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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

PETITIONER'S REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules/Statutes

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INTRODUCTION

There are important points raised by this appeal which the State never contradicted in its Brief, and which fully support the Circuit Court's decision to vacate this guilty plea. These points, which include factual findings about this adolescent's personal characteristics and the case precedent discussing how an adolescent's age and mental impairments take on increased importance in the totality of the circumstances test, are summarized below.

Instead, the State primarily rests its argument on an incorrect belief that the reason the Circuit Court vacated this plea was supposedly because the court thought plea record had to contain an explanation of the nature or elements of the crime. *See*, *e.g.*, Respondent's Brief at 18, 33. The State's argument is incorrect and without merit. There is also no merit in the State's incorrect claim that the Circuit Court supposedly believed *Daughtry* required an expressed exposition of the nature or elements on the guilty plea record. *Id.* To the contrary, the Circuit Court repeatedly explained throughout its opinion that there is no requirement to list or expressly state the nature and elements of the crime on the record. (E. 405) (explaining a variety of ways to affirm the validity of a plea without stating the nature or elements of the crime on the record). The Circuit Court explicitly stated "the Court of Appeals does not require that there be a reading of all of the elements." (E. 431). The record proves over and over that the Circuit Court applied the correct test and knew the nature and elements do not need to be stated on the record. (E. 422) (explaining ways to have a valid plea without expressly stating the nature or elements on the record); (E. 427) (same). Because this entire foundation of the State's argument is incorrect, the inferences the State tries to draw from that faulty foundation are unpersuasive.

Aside from this argument, the State alternatively seeks to introduce new issues it never previously petitioned this Court to consider. The State's arguments concerning the abuse of discretion standard of review, and what the State calls "the *Henderson/Priet* presumption," are ones which either: (1) the State did not argue to the Court of Special

Appeals at all; or (2) the Court of Special Appeals addressed, and determined had not been preserved for appeal. Both of these arguments are unpersuasive.

There never was any abuse of discretion by the Circuit Court and the Circuit Court's factual findings are not clearly erroneous. To the contrary, the Circuit Court's opinion was well-reasoned, thorough, and correct. For these reasons, it is respectfully requested that this Court vacate the decision of the Court of Special Appeals, affirm the Circuit Court's decision, and grant Tate a new trial.

ARGUMENT

I. THERE ARE IMPORTANT POINTS RAISED BY THIS APPEAL WHICH THE STATE HAS NOT DIRECTLY CHALLENGED, AND WHICH SUPPORT A DECISION TO VACATE TATE'S GUILTY PLEA.

A. Fundamental differences between the personal characteristics of adults and adolescents.

The State does not directly address itself to the proof that "age" carries special weight in the totality of the circumstances test when the defendant is not an adult. The reasons why this is true include "features that distinguish juveniles from adults," which "put them at a significant disadvantage in criminal proceedings." *Graham v. Florida*, 560 U.S. 48, 78 (2010). These disadvantages that impact guilty plea proceedings include "an incomplete ability to understand." *J.D.B. v. North Carolina*, 564 U.S. 261, 273 (2011). As Tate previously briefed to the Court, and the State did not challenge, when conducting a totality of the circumstances test involving the waiver of a juvenile's constitutional rights, "age" can sometimes be "the 'crucial factor.'" Petitioner's Brief at 24, 30.

Tate's initial brief discussed how courts exercising the constitutional obligation to confirm that a child's guilty plea satisfies all legal requirements may weigh not just an adolescent's chronological age, but also the commonsense understandings of the mental limitations imposed by adolescence itself. *Id.* at 24-25. Tate's brief explained how these and other factors, including mental illnesses and impairments, limit the ability to infer what a minor may have understood about the nature and elements of a complex crime. *Id.* at 25-27. The State did not dispute any of this precedent.

Because it is undisputed that 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 undue weight the Court of Special Appeals accorded them here. (E. 473-75). Given the materially different personal characteristics between Tate (an adolescent with significant mental impairments) and Daughtry (an adult with no mental impairments), the weight the Court of Special Appeals gave to its comparison of these plea colloquies was not justified.

The State's brief does not take issue with the reasons Tate presented to explain why the Court of Special Appeals' analysis was unpersuasive on this point.

B. The Court of Special Appeals disproportionately relied on the statement of facts in a way that contradicts this Court's guidance in *Daughtry*.

Because the judge and the lawyers who were present for this plea never made any mention about the nature or elements of first degree murder on the record, the State encourages this Court to search elsewhere. Specifically, the State wants the Court to do what the Court of Special Appeals did and rely on the statement of facts to infer that an

understanding of the nature and elements of the crime existed from this silent record. Respondent's Brief at 35-36.

But, the State never disputes the proof Tate provided that this statement of facts is not entitled to the improper weight the Court of Special Appeals gave it. Because the statement of facts read into the record did not include any "explanation of the legal significance of those facts," and "in no way informed" Tate "of the requisite elements or the nature of first-degree murder" it is not entitled to the weight the Court of Special Appeals accorded it here. *State v. Daughtry*, 419 Md. 35, n.22 (2011). The factual proffer provided during Tate's plea suffers from the same weakness as the factual proffer in *Daughtry*: it listed the facts but "there was no explanation of the legal significance of [the] facts." *Id.*; (E. 82-86). As a result, for the same reasons this Court explained in *Daughtry*, the factual proffer read at the plea was insufficient to satisfy the on-the-record requirements concerning the nature and elements of the crime.

The undue over-reliance by both the State and the Court of Special Appeals on the factual proffer, in place of the Circuit Court's judgment, is not justified. To the contrary, the weight the Circuit Court accorded the statement of facts is fully consistent with this Court's prior precedent and that court's well-reasoned decision vacating this plea.

C. The State agrees that the Circuit Court's factual findings should be credited, and not disturbed, unless they are proven to be "clearly erroneous."

The State agrees that appellate courts will not disturb the factual findings of a post-conviction court unless they are clearly erroneous. Respondent's Brief at 23; *see also Simms v. State*, 445 Md. 163, 185 (2015) ("if there is any competent evidence to

support the factual findings below, those findings cannot be held to be clearly erroneous."). There is no place in the State's brief where it argues that any specific factual finding by the Circuit Court was "clearly erroneous."

Tate's initial brief summarized factual findings the Circuit Court made about the importance of this adolescent's personal characteristics, including his youth and his mental impairments. Petitioner's Brief at 22. These factual findings established that Tate suffered from "impairment of his mental capacity" and confirmed the presence of "significant mental/emotional/behavioral disorders or deficits." (E. 434). The Circuit Court considered these personal characteristics when it assessed how much one could reasonably infer about Tate's understanding. (E. 433-34). Specifically, it made a factual finding that because of Tate's age and mental impairments, he was "less likely than the average adult to have sufficiently understood the nature of the crimes . . . ." (E. 433). These findings were supported by the record, including the summary of a pre-plea psychiatric evaluation which diagnosed this adolescent with a series of personality disorders that impaired and interfered with the ability to form specific intent. (E. 52). The summary of that psychological evaluation also informed the court Tate had a "lack of maturity" even for his "tender years." (E. 51).

The Circuit Court found that because of this minor's youth and his mental impairments, in order for a judge to conduct a valid guilty plea involving this defendant, the judge would need to engage in a "more careful examination by the plea court and a more extensive plea hearing" than would be usual with a mature, more functional adult. (E. 434). That finding is consistent with this Court's precedent that "one with a

diminished mental capacity is less likely to be able to understand the nature of the charges against him . . ." *Daughtry*, 419 Md. at 73. Weighing these personal characteristics within the totality of the circumstances, the Circuit Court correctly concluded that the record was insufficient to confirm Tate possessed "the requisite 'understanding of the nature of the charge'." (E. 438-39); *Daughtry*, 419 Md. at 52.

The State indirectly suggests the Circuit Court's factual findings are instead, legal conclusions. But, this Court has previously affirmed that a post-conviction court's finding about whether a defendant could "understand[] the nature of the proceeding" was a factual finding that would not be disturbed unless it was clearly erroneous. *Kusi v. State*, 438 Md. 362, 383-84 (2014); *see also In re Darryl P.*, 211 Md. App. 112, 164 (2013) (circuit court's determination of whether a defendant "understood" his *Miranda* rights was a factual finding); *Faulkner v. State*, 156 Md. App. 615, 649 (2004) (same); *cf. Gilliam v. State*, 331 Md. 651, 676 (1993) (whether a lawyer is competent to handle a proceeding, or has sufficient experience to understand how to handle a case is a factual finding).

The Circuit Court clearly made factual findings concerning Tate's age and mental impairments, and the significance of those personal characteristics, which are entitled to deference on appeal. Because there is evidence in the record that supports all of the Circuit Court's factual findings, they cannot be held to be clearly erroneous.[1]

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[1] Whether a defendant has a serious mental impairment and the extent to which that impairment may impact his ability to understand any specific aspect of the proceedings are factual determinations. The finding that Mr. Tate's youth and mental impairments rendered him in a condition such that more extensive questioning would be needed of

II. THE STATE'S APPELLATE ARGUMENT RESTS ON A FALSE PREMISE – THE MISTAKEN BELIEF THAT THE CIRCUIT COURT SUPPOSELDY HELD THE PLEA RECORD HAS TO INCLUDE A DESCRIPTION OF THE NATURE OR ELEMENTS OF THE CRIME.

The State conceded to the Circuit Court and the Court of Special Appeals that no party, including the judge, ever placed the nature or elements of first degree murder on the record during the guilty plea. But, the Circuit Court found this fact to be the beginning, not the end, of the required analysis. Because those elements were never placed on the record, the Circuit Court correctly proceeded to conduct an "exhaustive review" (E. 401) of the totality of all the relevant circumstances in order to determine if the record sufficiently established this adolescent had the requisite understanding. (E. 420-39).

On appeal, however, the State is now incorrectly claiming that the Circuit Court believed Mr. Tate's guilty plea was invalid *because* the nature and elements were not expressly stated on the record. Respondent's Brief at 18, 33. This is a material misunderstanding of the record.

The Circuit Court knew that courts are not required to list or expressly state the nature and elements of the crime on the record. (E. 405) (explaining a variety of ways to affirm the validity of a plea without expressly stating the nature or elements of the crime

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him than it would of a fully-functional adult is a factual one. When, as here, there is competent evidence to support these factual findings, they cannot be clearly erroneous. *Simms*, 445 Md. at 185.

The Court of Special Appeals' analysis of the totality of the circumstances is not reliable or persuasive because that court incorrectly refused to give any weight at all to Tate's mental impairments.

on the record). The Circuit Court explicitly stated "the Court of Appeals does not require that there be a reading of all of the elements." (E. 431) (emphasis added). The Circuit Court further confirmed "[t]here is no requirement that the precise legal elements comprising the offense be communicated to the defendant as a prerequisite to the valid acceptance of his guilty plea." (E. 403). The record here is replete with proof that the Circuit Court understood guilty pleas can be valid even where the nature and elements are not expressly stated on the record. (E. 427) (Circuit Court explaining that this requirement can be satisfied by the defendant informing the court, or defense counsel confirming to the court, that the nature and elements were discussed and understood before the plea hearing); (E. 422) (explaining a variety of ways to affirm the validity of a plea without an express exposition of the nature or elements of the crime on the record). As such, the State's argument is incorrect and without merit.

The State's argument appears to be based on an underlying – and equally incorrect – claim that the Circuit Court supposedly believed *Daughtry* somehow mandated the Circuit Court to automatically vacate the plea. Respondent's Brief at 18. The State incorrectly suggests that the Circuit Court believed *Daughtry* "compelled" a finding that this plea was defective because "the plea record lacked any expressed exposition of the nature or elements of the crime." *See id.* But, the record proves over and over again that is simply not true. *See, e.g.*, (E. 403, 405, 422, 427, 431).[2]

[2] In the Court of Special Appeals, the State tried to frame its appeal around the mistaken notion that the Circuit Court thought a description of the nature or elements of the crime had to be placed on the record, but the intermediate appellate court chose not to respond to that argument. (E. 471). Although that argument was the only "question

The State wants this Court to conclude that the Circuit Court read *Daughtry* as a rigid straightjacket that compelled reversal without exercising any discretion. But, that is not true. The Circuit Court explained that *Daughtry* only "sets out factors to aid the trial court in determining whether to accept the guilty plea." (E. 418). Contrary to the State's argument, the Circuit Court recognized "the complexities and subtleties of the rulings from *Daughtry* and this whole area of guilty plea jurisprudence." (E. 402). The Circuit Court expressly stated that precedent like *Daughtry*, and *State v. Priet*, 289 Md. 267 (1981), do not require any outcome, but rather hold "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 Circuit Court clearly applied discretion, and the totality of the circumstances test. In fact, several of the same exact legal citations the State uses to explain guilty plea procedures in Maryland were quoted and applied by the Circuit Court exactly in the manner the State proposes. *Compare* (E. 403) (Circuit Court explaining *Daughtry*'s holding) & (E. 448-49) (Circuit Court applying the totality of the circumstances test) *with* Respondent's Brief at 24-25 (providing the same quote from *Daughtry* regarding the totality of the circumstances test).[3]

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presented" by the State, the Court of Special Appeals, *sua sponte*, decided not to respond to it at all, preferring instead to glean a different argument from elsewhere in the State's brief. *Id.*

[3] The Circuit Court also expressly cited and applied the same precedent, now cited by the State, when the Circuit Court confirmed "[t]here is no requirement that the precise

The State is confusing the fact that this plea record did not contain any statement about the nature or elements of first degree murder with the belief that this fact is the reason the plea was vacated. It is not. The Circuit Court never held that *Daughtry* mandated anyone place the nature or elements of the crime on the record.

The Circuit Court knew that case law alone did not compel any outcome. Instead, the court believed the only way to reach an outcome here was to apply the "totality of the circumstances" test to "the unique facts of this case." (E. 378) (explaining that the case law is to be "read closely and applied" in the above manner). The Circuit Court then proceeded to reasonably apply those factors before vacating this plea. (E. 422-39).

For these reasons, the State's attempt to challenge the Circuit Court's decision to reopen this case is without merit.[4]

III. THE STATE'S "INTERESTS OF JUSTICE" AND "ABUSE OF DISCRETION" ARGUMENT IS WITHOUT MERIT AND IS NOT PROPERLY BEFORE THE COURT.

This argument is not properly before the Court because in the Court of Special Appeals, that court held that the State never presented this argument for appeal. (E. 472).

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legal elements comprising the offense be communicated to the defendant as a prerequisite to the valid acceptance of his guilty plea." *Compare* (E. 403) (Circuit Court highlighting this point of law) *with* Respondent's Brief at 25-26 (stating the same quote but citing to *Priet*).

[4] The State tries to create an abuse of discretion argument by quoting out-of-context a word or two from the lengthy opinion of the Circuit Court. Considering the depth of this written decision and the court's "exhaustive review" of the totality of the circumstances, there is no credible argument that the Circuit Court believed it had no discretion at all.

The Court of Special Appeals explained that the State did not argue in this appeal that the Circuit Court erred "in reopening the post-conviction proceeding under the interests of justice standard." *Id.* The Court of Special Appeals specifically relied on the conclusion that the State never challenged the Circuit Court's discretionary decision to reopen this case in order to hold that "the abuse of discretion standard of review does not apply here." *Id.*

The State never previously challenged these findings by the Court of Special Appeals. When Mr. Tate petitioned for certiorari and sought review by this Court, the State never filed any cross-petition or otherwise made any claim whatsoever that the Court of Special Appeals was wrong about what arguments the State did or did not preserve for appeal. To the contrary, the State argued the Court of Special Appeals' decision was correct in every respect. Under these circumstances, the State's current attempt to switch course and now challenge the Court of Special Appeals judgment as to which issues it failed to preserve on appeal is improper. *See, e.g., Parker v. State,* 402 Md. 372, 405-06 (2007)

In addition, the argument has no merit. The State's abuse of discretion argument is wholly based on the mistaken belief that the Circuit Court never really exercised its discretion at all, and instead simply vacated the guilty plea because it believed *Daughtry* required an actual, on-the-record, recitation of the nature and elements of the crime. But as explained above, this is not true.

The State's claim is simply inconsistent with the "exhaustive review" that the Circuit Court clearly undertook. If the Circuit Court actually believed that *Daughtry* left

the Court with no discretion in how to act, and provided the court no alternative, it would not have taken the Circuit Court 87 pages to explain that. There would have been absolutely no reason for the Circuit Court to discuss the personal characteristics of this adolescent if it believed what the State suggests about being automatically forced to vacate this plea for other reasons. There would have been no need to weigh the complexity of this crime, or the statement of facts either. If the Circuit Court actually believed what the State suggests, then there would have been no need to discuss and apply the totality of the circumstances test at all.[5]

The only reason the Circuit Court vacated this adolescent's plea is because the court applied the totality of the circumstances test, and after reasonably weighing all of the factors, it arrived at that conclusion. There was no abuse of discretion in the application of that test. The Circuit Court understood *Daughtry*. Given the court's factual findings about this adolescent's age and his serious, documented, mental impairments, the court made a reasonable finding that this particular defendant required "an even more careful examination by the plea court and a more extensive plea hearing than would be usual with a mature, more functional adult." (E. 434). Because of Mr. Tate's "'personal characteristics,' unique to himself" (E. 433), the Circuit Court correctly concluded that the information provided on the record was not sufficient to conclude this particular defendant possessed "the requisite knowledge of the nature and elements of the

[5] The meaning the State is now trying to inject into the Circuit Court's use of terms like "compelled" is completely out of context. When the Circuit Court's opinion is read as a whole, there is no plausible argument that the court never exercised any discretion.

crime." *Daughtry*, 410 Md. at 58. There is no reason to disturb that conclusion on appeal.

IV. THE CIRCUIT COURT DID NOT COMMIT REVERSIBLE ERROR IN ADDRESSING THE "*HENDERSON/PRIET* PRESUMPTION."

Neither the State's principal brief nor its reply brief before the Court of Special Appeals argued that a so-called "*Henderson*/*Priet* presumption" should be applied in this case, or that the court should rule on those grounds. In those briefs, the State never alleged error by the Circuit Court in addressing the presumption. When the Court of Special Appeals issued its decision, that court also did not apply a *Henderson/Priet* presumption. The State never sought to challenge the intermediate appellate court's decision not to do so. When the State filed a brief opposing the petition for certiorari, once again, the State never argued that the *Henderson/Priet* presumption should have been applied, and never filed any cross-petition asking the Court to address this presumption.

As a result of the State's failure to preserve its argument, Maryland law precludes it from pursuing that argument now. Md. Rule 8-131(b)(1). If the State wanted to raise this claim on appeal, the State needed to do that by briefing this specific argument to the Court of Special Appeals in its Brief of Appellant, and, if unsatisfied by that court's ruling, include it in a cross-petition for certiorari. *Coleman v. State*, 281 Md. 538, 547-48 (1977) ("[t]he State did not [ ] file a cross-petition for certiorari raising the [ ] issue, and we therefore will not consider it . . [n]or will we remand the case to the Court of Special Appeals to consider that question since the State failed to raise the issue before that

court.") (internal citations omitted); *Haley v. State*, 398 Md. 106, n.9 (2007) ("the issue [ ] is not before this Court. The question is not contained within the certiorari petition and the State did not file a cross-petition for certiorari raising the question . . ."); *Garner v. Archers Glen Partners Inc*., 405 Md. 43, 60-61 (2008) (declining to address an issue where neither question in the petition for certiorari "fairly embraced" it, reasoning "we have consistently held that, in a case decided by an intermediate appellate court, we shall not consider an issue unless it was raised in a certiorari petition, a cross-petition, or the order by this Court granting certiorari.") (citations omitted).

Moreover, the State's argument is not persuasive and the State does not provide any post-*Daughtry* citation in support. In *Daughtry*, this Court declined the State's request to apply this same presumption even when that issue was properly presented for consideration. Instead, the Court highlighted the primary importance of the totality of the circumstances test, focusing on the proper application of that test. *Daughtry*, 419 Md. at 67-69. This distinction is critical because *Daughtry* resolved the way in which the viability of the *Henderson/Priet* presumption is necessarily "limited" by, *inter alia*, proper use of the totality of the circumstances test. *Id.* at 69.

The State's request that this Court "presume" Tate understood the nature and elements is unpersuasive. The only post-*Daughtry* decision the State references is a Court of Special Appeals case where the State concedes the court *refused* to apply the presumption.[6] *State v. Graves*, 215 Md. App. 339, 357-58 (2013).

[6] The State's request also undermines the State's own argument before the Court of Special Appeals. Previously, the State argued the record alone was sufficient to conclude

This is simply not a case where any limited *Henderson/Priet* presumption should be applied. The presumption centers on what a judge may choose to assume, or presume, about a defendant's level of understanding when the plea transcript itself is insufficient to establish that point directly. *See Daughtry*, 419 Md. at 67-69. In this case, the original trial court never mentioned the nature or elements of first degree murder on the record, defense counsel never confirmed such a discussion on the record, and the defendant never confirmed on the record that the nature or elements of first degree murder were explained. *See* (E. 396). The Circuit Court noted Tate's answers of "yes" during the plea concerning whether he understood "what he is charged with" and "what he is pleading guilty to." (E. 397, 425). But, in the context of this particular defendant's personal characteristics, the court explained that "understanding what one is simply charged with is extremely different from understanding the legal elements that comprise the charge[s] themselves." (E. 425). The question about "what he was pleading guilty to" was another way of phrasing the same inquiry and does not change the analysis. The plea offer letter and other items the State relies on were addressed by the Circuit Court and did not list or describe the nature or elements of the crime, or state that an understanding of that

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that the Circuit Court findings constituted reversible error. It believed there was no need to resort to assumptions or presumptions of "limited viability." The State's new effort to invoke a presumption would be entirely unnecessary if the guilty plea record was sufficient.

requirement existed. (E. 61-66). On these facts, the decisions of both the Circuit Court and the Court of Special Appeals, to not apply this presumption were entirely justified.[7]

V. THE DECISION TO VACATE TATE'S PLEA IS FULLY CONSISTENT WITH THIS COURT'S PRIOR PRECEDENT, WHICH ALSO ESTABLISHES THAT THE COURT OF SPECIAL APPEALS' WEIGHING OF THE EVIDENCE WAS IMPROPER.

On *de novo* review of the Court of Special Appeals' decision, it is respectfully requested that the Court vacate that decision and affirm the Circuit Court's decision to vacate this plea.

The Court of Special Appeals' application of the totality of the circumstances test is unpersuasive because it was incomplete, and at times, contrary to precedent. There is no evidence the Court of Special Appeals adequately considered this adolescent's age, and the court erred by refusing to give any weight at all to the proof of Tate's serious mental impairments and diminished mental capacity. Those errors are alone sufficient to overturn the Court of Special Appeals' decision on *de novo* review. Equally concerning is the fact that there is no evidence at all the Court of Special Appeals weighed the fact

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[7] The State incorrectly claims that this presumption was also applied in order to affirm the validity of the two pleas in the Vandiver and Pincus cases that were adjudicated in the *Priet* decision. Respondent's Brief at 30-31. But, this court has already determined that the discussion of the presumption, as it related to those cases, was *dicta*. *Daughtry,* 419 Md. at 56. The State's citation to *Gross v. State*, 186 Md. App. 320, 350-51 (2009), is similarly unpersuasive because in that case the defendant also confirmed during the plea hearing that he had discussed the elements of the offense with counsel. Respondent's Brief at 31. Those cases do not support the State's argument.

In Tate's case, like *Daughtry* and *Graves*, 215 Md. App. at 357-59, "given the unique facts of this case," the Circuit Court held that the plea hearing was not so clear as to confirm Tate had the requisite constitutional understanding of the nature and elements of first degree murder based on pre-plea discussions. (E. 431-32).

that first degree murder is a complex crime, which is a factor that is always a part of the totality of the circumstances test.[8] The Court of Special Appeals also incorrectly placed undue emphasis on the statement of facts, and relied in part on a side-by-side comparison of the colloquies provided to Tate and Daughtry despite precedent requiring that the test be applied only on an individual, case-by-case, basis. *Compare* (E. 473-75) *with Daughtry*, 419 Md. at 72.

The unpersuasive nature of such comparisons is further exemplified by the State's incorrect suggestion that this case is "not appreciably different" from the pleas upheld in *Priet*. Respondent's Brief at 44. The *Priet* case involved pleas by Mr. Priet, Mr. Pincus, and Mr. Vandiver, in separate cases. In *Priet*, this Court never compared those pleas to each other, and instead addressed them on a case-by-case basis. *Priet*, 289 Md. at 291-93. But, even if side-by-side comparisons like the State advocates were appropriate, the facts of these cases undermine the State's own argument.

Unlike Mr. Tate's case, this Court held in *Priet* that Mr. Priet's crime "was a simple one." *See id.* at 291. Mr. Pincus, during his guilty plea, not only stated that he understood the crime he was charged with, but also he explained that he understood the difference between first and second degree murder, a difference that is defined by the elements of the crime. *Id.* at 291-92. Finally, Mr. Vandiver's case involved another

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[8] The Circuit Court correctly concluded, consistent with *Daughtry*, that the nature of first degree murder is complex, and the nature of the crime is not readily understandable from the crime itself. (E. 425, 449); *Daughtry*, 419 Md. at 72-73. The State has not challenged the Circuit Court's finding about the complex nature of first degree murder, and the State acknowledges that the complexity of the crime is a factor in applying the totality of the circumstances test. Respondent's Brief at 25.

simple crime and he "acknowledged during his testimony that he had discussed the elements of robbery with his counsel and understood what he had been told." *Id.* at 292. These cases are inapposite. Moreover, none of those defendants were children.[9]

To accept the State's claim is to accept that there is no appreciable difference between simple and complex crimes when this Court has repeatedly held otherwise. *Daughtry*, 419 Md. at 72-73; *Priet*, 289 Md. at 291-93. To accept the State's claim is to accept that there is no appreciable difference between (1) a defendant who testifies under oath that he understands the elements of the crime; (2) another defendant who states on the record that he understands and describes differences between different degrees of murder; and (3) the instant case where neither the nature or elements of the crime are mentioned by anyone, anywhere, on the record.

Finally, such an argument effectively asks the Court to believe that there is no appreciable difference when guilty pleas are entered to our most serious felonies by adults, as opposed to children. But there are.

The Circuit Court applied the correct legal test, and did so reasonably. The Court made factual findings that are well-supported by evidence in the record. The factual findings the court made about Tate's personal characteristics, when combined with the complexity of the crime and the on-record silence from the court and defense counsel

[9] While two cases had some evidence of prior mental health evaluations or treatment, unlike this case, there was no evidence indicating those defendants were actively suffering under any specific diagnosis or presently had any diminished capacity.

about the nature or elements of the crime all support the Circuit Court's decision to vacate this guilty plea and to remand the case for a new trial.

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, 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 5,451 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.

_____/s/_____
Booth Marcus Ripke

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of March 2018, a copy of the foregoing Petitioner's Reply Brief was mailed postage prepaid to:

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

_____/s/_____
Booth Marcus Ripke

CERTIFICATION OF COMPLIANCE WITH MARYLAND RULES

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

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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.

_____/s/_____
Booth M. Ripke