

**RECEIVED**

**Mar 07 2022**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal from Lexington County  
Honorable William P. Keesley, Circuit Court Judge  
Honorable D. Craig Brown, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

CRAIG CORY COOPER,

APPELLANT

APPELLATE CASE NO. 2021-000441

---

ANDERS BRIEF OF APPELLANT

---

TAYLOR D GILLIAM  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

**TABLE OF CONTENTS**

TABLE OF CONTENTS .....i

TABLE OF AUTHORITIES ..... ii

STATEMENT OF ISSUE ON APPEAL ..... 1

STATEMENT OF THE CASE .....2

STANDARD OF REVIEW .....4

ARGUMENT

The trial court erred in denying Appellant’s motion to withdraw his guilty plea, where the state withheld information about a potential witness’s pending charges, where Appellant would have gone to trial had he known the victim’s husband had at least one pending charge.....5

CONCLUSION..... 10

PETITION TO BE RELIEVED AS COUNSEL..... 11

**TABLE OF AUTHORITIES**

**Cases**

Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967).....11

Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969) .....7

Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). .....9

Gibson v. State, 334 S.C. 515, 514 S.E.2d 320 (1999).....9

LoPiano v. State, 270 S.C. 563, 243 S.E.2d 448 (1978).....7

Rollison v. State, 346 S.C. 506, 552 S.E.2d 290 (2001).....8

Simpson v. State, 317 S.C. 506, 455 S.E.2d 175 (1995) .....7

State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975).....7

State v. Barton, 325 S.C. 522, 481 S.E.2d 439 (Ct.App.1997).....8

State v. Cantrell, 250 S.C. 376, 158 S.E.2d 189 (1967) .....4

State v. Durant, 430 S.C. 98, 844 S.E.2d 49 (2020).....6, 8, 9

State v. Lopez, 352 S.C. 373, 574 S.E.2d 210 (Ct. App. 2002) .....4

State v. Riddle, 278 S.C. 148, 292 S.E.2d 795 (1982) .....4

**STATEMENT OF ISSUE ON APPEAL**

Whether the trial court erred in denying Appellant's motion to withdraw his guilty plea, where the state withheld information about a potential witness's pending charges, where Appellant would have gone to trial had he known the victim's husband had at least one pending charge?

## STATEMENT OF THE CASE

In November 2017, a Lexington County grand jury indicted Appellant for burglary in the first degree, armed robbery, kidnapping, criminal sexual conduct in the first degree, possession of a firearm during the commission of a violent crime, and criminal conspiracy. R. 1207. On November 19, 2020, Appellant appeared before the Honorable William P. Keesley for a plea. R. 1. Colin Spangler represented Appellant; Heather Weiss appeared on behalf of the state. Appellant pled as indicted to every offense, save the burglary charge, for which he pled to burglary second degree. R. 4, ll. 3 – 21.

The state indicated there was a negotiated range of 10 to 19 years, predicated upon Appellant's willingness to testify against his co-defendant and Cousin, Christopher Cooper ("Christopher"). R. 5, ll. 17 – 23. The facts giving rise to the indictments, as alleged, by the state, were that Appellant and Christopher broke into the victim's home, demanded money, held her at gunpoint, and sexually assaulted her. R. 11, l. 3 – Tr. 13, l. 6. Appellant gave a statement to law enforcement admitting to some of the facts. Id. He also identified Christopher as being present and participating. Id. Appellant admitted his guilt at the plea. R. 13, l. 12 – Tr. 14, l. 9. Defense counsel reiterated the negotiated sentence range. R. 15, ll. 1 – 3.

Judge Keesley found that the plea was made knowingly, freely, voluntarily, and intelligently. R. 25, ll. 11 – 19. He accepted the plea and found that a factual basis existed for it. Id. Pursuant to the plea agreement, predicated upon Appellant's testimony against Christopher, Judge Keesley deferred sentencing. Id. Jurisdiction was relinquished so that another judge could sentence Appellant. R. 26, ll. 9 – 15.

Defense counsel filed a motion to withdraw the plea in March 2021. R.28. On April 5, 2021, he filed a memorandum in support of the motion. R.31. A hearing was held on April 2,

2021, before Judge Keesley with the same counsel for both sides. R.39. Judge Keesley took the matter under advisement. R. 54, ll. 6 – 10. On April 14, 2021, Judge Keesley signed an order denying the motion to withdraw. R. 58.

Co-defendant Christopher's case was called for trial the following week, on April 19, 2021. R.65. The Honorable Craig Brown presided over the jury trial. Due to Appellant's unwillingness to testify favorably for the state, he was sentenced outside of the negotiated range. The state indicated Appellant still received the benefit of the lower burglary second classification. R. 1187, ll. 1 – 6. Judge Brown sentenced Appellant to fifteen years on the burglary charge, thirty years on the criminal sexual conduct charge, thirty years on the kidnapping charge, thirty years on the armed robbery charge, five years on the weapon charge, and five years on the conspiracy charge. R. 1203, l. 25 – R. 1205, l. 6. The two five-year sentences, from the weapons and conspiracy charges, were crafted to run consecutively. The remaining sentences were concurrent. Id.

This appeal follows.

## STANDARD OF REVIEW

The withdrawal of a guilty plea is generally within the sound discretion of the trial judge. State v. Riddle, 278 S.C. 148, 150, 292 S.E.2d 795, 796 (1982). An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law. State v. Lopez, 352 S.C. 373, 378, 574 S.E.2d 210, 212 (Ct. App. 2002). A determination the plea was voluntarily entered “will normally show the trial judge did not abuse his discretion.” Riddle, 278 S.C. at 150, 292 S.E.2d at 796; see State v. Cantrell, 250 S.C. 376, 378, 158 S.E.2d 189, 191 (1967)( “A motion to withdraw a plea of guilty, and to be allowed to enter a plea of not guilty, addresses itself to the discretion of the trial judge before whom the plea is entered, and, in the absence of a clear abuse of discretion, this court will not interfere.”).

## ARGUMENT

**The trial court erred in denying Appellant's motion to withdraw his guilty plea, where the state withheld information about a potential witness's pending charges, where Appellant would have gone to trial had he known the victim's husband had at least one pending charge.**

### Relevant facts

Appellant's motion to withdraw his guilty plea listed two primary reasons in support of withdrawal: 1) the suspension of jury trials two weeks after Appellant's guilty plea; and 2) the state's failure to disclose information about one of its witnesses.

Appellant entered his guilty plea on November 19, 2020. Due to the COVID-19 pandemic, the South Carolina Supreme Court issued an Order suspending any jury trials after December 4, 2020. RE: Circuit Court Jury Trials (Order dated December 3, 2020). This Order was rescinded in February 2021. RE: In-Person Proceedings and Jury Trials in Circuit, Family, Probate, and Master-in-Equity Courts (Order dated February 26, 2021). Appellant's motion to withdraw the plea was filed on or about March 18, 2021.

At the motion to withdraw hearing on April 2, 2021, Judge Keesley heard argument from defense counsel about how the plea was rushed due to a December 7, 2020 date-certain trial. R. 43, ll. 16 – 24. During the period between Appellant's plea and the motion to withdraw, counsel met with Appellant and developed defenses. R. 44, ll. 7 – 21.

The second justification for the motion to withdraw revolved around the state's failure to disclose information about the victim's husband's pending charges. Counsel indicated he had not yet received information about this witness:

We have learned, just earlier today, that there were certain SLED background sheets on State's witnesses that were not provided to us in discovery. We did not

have them at the time we looked at this case with [Appellant] back in November [2020]. We did not have them at the date of that plea, on November the 19th. We would not have had them on December the 7<sup>th</sup>. The only way we've learned of this - - and I'll tell you it's the victim's husband, who was identified by the State as a potential witness. He was listed in discovery. We had a copy of his driving record. We had interviews between him and law enforcement, but there was no SLED background. From talking with Ms. Weiss, when we were working up the case, she assured us there's no record, there's no issues, the victim and her husband have no criminal history, whatsoever.

We learned today that in 2020 he was arrested on general sessions charges in Richland. Those are still pending. And back in February of this year - - so between the time this plea was entered and today's hearing, he was arrested on attempted murder charges in Richland. It was all over the news. It's hard to say that no one knew of it, because it's on the public index. That's how I found it, just Googling around, trying to figure out what was going on with this case. And I submit to the Court that had we known that - - and the reason it's important is, Jacob Cook, the husband of the victim, he's one of the first people on scene after the outcry - - he, at least in discovery, let officers know that on the night this happened, he came home; it was about ten or eleven o'clock. Instead of staying home with his wife, he decides for some inexplicable reason to leave that house and go to Waffle House to hang out. At some point, he's notified by the victim or the family. Minutes after the alleged assault happened, he's contacted by the victim or the family, and he rushes home, is on scene when the ambulance gets there, is on-scene, talking with the officers. Judge, he's a State witness that we had no idea had these pending criminal charges. It's very serious charges. And I submit to the Court that had Mr. Cooper and I known that we would have taken a different route and probably not taken this plea deal.

R. 44, l. 24 – R. 46, l. 13.

Counsel then cited State v. Durant as favorable authority, arguing the state is responsible to disclose this information. 430 S.C. 98, 844 S.E.2d 49 (2020). R. 46, ll. 14 – 23. The state indicated the posture of this case was always plea-related. R. 49, l. 12 – R. 51, l. 18. The judge denied the motion to withdraw. R. 58.

The plea judge's order denying the motion to withdraw cited no case law. R. 58. Regarding the merits of the issue raised in this brief, the Order remarked how "there is no explanation as to how the lack of a criminal record for the husband in any way influenced this defendant to decide to plead guilty to heinous crimes." R. 61. Further, the plea judge concluded

that “[t]here appears to be ample evidence of actual guilt and the State’s ability to prove it.” R.

62. Additionally, the plea judge pointed out the earlier plea colloquy from November 2020:

As to both grounds, during the plea colloquy with this court, the defendant stated under oath that he admits his guilt, and he expressed full satisfaction with his attorney. As for any pressure associated with the timeframe, he stated he was not forced, threatened, or coerced in any manner, and he indicated that he was pleading guilty of his own free will. Moreover, since he was expected to testify at the upcoming trial, he provided an elocution under oath admitting to the crime as part of the plea bargain. The plea colloquy covered a variety of issues in which the defendant stated that he is actually guilty, and he acknowledged that he was giving up the presumption of innocence that the State prove him guilty beyond a reasonable doubt.

R. 63.

### Discussion

A trial judge should not accept a guilty plea without an affirmative showing that it was intelligent and voluntary. Boykin v. Alabama, 395 U.S. 238, 241, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). Additionally, to knowingly and voluntarily enter a plea of guilty, all that is required is that a defendant has a full understanding of the consequences of her plea and the charges against her. Simpson v. State, 317 S.C. 506, 508, 455 S.E.2d 175, 176 (1995). Moreover, the record in a guilty plea proceeding must establish a factual basis for the plea. LoPiano v. State, 270 S.C. 563, 569, 243 S.E.2d 448, 451 (1978); State v. Armstrong, 263 S.C. 594, 598, 211 S.E.2d 889, 891 (1975). In accepting a guilty plea, “the trial judge is free to use any appropriate procedure for determining the accuracy of the guilty plea. The judge must be certain that the defendant understands the charge and the consequences of the plea and that the record indicates a factual basis for the plea.” Armstrong, 263 S.C. at 598, 211 S.E.2d at 891. “All that is required before a plea can be accepted is that the defendant understand the nature and crucial elements of the charges, the consequences of the plea, and the constitutional rights he is waiving, and that the record reflect a factual basis for the plea.” Rollison v. State, 346 S.C. 506, 511, 552 S.E.2d 290,

292 (2001). See State v. Barton, 325 S.C. 522, 531, 481 S.E.2d 439, 444 (Ct.App.1997) (finding no error in trial judge's refusal to allow appellant to withdraw guilty plea where appellant failed to object at any point before the judge accepted his guilty plea and judge: considered evidence presented by appellant, allowed appellant to testify about the nature of the guilty plea, and thoroughly questioned appellant during guilty plea).

Based on the recent opinion from our South Carolina Supreme Court cited by counsel at the motion to withdraw hearing, the plea judge should have granted the motion to withdraw. In Durant, supra, the defense attorney received a call from a witness's ex-husband "inquiring why he did not question [her] about her prior criminal convictions." 430 S.C. 98, 104, 844 S.E.2d 49, 52. Counsel did not believe the witness had a criminal background because the state had previously disclosed a NCIC report showing she did not have a criminal record. Id. Counsel then performed a SLED search and found numerous convictions spanning a fourteen-year period. Id. Counsel then requested a new trial. Id. The state claimed it had run the witness's name through NCIC using a misspelled variation of her last name. Id. The trial judge denied the motion, concluding "the case boiled down to whether the jury believed the testimony of the victim and the three other witnesses regarding assaults." Id. at 104-05, 844 S.E.2d 49, 52. The case was transferred to the South Carolina Supreme Court from this Court pursuant to Rule 204(b), SCACR.

Our Court analyzed the situation under the lens of a Brady<sup>1</sup> violation, thereby considering the four factors from Gibson v. State: whether the evidence is 1) favorable to the accused; 2) in the possession of or known to the prosecution; 3) suppressed by the prosecution; and 4) material to the defendant's guilt or punishment. 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Durant

---

<sup>1</sup> Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

contains a detailed analysis of the second element. Our Supreme Court held as a matter of law that the state was in possession of the witness's criminal background information and failed to accurately disclose it. 430 S.C. 98, 110, 844 S.E.2d 49, 55. However, because Durant could not satisfy the abuse of discretion regarding the fourth prong, materiality. In particular, the state in Durant "presented cumulative evidence in the form of the girls' testimony," meaning the jury "had ample evidence supporting its verdict." Id.

In Appellant's case, counsel indicated he and Appellant would have elected to go to trial had they known about Cook's pending charges. Appellant was not committed to the 10-19 year negotiated range from the plea deal, as evidenced by his decision to not cooperate with the prosecution. Had he been apprised by the state of the victim's husband's pending charges, he would have gone to trial. Therefore, the pending charges were material and should have been disclosed. The resulting Brady violation was a sufficient reason to grant the motion to withdraw, and the plea judge erred in not doing so.

**CONCLUSION**

Based on the foregoing, Appellant respectfully requests that this Court reverse his conviction and remand this case for a new trial.



---

Taylor D Gilliam  
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of March, 2022.

**RECEIVED**  
**Mar 07 2022**  
**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Lexington County

Honorable D. Craig Brown, Circuit Court Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,

V.

CRAIG CORY COOPER,

APPELLANT

\_\_\_\_\_  
PETITION TO BE RELIEVED AS COUNSEL  
\_\_\_\_\_

Counsel for Craig Cory Cooper states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge D. Craig Brown, which was held on April 23, 2021, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, He asks the Court to relieve him as counsel for Craig Cory Cooper.

Respectfully Submitted,



\_\_\_\_\_  
Taylor D. Gilliam  
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of March, 2022.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**  
**Mar 07 2022**  
**SC Court of Appeals**

Appeal from Lexington County

Honorable D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CRAIG CORY COOPER,

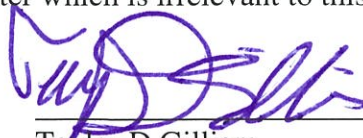
APPELLANT

**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s):
- (2) Guilty Plea Transcript Dated November 19, 2020
- (3) Motion to Withdraw Plea
- (4) Memo in Support of Motion to Withdraw Plea
- (5) Transcript of Hearing on Motion to Withdraw Dated April 2, 2021
- (6) Court's Exhibit #1- Jacob Cook SLED CATCH
- (7) Order on Motion to Withdraw Plea
- (8) Transcript of Co-defendant's Trial Dated April 19, 2021
- (9) Sentence Sheets

I certify that this designation contains no matter which is irrelevant to this appeal.



Taylor D Gilliam  
Appellate Defender  
South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330  
ATTORNEY FOR APPELLANT

March 7, 2022

**RECEIVED**

**Mar 07 2022**

**SC Court of Appeals**

**CERTIFICATE OF COUNSEL**

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



Taylor D. Gilliam  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

March 7, 2022