)).

The “‘contrary to’ clause is satisfied if a state court has arrived at a conclusion opposite to that reached by the Supreme Court on a question of law or confronts facts that are materially indistinguishable from a relevant Supreme Court precedent but arrives at the opposite result.” *Shafer v. Bowersox*, 329 F.3d 637, 646 (8th Cir. 2003) (cleaned up). “A state court ‘unreasonably applies’ clearly established federal law when it ‘identifies the correct governing legal principle from the Supreme Court’s decisions but unreasonably applies that principle to the facts of the prisoner’s case.’” *Id.* at 646–47 (cleaned up). “A case cannot be overturned merely because it incorrectly applies federal law, for the application must also be ‘unreasonable.’” *Id.* at 647 (citations and quotation marks omitted).

“Under subsection (2), ‘a state court decision involves an unreasonable determination of the facts in light of the evidence presented in state court proceed-

ings, 28 U.S.C. § 2254(d)(2), only if it is shown by clear and convincing evidence that the state court’s presumptively correct factual findings do not enjoy support in the record.” *Johnson*, 2005 WL 2298185 at *3 (quoting *Lombolt v. Iowa*, 327 F.3d 748, 752 (8th Cir. 2003)). However, this “deferential standard of review” applies “only if the state court adjudicated the prisoner’s claims on the merits.” *Taylor v. Bowersox*, 329 F.3d 963, 967–68 (8th Cir. 2003).

When, as here, a petitioner asserts ineffective assistance of counsel, the petitioner must demonstrate that her attorney’s performance (1) “fell below an objective standard of reasonableness” and that (2) “the deficient performance” actually prejudiced her. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984). “A court considering a claim of ineffective assistance of counsel must apply a ‘strong presumption’ that counsel’s representation was within the ‘wide range’ of reasonable professional assistance.” *Harrington v. Richter*, 562 U.S. 86, 104 (2011) (quoting *Strickland*, 466 U.S. at 689). This standard requires a petitioner to show “that counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” *Strickland*, 466 U.S. at 687. To satisfy the prejudice prong, a petitioner must “show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceedings would have been different.” *Id.* at 694.

Habeas relief cannot be granted unless a petitioner shows the state appellate court’s decision “was contrary to, or an unreasonable application of, the standard articulated by the [United States] Supreme Court in *Strickland*.” *Owens v. Dormire*, 198 F.3d 679,

681 (8th Cir. 1999). “Establishing that a state court’s application of *Strickland* was unreasonable under § 2254(d) is . . . difficult. The standards created by *Strickland* and § 2254(d) are both ‘highly deferential,’ and when the two apply in tandem, review is ‘doubly’ so. *Harrington*, 562 U.S. at 105.

III. DISCUSSION

a. Whether Petitioner was denied due process of law when she was convicted of arson for the 2013 Lee’s Summit fire

Under Ground I, Petitioner first argues that the trial court erred in convicting her of first-degree arson related to the 2013 Lee’s Summit fire because there was insufficient evidence to support the conviction. Respondents argue that this claim is “meritless.” (Doc. #17, p. 9.)

“[T]he critical inquiry on review of the sufficiency of the evidence to support a criminal conviction . . . [is] whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 318 (1979). In Missouri, a person commits arson in the first degree if she:

(1): Knowingly damages a building or inhabitable structure, and when any person is then present or in near proximity thereto, by starting a fire or causing an explosion and thereby recklessly places such person in danger of death or serious physical injury . . .

Mo. Rev. Stat. § 569.040.1.

The Court here reviews the Missouri Court of Appeal's determination of the sufficiency of the evidence:

On the day of the fire, Nguyen decided to close the store early. She directed her other two employees to wait for her outside and was the last person to leave the salon. The store employees did not smell or observe anything unusual before they left. All of the salon's equipment was working properly when they left . . . The fire began inside Nguyen's work desk. A power strip was found melted inside Nguyen's desk. When the ATF ran tests on the same model power strip, they could not get it to fail on its own and start a fire. When they forced the power strip to fail, there was immediately an acrid smoke upon ignition of the power strip which would have been noticeable by store employees if the fire started prior to their leaving the salon for the day . . . The investigators concluded that none of the ATF's accidental simulations matched the fire's timeline. The fire was classified as being intentionally set. The salon was insured for \$30,000 but the insurance company paid out \$50,000. Nguyen had owned, operated, or controlled five nail salons. Each of them had suffered some type of catastrophic event and had closed. All of the salons were purchased with cash and none of them reopened after the catastrophic event. Nguyen's financial records showed employment gaps ranging from seven months to one year. During those times, Nguyen appeared to live off of the

insurance proceeds from the previous insurance event.

(Doc. #17-5, pp. 8-9.)

“A review of the record in the light most favorable to the prosecution convinces [the Court] that a rational factfinder could readily have found the [P]etitioner guilty beyond a reasonable doubt of first-degree [arson] under [Missouri] law.” *Jackson*, 443 U.S. at 324. There was substantial circumstantial evidence linking Petitioner to the crime and the factfinder could have found that she met all the elements of the offense beyond a reasonable doubt. *See State v. Bolds*, 913 S.W.2d 393, 398 (Mo. Ct. App. 1996) (“All elements of arson may be proven by circumstantial evidence”). While Petitioner relies in her traverse on the Sixth Circuit case *Brown v. Palmer*, 441 F.3d 347 (6th Cir. 2006) for the proposition that state’s evidence was insufficient, that case involved a different set of facts, where the court had found insufficient evidence on the required elements of the offense. Here, by contrast, the Court agrees with the Respondents that “based on the extensive amount of evidence presented in support of the [arson] count . . . at trial[,]” that “Nyugen has failed to establish that ‘no rational trier of fact could have agreed with the [factfinder.]’” (Doc. #17, p. 10) (quoting *Cavazos v. Smith*, 565 U.S. 1, 2 (2011)).

Ultimately, considering the above, Petitioner’s request for relief under Ground One is denied. *See Jackson*, 443 U.S. at 319.

b. Whether Petitioner was denied due process of law when evidence from a financial auditor was admitted at trial

Under Ground II, Petitioner argues that the trial court improperly admitted evidence from a financial auditor. While the trial court admitted the evidence for motive only, not propensity, Petitioner argues that this evidence was more prejudicial than probative. The Respondents disagree and argue that this claim “pertain[s] only to the proper application of Missouri evidentiary rules,” and therefore, “fail[s] to provide a basis for federal habeas relief.” (Doc. #17, p. 12.) Alternatively, the Respondents argue that Petitioner’s claim is meritless.

“Ordinarily the admissibility of evidence at trial is a matter of state law and will not form the basis for federal habeas relief. A federal court may, however, grant habeas relief when a state court’s evidentiary ruling infringes upon a specific constitutional protection or is so prejudicial that it amounts to a denial of due process.” *Turner v. Armontrout*, 845 F.2d 165, 169 (8th Cir. 1988) (internal citation omitted).

While Petitioner argues that the trial court denied her due process of law by allowing evidence of the financial auditor, the Missouri Court of Appeals analyzed and rejected that argument:

[A] senior forensic auditor from the ATF, testified about a financial analysis she did of Nguyen. She discussed the financial history of five salons: PS Nails, LN Nails, Nails USA, AV Nails, and Perfect Nails. Nguyen owned, operated, or had control of each business. The banks accounts of those businesses were

used to pay Nguyen's personal expenses such as groceries and automobile gas. Each business was purchased for cash, and each business suffered a catastrophic insurance event and closed. None of the businesses reopened. . . . When making insurance claims, Nguyen claimed the income she lost from the business being closed. She claimed more than double what she was allowed to claim. . . . The State claimed that Nguyen supported herself by receiving insurance payouts. . . . This was her motive for setting the fires at issue in the current case. [The forensic auditor's] testimony was evidence of such a motive. . . . The circuit court expressly admitted [the forensic auditor's] testimony with respect to motive and stated it would not consider the evidence with respect to propensity. . . . Notably, Nguyen does not challenge the circuit court's conclusion that the evidence of prior insurance payouts was relevant to establish her motive. Instead, she argues only that the (unchallenged) probative value of the evidence was outweighed by the potential of unfair prejudice, because the evidence would inevitably lead the circuit court to conclude that she had a propensity to commit insurance-related arson. However, this was a bench trial, and we 'presume that the trial court knows and follows the law.' *State v. Washington*, 512 S.W.3d 118, 123 (Mo. App. 2017). We therefore reject Nguyen's contention that the circuit court must have improperly considered the evidence as propensity evidence.

(Doc. #17-5, pp. 12-14.)

The Court finds no fault with the above analysis as a state court evidentiary ruling should only be reversed if the “[P]etitioner . . . show[s] that the alleged improprieties were ‘so egregious that they fatally infected the proceedings and rendered h[er] entire trial fundamentally unfair.’ *Anderson v. Goeke*, 44 F.3d 675, 679 (8th Cir. 1995) (citing *Hamilton v. Nix*, 809 F.2d 463, 470 (8th Cir. 1987)). Here, Petitioner has not carried that burden by “show[ing] that there is a reasonable probability that the error complained of affected the outcome of the trial-i.e., that absent the alleged impropriety the verdict probably would have been different.” *Id.* Under Missouri law, as pointed out by the Missouri Court of Appeals, “evidence of other crimes is admissible if it tends to establish motive[.]” *State v. Phillips*, 890 S.W.2d 698, 699 (Mo. Ct. App. 1995). The trial court properly admitted evidence of the financial auditor for that purpose only.

Therefore, the Court finds that because the decision of the Missouri Court of Appeals was neither contrary to clearly established federal law nor involved an unreasonable application of clearly established federal law, Petitioner’s request for relief under Ground Two is denied. *See* 28 U.S.C. § 2254(d)(1)-(2).

c. Whether Petitioner was denied due process of law and her right to present a defense when the trial court did not allow her counsel to present evidence that another person committed the crime

Under Ground III, Petitioner argues that the trial court improperly “sustained the state’s objection

to defense counsel’s argument that B.T.³ was the real perpetrator of the arson . . . resulting [in] deaths and injuries.” (Doc. #1, p. 28.) The Respondents argue that claim is meritless as “[t]he Missouri Court of Appeals concluded that the record did not indicate that the trial court prevented Nguyen from presenting evidence that B.T. was the cause of the LN Nails fire.” (Doc. #17, pp. 13-14.)

Under Missouri law, “[a] defendant may introduce evidence that another person committed a crime if a proper foundation is laid, and the probative value of the evidence is not substantially outweighed by its costs (such as undue delay, prejudice or confusion). *State v. Shegog*, 521 S.W.3d 628, 636 (Mo. Ct. App. 2017) (internal cite and quotation marks omitted). However, “evidence which can have no other effect than to cast a bare suspicion on another, or to raise a conjectural inference as to the commission of the crime by another, is not admissible.” *State v. Nash*, 339 S.W.3d 500, 513 (Mo. banc 2011).

While Petitioner argues that the trial court improperly disallowed evidence that someone else started the fire at LN Nails and Spa, the Missouri Court of Appeals analyzed and rejected that argument:

Prior to trial, the State filed a motion in limine requesting in pertinent part that Nguyen be prohibited from engaging in cross-examination designed to cast suspicion on B.T. for the arson. Nguyen did not object to the motion. During trial, while cross-examining B.T.,

³ B.T. was the owner of the building where the fire occurred at LN Nails and Spa.

Nguyen sought to present evidence of his financial records and past insurance claims to impeach similar evidence presented by the State with respect to Nguyen. In response to the State's objection, defense counsel argued that B.T. had a history similar to Nguyen but had not been investigated as a suspect. Defense counsel stated:

I'm not suggesting that he lit the fire, but I do want to be able to point out any benefits that he's received, records that we know of, and the claims that he's made and to be able to make an arguable comparison that they are no different, in fact, they may be worse than that of my client.

The State argued that Nguyen was making an improper implication that B.T. should have been a suspect in the arsons. The circuit court allowed Nguyen to present the evidence for purposes of impeaching the State's financial expert. It stated it would not consider it as evidence that B.T. had a motive for the arson. During closing argument, . . . [d]efense counsel stated, '[B.T.] doesn't care about this building. We are not arguing that B.T. made it burn. But we know he really didn't care if it did.' The State objected that the inference that B.T. was acting 'nefariously' with respect to the building was in violation of the motion in limine. The court stated, 'I think she directly said that it was not her intention to say that he set the fire' and defense counsel confirmed, 'Correct.'

Nguyen states in her brief [to the Missouri Court of Appeals] that she was not permitted to present evidence that B.T. caused the LN Nails fire. She does not cite where this occurred in the record. To the contrary, the record indicates that Nguyen affirmatively stated multiple times that she was not claiming B.T. was to blame for the fire. There is no evidence that Nguyen was prevented from presenting evidence that B.T. was the cause of the LN Nails fire.

(Doc. #17-5, pp. 15-16.)

The Court finds no fault with the above analysis. Petitioner points in her traverse to two points in the trial transcript where she argues that the trial court stated it would not consider evidence of B.T.'s motive, particularly pages 217 and 1369. *See* (Doc. #17-1.) Both points appear to reference events the Missouri Court of Appeals discussed in its opinion—namely, that defense counsel was seeking to introduce evidence of B.T.'s financial information to “impeach” the state’s financial auditor and argue in closing that B.T. did not care about the building but not that he “made it burn.” (Doc. #17-1, pp. 216, 1368.) Ultimately, the Court is unclear as to Petitioner’s argument that these two points point to “erroneous” rulings. (Doc. #21, p. 4.) The Court finds nothing in the record, nor does Petitioner point the Court to, any event where defense counsel explicitly attempted to introduce evidence that B.T. started the fire and the trial court did not permit her to do so.

Further emphasizing this point, the Missouri Court of Appeals found that while the state had filed a motion in limine seeking to prohibit Petitioner from

casting suspicion on B.T. for the arson, Petitioner failed to object to that motion or make an offer of proof to preserve the issue for appeal. Ultimately, it appears that Petitioner did not properly preserve this issue for appeal, as noted by the Missouri Court of Appeals in its opinion, and is “procedurally barred from raising this ground in this federal habeas action.” *Woolfolk v. Bowersox*, No. 4:09 CV 367 HEA/DDN, 2012 WL 943095, at *7 (E.D. Mo. Feb. 15, 2012) (finding that petitioner’s argument that the trial court improperly granted a motion in limine was procedurally barred for failing to make an offer of proof during trial.) And further, even if Petitioner were not procedurally barred, the Court finds that because the decision of the Missouri Court of Appeals was neither contrary to clearly established federal law nor involved an unreasonable application of clearly established federal law, Petitioner’s request for relief under Ground Three is denied. *See* 28 U.S.C. § 2254(d)(1)-(2).

d. Whether Petitioner was denied effective assistance of counsel at sentencing

Under Ground IV, the Court lastly considers whether Petitioner has shown that the Missouri Court of Appeals unreasonably found she did not show the prejudice necessary to obtain habeas relief. *Strickland*, 466 U.S. at 697, 104 (“If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice . . . that course should be followed.”). Petitioner contends she was prejudiced because her counsel “failed to present to the sentencing court full information about her background.” (Doc. #1, p. 28.) Some of this background includes information on her traumatic and impoverished upbringing in Vietnam, her lack of education, the bullying she experienced from being

the daughter of an American soldier, and her role as a single mother to four children. The Respondents argue this claim is meritless because “the state courts reasonably applied clearly established federal law in denying [this] claim.” (Doc. #17, pp. 15-16.)

The Missouri Court of Appeals found that Petitioner failed to show prejudice:

Because the mitigation evidence presented by trial counsel during the sentencing hearing was highly similar and correlated to the evidence that was omitted, we find that the omitted evidence would not have materially enhanced the persuasive value of the mitigation evidence before the sentencing court. . . . Given the significant evidence of spousal abuse and childhood trauma and deprivation Nguyen suffered that was presented at Nguyen’s sentencing, we agree with the [trial] court that the omission of additional details related to Nguyen’s social history do not warrant setting the Judgment aside because there is not a reasonable probability that the additional details would have resulted in a lower sentence.

(Doc. #17-10, p. 10.)

In light of the above, the Court finds Petitioner has failed to show she is entitled to habeas relief. While Petitioner argues the omitted evidence was “more extensive than that presented at sentencing[.]” the Court finds Petitioner has failed to show that the Missouri Court of Appeals unreasonably applied *Strickland* by finding a lack of prejudice. (Doc. #21, p. 8.)

For these reasons, and for the additional reasons stated by Respondents, Petitioner has failed to show that the Missouri Court of Appeals' decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States" or "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." *See* 28 U.S.C. § 2254(d)(1)-(2).

IV. Certificate of Appealability

Under 28 U.S.C. § 2253(c), the Court may issue a certificate of appealability only if a petitioner "has made a substantial showing of the denial of a constitutional right." To make this showing, "[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Neither party appears to have raised this issue in its briefing. However, as a "district court must issue or deny a certificate of appealability when it enters a final order adverse to the [habeas] applicant[.]" for the reasons discussed above, the Court finds Petitioner has not met the required standard, and a certificate of appealability will therefore not be issued. Habeas Rule 11(a).

V. Conclusion

Accordingly, it is hereby ORDERED that:

- (1) Petitioner Hong Thu Nguyen's Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus (Doc. #1) is DENIED;

- (2) Petitioner's request for an evidentiary hearing is DENIED as moot and as unnecessary;
 - (3) A certificate of appealability is DENIED. No certificate of appealability has been or will be issued in this matter; and
 - (4) This case is DISMISSED WITH PREJUDICE.
- IT IS SO ORDERED.

/s/ Stephen R. Bough
United States District Judge

Dated: November 21, 2024

**OPINION, MISSOURI COURT OF
APPEALS, WESTERN DISTRICT
(JUNE 27, 2023)**

670 S.W.3d 256

MISSOURI COURT OF APPEALS,
WESTERN DISTRICT

THU HONG NGUYEN,

Appellant.

v.

STATE OF MISSOURI,

Respondent,

WD 85341

Appeal from the Circuit Court of Jackson County,
Missouri, The Honorable Joel P. Fahnestock, Judge.

Before Division Three: Janet SUTTON,
Presiding Judge, Cynthia L. MARTIN,
and Edward R. ARDINI JR., Judges

OPINION

Cynthia L. Martin, Judge

Thu Hong Nguyen (“Nguyen”) appeals from a
judgment denying her Rule 29.15¹ motion for post-

¹ All rule references are to Missouri Supreme Court Rules (2020),
unless otherwise indicated.

conviction relief following an evidentiary hearing. Nguyen asserts the motion court clearly erred in denying her claim that she was prejudiced by her trial counsel's failure to present all available mitigation evidence at her sentencing proceeding. Finding no error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Nguyen immigrated to the United States from Vietnam in the early 1990s when she was a young adult. In 2015, she was running a nail salon ("LN Nails") which was located on the first floor of a three-story apartment building in Kansas City, Missouri. In the same building were sixteen apartments and other businesses. On October 12, 2015, Nguyen intentionally set fire to the nail salon. The placement of the fire in the storage closet which contained acetone and isopropyl alcohol, along with the amount of fuel and accelerant Nguyen used, contributed to the speed with which the fire spread throughout the building and concealed the main body of the fire from the outside of the building. When firefighters arrived, they began clearing the ground floors and apartments, searching for people left inside. While firefighters fought the flames, the western side of the building collapsed, burying firefighters working in the alley. Two firefighters were killed and two were severely injured.

During a police interview, Nguyen claimed that her boyfriend was the owner of LN Nails, that she had nothing to hide because the building was not hers, and that her boyfriend helped her close the salon the night of the fire. However, Nguyen's boyfriend was at a nearby casino when the fire was set. Further investigation revealed that Nguyen had a pattern of

purchasing a nail salon in another person's name and thereafter making an insurance claim after the business suffered a catastrophic event, usually a fire. Nguyen received \$267,000 in insurance proceeds for fourteen different claims over an eight-year period which enabled her to go long periods with no employment, living on the insurance proceeds alone. In 2013, Nguyen owned another nail salon in Lee's Summit, Missouri with her 21-year-old son. In July 2013, that salon suffered a fire and it was never reopened.

The State charged Nguyen with one count of causing catastrophe, one count of first-degree arson for deliberately causing the fire inside of LN Nails, two counts of felony murder, two counts of second-degree assault, and one count of first-degree arson for deliberately causing a fire inside of her Lee's Summit nail salon in 2013.

Nguyen's five-day-long bench trial began on July 16, 2018. She was represented by two attorneys. Nguyen's primary counsel "handled all of the courtroom work [including all presentation of evidence at trial and the sentencing hearing,] witness interviews and depositions," while secondary counsel "was primarily responsible for client communication and keeping the family abreast of what was going on in the case." Nguyen's secondary counsel spoke Vietnamese, and she was familiar with cultural nuances which affected Nguyen's upbringing, as she was born in and spent a portion of her childhood in Vietnam.²

The trial court found Nguyen not guilty of causing a catastrophe, but guilty on all other counts.

² Nguyen utilized a Vietnamese interpreter throughout trial.

A sentencing hearing was held on September 21, 2018. The State called several family members of the victims. Nguyen presented evidence of mitigation from one of her sons who testified about her history of hardships, both while growing up in Vietnam and after she moved to the United States, including that Nguyen never received an education but she nevertheless worked hard as a single mother to support her four sons without help from their father. Nguyen also presented a letter from Thich Hoa Dao (“Dao”), a Buddhist nun at Nguyen’s temple. The letter outlined, *inter alia*, that Nguyen’s father, an American soldier during the Vietnam War, abandoned her in Vietnam to face racial discrimination, that Nguyen was ostracized by her community because she was interracial, that she was never afforded proper education as a child and instead had to work long hours to support her stepfather and four half-brothers, and that Nguyen was physically and verbally abused by her husband.

The trial court sentenced Nguyen to thirty years for the LN Nails arson, thirty years for each count of felony murder, fifteen years for the Lee’s Summit nail salon arson, and seven years for each count of second-degree assault. Nguyen’s sentences for the felony murder and assault counts were ordered to run consecutively but concurrent to the arson sentences, for a total of seventy-four years in prison. (Tr. 1477). Nguyen’s conviction was affirmed on direct appeal. *State v. Nguyen*, 598 S.W.3d 927 (Mo. App. W.D. 2020).

Nguyen filed a timely *pro se* motion for post-conviction relief pursuant to Rule 29.15. The motion court appointed counsel who filed a timely amended motion on November 23, 2020 (“Amended Motion”) which asserted that Nguyen’s representation at

sentencing was ineffective because counsel failed to investigate Nguyen's "substantial social history" which "would have revealed mitigation evidence" that "would have been presented to the [trial court and there] is at least a reasonable probability that the [trial court] would have given [Nguyen] a lower sentence." At the evidentiary hearing, post-conviction counsel presented evidence from primary and secondary counsel, as well as Dr. Christopher Robertson ("Dr. Robertson"), a certified forensic examiner who was retained to conduct an evaluation of Nguyen.

Dr. Robertson testified that while interviewing Nguyen, he learned that she was raised in an impoverished environment in Vietnam where she did not attend school and was required to work from the age of ten to help support the rest of the family. Prior to working, Nguyen was forced to raise her half-siblings. Dr. Robertson testified that Nguyen relayed that she did not know her biological father (who was an American soldier), that her mother and stepfather were emotionally neglectful and favored her half-siblings, and that her stepfather was physically abusive. Nguyen described that as a child, she was taunted by her peers because she was interracial. Dr. Robertson explained that Nguyen married her husband when she was eighteen, and they moved to the United States where he controlled the finances and sent substantial portions of their income back to his family in Vietnam. Nguyen's husband eventually abandoned the family, taking their savings.

Primary counsel testified that she relied on secondary counsel to help her gather mitigation evidence for sentencing. Primary counsel testified about her understanding of Nguyen's difficult background—

she knew that Nguyen was “ostracized as a child” and treated differently by her mother because her father was an American soldier, that Nguyen grew up in extreme poverty and had a very limited education; and, that she was treated poorly and abandoned by her husband. Primary counsel testified that she made a strategic decision to forgo further investigation into Nguyen’s background because she believed they had sufficient evidence to introduce at sentencing. Secondary counsel testified that prior to sentencing, she spoke with Nguyen, Nguyen’s children, and Dao seeking mitigation evidence. Secondary counsel testified that she had more information about Nguyen’s social history than primary counsel, but she did not present the evidence or speak to primary counsel about the additional history because “this court found [Nguyen] guilty despite the evidence. I did not want to bring her unfortunate history to the Court as I did not think it would make a difference.”³ Secondary counsel testified that she was aware that Nguyen was abused by her stepfather, that she experienced trauma as a result of extensive taunting by her peers as a child in Vietnam, that her mother neglected her due to her skin color, and that Nguyen’s husband took advantage of Nguyen’s ability to immigrate to the United States and then financially abused her and isolated her and their children.

The motion court entered a judgment (“Judgment”), which included findings of fact and conclusions of law, denying Nguyen’s Amended Motion. In regards to the claim that trial counsel failed to adequately

³ The motion court also served as the trial court for Nguyen’s criminal trial and sentencing

investigate Nguyen's social background, the motion court found that their investigation was adequate. The motion court referenced primary counsel's testimony about her understanding of Nguyen's social history, and found that secondary counsel "had a full understanding of [Nguyen's] social history from her investigation but chose not to present the full extent of that history at sentencing and not to share all the details of [Nguyen's] upbringing with [primary counsel]." But, the motion court did conclude that "the omission of evidence related to [Nguyen's] social background at the sentencing hearing based on trial counsel's personal belief that presentation of [Nguyen's] full social history 'would not make a difference to this Court' fell below an objective standard of reasonableness and was not reasonable trial strategy," and that "withholding information from [primary counsel] . . . also was not a reasonable trial strategy."

However, the motion court concluded that Nguyen had not established that she was prejudiced as a result of her counsel's deficient performance because:

[The trial court] was presented most [of the] details related to [Nguyen's] unfortunate social background through [Dao's] letter and through [her son's] testimony. Before a reasonable court, the additional details regarding [Nguyen's] social background—the physical abuse by [Nguyen's] stepfather, the emotional neglect by her mother in favor of her halfsiblings, and [Nguyen] being taunted by

her peers in Vietnam—would not have resulted in a lower sentence[.]⁴

Nguyen appeals.

STANDARD OF REVIEW

“Appellate review of the [motion] court’s action on [a] motion filed under . . . Rule 29.15 shall be limited to a determination of whether the findings and conclusions of the [motion] court are clearly erroneous.” Rule 29.15(k). “A judgment is clearly erroneous when, in light of the entire record, the court is left with the definite and firm impression that a mistake has been made.” *Stark v. State*, 644 S.W.3d 583, 587 (Mo. App. W.D. 2022) (quoting *Eckert v. State*, 633 S.W.3d 435, 441 (Mo. App. W.D. 2021)).

ANALYSIS

Nguyen raises one point on appeal which asserts that the motion court clearly erred when it concluded that she had not established that she was prejudiced as a result of trial counsel’s failure to present all available mitigation evidence at her sentencing hearing.

⁴ The trial court’s Judgment also separately concluded that Nguyen failed to establish that her trial counsel’s decision not to present mitigating evidence of Nguyen’s social history through an expert witness fell below an objective standard of reasonableness because “Dr. Robertson did not testify that Nguyen’s diagnosis [of major depressive disorder with psychotic features after she was incarcerated] had any effect on [Nguyen’s] actions in this case, nor did he testify as to his opinion regarding any impact her social history may have had on her actions; [moreover,] Dr. Robertson’s testimony was not necessary as the social background information he testified to was known by Movant and her family.” Nguyen has not challenged that conclusion on appeal.

The standard for a claim of ineffective assistance of counsel was set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Under that standard, Nguyen “must demonstrate that: (1) [her] trial counsel failed to exercise the level of skill and diligence that a reasonably competent trial counsel would in a similar situation, and (2) [she] was prejudiced by that failure.” *Eckert*, 633 S.W.3d at 441 (citing *Strickland*, 466 U.S. at 687, 104 S.Ct. 2052). The prejudice prong required Nguyen to “establish that ‘there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.’ ” *Shaw v. State*, 636 S.W.3d 596, 600 (Mo. App. W.D. 2021) (quoting *Webber v. State*, 628 S.W.3d 766, 770 (Mo. App. W.D. 2021)).

Nguyen argues that she was prejudiced by her trial counsel’s failure to present “all available mitigation at [her] sentencing proceeding, including childhood trauma and deprivation suffered by [Nguyen] while growing up in Vietnam due to being fathered by an American soldier (including abuse by her stepfather, neglect by her mother in favor of siblings, and being taunted by peers), and financial abuse by her husband” because the “missing details . . . would have provided the sentencing court with significant evidence of childhood trauma and deprivation, and certainly a person with such background . . . would be considered to be less culpable than a person who committed these offenses without such history.”

Because the mitigation evidence presented by trial counsel during the sentencing hearing was highly similar and correlated to the evidence that was omitted, we find that the omitted evidence would not

have materially enhanced the persuasive value of the mitigation evidence before the sentencing court. We agree with the motion court's findings that while some details of Nguyen's social history were not presented to the trial court, "including the physical abuse by Movant's stepfather, the emotional neglect by her mother in favor of her half-siblings, and Movant being taunted by her peers in Vietnam," most of the "details related to [Nguyen's] unfortunate social background" were presented at sentencing through Dao's letter and Nguyen's son's testimony. Dao's letter detailed that Nguyen was fathered by an American soldier during the Vietnam war, that he left her in Vietnam "to face the discrimination of being a half-breed," that Nguyen was ostracized by her community in Vietnam, that she was never afforded proper education and instead had to work long hours to support her family which included her stepfather and four half-brothers, that Nguyen was physically and verbally abused by her husband who abandoned her after they moved to the United States, and that Nguyen raised her four sons without support or involvement from her husband. And, Nguyen's son testified that Nguyen faced many hardships in her life, that her upbringing in Vietnam was difficult because she worked on a rural farm and did not receive an education, and finally that she moved to the United State in the early 1990s and raised her four sons by herself without any support from their father. Further evidence of Nguyen's childhood trauma and deprivation she suffered while growing up in Vietnam, as well as financial abuse by her husband, "would have been largely cumulative of information already before the sentencing court." *Hendricks v. State*, 663 S.W.3d 875, 887-88 (Mo. App. E.D. 2023) (citations omitted). Given the significant

evidence of spousal abuse and childhood trauma and deprivation Nguyen suffered that was presented at Nguyen’s sentencing, we agree with the motion court that the omission of “additional details related to [Nguyen’s] social history do not warrant setting the Judgment aside” because there is not a reasonable probability that the additional details would have resulted in a lower sentence. Therefore, the motion court did not clearly err in denying the Amended Motion.⁵

Point denied.

CONCLUSION

The motion court’s Judgment is affirmed.

All concur.

⁵ This conclusion is reinforced by the fact that the motion court and sentencing court were the same. *Hendricks v. State*, 663 S.W.3d 875, 890 (Mo. App. E.D. 2023) (citations omitted). “[W]hen the sentencing court and the motion court are one and the same, the conclusion that ‘character witnesses would not have ameliorated the sentence [is] virtually unchallengeable under the clearly erroneous standard.’” *Varvil v. State*, 645 S.W.3d 113, 117 (Mo. App. E.D. 2022) (quoting *Cherco v. State*, 309 S.W.3d 819, 831 (Mo. App. W.D. 2010)). However, this is not to suggest that the standard for determining whether the omission of mitigation evidence created a reasonable probability that Nguyen would have received a lesser sentence is a subjective standard, as evidenced by the motion court’s proper application of the objective *Strickland* standard when it expressly concluded that “before a reasonable court, the additional details regarding [Nguyen’s] social background . . . would not have resulted in a lower sentence.”

**ORDER, MISSOURI COURT OF
APPEALS, WESTERN DISTRICT
(MAY 5, 2020)**

IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI,

Respondent,

v.

THU HONG NGUYEN,

Appellant.

WD82141

Appeal from the Circuit Court of Jackson County the
Honorable Joel P. Fahnestock, Judge.

Before: Division Three: Lisa White HARDWICK,
Presiding Judge, Alok AHUJA and
Edward R. ARDINI, JR., Judges.

ORDER

PER CURIAM

Thu Hong Nguyen appeals her conviction following bench trial for two counts of arson in the second degree, Section 569.040, two counts of felony murder in the second degree, Section 565.021, and two counts of assault in the second degree, Section 565.060. She

raises three points on appeal. First, Nguyen claims the State failed to establish the 2013 fire resulted from her agency. Second, she claims the circuit court erred in allowing a forensic auditor's testimony. Third, she claims the circuit court erred in sustaining the State of Missouri's objection to defense counsel arguments. Because a published opinion would have no jurisprudential purpose, a memorandum has been provided to the parties. The judgment is affirmed. Rule 30.25(b).

**MEMORANDUM SUPPLEMENTING ORDER
AFFIRMING JUDGMENT PURSUANT TO
RULE 84.16(B) OR 30.25(B)
(MAY 20, 2020)**

IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI,

Respondent,

v.

THU HONG NGUYEN,

Appellant.

WD82141

**MEMORANDUM SUPPLEMENTING ORDER
AFFIRMING JUDGMENT PURSUANT TO
RULE 84.16(B) OR 30.25(B)**

This memorandum is for the information of the parties and sets forth the reasons for the order affirming the judgment.

Thu Hong Nguyen appeals her conviction following bench trial for two counts of arson in the second

degree, Section 569.040,¹ two counts of felony murder in the second degree, Section 565.021, and two counts of assault in the second degree, Section 565.060. She raises three points on appeal. First, Nguyen claims the State of Missouri (“the State”) failed to establish the 2013 fire resulted from her agency. Second, she claims the circuit court erred in allowing a forensic auditor’s testimony. Third, she claims the circuit court erred in sustaining the State of Missouri’s objection to defense counsel arguments. The judgment is affirmed.

Facts

In October 2015, a fire occurred at 2608 Independence Avenue in Kansas City, Missouri. The building had five businesses on the ground floor and sixteen apartments on the second and third floors. Firefighters arrived on scene and began fighting the blaze. A side wall of the building collapsed and bricks buried one of the fire trucks. Two firefighters died and two were seriously injured.

Nguyen was ultimately charged with causing a catastrophe, Section 569.070, two counts of arson in the second degree, Section 569.040, two counts of felony murder in the second degree, Section 565.021, and two counts of assault in the second degree, Section 565.060. One count of arson pertained to a July 2013 fire at a business in Lee’s Summit, Missouri. The other counts pertained to the October 2015 fire. Nguyen waived her right to a jury trial and proceeded to a bench trial. In

¹ All statutory references are to RSMo 2000 as supplemented through the dates of the offenses in July 2013 and October 2015 unless otherwise indicated.

the light most favorable to the verdict,² the following evidence was presented at trial:

The Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) determined that the October 2015 fire began inside the back storage closet at LN Nails, a nail salon on the ground floor of the Kansas City Building, and that the fire was intentionally set. Nguyen and Long Pham were working at LN Nails the day of the fire. Nguyen had restocked the closet earlier the day of the fire and there were approximately eight gallons of acetone and isopropyl alcohol inside the closet.

As they prepared to close the salon that evening, Pham went outside to smoke and waited for Nguyen to lock up. Nearby surveillance cameras show that Pham stepped outside of the salon at 7:10 p.m., Nguyen stepped outside of the salon and walked away carrying several bags at 7:12 p.m., the electrical circuits were impinged at 7:17 p.m., the front sign of the nail salon lost power at 7:25 p.m., the fire department arrived at 7:29 p.m., and the wall collapsed at 8:06 p.m. The only exit from the business was the front door. Pham did not see a fire or smell anything unusual when leaving the salon for the day. Nguyen was the last person to leave the nail salon.

During questioning,³ Nguyen claimed her boyfriend helped her close the salon the night of the fire

² “We state the facts and all reasonable inferences derived therefrom in a light most favorable to the verdict, and we reject all contrary evidence and inferences.” *State v. Foster*, 591 S.W.3d 518, 520 n.1 (Mo. App. 2019) (internal quotation marks omitted).

³ Nguyen’s native language is Vietnamese. An ATF forensic auditor who was fluent in Vietnamese participated in questioning

and that he drove to her apartment afterwards. She claimed she did not call her boyfriend the night of the fire. When confronted with records showing that she did call her boyfriend several times and that he was not with her, Nguyen stated she may have accidentally called him. Nguyen's boyfriend was with another woman at a casino the evening of the fire.

Nguyen's statements about who owned the salon were contradictory. She claimed that she owned the salon, that her boyfriend owned the salon, that her boyfriend purchased the salon for her, and that that they purchased the salon together. She stated she did not put the salon in her name because it would prevent her from qualifying for food stamps.

Misty Levron was in a holding cell with Nguyen in October 2015. Nguyen told her that she was being accused of setting her apartment on fire. Nguyen stated she did not understand what went wrong because no one was supposed to have died. Nguyen stated she used items from her salon to start the fire.

During the investigation, authorities became aware of a July 2013 fire at a nail salon called USA Nails⁴ in Lee's Summit, Missouri. On that day, the salon's last customer, Melissa Vaughn got a pedicure. After getting the pedicure, she was sitting on a park bench nearby when she saw two people and then one person leave the nail salon. The third person, Nguyen,

Nguyen; the auditor was certified by the FBI as a translator in Vietnamese and translated for Nguyen during questioning. Nguyen also used a translator at trial.

⁴ The business is identified as both USA Nails and Nails USA throughout the trial.

locked the door. Vaughn subsequently saw a fire inside the salon and called 911.

Nguyen received a call from her son ten to fifteen minutes after she left the salon that it was on fire and she needed to return. The fire originated inside Nguyen's desk and workstation. Nguyen was the last person inside the salon. The ATF determined the fire was intentionally set.

A senior forensic auditor from the ATF testified about a financial analysis she did of Nguyen. She discussed the financial history of five salons: PS Nails, LN Nails, Nails USA, AV Nails, and Perfect Nails. Nguyen owned, operated, or had control of each business. The banks accounts of those businesses were used to pay Nguyen's personal expenses such as groceries and automobile gas. Each business was purchased for cash, and each business suffered a catastrophic insurance event and closed. None of the businesses reopened. There were gaps between one business closing and the next one opening where Nguyen had no discernable employment. Those gaps ranged from seven months to one year. Nguyen appeared to live off of the insurance proceeds from the prior event during those gaps. Nguyen received about \$267,000 during the timeframe encompassing the five businesses.

Nguyen was found guilty of two counts of arson in the second degree, two counts of felony murder in the second degree, and two counts of assault in the second degree. She was found not guilty of causing a catastrophe. Nguyen was sentenced to seventy-four years in the Department of Corrections.

This appeal follows.

Point I

In her first point on appeal, Nguyen claims the circuit court erred in overruling defense counsel's motion for judgment of acquittal and in sentencing her with respect to Count VII, the 2013 Lee's Summit arson. She states that there was insufficient evidence from which a rational finder of fact could find her guilty beyond a reasonable doubt. Nguyen argues the evidence failed to establish that the fire originated in the nail salon as a result of her agency rather than from other causes.

"In determining the sufficiency of the evidence on appeal, we view the evidence and all inferences drawn therefrom in the light most favorable to the verdict, and we disregard evidence and inferences contrary to the verdict." *State v. O'Haver*, 33 S.W.3d 555, 559 (Mo. App. 2000). "An appellate court neither weighs the evidence, nor determines the reliability or credibility of witnesses, but rather limits its determination to whether there is substantial evidence from which a reasonable jury might have found the defendant guilty beyond a reasonable doubt." *Id.* "Substantial evidence is evidence from which the trier of fact could reasonably find the issue in harmony with the verdict." *Id.* (internal quotation marks omitted).

The elements of first degree arson, Section 569.040, are "(1) that the defendant knowingly damaged a building or inhabitable structure, (2) by starting a fire or causing an explosion, (3) with persons then present or in near proximity, and (4) thereby recklessly placing such person in danger of death or serious injury." *Id.* "All elements of arson may be proven by circumstantial evidence." *Id.* (internal quotation marks omitted). "Circumstances need not be absolutely con-

clusive of guilt and need not demonstrate impossibility of innocence.” *Id.* at 559-60 (internal quotation marks omitted). “In fact, because arson is a crime usually committed in stealth and seldom in view of witnesses, the prosecutor must ordinarily prove a defendant’s guilt by circumstantial evidence.” *Id.* at 560. (internal quotation marks omitted). “Any societal distrust of circumstantial evidence has long been abandoned.” *Id.* (internal quotation marks omitted) “We no longer need to hold circumstantial evidence cases to a higher standard than direct evidence cases.” *Id.* (internal quotation marks omitted).

“While opportunity alone is insufficient to support an arson conviction, evidence of opportunity and motive aids in determining guilt.” *Id.* “Where a fire is deliberately set, evidence that the defendant had the means, opportunity and motive for setting the fire will sustain a finding of defendant’s criminal agency.” *Id.* “[E]vidence placing a defendant at the scene of a fire and lack of evidence placing anyone else on the premises may be sufficient to support a conviction.” *State v. Kelley*, 901 S.W.2d 193, 200 (Mo. App. 1995). Further, an attempt to deceive the police may be another circumstance that infers guilt. *Id.* at 200-01.

Nguyen’s point on appeal is focused on the count of arson pertaining to fire at USA Nails in Lee’s Summit in July 2013. In the light most favorable to the verdict, the following evidence was presented that Nguyen started the fire inside the Lee’s Summit nail salon: On the day of the fire, Nguyen decided to close the store early. She directed her other two employees to wait for her outside and was the last person to leave the salon. The store employees did not smell or observe anything

unusual before they left. All of the salon's equipment was working properly when they left.

After getting a pedicure, Melissa Vaughn was sitting on a park bench nearby when she saw two people and then one person leave the nail salon. The third person locked the door. She subsequently saw a fire inside the salon and called 911.

The fire began inside Nguyen's work desk. A power strip was found melted inside Nguyen's desk. When the ATF ran tests on the same model power strip, they could not get it to fail on its own and start a fire. When they forced the power strip to fail, there was immediately an acrid smoke upon ignition of the power strip which would have been noticeable by store employees if the fire started prior to their leaving the salon for the day. The time period between when Nguyen left the salon and when Vaughn observed the desk on fire was short. Given this, an accidental fire would have started before the employees left the salon, and they would have smelled the burning plastic and seen the smoke prior to leaving. The investigators concluded that none of the ATF's accidental simulations matched the fire's timeline. The fire was classified as being intentionally set.

The salon was insured for \$30,000 but the insurance company paid out \$50,000. Nguyen had owned, operated, or controlled five nail salons. All of them had suffered some type of catastrophic event and had closed. All of the salons were purchased with cash and none of them reopened after the catastrophic event. Nguyen's financial records showed employment gaps ranging from seven months to one year. During those times, Nguyen appeared to live off of the insurance proceeds from the previous insurance event. In total,

Nguyen collected approximately \$267,000 in insurance proceeds. She did not have income beyond the salons and insurance proceeds.

Nguyen argues in her brief that the State failed to present evidence that the fire was incendiary. “Evidence of an incendiary origin does not require that there be proof of some highly combustible material.” *State v. Steidley*, 533 S.W.3d 762, 768–69 (Mo. App. 2017) (internal quotation marks omitted). “To prove that a fire was of an incendiary origin, there need only be some evidence, direct or circumstantial, that the person charged intentionally set the property on fire.” *Id.* at 769 (internal quotation marks omitted). She claims in her brief that that the only evidence was a lack of evidence – “the investigators could not prove an accidental cause, so they decided the fire was intentionally set.”

Ryan Zornes, a Senior Special Agent with the ATF testified that he and his coworkers “ultimately concluded that this fire was intentionally set and it was classified as incendiary.” Nguyen does not dispute that the ATF classified the fire as one that was intentionally set. Instead, she takes issue with how it reached that conclusion. Multiple engineers and fire specialists with the ATF and the ATF’s Fire Research Laboratory testified in depth about their qualifications, training, methods, and conclusions. Nguyen had the opportunity to cross-examine them and present contrary findings. The circuit court, as the finder of fact, was free to believe the ATF’s methods yielded a reliable conclusion that the fire was intentionally set. We defer to the court’s credibility determinations, recognizing the finder of fact “was entitled to believe all, some, or

none of the testimony of the witnesses.” *Id.* at 768 (internal quotation marks omitted).

Vaughn, the last customer, did not observe any signs of fire inside the salon when she was inside. Nguyen received a call from her son ten to fifteen minutes after she left the salon that it was on fire and she needed to return. The fire originated inside Nguyen’s desk and workstation. Nguyen was the last person inside the salon. Nguyen had a financial motive to start a fire and collect the insurance proceeds. Nothing inside the salon, including the melted power strip inside the desk, caused the fire. The ATF determined the fire was intentionally set. The State presented sufficient evidence that Nguyen was guilty of arson at the Lee’s Summit nail salon. Point I is denied.

Point II

In her second point on appeal, Nguyen claims the circuit court abused its discretion in overruling defense counsel’s objection to the testimony of forensic auditor Nicole Poirier as propensity evidence. She contends the testimony was more prejudicial than probative. Nguyen acknowledges the circuit court stated it would consider the evidence for motive and not propensity, but she argues it would be impossible to disregard the history of prior insurance claims. She concludes that without this evidence the case would have devolved into a battle of the experts regarding fire causation and snitch testimony.

“A trial court has broad discretion to admit or exclude evidence at trial, and we review the trial court’s ruling for an abuse of that discretion.” *State v. Young*, 582 S.W.3d 84, 91 (Mo. App. 2019). “An abuse of discretion occurs when the trial court’s ruling

clearly offends the logic of the circumstances or is so arbitrary and unreasonable that it shocks the sense of justice and indicates a lack of careful consideration.”

Id. “Our review is for prejudice, not mere error, and we will reverse only if the defendant demonstrates that the error was so prejudicial as to deprive him of a fair trial and there was a reasonable probability the trial court’s ruling affected the outcome of the trial.”

Id. “The burden lies on the defendant on appeal to overcome the presumption that the trial court’s discretionary ruling was correct.” *Id.*

“In general, evidence of uncharged misconduct and prior convictions is inadmissible to show a defendant’s propensity to commit such crimes, for fear that the jury would convict the defendant based on the propensity rather than on the evidence presented to support the particular crime charged.” *Id.* “There are, however, several established exceptions to this general rule, such as where the evidence tends to establish a motive or the identity of the person charged with the commission of the crime on trial.” *Id.* “Evidence of uncharged misconduct must be both logically relevant, in that it must tend to establish guilt for the crime charged, and legally relevant, in that its probative value must outweigh its prejudicial effect.” *Id.*

Prior to trial, the State filed a motion in limine seeking to introduce evidence of Nguyen’s past financial information and insurance claims. The circuit court found the evidence legally and logically relevant to the issue of motive. It stated, “But the evidence will be limited to information touching upon financial motive only. The Court will not consider collateral wrongs as it relates to the defendant’s propensity to commit the crimes to which she is currently charged.”

Nguyen objected during trial when the State sought to introduce the evidence. The State again claimed the evidence was relevant to motive: “The fact that she’s had previous fires that have paid money to her and that she’s received money will allow us to establish that there is a nexus between fires and money in her mind, which goes directly to motive.” The circuit court overruled the objection and stated it would “consider the evidence again only as it properly relates to financial motive in this case.”

Nikki Poirier, a senior forensic auditor from the ATF, testified about a financial analysis she did of Nguyen. She discussed the financial history of five salons: PS Nails, LN Nails, Nails USA, AV Nails, and Perfect Nails. Nguyen owned, operated, or had control of each business. The banks accounts of those businesses were used to pay Nguyen’s personal expenses such as groceries and automobile gas. Each business was purchased for cash, and each business suffered a catastrophic insurance event and closed. None of the businesses reopened. There were gaps between one business closing and the next one opening where Nguyen had no discernable employment. Those gaps ranged from seven months to one year. Nguyen appeared to live off of the insurance proceeds from the prior event during those gaps. Nguyen received about \$267,000 during the timeframe encompassing the five businesses.

PS Nails opened in Texas in December 2006. It incurred a fire in July 2008. The business went without insurance for 16 months. Then Nguyen obtained insurance and made one payment on it and the month it was scheduled to terminate, the fire occurred.

Nguyen and her then husband purchased the business for \$27,000 and received a \$30,000 insurance payout.

AV Nails opened in June 2009. It had a fire in October 2009. It was purchased for \$38,000 and the insurance payout was \$62,344.

Perfect Nails opened in Grandview, Missouri in October 2010. Nguyen and her son jointly purchased it for \$15,000. They initially obtained insurance in the amount of \$15,000; that policy was in effect for eight months. On July 9, 2011, they increased the amount to \$30,000, and a burglary occurred two days later on July 11, 2011. They received a payout of \$41,855.

Nails USA opened in January 2012 in Lee's Summit, Missouri. It was purchased for \$20,000 and insurance paid out \$51,873 for the fire that occurred in July 2013. While working at Nails USA, Nguyen made a \$1,300 insurance claim about a burglary at her residence. The claim was denied because, as a renter, she was not covered under the homeowners policy she tried to make a claim on. She requested to be added to the policy in June 2011. The policy was due to be cancelled on May 23, 2012. Two weeks before that date, on May 7, 2012, she had a fire at her residence and ultimately received insurance payouts in the amount of \$9,650 and \$18,000.

LN Nails was opened in July 2014. It was purchased for \$20,000. A fire in January 2015 resulted in an insurance payout of \$40,000. There was no indication that the fire disrupted business at all. Another fire occurred in October 2015 that destroyed the business and led in part to the charges in the current case.

When making insurance claims, Nguyen claimed the income she lost from the business being closed.

She claimed more than double what she was allowed to claim. Poirier testified Nguyen overinflated her gross receipts for purpose of increasing her insurance payouts. Poirier concluded:

Big picture, I can tell you she [Nguyen], I looked at seven or eight years worth of financial information and found that she received \$267,000 in insurance payouts over 14 different claims. She was able to go lengthy periods of time with no employment and live off of insurance, it would appear to be only those insurance payouts. And then subsequently use that money to purchase a new nail salon and start over.

She testified that it was more profitable for Nguyen to cease operations and collect an insurance payout as opposed to continuing to operate her businesses.

The State claimed that Nguyen supported herself by receiving insurance payouts. This was her motive for setting the fires at issue in the current case. Poirier's testimony was evidence of such a motive. "[E]vidence of other crimes is admissible if it tends to establish motive" *State v. Phillips*, 890 S.W.2d 698, 699 (Mo. App. 1995). "Furthermore, wide latitude is to be given in the development of motive." *Id.* at 700. The circuit court expressly admitted Poirier's testimony with respect to motive and stated it would not consider the evidence with respect to propensity.

Notably, Nguyen does not challenge the circuit court's conclusion that the evidence of prior insurance payouts was relevant to establish her motive. Instead, she argues only that the (unchallenged) probative value of the evidence was outweighed by the potential

of unfair prejudice, because the evidence would inevitably lead the circuit court to conclude that she had a propensity to commit insurance-related arson. However, this was a bench trial, and we “presume that the trial court knows and follows the law.” *State v. Washington*, 512 S.W.3d 118, 123 (Mo. App. 2017).

We therefore reject Nguyen’s contention that the circuit court must have improperly considered the evidence as propensity evidence. She states that without the history of insurance claims, the case devolved to a battle of the experts and snitch testimony. Nguyen implies that a case with a battle of the experts could not result in a guilty verdict. She cites no authority, and we find none. We also find no abuse of the circuit court’s discretion in admitting the testimony of the forensic examiner as evidence of motive. Accordingly, Nguyen’s objection was properly overruled and Point II is denied.

Point III

In her third point on appeal, Nguyen claims the circuit court erred in sustaining the State’s objections to defense counsel’s arguments that building owner Bo Tran was the cause of the Kansas City fire as opposed to Nguyen. She states that the evidence inculpatory Bo Tran was reliable. Nguyen concludes that the evidence tended to exonerate her.

“A defendant may introduce evidence that another person committed a crime if a proper foundation is laid and the probative value of the evidence is not substantially outweighed by its costs (such as undue delay, prejudice or confusion).” *State v. Shegog*, 521 S.W.3d 628, 636 (Mo. App. 2017) (internal quotation marks omitted). “[E]vidence which can have no other

effect than to cast a bare suspicion on another, or to raise a conjectural inference as to the commission of the crime by another, is not admissible.” *Id.* (internal quotation marks omitted). “Rather, evidence of an alternative perpetrator is admissible only if there is proof that the other person committed *some act* directly connecting that person with the crime.” *Id.* (emphasis in original). “The defendant must establish a clear link between the alleged alternative perpetrator and the corpus delicti of the crime.” *Id.* (internal quotation marks omitted).

Prior to trial, the State filed a motion in limine requesting in pertinent part that Nguyen be prohibited from engaging in cross-examination designed to cast suspicion on Bo Tran for the arson. Nguyen did not object to the motion. During trial, while cross-examining Tran, Nguyen sought to present evidence of his financial records and past insurance claims to impeach similar evidence presented by the State with respect to Nguyen. In response to the State’s objection, defense counsel argued that Tran had a history similar to Nguyen but had not been investigated as a suspect. Defense counsel stated:

I’m not suggesting that he lit the fire, but I do want to be able to point out any benefits that he’s received, records that we know of, and the claims that he’s made and to be able to make an arguable comparison that they are no different, in fact, they may be worse than that of my client.

The State argued that Nguyen was making an improper implication that Tran should have been a suspect in the arsons. The circuit court allowed Nguyen to present the evidence for purposes of impeaching the

State's financial expert. It stated it would not consider it as evidence that Tran had a motive for the arson.

During closing argument, Nguyen argued that Tran did not care about maintaining the building's electrical system. Defense counsel stated, "He doesn't care about this building. We are not arguing that Bo made it burn. But we know he really didn't care if it did." The State objected that the inference that Tran was acting "nefariously" with respect to the building was in violation of the motion in limine. The court stated, "I think she directly said that it was not her intention to say that he set the fire" and defense counsel confirmed, "Correct."

Nguyen states in her brief that she was not permitted to present evidence that Tran caused the LN Nails fire. She does not cite where this occurred in the record. To the contrary, the record indicates that Nguyen affirmatively stated multiple times that she was not claiming Tran was to blame for the fire. There is no evidence that Nguyen was prevented from presenting evidence that Tran was the cause of the LN Nails fire.⁵ Point III is therefore denied.

Conclusion

The judgment is affirmed.

⁵ Further, even if such a ruling occurred, Nguyen did not present an offer of proof. "To preserve for appeal the issue of improper exclusion of evidence, an offer of proof must be made at trial demonstrating to the trial judge why the evidence is relevant and should be admitted." *State v. Bouser*, 17 S.W.3d 130, 141 (Mo. App. 1999).

**JUDGMENT, SIXTEENTH COURT,
JACKSON COUNTY, MISSOURI
(SEPTEMBER 21, 2018)**

IN THE 16TH COURT,
JACKSON COUNTY, MISSOURI

STATE OF MISSOURI,

v.

THU HONG NGUYEN,
DOB: 20-JUN-1972
SSN: [REDACTED]
SEX: F

Defendant.

Case Number: 1516-CR03754-01
Before: Joel P. FAHNESTOCK, Judge

☒ Pre-Sentencing Assessment Report Ordered

JUDGMENT

Count	Charge Code & Description	Charge Level	Date of Offense
1	569.070- 001Y19755399.0 *Disc-Causing Catastrophe 569.070 RSMO	Felony A	12-OCT-2015

App.58a

2	569.040- 002Y19872099.0 Arson 1st Deg - Injury / Death 569.040 RSMO	Felony A	12-OCT-2015
3	565.021- 003Y19840999.0 Murder 2d Deg- Felony Murder 565.021 RSMO	Felony A	12-OCT-2015
4	565.021- 003Y19840999.0 Murder 2d Deg- Felony Murder 565.021 RSMO	Felony A	12-OCT-2015
5	565.060- 001Y19841399.0 *Disc-Assault 2nd Degree 565.060 RSMO	Felony C	12-OCT-2015
6	565.060- 001Y19841399.0 *Disc-Assault 2nd Degree 565.060 RSMO	Felony C	12-OCT-2015
7	569.040- 001Y19772001.0 Arson 1st Degree 569.040 RSMO	Felony B	25-JUL-2013

Count 1

☒ Felony

Class ☒ A

On the above count, it is adjudged that the defendant has been:

☒ Dismissed/Nolle pros/found not guilty

Count 2

☒ Felony

Class ☒ A

On the above count, it is adjudged that the defendant has been:

☒ Found guilty by a jury/court

Count 3

☒ Felony

Class ☒ A

On the above count, it is adjudged that the defendant has been:

☒ Found guilty by a jury/court

Count 4

☒ Felony

Class ☒ A

On the above count, it is adjudged that the defendant has been:

☒ Found guilty by a jury/court

Count 5

☒ Felony

Class ☒ C

On the above count, it is adjudged that the defendant has been:

☒ Found guilty by a jury/court

Count 6

☒ Felony

Class ☒ C

On the above count, it is adjudged that the defendant has been:

☒ Found guilty by a jury/court

Count 7

☒ Felony

Class ☒ B

On the above count, it is adjudged that the defendant has been:

☒ Found guilty by a jury/court

The defendant has been found beyond a reasonable doubt to be a:

☒ Not Applicable

The court:

☒ Informs the defendant of verdict/finding, asks the defendant whether (s)he has anything to say why judgment should not be pronounced, and finds that no sufficient cause to the contrary has been shown or appears to the court.

App.61a

☒ Defendant has been advised of his/her rights to file a motion for post-conviction relief pursuant to Rule 24.035/29.15 and the court has found

☒ No probable cause

to believe that defendant has received ineffective assistance of counsel.

☒ Finds the defendant has pled or been found guilty of a dangerous felony, as defined in section 556.061, RSMo, and if committed to the Department of Corrections, must serve at least 85% of the sentence.

On count 2, the Court:

☒ Sentences and commits the defendant to the custody of Missouri Division of Adult Institutions for a period of thirty (30) years. Sentence to be served

☒ Concurrent

with Count 3.

On count 3, the Court:

☒ Sentences and commits the defendant to the custody of Missouri Division of Adult Institutions for a period of thirty (30) years. Sentence to be served

☒ Consecutive

with Count 4.

On count 4, the Court:

☒ Sentences and commits the defendant to the custody of Missouri Division of Adult Institutions for a period of thirty (30) years. Sentence to be served

☒ Consecutive

with Count 3.

On count 5, the Court:

☒ Sentences and commits the defendant to the custody of Missouri Division of Adult Institutions for a period of seven (7). Sentence to be served

☒ Consecutive

with Count 6.

On count 6, the Court:

☒ Sentences and commits the defendant to the custody of Missouri Division of Adult Institutions for a period of seven (7). Sentence to be served

☒ Consecutive

with Count 5.

On count 7, the Court:

☒ Sentences and commits the defendant to the custody of Missouri Division of Adult Institutions for a period of fifteen (15). Sentence to be served

☒ Concurrent

with Count 3.

The court orders:

☒ That judgment is entered in favor of the state of Missouri and against the defendant for the crime victims compensation fund for the sum of

☒ \$68.00.

☒ Unsatisfied

☒ Court Costs and Fees shall be waived except for the Crime Victims' Compensation Fund Fee.

The court further orders: Count 3 and Count 4 shall run consecutive to each other. Count 5 and Count 6 shall run consecutive to each other. Counts 3 and 4 shall run consecutive to Counts 5 and 6. Count 2 and Count 7 shall run concurrent with Count 3.

So Ordered:

/s/ Joel P. Fahnestock
Judge

Date: September 20, 2018

I certify that the above is a true copy of the original Judgment and Sentence of the court in the above cause, as it appears on record in my office.

Issued on September 20, 2018

/s/ Michelle Parr
Clerk