

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Micheal G. Nettles, 12<sup>th</sup> Circuit Judge

RECEIVED

JUN 25 2024

SC Court of Appeals

THE STATE,

RESPONDENT

✓

LATOYA D. RIVERS

APPELLANT

APPELLATE CASE NO. 2023-001235

PRO SE ANDERS BRIEF

LATOYA D. RIVERS

PRO SE

Camille Graham Correctional Institution

Whitney-B-0011A

4450 Broad River Rd

Columbia, South Carolina 29210

PRO SE

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1. The Circuit Court erred in accepting the guilty plea. Before accepting the guilty plea, the trial court must give the defendant an adequate warning of the consequences of his plea. Which should include an explanation of the defendant's rights being waived. Along with a realistic picture of all sentencing possibilities.

2. The Circuit Court erred in accepting the guilty plea because the record did not establish a factual basis. At the motion for reconsideration hearing the factual basis became in dispute.

3. The circuit court erred in allowing the prosecution to commit a Brady violation. Because the state withheld documents that resulted in a ~~conviction~~ conviction of the defendant.

4. The circuit court erred in not giving instructions on a lesser-included offense of Assault and battery first degree. After evidence proved that Appellant did not injure the victim, Appellant should have been given the lesser charge of Assault and battery <sup>first</sup> ~~second~~ degree.

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## STATEMENT OF ISSUES ON APPEAL

1. Whether the circuit court erred in denying Appellant's motion to reconsider sentence? Where the court improperly considered a pending charge with no disposition in denying the motion - See Appellant Defenders Anders Brief

2. Whether circuit court erred in accepting Appellant's guilty plea because the record did not establish a factual basis. At the motion for reconsideration hearing the factual basis became in dispute?

3. Whether the circuit court erred in allowing the the prosecution to commit a Brady violation. State withheld documents that resulted in a guilty plea of the defendant as well as active jail time?

4. The circuit court erred in not giving instructions on a lesser included offense of Assault and battery first degree. After evidence proved that Appellant did not injure the victim Appellant should have been given the lesser charge of Assault and battery third degree?

## STATEMENT OF ISSUES ON APPEAL (CONT.)

5. Whether the circuit court erred in accepting the guilty plea. Before accepting a guilty plea, the trial court must give the defendant an adequate warning of the consequences of his plea. Which should include a explanation of the defendant's rights being waived. Along with all realistic pictures of all sentencing possibilities.

## STATEMENT OF THE CASE

Appellant LATOYA D. RIVERS, was arrested ~~at~~ Prisma Health Richland Hospital on January 4, 2021. Appellant was charged with Attempted Murder and Felony DUI with great bodily injury. The Richland County Grand Jury indicted Appellant ~~for~~ on one count of Attempted Murder on November 16, 2021. They also indicted Appellant on one count of Felony DUI with Great Bodily injury on November 10, 2021. The Grand Jury did not meet on November 10, 2021. Both indictments were true billed on November 17, 2021. Felony DUI with Great bodily injury was ~~not~~ fraudulently ~~not~~ true billed. However Appellant was indicted 10 months later, after she was charged. (Rule 3(c) SCRIMP)

May 15, 2023, a trial date was set for Appellant. On the advisement of counsel Robert Forney, Appellant plead guilty to a lesser charge of Assault and Battery first degree. On May 8, 2023, in the county of Richland in the court of General Sessions. The state was represented by Keith Taylor. Along with 12<sup>th</sup> Circuit Judge of Florence county, Micheal G. Nettles presiding. The state informed that in exchange for the plea, it would remain silent as to sentencing. and would be dismissing a felony DUI charge with great bodily injury.

## STANDARD OF REVIEW

In criminal cases, the appellate court reviews only errors of the law and is bound by the factual findings of the trial court unless the findings are clearly erroneous. State v. Bryant, 372 S.C. 305, 312, 642 S.E. 2d 582, 586 (2007). The authority to change a sentence rests ~~solely~~ solely and exclusively within the discretion of the sentencing judge. State v. Smith, 276 S.C. 494, 498, 280 S.E. 2d 200, 202 (1981). "A sentence will not be overturned absent an abuse of discretion when the ruling is based on an error of law or a factual conclusion without evidentiary support." In re M.B.H., 387 S.C. 323, 326, 692 S.E. 2d 541, 542 (2010). An abuse of discretion occurs where the conclusions of the trial court are either controlled by an error of law or lack evidentiary support. State v. Winkler, 388 S.C. 574, 583, 698 S.E. 2d 596, 601 (2010).

# ARGUMENT

i. The Circuit court erred in accepting the guilty plea. Before accepting a guilty plea, the trial court must give the defendant an adequate warning of the consequences of his plea, which should include a explanation of the defendants rights being waived along with a realistic picture of all sentencing possibilities.

The circuit court erred in accepting the guilty plea because the record did not establish a factual basis. At the motion for reconsideration hearing the factual basis for the guilty plea became in dispute.

The circuit court erred in allowing the prosecution to commit a Brady violation. The state withheld documents that resulted in a guilty plea, a conviction of the defendant as well as jail time.

The circuit court erred in not giving instructions on a lesser included offense of Assault + battery first degree. After evidence proved that Appellant did not injure the victim, Appellant should have been given the lesser charge of Assault + Battery Third degree.

## ARGUMENT (CONT)

### Relevant Facts:

On January 4, 2021, at approximately six o'clock am "allegedly", Brittany Campbell was at the residence of Edrelle Simmons performing a custody exchange. Simmons and Campbell share two children, Simmons also has four children with the Appellant. Campbell made claims that she was placing a car seat in her vehicle. Campbell claimed that Appellant allegedly drove her vehicle forward and pinned her between the two vehicles. Campbell then pulled a .357. Revolver and fired a single shot threw the windshield of the Appellants vehicle. Striking the Appellant in the face. R. 4, 1. 13-R. 15, 1. 19

During the plea colloquy, after the state recites the "alleged" facts. The court asks the Appellant were the facts that the state recited true. The Appellant stated "No" clearly not agreeing R. 6, 1. 10-17. The court completely disregards the Appellant. Proceeding to talk about a charge that was not relevant to the plea R. 6 1. 18-23. The court completes the colloquy R. 8 1. 5-10. Never making sure that the Appellant fully understood the consequences of her guilty plea.

## Argument (Cont)

### Relevant Facts (cont)

Medical records from an emergency room visit indicated that Campbell only received a thigh contusion during the incident. R.10, 11.9-11; R. 21, 11, 14-20. A contusion which is a bruise that you can't see. The records were furnished by the state. At the plea hearing, the state and Campbell alleged that she had undergone two major <sup>knee</sup> surgeries, and had a third surgery planned as a result of the incident. R. 8, 11, 16-19. Counsel Forney advised the court that he had not seen any records regarding the surgeries. R.10, 11.11-12. However, the state had already had these records in their possession if they were able to bring up these allegations in the plea. Prior to sentencing, the court inquired of the victims advocate whether Campbell had actually undergone surgeries R.10:1. 18-19. The victims advocate responded that she was informed by Campbell of the operations. The only confirmations of the operations was a scar on her knees R.10, 1. 18-R, 11, 1. 2. Appellant was ultimately sentenced to active time in prison. Counsel Forney moved to reconsider Appellants sentence R. 17. At the hearing the state goes into

## ARGUMENT (CONT)

### Relevant Facts (cont)

Factual recitation R. 24 l. 1-17. Then the state proceeds to get into the medical records of Brittany Campbell R. 25 l. 20-25; R. 26 l. 1-4. The state informed the court that Campbell admitted to having knee problems, prior to the incident but stated she did not require surgery until after the incident, R. 25, l. 13-R. 26, l. 11.

Counsel Forney argued that the knee surgeries were the result of degenerative changes and not any acute injuries. He stated that Campbell's injuries did not come from the incident. As Campbell's only diagnosis from the incident date was only a thigh contusion. He also stated that Campbell's medical records noted that some of the weaknesses she experienced was from not doing home exercises, R. 26, l. 20-R. 29 l. 7. In regards to Campbell's medical records when mentioning No Degenerative changes, meaning her knees were already in a state that required surgery. The records also mentioned "No acute injuries" meaning there was not anything that required serious attention or action. For that matter, it proves that the "victim"

## Argument (Cont)

### Relevant facts (Cont):

Continuously lied and intentionally mislead the court. Campbell admitted to having knee problems prior to the incident, but claimed she did need surgery until after the incident. R. 26 1, 5-11. However her medical records states otherwise and Robert Forney counsel for the Appellant proved it. ~~was~~

With this new evidence the court should have gave instructions on the lesser included offense of Assault and Battery first degree, to Assault and Battery third degree. Evidence proves that Appellant did not contribute to Campbells injuries. R. 37 1, 1-3

Evidence was also brought forth were Campbell has previously threatened Appellants life. R. 37 1, 4-7.

No one took the threat into consideration. Appellant was not treated equally in this matter. Counsel Forney stated that Campbell was intentionally misleading the court. R. 37, 1, 17-18, Counsel Forney proved that as well.

Upon Conclusion, Deyaska Speneer Sweetman appeared on the behalf of Witness Edrelle Simmons R. 21 1, 3-6. She stated that Campbell invited the danger R. 39 1, 1-2. She also stated

## ARGUMENT (CONT)

### Relevant Facts (cont):

That Campbell shouted a lot of hyperbolic statements. Making things seem worse than it really is, R. 39. 1:- 14-15. Which goes back to her victim impact statement in the original plea, R 8. 1, 20-22 She says she loses her job but never offered proof before court. In the motion for reconsideration hearing. She made claims of the Appellant harassing her while out on bond R. 34. 1. 13-14. She made claims of Appellant ~~stealing~~ <sup>stealing</sup> her and her children's belongings while on a leg monitor R. 34. 1. 15-17. Her claims of having police reports of incidents R. 36. 1. 8. As Counsel Robert Forney stated the things that she stated in court were being heard for the first time attempting to mislead the court R. 37. 1. 14-18. If these things actually happened Appellants bond would have been revoked. Due to her bond conditions which included GPS ~~monitoring~~ monitoring and no contact with Campbell indirectly or directly.

Upon conclusion of the hearing, The court stated that the facts were in dispute. R. 41. 1. 7-10. Meaning that there was no longer a factual basis for the guilty plea. Which is needed to accept a guilty plea. 5

## DISCUSSION

Discussion:

"All that is required before a plea can be accepted is that the defendant understands the nature and crucial elements of charges, consequences of the plea, and constitutional rights he is waiving and that the record reflect a factual basis for the plea."

Stalk v state, 375 S.C. 289, 662 S.E. 2d 402 (Ct. App 2007)

"The circuit court erred when accepting appellants guilty plea. Before accepting the guilty plea the trial court must give the defendant an adequate warning of the consequences of his plea. Which should include an explanation of the defendants waiver of his constitutional rights and a realistic picture of all sentencing possibilities.

If the court fails to do this the plea may be held not to have been knowing, intelligent, and voluntary.

Pittman v state, 337 S.C. 597, 524 S.E. 2d 623 (1999)

once the ~~record~~<sup>record</sup> indicated that the facts were in dispute. The guilty plea is no longer valid.

"A defendant who pleads guilty usually may not later raise independent claims of constitutional violations"

Gibson v state, 334 S.C. 515, 523, 514 S.E. 2d 320, 324 (1999)

However a defendants decision whether or not to plead guilty is often heavily influenced by his appraisal of the prosecution's case" *Id* (quoting *Sanchez v United States*, 50 F.3d 1048, 1453 (9th Cir. 1995) 6

# Discussion

## Discussion (cont):

"When a defendant lacks knowledge of material evidence in the prosecution's possession, the waiver of constitutional rights cannot be deemed knowing and voluntary." Appellant is challenging the voluntary nature of her guilty plea by asserting an alleged Brady violation." Gibson, 334 S.C. at 524, 514 S.E. 2d 320, 324 (1999)

The prosecutor committed a brady violation when he withheld evidence that was favorable to the ~~case~~ Appellant. Campbell's medical records that he first mentioned in the guilty plea ~~was~~ was proof of Campbell lies. Second the evidence was in the possession of and known to the prosecutor. Third the prosecutor suppressed the evidence by failing to reveal it ~~after~~<sup>before</sup> the Appellant was sentence to active prison time."

"A charge on a lesser included offense is only required when the evidence warrants such an instruction." Assault differs from assault and battery in that there is no touching of victim in an assault. Appellant was originally charged with Attempted murder, the charge later dropped to Assault and battery 1st degree. After the motion  
6.

# Discussion

## Discussion (cont)

to reconsider sentence defense proved that Appellant did not injure Campbell. Material evidence proves that Appellant is entitled to the lesser included offense of Assault + Battery first Degree. Which is Assault and Battery third degree, which is also a lesser included offense of Attempted Murder. Also A person who commits assault and battery 1st degree involved the act of nonconsensual touching of the private parts, of a person, either under or above clothing; with lewd and lascivious intent. So Appellant is entitled to the lesser included offense of Assault and battery third degree because the Appellant did not touch the victim in a Lewd or Lascivious manner. Evidence proved that Appellant didn't injure the victim as well.

Carter v. United States, 530 U.S. 255, 120 S. Ct. 2159, 147 L. Ed. 2d 203 (2000)

## CONCLUSION

Based on the foregoing arguments, I, the Appellant, LaTaya D. Rivers, appearing before the South Carolina Court of Appeals, PRO SE.

Respectfully requests that this court vacate the judgement, Reverse the ruling and remand this case back to the Richland County Court of General Sessions.

LaTaya D. Rivers  
LaTaya D. Rivers  
PRO SE

This 18<sup>th</sup> day of June 2024

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