

**IN THE
COURT OF APPEALS OF MARYLAND**

September Term, 2017

No. 65

**BRIAN TATE,
Petitioner,**

v.

**STATE OF MARYLAND,
Respondent.**

**ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF SPECIAL APPEALS**

BRIEF OF PETITIONER

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STATEMENT OF THE CASE

I. PROCEEDINGS BEFORE THE ORIGINAL TRIAL COURT, WHICH ENDED WITH A GUILTY PLEA.

This case involves a homicide that took place on February 24, 1992. (E. 82). The Petitioner, Brian Tate, who was 16 years old at the time, was arrested and on March 16, 1992, he was charged in the Circuit Court for Anne Arundel County with first degree murder. *See State v. Brian Arthur Tate*, Case Number K-92-862. Tate turned 17 while in pre-trial incarceration for this case. *See* (E. 9). The case proceeded to a guilty plea on

November 2, 1992, while Tate was 17. *Id.* This appeal is focused on the information provided to the original guilty plea court in support of that guilty plea proceeding and whether that information was sufficient to determine if Tate, as an adolescent suffering from mental impairments, understood the nature or elements of first degree murder such that the plea was constitutionally valid.

The judge that presided over this case accepted the guilty plea during the November 2, 1992, hearing, and found Tate guilty of first degree murder. (E. 86). On January 18, 1993, at age 17, Tate was sentenced to life in prison with the possibility of parole. (E. 14-15).

II. PROCEEDINGS AFTER THE GUILTY PLEA.

A. Direct appeal and the original post-conviction proceedings.

No application for leave to appeal from the guilty plea was filed after sentencing. (E. 15). On July 2, 1999, a motion to correct illegal sentence was filed, *id.*, based on issues relating to former Governor Glendening's policy of refusing parole to any individual serving a life sentence. (E. 387). The motion was denied on July 28, 1999. (E. 16).

A post-conviction petition was subsequently filed, and then amended, by Tate's former counsel, Gary Bair, on January 31, 2006. (E. 17). As it relates to this appeal, the primary relevant issue in that petition was stated as follows: "the record of the guilty plea is defective under Maryland Rule 4-242 and the United States Constitution." (E. 387).

Post-conviction hearings were held on November 20 and 21, 2006, and September 11, 2009. (E. 19-20). On May 26, 2010, the circuit court denied relief on all grounds. (E. 292-93); (E. 188-293) (attaching entire post-conviction opinion).

B. Proceedings that resulted in the Circuit Court reopening Tate's post-conviction case, vacating the guilty plea, and granting a new trial.

On April 25, 2011, in a completely unrelated case called *State v. Daughtry*, 419 Md. 35 (2011), this Court rendered a new decision that addressed guilty plea proceedings. On September 14, 2011, Tate filed a motion to reopen his post-conviction proceedings (E. 24), and asked the Circuit Court¹ to reconsider its prior decision in light of *Daughtry*. (E. 389-90).

A hearing on Tate's Motion to Reopen was held on January 31, 2014, and the court requested additional post-hearing briefing. (E. 294-375) (attaching hearing transcript). On September 26, 2014, the Circuit Court issued an 86-page written memorandum opinion granting Tate's Motion to Reopen and further granting Tate a new trial based on constitutional infirmities in the guilty plea proceeding. (E. 376-461) (attaching full opinion).

¹ Because this case was in the circuit court more than once, to help clarify which proceeding is which, this Brief capitalizes "Circuit Court" anytime a reference is made to that court's 2014 decision to grant Tate's Motion to Reopen and vacate his plea. The court's 2014 decision is at issue in this appeal. Other references to the circuit court's rulings, including the guilty plea itself, will not be capitalized.

The State filed an application for leave to appeal with the Court of Special Appeals on October 24, 2014, (E. 28) and on January 29, 2016, it was granted.² *State v. Brian Tate*, Court of Special Appeals No. 2823, Order dated January 29, 2016. Following briefing and oral argument, on August 15, 2017, the Court of Special Appeals issued an unreported decision, vacating the Circuit Court's decision granting a new trial. (E. 463-81) (attaching opinion).

Tate filed his Petition for a Writ of Certiorari on October 4, 2017, (E. 45) and on December 18, 2017, this Court granted that Petition. (E. 46).

QUESTIONS PRESENTED

Was Brian Tate's guilty plea record sufficient to conclude he understood the nature or elements of first degree murder, despite the fact that he was a child with mental impairments and no one addressed the nature or elements of the crime on the record?

STATEMENT OF THE FACTS

I. INTRODUCTION.

In 1992, at age 16, Brian Tate was charged as an adult with first degree murder in the Circuit Court for Anne Arundel County. *See* (E. 8). At that time, Tate had only completed the tenth grade. (E. 73). A pre-plea psychiatric evaluation by Michael

² Although the Circuit Court's decision granting a new trial was filed by the Circuit Court for Howard County, the State filed its Application for Leave to Appeal from the Howard County court's decision with the Circuit Court for Anne Arundel County. Tate filed a motion to dismiss the State's original appeal on these grounds, arguing that the State did not timely file application with the proper court. As such, a portion of the Court of Special Appeals' decision currently on appeal also addressed the motion Tate filed to dismiss the State's original appeal to the Court of Special Appeals. (E. 468-70). The court denied Tate's motion to dismiss.

Spodak, M.D., indicated that Tate suffered from serious mental impairments.³ (E. 51-52).

Eventually, while Tate was still 17 and incarcerated, the case was called for the purposes of a guilty plea hearing. (E. 67-89) (attaching transcript). The factual summary below includes the contents of that guilty plea hearing, as well as a summary of both factual findings made during the subsequent motion to reopen post-conviction proceedings that resulted in Tate's plea being vacated as unconstitutional, and the Court of Special Appeals' decision.

II. THE GUILTY PLEA PROCEEDINGS.

A. Information given to the presiding judge, and the plea colloquy.

The transcript from the November 2, 1992, plea hearing does not contain any acknowledgment that Tate was only 16 years old on the date of this crime, and 17 on the date of the plea hearing. Tate's actual age is never mentioned during the guilty plea hearing. The entire transcript of the plea hearing is located in the record extract at E. 67-89.

The first part of the plea hearing involved questions the judge asked Tate. (E. 72-80). The portion of the plea where the judge inquired about Tate's personal

³ Dr. Michael Spodak, evaluated Tate and an oral summary of those findings was provided to the circuit court before the plea. (E. 48-52) (attaching letter disclosing diagnosis). The summary of Dr. Spodak's conclusions contained a diagnosis that included, "narcissistic and passive, aggressive personality disorders," and a finding that this adolescent "did not have the sufficient mental capabilities to form the specific intent to commit first degree murder." (E. 52). The summary also included a reference to "Brian's tender years," and disclosed that Tate lacked even the maturity of other minors his own age. (E. 51).

characteristics is short. *Id.* The judge never asked a single question about age or the fact that Tate was a minor. *See id.* The judge asked generic, standard questions, such as if anyone had threatened Tate or induced him to plea. (E. 73). The judge asked if Tate was on parole, or probation, or under the influence of “any alcohol, drugs, narcotic or other pills?” *Id.* The judge asked about education and Tate said he went “[h]alfway through my junior year” in school. *Id.* The judge was aware that Tate had “been examined by various mental health individuals” (E. 74), and that a referral to the Patuxent Institution for treatment was part of the plea negotiation, including a concession from the State that it “will not object to such a request for referral.”⁴ (E. 71-72).

When Tate was asked “have you ever been under the care of a psychiatrist or in a mental institution?,” (E. 74), he replied, “Yes, I have.” *Id.* At that point, defense counsel intervened and stated that “some months before the incident in question, Brian, after a series of difficulties at home and school,” was “seen by a mental health professional.” *Id.* Defense counsel was not clear about the qualifications of the mental health professional, stating he believed the professional “is a licensed social worker, perhaps psychologist . . .” *Id.* Defense counsel stated that he saw some “very brief statements” from those

⁴ The Patuxent Institution is a maximum security prison that focuses on inmates with serious mental illness. Maryland Department of Public Safety and Correctional Services, *Patuxent Institution Annual Report*, 1-2, 16 (2013). Sentencing judges can make a referral for an inmate to be considered for treatment at Patuxent, but do not have control over whether an inmate is confined there. *See id.* at 16.

interviews and “it does not appear” that Tate was unable to comprehend the proceedings.⁵
Id.

That was the full extent of the judge’s inquiry about Tate’s personal characteristics, on the record of the guilty plea. Although the judge did not inquire further about Tate’s adolescent medical and psychiatric evaluations prior to the plea, the court was aware that Tate underwent a psychiatric evaluation conducted by Dr. Spodak. (E. 48-52). The summary provided to the court included a reference to Tate’s “tender years,” and that he was functioning below his chronological age. (E. 51). The court was made aware of this psychiatric evaluation, and some of the results, through litigation before the plea hearing.⁶ However, the court made no specific inquiry during the plea hearing about these mental impairments. (E. 67-89). After the judge concluded that portion of the plea, before moving to the State’s factual presentation, the judge announced, “[t]he Court is satisfied.” (E. 80). The court never used the terms “knowing” or “voluntary” in relation to this plea.

⁵ The psychological treatments referenced at this point in the plea transcript, which Tate received as a child before this case arose, were entirely separate and independent from any evaluation to determine competence to stand trial, or any other trial-related medical examination. Instead, this additional psychological treatment pre-dated Dr. Spodak’s previously cited medical and psychiatric examinations. *Compare* (E. 74), *with* (E. 51-52). In terms of this appeal, there is no allegation that Tate was either NCR or not competent to stand trial. Instead, the mental impairments Tate experienced as a child are personal characteristics which are relevant under the “totality of the circumstances” test for determining the validity of a guilty plea. *See Daughtry*, 419 Md. at 73-74; *see State v. Priet*, 289 Md. 267, 285-86, 288-90 (1981).

⁶ The judge taking the guilty plea had also previously signed an order allowing for such examinations, and transportation of Tate to the locations where the examinations were going to be performed. (E. 11).

At that point, Tate's defense counsel sought permission to ask a couple more questions, and endeavored to bring up the issue of Tate's age for the first time. *Id.* But, even then, all that was confirmed was that Tate was "under 18." *Id.* Neither Tate's age at the time of the crime nor his age during the plea was mentioned on the record. *See id.* Defense counsel's follow-up questions confirmed that Tate's lawyer met with him and his parents jointly to discuss the plea negotiation and that Tate spoke with his parents about it prior to court. (E. 80-81).

B. Both parties agree that there was no discussion on the record about either the nature or the elements of first degree murder.

This appeal relates to whether sufficient information was provided to the court in order to allow the court to conclude Tate had the requisite constitutional understanding of the nature or elements of first degree murder. On that point, it is undisputed that neither the nature nor elements of first degree murder were ever mentioned on the record. (E. 396). The State has conceded in these proceedings that "neither the plea judge [nor] trial counsel ever explained the nature or the elements of the offense of premeditated first-degree murder and its complexities in express terms at the plea hearing." *Id.*

Because the nature and elements of first degree murder were never described on the record, there is no question or answer to establish whether Tate understood those specific things. Instead, the closest discussion on the record involved generic questions about the case as a whole. *See* (E. 74-75). Tate was asked and answered as follows:

Court: Do you understand what you are charged with?

Tate: Yes, I do.

Court: Do you understand what you are pleading guilty to?

Tate: Yes, I do.

(E. 75).

Tate was shown a summary of the plea deal and a copy of his charging document before court, and discussed this with his lawyer. (E. 72-75). The summary of the plea deal made no reference to the elements of first degree murder and did not otherwise discuss the nature of that crime. (E. 61-66). The charging document only used the generic "short form language" which was not specific and covered more than one form of murder. (E. 424).

C. Statement of facts at the guilty plea.

After the court declared it was satisfied with the colloquy, the prosecutor read a factual proffer, which is located in full at pages E. 82-86 of the record extract. The proffer explained that this crime started with a fight on the street between Gerry Haynes, and an unidentified person later decided to be Tate. (E. 83). It was between 10:30 p.m. and 11:00 p.m. on February 24, 1992. (E. 82). A witness observed the two struggle as they were fighting, and 911 was called. (E. 83). Before anyone arrived in response to the 911 call, the witness saw Haynes on the ground and the unidentified person dragging him behind a home before leaving the scene. *Id.* The medical examiner determined the manner of death was homicide. (E. 84). The State proffered that other witnesses would testify Tate had previously threatened to kill Haynes because Haynes was dating Tate's former girlfriend. (E. 84-85). A search of Tate's bedroom revealed a jacket containing

the victim's blood, and the victim's wallet was located in a bathroom at Tate's parents' home. (E. 85-86).

The factual proffer did not mention or describe any of the elements of first degree murder and there was no explanation of the legal significance of those facts. Tate's plea was accepted. (E. 86). On January 18, 1993, Tate was sentenced to life in prison. (E. 14-15).

III. FACTUAL FINDINGS AND CONCLUSIONS MADE BY THE CIRCUIT COURT IN GRANTING TATE'S MOTION TO REOPEN AND VACATING HIS GUILTY PLEA.

In 2011, Tate filed a motion to reopen his post-conviction proceedings so the Circuit Court could re-evaluate its prior post-conviction decision that denied relief, in light of this Court's more recent decision in *Daughtry*. (E. 389-90). The Circuit Court granted that motion and agreed to reopen Tate's case. (E. 392-93). The Circuit Court held a hearing and issued an 86-page opinion addressing the validity of Tate's plea. (E. 376-462) (attaching opinion granting relief). The court made numerous factual findings and some legal conclusions based on those factual findings. *Id.* In the end, the court concluded that Tate's plea was invalid because the record at the plea hearing was not sufficient to confirm Tate understood the nature or elements of first degree murder. (E. 448).

In vacating Tate's plea, the Circuit Court weighed his age and information about his mental impairments, among other things, to help determine what he might have understood. (E. 433-34). A significant issue in these proceedings involved how much one could read into a "yes" answer to the question, "[d]o you understand what you are

charged with?” when the nature and elements were not part of the question or addressed at any place on the record. (E. 347, 384). The relevance of Tate’s youthful age, and specifically that he was a minor, were among the facts that the Circuit Court addressed when it applied the *Priet* factors to assess the constitutionality of the plea. (E. 433). The Circuit Court stated as follows:

Although charged as an adult, Petitioner was still, chronologically, a minor, an adolescent and, thus, is generally recognized by science and jurisprudence of the last 25 years to be less likely than the average adult to have sufficiently understood the nature of the crimes to which he plead [sic]. However, more pertinent to this case, his “personal characteristics,” unique to himself, directly affect any assessment of his mental capacity and, on re-review, are given increased importance when determining Petitioner’s level of comprehension required to enter into a valid plea.

Id. (emphasis added).

The Circuit Court’s opinion chronicled the court’s “exhaustive review of the entire record.” (E. 401). The Circuit Court reviewed in detail numerous decisions of this Court regarding guilty plea hearings. (E. 416-18) (quoting from *Daughtry*); (E. 441) (collecting cases stating that a determination of the validity of a guilty plea requires an analysis of whether under the totality of the circumstances, the defendant entered the plea knowingly and voluntarily). Specifically, quoting *Daughtry*, the court noted:

This Court reiterates that Judge Harrell sets out factors to aid the trial court in determining whether to accept the guilty plea. He notes as a starting point from the holding in *Priet* that determination can only be made on a case-by-case basis taking into account, among other factors, the complexity of the charge, the personal characteristics of the accused, and the factual basis proffered to support the court’s acceptance of the plea.

(E. 418). The court stated that “in determining the validity of a guilty plea [Maryland courts have] focused always on whether the defendant, based on a totality of the circumstances, entered the plea knowingly and voluntarily.” (E. 441).

In the Circuit Court’s written opinion concluding that Tate’s plea was unconstitutional, the court expressly weighed all of the *Priet* factors under the totality of the circumstances test. (E. 420-21) (the factual basis offered in support of the plea); (E. 433) (Tate’s personal characteristics); (E. 449) (the complexity of the crime). As to the complexity of the charge, the Circuit Court cited to *Daughtry*, and concluded that first degree murder is a complex crime, and is not one of the crimes where the nature and elements “[are] readily understandable from the label of the crime itself.” (E. 449). The Circuit Court also expressly weighed the factual basis proffered to support the plea and concluded that the statement of facts “clearly sets out facts” that support a finding of first degree murder. (E. 420-21). However, the Circuit Court concluded that even assuming a valid statement of facts on the record, “that is not enough, when taking in consideration other components from *Daughtry* and other relevant guilty plea appellate cases cited above and below, to now support an ultimate finding of a valid plea in Petitioner’s case.” (E. 421).

The Circuit Court relied on this Court’s precedent indicating that the guilty plea hearing must contain sufficient information to allow the judge at the plea to properly conclude the defendant possessed the necessary understanding of the nature of the crime. (E. 435). The court cited this Court’s precedent to confirm three ways a court can ensure the plea record is sufficient as to the nature of the crime: (1) the court can address the

nature and elements with the defendant directly; (2) defense counsel can advise the court that the defendant has the requisite understanding; or (3) the court may be able to make the required determination from the defendant's own responses during the guilty plea. (E. 422).

The Circuit Court concluded that “[a]t no time did the plea hearing court adequately seek or receive an on-the-record confirmation of Petitioner’s knowledge” as to his understanding, if any, of the nature of first degree murder. (E. 431). Given the finding that neither defense counsel, nor the judge made a sufficient record to establish the requirements for the plea, the Circuit Court also reviewed Tate’s answers to questions to see if the proof he had the requisite knowledge could be established from those responses. (E. 424-25, 446-48, 454).

The Circuit Court confirmed that Tate acknowledged he “understood what he was charged with.” (E. 384). But, in this case, the court concluded that a basic understanding of what one is charged with is different from a determination that a defendant has the requisite understanding of the nature of a complex crime. (E. 425). The Circuit Court noted that given *Daughtry*’s explanation that “it [is] clear that the nature of ‘first degree murder’ is not readily understandable from the label of the crime itself,” (E. 425-26) and given Tate’s personal characteristics, in the context of a record that was silent as to the nature and elements of the crime, something more than what was provided in this record was needed. (E. 438-39).

In order to assess what could reasonably be assumed from Tate’s answers to these generic questions, the Circuit Court reviewed his personal characteristics. (E. 432-35).

The Circuit Court noted “many conflicting tensions” when determining if the plea record was sufficient and explained that “[t]he resolution of these conflicting tensions in favor of the Petitioner becomes even more viable . . . considering the fact that Petitioner was only 16 at the time of the murder and 17 at the time of the plea.” (E. 432-33). The court then cross-referenced its prior “review and discussion of recent U.S. Supreme Court jurisprudence regarding psychology and physiology of the adolescent mind regarding criminal actions.” (E. 433); (E. 279-92) (attaching the circuit court’s prior decision, mentioning the Supreme Court precedent). The Circuit Court considered the fact that Tate “was still, chronologically, a minor, an adolescent,” as a personal circumstance that weighed against inferring he had a greater understanding of the complicated nature of first degree murder than was established by answers on the record. (E. 433-34).

In the end, the Circuit Court applied the totality of the circumstances test. (E. 448). The court concluded that because first-degree murder was a complex crime and Tate was “a minor” and had mental impairments, relying on a guilty plea record that was silent about the nature and elements of the crime to draw the inference that this particular adolescent understood those components of a valid plea required “a more extensive plea hearing record than would be usual with a mature, more functional adult” and a more detailed plea record than “was present in this case.” (E. 432-35). Tate’s guilty plea and life sentence were vacated by the Circuit Court, and a new trial was ordered. (E. 379).

IV. PROCEEDINGS BEFORE THE COURT OF SPECIAL APPEALS.

The Court of Special Appeals reached the opposite conclusion from that of the Circuit Court. (E. 465).

The State was the appellant before the Court of Special Appeals, and briefed only one issue: Did the post-conviction court err in concluding that it “had no alternative” but to reopen Tate’s post-conviction proceeding to vacate Tate’s guilty plea based on *Daughtry*? See Brief of Appellant at 3; (E. 471).

The Court of Special Appeals, *sua sponte*, chose not to answer the question the State presented, and instead addressed itself to a different issue it gleaned from the argument section of the State’s brief. (E. 471); (E. 463-81) (attaching entire Court of Special Appeals decision). The court concluded that the State had not challenged the Circuit Court’s decision to grant Tate’s Motion to Reopen his case. Instead, the court addressed itself only to the question of whether “Tate’s plea was valid under the totality of the circumstances test.” (E. 471). The court also relied on the “clear[] error[]” standard of review, instead of the abuse of discretion standard, which is applicable to a circuit court’s decision to reopen a post-conviction case.⁷ (E. 471-72).

While reweighing the evidence, the Court of Special Appeals made several significant choices that are at issue in this appeal. First, the court did not specifically weigh the fact that Tate was still a child, and never weighed his age as a factor that influenced how much information needed to be provided during his plea. See (E. 477-

⁷ On appellate review of a circuit court’s adjudication of a motion to reopen post-conviction proceedings, the correct standard of review is abuse of discretion. *State v. Waine*, 444 Md. 692, 703 (2015). A circuit court’s factual findings are not disturbed on appeal unless they are “clearly erroneous.” *Wilson v. State*, 363 Md. 333, 348 (2001). These standards of review applicable in this appeal are addressed in more detail in Section I(B)(2) below.

80). Second, the court disregarded the evidence of Tate's mental impairments.⁸ (E. 479). The court concluded that information about Tate's mental impairments should be given no weight at all in assessing what he may have understood because that evidence was offered to the original trial court for a different purpose. *Id.* Third, the court gave tremendous weight to the factual proffer despite the fact that it never informed Tate "of the requisite elements or the nature of first-degree murder."⁹ (E. 475-77); *see also Daughtry*, 419 Md. at 74, n.22 (providing quote).

The Court of Special Appeals' focus on Tate's answer of "yes" to the question "[d]o you understand what you are charged with?" is also relevant in this appeal. (E. 473-74). The court accorded Tate's generic "yes" answer – along with proof he received a copy of his charges and reviewed it with his lawyer – extra weight. (E. 474). The court used *Daughtry* to suggest that these items should be weighed as "strong evidence" that

⁸ One reason the Court of Special Appeals apparently disregarded this evidence was the incorrect belief that information about Tate's mental impairments was only provided at sentencing. But, the docket entries (E. 11) and correspondence provided to the judge prior to the plea (E. 48-52) establish that the court conducting the guilty plea was made aware of the result of an expert physician's psychiatric examination of Tate, including his medical diagnosis regarding Tate's mental impairments, prior to the plea. The court also referenced its knowledge of these examinations during the plea hearing. (E. 73-74). The physician who examined and diagnosed Tate later testified about these mental impairments at sentencing in mitigation to support a referral to the Patuxent Institution. (E. 120-44). But, the judge that presided over the guilty plea knew before the plea ever started that the purpose of the examinations was not to obtain a referral to Patuxent, and the court possessed a summary of those mental health diagnoses in advance. (E. 48-52).

⁹ Agreeing to facts "does not suffice where 'there was no explanation of the legal significant of those facts'." *See Daughtry*, 419 Md. at 74, n.22 (citing *United States v. Syal*, 963 F.2d 900, 905 (6th Cir. 1992)).

Tate had the requisite understanding. *Id.* The court then compared Tate's colloquy to the one given in *Daughtry*, (E. 474-75), although *Daughtry* was a 21-year-old adult with no evidence of mental impairment. *See Daughtry*, 419 Md. at 44.

With that analysis, the Court of Special Appeals reversed the judgment of the Circuit Court. (E. 481).

ARGUMENT

I. CONSIDERING THE PERSONAL CHARACTERISTICS OF THIS ADOLESCENT, THE COMPLEXITY OF THE CRIME, AND THE ABSENCE OF ANY INFORMATION ABOUT THE NATURE OR ELEMENTS OF THE CRIME ON THE RECORD, THE PLEA COLLOQUY WAS INSUFFICIENT TO CONFIRM TATE HAD THE REQUISITE UNDERSTANDING OF THE NATURE OF THE CRIME.

A. Introduction.

After granting Tate's Motion to Reopen, the Circuit Court reviewed the totality of the circumstances and correctly concluded that Tate's guilty plea should be vacated. (E. 448, 461). The court's review confirmed that neither the judge nor Tate's defense counsel sufficiently addressed the nature or elements of first degree murder on the record. (E. 396). Because neither the judge nor Tate's defense counsel covered this requirement, the Circuit Court correctly reviewed other sources of possible information before concluding that the record was not sufficient. (E. 438-39).

Considering that Brian Tate was a child who was suffering from mental impairments when this plea was conducted, and that there is a complete absence on the record of any advice from any source concerning the nature or elements of a very complex crime – first degree murder – the Circuit Court was correct to conclude that the

colloquy was insufficient to establish that this plea was knowing and voluntary. Given the totality of the circumstances, the court's original inquiry was insufficient to develop a record establishing that this plea was entered with the requisite understanding of the nature of the crime.

For these reasons, and the additional reasons stated below, it is respectfully requested that this Court answer "no" to the question presented, reverse the decision of the Court of Special Appeal, and affirm the Circuit Court's granting of a new trial.

B. In vacating this minor's guilty plea, the Circuit Court applied the correct legal standard and reached the correct decision without abusing its discretion or making any "clearly erroneous" findings.

1. The law applicable to guilty pleas.

"[A] guilty plea operates as a waiver of important rights, and is valid only if done voluntarily, knowingly, and intelligently, 'with sufficient awareness of the relevant circumstances and likely consequences'." *Daughtry*, 419 Md. at 59 (quoting *Bradshaw v. Stumpf*, 545 U.S. 175, 182 (2005)). The Due Process Clause requires "that a guilty plea must be voluntary, not only in a colloquial sense, but 'in a constitutional sense'." *Id.* at 48 (quoting *Henderson v. Morgan*, 426 U.S. 637, 645 (1976)). In order to satisfy this constitutional standard involving these fundamental rights, a defendant's plea must be "entered with the requisite knowledge of the nature and elements of the crime." *Id.* at 58; *see also Bradshaw*, 545 U.S. at 183 (discussing the need for defendants to be "properly informed of the nature and elements of the charge").

This Court's decision in *Daughtry* re-confirmed that the procedures enshrined in Maryland Rule 4-242(c) help courts determine whether a guilty plea satisfies the

constitutional standard. *See Daughtry*, 419 Md. at 71-73. At all times pertinent to the present case, Maryland Rule 4-242(c) provided that a court “may accept a plea of guilty only after it determines, upon an examination of the defendant on the record in open court,” that “the defendant is pleading voluntarily, with understanding of the nature of the charge and the consequences of the plea. . .” *Id.* at 58 (quoting Md. Rule 4-242(c)). As to the requirement for proof on the record that the defendant possessed the requisite knowledge of the nature and elements of the crime, *Daughtry* explained that the source of that information, if present in the record, could be from the judge, defense counsel, or from the defendant’s own responses to questions during the plea. *Id.* at 74-75. In cases where this requirement is not satisfied, the plea must be vacated. *See id.* at 75 (plea vacated); *Graves v. State*, 215 Md. App. 339, 358-59 (2013) (plea vacated because, *inter alia*, “the nature and elements of the crime” were not covered on the record by the judge, defense counsel, or the defendant’s responses to questions).

In determining the validity of a guilty plea, Maryland jurisprudence “has focused always on whether the defendant, *based on the totality of the circumstances*, entered the plea knowingly and voluntarily.” *Daughtry*, 419 Md. at 69. This required determination “can only be made on a case-by-case basis, taking into account . . . among other factors, *the complexity of the charge, the personal characteristics of the accused, and the factual basis proffered to support the court’s acceptance of the plea.*” *Id.* at 72 (quoting *Priet*, 289 Md. at 277).¹⁰ Courts apply the case by case approach in a flexible manner, such that

¹⁰ Consistent with this Court’s prior precedent, when children enter guilty pleas to our most serious felonies in circuit court, the “totality of the circumstances” test applies

the personal characteristics of the defendant and the complexity of the charge can influence the amount of information that needs to be provided to a defendant under a totality of the circumstances. *See Priet*, 289 Md. at 285-86.

2. The standards of review in this appeal.

The standard of review for the Circuit Court's decision to grant Tate's motion to reopen is abuse of discretion. *See Waine*, 444 Md. at 703. After reopening Tate's case, the Circuit Court made findings which led the court to vacate his plea. The standard of review for these factual findings is the "clearly erroneous" standard. This Court has explained that it "will not disturb the factual findings of the post-conviction court unless they are clearly erroneous." *Wilson*, 363 Md. at 348. Further, "[i]f there is any competent evidence to support the factual findings below, those findings cannot be held to be clearly erroneous." *Solomon v. Solomon*, 383 Md. 176, 202 (2004).

3. The Circuit Court correctly applied the law in deciding to grant Tate's motion to reopen, and vacate his guilty plea.

The Circuit Court properly weighed all relevant factors before vacating Tate's plea and granting a new trial. The court started by correctly finding, based on the record, that neither the court, nor defense counsel, established on the record that Tate understood the nature of the crime. (E. 396). Because neither the lawyers present, nor the judge

to the determination of whether the plea is knowing and voluntary. Further, when courts assess the personal circumstances of the defendant as part of the totality of the circumstances, the factors this Court has previously recognized, including age and mental status of the defendant are considered. *See Daughtry*, 419 Md. at 54, 73-74; *see also Priet*, 289 Md. at 285-86, 290. The Circuit Court properly applied this test, weighed these considerations, and certainly did not abuse its discretion in doing so.

addressed this matter, the Circuit Court was left to try to infer what this adolescent understood about the nature and elements of first degree murder based on his monosyllabic responses to generic questions, none of which addressed the nature or elements of the crime. *See* (E. 423-25).

The Circuit Court correctly pursued this task by weighing all of the *Priet* factors consistent with this Court's further guidance in *Daughtry*. (E. 420-21) (factual basis in support of the plea); (E. 433-34) (Tate's personal characteristics); (E. 449) (complexity of the charge). In so doing, the court concluded that first degree murder is a complex crime and courts cannot assume an understanding of the nature and elements from the name or description of the crime itself. (E. 449). The court also reviewed the factual proffer offered to support the plea. (E. 420-21). The Circuit Court concluded that the statement of facts described a crime that qualified as a first degree murder. *Id.* But, there was no explanation of the legal significance of those facts in the record. *See id.; see also Daughtry*, 419 Md. at 74, n.22. There was nothing in the statement of facts that informed Tate "of the requisite elements . . . of first-degree murder."¹¹ *See Daughtry*, 419 Md. at 74, n.22. As such, the Circuit Court correctly concluded the statement of facts was not sufficient to establish that Tate had the requisite understanding of the nature of the crime.

¹¹ When a reviewing court is trying to infer whether a defendant had a greater understanding of the nature of the crime from the statement of facts alone, *Daughtry* recognized the importance of distinguishing between factual proffers that merely support the crime charged, and those that also explain the legal significance of those facts. *Daughtry*, 419 Md. at 74, n.22.

In addition to noting these gaps in the record, the Circuit Court reviewed this adolescent's personal characteristics. (E. 432-34). Because Tate "was still, chronologically, a minor, an adolescent," including his other personal characteristics the Circuit Court concluded that he was "less likely than the average adult to have sufficiently understood the nature of the crimes . . ." (E. 433). Beyond his youth, the Circuit Court also noted evidence that Tate had mental impairments. (E. 433-34). Under a totality of the circumstances, especially given Tate's personal characteristics, the court correctly concluded that a more extensive plea hearing would have been necessary to conclude that Tate understood the nature of the crime to which he pled. *See* (E. 448) (reiterating the court's conclusion).

Because the Circuit Court did not abuse its discretion in vacating Tate's plea, and competent evidence supports the Circuit Court's findings, it was error for the Court of Special Appeals to reverse the Circuit Court's decision. It is respectfully requested that this Court reverse the decision of the Court of Special Appeals and affirm the Circuit Court's decision, granting a new trial.

II. WHEN ADOLESCENTS ATTEMPT, *INTER ALIA*, TO ENTER GUILTY PLEAS, REVIEWING COURTS CONSIDER AGE AND RELATED CHARACTERISTICS, IN DETERMINING WHETHER THE RECORD IS SUFFICIENT TO CONCLUDE THE CHILD UNDERSTANDS THE NATURE OF THE CRIME.

A. When a defendant is a child, the personal characteristics of the adolescent are relevant factors to consider in assessing the voluntariness of a plea.

When children are involved as criminal defendants, age is not just a number. This Court weighs not just the minor's chronological age, but also mental attributes and

developmental issues that go along with adolescence in determining the adequacy of adult criminal procedures involving minors. *See Stebbing v. State*, 299 Md. 331, 368 (1984) (“[Y]outh is more than a chronological fact.”) (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115-16 (1982)). The Supreme Court is in agreement with this approach. In *Graham v. Florida*, 560 U.S. 48 (2010), the Supreme Court went beyond just chronological age itself, in explaining the obvious – that there are “features that distinguish juveniles from adults” and those features “put them at a significant disadvantage in criminal proceedings.” *Id.* at 78.

Medical science is improving our ability to quantify with more precision how these characteristics of adolescence leave minors at such a significant disadvantage in criminal proceedings. *See Roper v. Simmons*, 543 U.S. 551, 569 (2005) (status as an adolescent impacts assessments of the minor’s mental capacity, as compared to an average adult); *Miller v. Alabama*, 567 U.S. 460, 477-78 (2012) (explaining that the hallmark features of juvenility include the “incompetencies associated with youth,” such as “inability to deal with police officers or prosecutors . . . [and] incapacity to assist [one’s] own attorneys”); *see In re Darryl P.*, 211 Md. App. 112, 197 (2013) (giving weight to the fact that the accused was a 17-year-old juvenile in analyzing his Sixth Amendment right to counsel during an interrogation). While there are many disadvantages that have legal significance, specific disadvantages that are material to evaluating guilty plea proceedings include a possible decreased ability to understand and make decisions, as compared with adults. *See J.D.B. v. North Carolina*, 564 U.S. 261, 273 (2011) (minors lack “mature judgment,” and possess “an incomplete ability to

understand”); *Graham*, 560 U.S. at 78 (juveniles have “limited understandings of the criminal justice system;” are more susceptible to making poor decisions in those proceedings; and “[have] [d]ifficulty in weighing long-term consequences”); *McIntyre v. State*, 309 Md. 607, 618 (1987) (youth is a crucial factor in determining whether under the totality of the circumstances, a juvenile’s decision to waive constitutional rights was, in fact, a *voluntary* decision).

While science helps us to understand why these conclusions about minors are true, the Supreme Court has explained why we do not need science to know they are true. *J.D.B.*, 564 U.S. at 272 (a child’s age is a fact that “generates commonsense conclusions about behavior and perception”). We know these things about adolescence are true because we were all children once too. *Id.*

For these and other reasons, when courts are applying the totality of the circumstances test, and the defendant is an adolescent, these age-related factors should receive weight. Indeed, as this Court has stated, age can be “the ‘crucial factor’.” See *Moore v. State*, 422 Md. 516, 531-32 (2011) (discussing importance of age in the totality of the circumstances test for determining whether a minor’s waiver of constitutional rights was voluntary); *McIntyre*, 309 Md. at 618 (same – waiver of *Miranda* rights by a juvenile).

Similarly, courts also consider information about a defendant’s mental impairments during a guilty plea. *Daughtry*, 419 Md. at 73 (citing *Henderson*, 426 U.S. at 641). Information that a child has a mental impairment may indicate, as it did in this

case, that the child is functioning at an even younger age than his chronological age suggests. *See* (E. 51-52).

Children can be charged as adults and plead guilty to adult crimes. But, when children are charged as adults, they are still chronologically and developmentally children. In these circumstances, especially when the plea colloquy is otherwise lacking in material ways, a greater consideration of the personal characteristics of adolescence is required from the trial court overseeing the plea than was present here. (E. 432-32).

B. Because adolescents and adults have different personal characteristics, it is impossible to assume they have the same understanding merely based on the answers they may provide to similar questions.

Age or maturity are factors that Maryland courts and other authorities routinely consider in assessing the validity of a defendant's guilty plea.¹² In the context of guilty pleas involving minors, the defendant's age presents additional concerns about the youth's understanding, mental capacity, and decision-making that are similar to concerns recently addressed by the Supreme Court in *J.D.B.* In *J.D.B.*, the Supreme Court considered the totality of the circumstances test for determining whether a juvenile was in

¹² *See, e.g., Daughtry*, 419 Md. at 44 (quoting the plea court's question, "[a]nd how old are you?" and Daughtry's response, "[t]wenty-one."); *Priet*, 289 Md. at 282, 285 (referencing the ABA standard suggesting consideration of age and explaining the persuasiveness of federal court interpretations of Rule 11 which indicate that the information that must be provided to the defendant about the nature of the offense varies depending on "the personal characteristics of the defendant, such as his age, education . . .") (emphasis added); *Coleman v. State*, 219 Md. App. 339, 357 (2014) (considering Coleman's age of 19 in concluding that the *coram nobis* court did not err in determining that his plea was knowing and voluntary, pursuant to Md. Rule 4-242(c)); *Rich v. State*, 230 Md. App. 537, 554 (2016) (highlighting that the plea court asked the defendant during the colloquy, "[s]o you're 27 years old. . .") (aff'd *State v. Rich*, 454 Md. 448 (2017)).

custody for purposes of *Miranda*. See *J.D.B.*, 564 U.S. at 270-72. As with the guilty plea proceedings at issue here, the assessment in *J.D.B.* turned on what the minor may have understood. *Id.* at 272-75. In that context, the Supreme Court noted that age presents “a reality that courts cannot simply ignore.” *Id.* at 277. The same is true for guilty pleas.

For these reasons, and because guilty pleas can only be assessed individually on a case-by-case basis, comparisons between generic questions asked of adults, and those asked of juveniles, should not be entitled to the weight the Court of Special Appeals accorded them here. See (E. 474-75) (comparison of answers). What is particularly problematic is the way in which the intermediate appellate court compared selected questions and answers from the plea colloquy in *Daughtry* to the one in Tate’s case. *Id.*

The Circuit Court that vacated Tate’s plea, and the Court of Special Appeals, both found questions and answers in Tate’s plea transcript which they concluded were more comprehensive than the questions asked in *Daughtry*. (E. 417) (Circuit Court); (E. 473-75) (Court of Special Appeals). But, those courts reached opposite conclusions about how much that distinction could be relied on to make an inference that this adolescent possessed a greater understanding of the nature or elements of first degree murder than Mr. Daughtry did, or than is evident from the record.

One material difference between these two cases is that Mr. Daughtry was a 21 year old adult, *Daughtry*, 419 Md. at 44, and Tate was a 16 year old child at the time of the crime (17 during the plea). Also, there was no evidence Mr. Daughtry had any mental impairment. See *id.* at 44, 75. But, in this case, the court knew that by time Tate

was 16, or possibly younger, he was already suffering from serious mental impairments that caused his parents to seek professional intervention. (E. 74). The court knew Tate's mental impairments caused problems with school. *Id.* Tate himself told the court "yes," "[he had] been under the care of a psychiatrist or in a mental institution," *id.*, and the court was also aware he was seeking treatment at the Patuxent Institution, a place for inmates with serious mental illnesses. *See* (E. 71-72). The court also knew about Tate's psychiatric evaluation prior to the plea, and the diagnosis offered by Dr. Spodak concerning Tate's "manifestations of narcissistic and passive, aggressive personality disorders." (E. 48-52). The judge presiding over the guilty plea had been informed about this physician's conclusions about Tate's "lack of maturity even for his age," and that a possible issue existed about whether his mental impairments interfered with his ability to form specific intent. *Id.* For these reasons, it was error for the Court of Special Appeals to give the extra weight that it did to this information.

Considering these material differences in personal circumstances that relate directly to a defendant's mental acuity, on this record there is no way to assume that Tate, an adolescent with serious mental impairments, understood more than Mr. Daughtry, a fully functional adult, merely because of the questions they were asked.

III. BUT FOR ERRORS MADE BY THE COURT OF SPECIAL APPEALS, THAT COURT WOULD HAVE AFFIRMED THE DECISION TO VACATE THIS PLEA AND GRANT A NEW TRIAL.

The Court of Special Appeals did not accord proper weight, or deference, to the Circuit Court's factual findings or legal conclusions. The intermediate appellate court did not give sufficient weight to Tate's personal characteristics, such as his youth, and the

court incorrectly discounted any and all consideration of his mental impairments. (E. 479-80). The court gave undue weight to the statement of facts even though it “in no way” informed Tate “of the requisite elements or nature of first-degree murder.” (E. 475-77); *see Daughtry*, 419 Md. at 74, n.22. Finally, the Court of Special Appeals inferred Tate understood more than can be justified by the plea transcript. (E. 474).

The Circuit Court made factual findings on all of these points. The Circuit Court’s findings should not have been disturbed unless they were clearly erroneous. They were not. Because there was competent evidence in the record to support the Circuit Court’s findings, the decision to vacate Tate’s plea and grant a new trial should be affirmed.

A. Differences in how the Circuit Court and the Court of Special Appeals weighed the totality of the circumstances show that the Circuit Court’s findings were proper, and the decision to vacate Tate’s plea was correct.

When the Circuit Court’s review of the factors listed in *Priet* and *Daughtry* are compared to the analysis provided by the Court of Special Appeals, it reveals why the Circuit Court’s decision to grant a new trial should be affirmed. These factors include the complexity of the charge, the personal characteristics of the accused, and the factual predicate offered in support of the plea.

1. Complexity of the charge.

This Court has directed lower courts to consider the complexity of the charge when applying the totality of the circumstances test. *Daughtry*, 419 Md. at 72. In terms of the complexity of the charge, the Circuit Court concluded, consistent with *Daughtry*, that the nature of first degree murder is highly complex. (E. 425, 449); *see also*

Daughtry, 419 Md. at 72-73. The State never challenged this finding on appeal, and ever since *Daughtry* issued, the State has not argued first degree murder is anything other than a complex crime.

The Court of Special Appeals, however, never weighed this factor at all. The court never mentioned the complexity of first degree murder, or discussed how the complexity of this particular crime may have made it more difficult for a minor to understand. These are factors the Court of Special Appeals should have considered, pursuant to this Court's controlling precedent. *Daughtry*, 419 Md. at 72-73; *Priet*, 289 Md. at 282, 285.

Under these circumstances, it is self-evident that the Circuit Court correctly concluded that first degree murder is a complex crime. The Court of Special Appeals' balancing of the totality of the circumstances is less persuasive than the Circuit Court's original analysis because, *inter alia*, the intermediate appellate court never weighed the complexity of the crime at all.

2. Personal characteristics of the accused.

Given the extent of the Circuit Court's discussion about Tate's status as a minor, and how his personal characteristics carry weight pursuant to this Court's precedent under the totality of the circumstances test, it is surprising that the Court of Special Appeals hardly even mentioned Tate's age. Aside from acknowledging that "the 'personal characteristics of the accused' should be considered in evaluating the validity of the plea," (E. 479) there is nothing in the Court of Special Appeals' opinion indicating

that it weighed Tate's youth or status as a minor as factors influencing the proof needed on the record to establish a knowing and voluntary plea.

The Circuit Court, on the other hand, made findings that Tate was "less likely than the average adult to have sufficiently understood the nature of the crimes to which he pled" because he was a minor. (E. 433). Because Tate was a minor, the Circuit Court acknowledged attributes of adolescence and age in assessing his personal characteristics. *Id.* The importance that the Circuit Court attributed to adolescence and age is supported by the evidence, (E. 279-92) and the Court of Special Appeals never directly questioned the Circuit Court's weighing of these age-related personal characteristics. Instead, the intermediate appellate court appears to have given no weight at all to this minor's age, a characteristic that this Court has held to be "a crucial factor" in deciding whether a juvenile's waiver of constitutional rights is knowing and voluntary in another criminal context. *Moore*, 422 Md. at 531-32; *McIntyre*, 309 Md. at 618. Although Tate's youth is "a reality that courts cannot simply ignore," *J.D.B.*, 564 U.S. at 277, there is no evidence the Court of Special Appeals accorded any weight to this factor.

The Court of Special Appeals' conclusions about the validity of the plea are also unpersuasive because the court refused to accord any weight at all to the evidence of Tate's mental impairments in assessing his personal characteristics. *See* (E. 479-80). The Court of Special Appeals' failure to consider this evidence is contrary to controlling precedent. *See Henderson*, 426 U.S. at 647; *Daughtry*, 419 Md. at 73. This Court has explained that the requirement imposed on the court to ensure the defendant understands the nature of the charge "must be applied in a practical and realistic manner." *Priet*, 289

Md. at 288. Failing to place any weight on a defendant's status as a juvenile or his mental impairments is neither practical nor realistic. Because "one with a diminished mental capacity is less likely to be able to understand the nature of the charges against him than one with normal mental faculties," the Circuit Court was right to consider this information. *Daughtry*, 419 Md. at 73.

Contrary to the Court of Special Appeals' opinion, the evidence of Tate's mental impairments is not only relevant, it is material and deserved the weight it received. During the original guilty plea hearing, the judge knew Tate had psychiatric impairments that caused problems at school, and was aware of his prior psychiatric examination. (E. 48-52, 74). The judge knew these examinations raised a question about Tate's mental capacity. (E. 48-52). In fact, the court signed an order allowing the examinations to take place and for Tate's transportation to submit for testing. (E. 11). It was error for the Court of Special Appeals to discard all this evidence.

The Circuit Court's findings about Tate's personal characteristics were supported by available evidence and were in no way clearly erroneous. If the intermediate appellate court had properly weighed these personal characteristics, along with the complexity of the crime, and the absence of any information in the record about the nature and elements of first degree murder, the court would have affirmed.

3. Statement of the facts.

One factor courts weigh as part of the totality of the circumstances test is the factual basis proffered to support the court's acceptance of the plea. *Daughtry*, 419 Md. at 72. The Circuit Court properly weighed this factor and concluded that the statement of

facts “clearly” supported the crime charged. (E. 420-21). But, the court also noted that the factual proffer alone “is not enough” to “support an ultimate finding of a valid plea” after taking into consideration the totality of the circumstances. (E. 421). The Circuit Court did not make any error, or abuse its discretion, in reaching that conclusion.

The Court of Special Appeals, however, took a materially different, and incorrect approach, which contradicts this Court’s analysis in *Daughtry*. In *Daughtry*, the Court discussed two ways in which the statement of facts at a plea can play a role in the determination of the validity of the plea. The first, as described in *Priet*, is when the factual statement is one of several factors that may help indicate, under a totality of the circumstances, whether the plea is valid. *See Daughtry*, 419 Md. at 72; *see also Priet*, 289 Md. at 288. In this first method, the statement of facts may play some role in the weighing process under the totality of the circumstances test.

The second way a statement of facts might play a different, and far more significant role, as mentioned in *Daughtry*, is the “possibility” that the statement of facts go further and also describe the offense in such a way that the description alone could satisfy the constitutional requirements otherwise lacking in the transcript. *Daughtry*, 419 Md. at 74. This second method only applies when the factual statement not only states adequate facts, but also provides a sufficient “explanation of the legal significance of those facts,” such that Rule 4-242(c) is satisfied. *Id.* at 74, n.22. That did not happen here. (E. 82-86) (factual predicate).

In *Daughtry*, the Court confronted a statement of facts, like the one here, which arguably fit the crime in question. *See id.* Nonetheless, this Court concluded that

Daughtry's statement of facts was insufficient to conclude that Daughtry also understood the nature of the offense because the facts he agreed to "in no way informed Daughtry of the requisite elements or the nature of first-degree murder. . ." *Id.* The same is true for the statement of facts presented at Tate's plea. The facts read during Tate's plea never identified the elements of first degree murder, or described the nature of first degree murder, and there was no explanation of the legal significance of those facts as related to any particular element of the crime. (E. 82-86) (citing to statement of facts proving it failed to meet this standard).

The Court of Special Appeals focused exclusively on the factual *details* provided in the proffer, as opposed to whether there was any explanation provided about the legal significance of those facts. (E. 477). In doing so, the court did not discuss the distinction this Court made in *Daughtry* and it applied this part of *Daughtry*'s analysis incorrectly.

In order to conclude the statement of facts itself satisfies the nature or elements requirement for a valid guilty plea as discussed in *Daughtry*, the factual proffer has to do more than simply describe the details of the crime. That did not happen here. The factual proffer never gave Tate "an understanding of the law in relation to the facts." *McCarthy v. United States*, 394 U.S. 459, 466 (1969). The factual proffer in Tate's case did not inform him of the elements of first degree murder, or explain the legal significance of the facts as they related to the nature of the crime. Accordingly, the factual details at the plea failed to satisfy the on-the-record requirement concerning the nature of the crime.

B. Because the findings the Circuit Court made concerning Tate's guilty plea were supported by competent evidence, the decision to vacate this plea should have been affirmed on appeal.

Record evidence supports the findings that the Circuit Court made in reaching the conclusion to vacate Tate's plea. The court applied the correct test, and weighed all relevant circumstances in a manner that was fully consistent with this Court's precedent.

As explained above, the fact that Tate was chronologically still a child fully justified the consideration accorded by the Circuit Court. Evidence also supported the Circuit Court's consideration of Tate's mental impairments as a personal characteristic, and all the other factors weighed by the Circuit Court. All this evidence supports the Circuit Court's decision to vacate this plea.

First degree murder is a complex crime. *Daughtry*, 419 Md. at 72-73. Yet, neither the judge presiding over this guilty plea, nor defense counsel, ever even attempted to address the nature of this crime on the record. (E. 396). When a child is going through a plea proceeding that will ultimately require a judge to impose some form of a life sentence, and no one mentions the nature or elements of the crime, the plea colloquy needs to be more thorough than the one present here.

The Circuit Court's decision to vacate Tate's plea was correct.

CONCLUSION

It is respectfully requested that this Honorable Court affirm the Circuit Court's decision to reopen Tate's case, vacate his plea, and grant a new trial. We ask that the

Court reverse the decision of the Court of Special Appeals on these matters, and remand this case to the circuit court for further proceedings.

Respectfully Submitted,



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**CERTIFICATION OF WORD COUNT AND COMPLIANCE
WITH RULE 8-112**

1. This brief contains 9,650 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the font, spacing, and type size requirements state in Rule 8-112.



Booth Marcus Ripke

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of January 2018, the foregoing Brief of Petitioner was filed through the MDEC system, and two copies were mailed postage prepaid to:

Edward J. Kelley
Office of the Attorney General
Criminal Appeals Division
200 St. Paul Place
Baltimore, MD 21202



Booth Marcus Ripke

CERTIFICATION OF COMPLIANCE WITH MARYLAND RULES

As to the attached document, I hereby certify that the attached Brief of Petitioner complies with the Maryland Rules, as follows:

No Restricted Information – No certificate of redactions needed

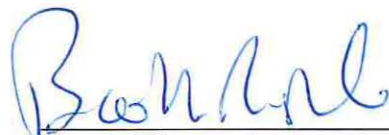
1. Pursuant to Rule 20-201, this document does not contain any restricted information as defined in the Maryland Rules. Therefore, no redacted or un-redacted copies are necessary under Rule 20-201;

Certificate of Service

2. There is a written and signed certificate of service attached to this Request pursuant to Rule 20-205(d); and

Signature

3. Pursuant to Rule 20-107, all documents requiring a signature are signed.


Booth Marcus Ripke

PERTINENT PROVISIONS

Md. Rule 4-242(c) (current version)

The court may not accept a plea of guilty, including a conditional plea of guilty, until after an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, the court determines and announces on the record that (1) the defendant is pleading voluntarily, with understanding of the nature of the charge and the consequences of the plea; and (2) there is a factual basis for the plea. In addition, before accepting the plea, the court shall comply with section (f) of this Rule. The court may accept the plea of guilty even though the defendant does not admit guilt. Upon refusal to accept a plea of guilty, the court shall enter a plea of not guilty.

Md. Rule 4-242(c) (previous version)¹³

The court may accept a plea of guilty only after it determines, upon an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, that (1) the defendant is pleading voluntarily, with understanding of the nature of the charge and the consequences of the plea; and (2) there is a factual basis for the plea. The court may accept the plea of guilty even though the defendant does not admit guilt. Upon refusal to accept a plea of guilty, the court shall enter a plea of not guilty.

¹³ Note that both versions contain identical language concerning the “nature of the charge.”