Circuit Court for Baltimore City
Case No. 117075001

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 658

September Term, 2019

TAMEKIA MARTIN

v.

STATE OF MARYLAND

Arthur,
Friedman,
Raker, Irma S.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Raker, J.

Filed: September 10, 2020

In 2008, D.M., child of Tamekia Martin, appellant, suffered serious injuries while in appellant's care. Appellant was thereafter charged, in the Circuit Court for Baltimore City, with various crimes related to D.M.'s injuries. Appellant entered a negotiated *Alford* plea[1] to one count of first-degree child abuse. In 2014, D.M. died as a result of his injuries, and the State re-charged appellant with manslaughter and first-degree child abuse resulting in death. Prior to her March 2019 trial, appellant filed a "Motion to Enforce Plea Agreement and Bar Further Prosecution," which the circuit court denied. Following a jury trial, appellant was convicted on both counts and sentenced to a term of incarceration of six years for involuntary manslaughter and six years for first-degree child abuse resulting in death, to be served concurrently. In this appeal, appellant presents the following questions for our review:

> "1. Did the circuit court err in denying the motion to enforce the 2018 plea agreement and bar further prosecution?
>
> 2. Was the evidence insufficient to sustain the convictions?"

We shall hold that the circuit court erred in denying appellant's motion and shall reverse.

[1] *See North Carolina v. Alford*, 400 U.S. 25 (1970). An *Alford* plea is a "specialized type of guilty plea where the defendant, although pleading guilty, continues to deny his or her guilt, but enters the plea to avoid the threat of greater punishment." *Ward v. State*, 83 Md. App. 474, 478 (1990). An *Alford* plea is the functional equivalent of a guilty plea. *Id.* at 480.

I.

On January 19, 2008, three-year-old D.M. was at his home when he suffered a traumatic brain injury consistent with "an inflicted injury" and "child abuse." At the time, appellant was the only adult in the home. As a result of these injuries, D.M. suffered from cerebral palsy and "visual, physical and mental disabilities, requiring the use of a feeding tube, ventilator and wheelchair."

On April 30, 2008, the Grand Jury for Baltimore City indicted appellant with the offenses of first-degree child abuse, first-degree assault, and lesser included offenses. The charges arose out of the 2008 incident. Baltimore City authorities responded to a call for an injured, unconscious child at appellant's home on Hugo Avenue. Appellant told the investigating detective that D.M. fell down the stairs and passed out on the way to the bathroom. D.M. was admitted to The Johns Hopkins Hospital where Dr. Allen Walker determined that he suffered a traumatic brain injury consistent with "Abusive Head Trauma" or "Shaken Baby [S]yndrome," not an accidental fall. Dr. Walker stated that D.M. had little chance of surviving. Shortly after sustaining the injuries, D.M., in a vegetative state, was transferred to Lifeline, Inc., a long-term care facility.

On May 4, 2009, appellant agreed to enter an *Alford* plea to one count of first-degree child abuse.[2] At the plea hearing that followed, the State outlined the terms of the plea agreement as follows:

[2] Because Martin does not seek to set aside her *Alford* plea, we do not have occasion to reconsider whether the evidence against her was legally sufficient. We note, however, that there have been significant developments in the legal and medical diagnosis of "shaken

> "[DEFENSE COUNSEL]: Your Honor . . . Ms. Martin is going to be pleading guilty to the first count, which is first degree child abuse. Upon acceptance of the plea and a finding of guilt, the State will enter a *nolle prosse* as to the remaining counts.
>
> THE COURT: Okay. Now, that's Count 1 or Count 2?
>
> [THE STATE]: That's Count 1, Your Honor . . . first-degree child abuse.
>
> ***
>
> THE COURT: And that sentence grade is—well, it's going to be held *sub curia* anyway.
>
> [THE STATE]: That's correct, but it is 25 years, Your Honor."

Subsequently, the court and appellant discussed as follows:

> "THE COURT: Okay. The agreement will be that it's 15 years, suspend all but time served, three years supervised probation. And the State is going to research treatment facilities and programs for you in the meantime.
>
> [APPELLANT]: Yes, sir.
>
> ***
>
> THE COURT: . . . There are no promises regarding *any other cases* than the ones I stated. Do you understand that, [Ms. Martin]?
>
> ***

baby syndrome" or "abusive head trauma" since the time of Martin's guilty plea in 2008. While it once may have been thought sufficient to diagnose this condition based solely on the existence of a so-called "triad" of highly correlated findings: subdural hematomas, retinal hemorrhages, and brain swelling, *Sissoko v. State*, 236 Md. App. 676, 686 (2018), we now better understand that "[t]he process of reaching a diagnosis of abusive head trauma … is nuanced and fact-specific." *Id*. at 729 (holding that diagnosis satisfied *Frye–Reed* test). This Court is currently considering a case that purports to test whether evidence of this "triad" alone is sufficient to sustain a conviction related to abusive head trauma. *Clarence Jones III v. State of Maryland*, Case No. 0087 (Sept. Term 2019).

[APPELLANT]: Yes."

The court asked appellant if there was anything she wanted "to get off [her] chest, without limitation, about this case" or if there was anything "in the back of [her] mind that's bothering [her]." After appellant conferred with defense counsel, defense counsel responded, "No, Your Honor." The State read the facts to support the plea into the record, and the court found appellant guilty of first-degree child abuse. The court imposed sentence in accord with the plea agreement.

On July 2, 2014, an Anne Arundel County paramedic responded to a call to an apartment, a Lifeline health care facility, along Bushy Ridge Road. She found ten-year old D.M. lying in cardiac arrest but still breathing with the assistance of a ventilator. He was cold to the touch, and no one was performing CPR. After performing CPR for twenty to thirty minutes, the paramedic called the hospital and received permission to terminate efforts to resuscitate D.M.[3] and waited for police to arrive. D.M. was in the care and custody of Lifeline, and appellant had had no contact with D.M. from January 19, 2008 to July 2, 2014.

The medical examiner performed an autopsy on D.M. and concluded that the manner of death was homicide and that the causes of death were complications stemming from "cerebral palsy due to remote head trauma," with the originating cause of death being the head trauma that he suffered in 2008.

[3] In 2013, less than a year before D.M. died, the State sought and received a do-not-resuscitate ("DNR") order for D.M.

On March 17, 2017, the State charged appellant with one count of manslaughter and one count of child abuse resulting in death, based on the events of January 19, 2008. On September 13, 2017, Appellant filed in the circuit court a "Motion to Enforce Plea Agreement and Bar Further Prosecution." In that motion, appellant argued that when she pled guilty to first-degree child abuse following D.M.'s injuries, she did so "on the clear understanding that this plea would end forever the legal ordeal that began with her child's injury." Appellant further argued that the circuit court's acceptance of the binding plea agreement created "a reasonable assumption in [her mind] that this plea was the conclusion of any and all legal consequences for the alleged abuse of [D.M.]" Appellant asked that the terms of the plea bargain be enforced and that, in accord with those terms, the State be barred from further prosecution and the court dismiss all charges.

Prior to the start of appellant's trial, the parties litigated appellant's motion before the circuit court. The court denied the motion, reasoning as follows:

> "[A]fter looking at the transcript, I think [the hearing court] points out that there were no future promises to any other cases, and that [appellant's] belief was unreasonable. Her attorney could have explained to her that if this child died that she could be charged with the death of her child.
>
> Her belief that she could not be charged with any further cases if [D.M.'s] situation changed, I think was completely unreasonable and it is not supported by the transcript or any other evidence."

The trial commenced, the jury convicted appellant, and the court imposed sentence. This timely appeal followed.

II.

Before this Court, appellant argues first that the circuit court erred in denying her "Motion to Enforce Plea Agreement and Bar Further Prosecution." She maintains that when she agreed to the *Alford* plea following the alleged child abuse involving D.M. in 2008, she believed, and a reasonable person in her position would have believed, based on the terms of the plea agreement, that she could not be prosecuted again if D.M. died from his injuries. Appellant asserts that the only notice she had that such a consequence was possible came when the hearing court asked her if she understood that there were "no promises regarding any other cases." She contends, however, that the court's question "was simply too thin of a reed upon which to conclude that it would be unreasonable for [her] to believe she could not be prosecuted again if [D.M.] died." Appellant maintains that the terms of her 2008 plea agreement, as she understood them, should be enforced and that, as a result, her 2019 convictions of manslaughter and child abuse resulting in death should be vacated.

Second, appellant argues that the evidence was insufficient to sustain convictions for involuntary manslaughter and first-degree child abuse. For both charges, appellant asserts that the State failed to prove that her actions were the legal cause of D.M.'s death. Appellant concedes, however, that she did not move for judgment of acquittal on the charge of involuntary manslaughter at trial. If the causation issue in first-degree child abuse is preserved and vacated, the interest of justice demands vacating the involuntary manslaughter conviction. In the alternative, this court should exercise plain-error review to vacate the involuntary manslaughter conviction because post-conviction relief is

"inevitable." Additionally, appellant raises a claim of ineffective assistance of counsel.

In response, the State contends that the court properly denied appellant's "Motion to Enforce Plea Agreement and Ban Further Prosecution" because "there is nothing in the record to show that [her] plea was conditioned on the State's promise not to prosecute her if [D.M.] died." In the State's view, the plea agreement was clear: "[appellant] was to enter an *Alford* plea to first-degree child abuse, and in exchange, the State was to *nol pros* the remaining counts in the charging document" and nothing else. The State argues that because there was no express condition nor ambiguous term for the circuit court to interpret in appellant's favor, it properly denied her motion.

As to the sufficiency of the evidence claim, the State argues that this claim for the manslaughter conviction is not preserved for our review. On the merits, the State maintains that the evidence, viewed in the light most favorable to the prosecution, was sufficient to sustain both convictions. As to the ineffective assistance of counsel claim, the State argues that this Court should not decide that issue on direct review because it is better left for post-conviction review.

III.

We review *de novo* whether a trial court has violated the terms of a plea agreement. *Cuffley v. State*, 416 Md. 568, 581 (2010). Maryland Rule 4-243(a)(1), which governs plea agreements, including *Alford* pleas, permits a defendant to "enter into an agreement with the State's Attorney for a plea of guilty or nolo contendere on any proper condition[.]" The Rule provides a non-exhaustive list of the conditions under which a defendant may plead

guilty, including that the State's Attorney will enter a *nolle prosequi* or agree to the entry of a judgment of acquittal as to one or more charged offenses, that the State will not charge the defendant with other offenses, and that the State's Attorney will not oppose a particular sentence, disposition, or other judicial action. *Id.* If a defendant agrees to plead guilty in exchange for "a particular sentence, disposition, or other judicial action," the terms of that agreement must be presented to the circuit court when the defendant enters his or her plea. Rule 4-243(c)(1). Such an agreement "is not binding on the court unless the judge to whom the agreement is presented approves it." Rule 4-243(c)(2). If the court accepts the agreement, "the judge shall embody in the judgment the agreed sentence, disposition, or other judicial action encompassed in the agreement or, with the consent of the parties, a disposition more favorable to the defendant than that provided for in the agreement." Rule 4-243(c)(3).

Rule 4-243 requires that the terms of a plea agreement be made plain on the record, in the presence of the defendant. *Cuffley*, 416 Md. at 579. The terms must be made express and must be agreed upon clearly before the court accepts a guilty plea. *Id.* Finally, "any question that later arises concerning the meaning of the [terms] of a binding plea agreement must be resolved by resort *solely* to the record established at the Rule 4-243 plea proceeding."[4] *Id.* at 582. That is, "[t]he record of [the plea hearing] must be examined to ascertain precisely what was presented to the court, in the defendant's presence and before

[4] For this reason, we shall not consider matters raised by appellant that occurred outside of the plea proceeding.

the court accepts the agreement, to determine what the defendant reasonably understood to be [the terms] the parties negotiated and the court agreed to impose." *Id.*

Thus, in interpreting the terms of a plea agreement, we look to the record developed at the plea proceeding to determine "what a reasonable lay person in the defendant's position would understand the agreed-upon sentence to be." *Ray v. State*, 454 Md. 563, 573 (2017). The test for determining the reasonable understanding of a defendant is an objective one. *Cuffley*, 416 Md. at 582. The test is "what a reasonable *lay person* in the defendant's position and *unaware of the niceties of [the] law* would have understood the agreement to mean, based on the record developed at the plea proceeding." *Id.* (emphasis added). "[I]f examination of the terms of the plea agreement itself, by reference to what was presented on the record at the plea proceeding before the defendant pleads guilty, reveals what the defendant reasonably understood to be the terms of the agreement, then that determination governs the agreement." *Baines v. State*, 416 Md. 604, 615 (2010). If, on the other hand, an ambiguity exists, then that ambiguity must be resolved in the defendant's favor, and the defendant is "entitled to have the plea agreement enforced, based on the terms as he reasonably understood them to be."[5] *Matthews v. State*, 424 Md. 503, 525 (2012).

Any ambiguity in a plea agreement is resolved against the State because of the State's advantage in bargaining power. In *Ray v. State*, 230 Md. App. 157, 188 (2016), we

[5] A defendant may, in the alternative, elect to have his guilty plea vacated. *Cuffley*, 416 Md. at 580–81. Appellant is not claiming that her plea was involuntary and is not asking to withdraw her plea.

endeavored "to determine objectively what a reasonable non-lawyer's version of the deal would have been under circumstances similar to those of the defendant." Elsewhere, we have repeatedly recognized that "[d]ue process concerns for fairness and the adequacy of procedural safeguards guide any interpretation of a proffer agreement, and that any ambiguity is resolved against the government." *Butler v. State*, 231 Md. App. 533, 566 (2017) (internal quotations omitted).

According to the record of the plea proceeding in the instant case, appellant agreed to plead guilty to one count of first-degree child abuse. In exchange, the State agreed to *nolle prosse* the "remaining counts." In addition, the State agreed to a sentence of 15 years, suspend all but time served and to research treatment facilities and programs for appellant. There was no explicit discussion by the court with appellant whether, should D.M. die as a result of his 2008 injuries, she would not be prosecuted for his death.

This case is a very difficult one. It requires us to ascertain the reasonable belief of a lay person and what a reasonable defendant in appellant's position would have believed. We have often stated that all persons are presumed to know the law. *State v. Sewell*, 463 Md. 291, 314 (2019). This oft-stated maxim raises the questions for a lay person: Could a person be re-prosecuted for child abuse later after pleading guilty to the charge? Does double jeopardy prevent that? What about the common law "one year and a day rule"[6] for

[6] The common law rule of "one year and a day" barred a prosecution for murder when the victim dies more than a year and a day from the time of the act which is alleged to have caused the death. *State v. Minster*, 302 Md. 240, 241 (1985). The Maryland Legislature abolished the rule in 2002 through Section 2-102 ("Elimination of year and a day rule") of the Criminal Law Article of the Maryland Code, which states as follows: "A prosecution

murder? Is it reasonable to find that a lay person even knew of the common law rule of "one year and a day," or knew that the Legislature abrogated that rule? Doesn't it make sense that a plea agreement stating that a defendant could be prosecuted for "*other* cases" refers to cases unrelated to the underlying facts of the *Alford* plea? And would a reasonable non-lawyer believe anything other than that appellant entered the *Alford* plea to resolve all liability for the underlying child abuse conduct? Is it reasonable to think that the government may bring future charges from the same acts underlying the *Alford* plea?

We hold that the State has breached, at a minimum, the spirit of the agreement in charging and prosecuting appellant for the death of D.M. resulting from his 2008 injuries. Although the language of the agreement does not refer explicitly to future prosecution arising out of the 2008 event or conduct, the judge did advise appellant, during the plea *voir dire*, that there is no agreement or promise that appellant would not be prosecuted for "any other cases." Under the particular circumstances of this case, the very grave medical prognosis of the child, and given the partial advice and inquiry to appellant about other charges, it was incumbent on the court to advise appellant explicitly that should the child die of 2008 injuries, appellant could in the future be prosecuted for murder, child abuse resulting in death, or manslaughter.[7]

may be instituted for murder, manslaughter, or unlawful homicide, whether at common law or under this title, regardless of the time that has elapsed between the act or omission that caused the death of the victim and the victim's death."

[7] Our holding is limited to the unique facts presented herein. We are not holding that a trial court is required to state explicitly in every plea *voir dire* that the defendant might be prosecuted for murder if the victim dies later.

Notably, appellant did not enter a traditional guilty plea but instead entered an *Alford* plea. In an *Alford* plea, "the defendant, although pleading guilty, continues to deny his or her guilt." *Ward v. State*, 83 Md. App. 474, 478 (1990). The underlying basis of an *Alford* plea is that the defendant is entering a plea to avoid the threat of greater punishment. *Id.* We cannot say that a reasonable person in appellant's position would have entered the *Alford* plea knowing that she could later be prosecuted for any new consequences of the same 2008 conduct.

If the record of the plea proceeding is ambiguous, then the defendant is entitled to the benefit of the bargain, which, at the defendant's option, is either specific enforcement of the agreement or withdrawal of the plea. *Solorzano v. State*, 397 Md. 661, 667–68 (2007). Appellant here is seeking the benefit of the bargain, not the withdrawal of her plea.

We hold that a reasonable person in appellant's position would have believed, when she entered an *Alford* plea in the circuit court in 2008, that she would not face any other charges arising from the 2008 incident. The record at the plea hearing does not show that a reasonable lay person in her position would have understood that she could be prosecuted again if D.M. were to die of injuries from the 2008 incident. A reasonable lay person in her position would have understood "any other cases" to mean any other pending or future cases *unrelated* to the injuries D.M. sustained in 2008. It was clear to all at the time of the plea that D.M.'s medical condition was extremely dire and grim and that he had little

chance of surviving.[8] Under these circumstances, the circuit court in 2019 erred when it denied her motion to prohibit the State from prosecuting her for her conduct related to abuse of D.M., and specifically manslaughter and child abuse resulting in death.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY VACATED. COSTS TO BE PAID BY THE MAYOR AND CITY COUNCIL OF BALTIMORE.

[8] Although not the basis of our decision, we do not think that any reasonable person would have agreed to a DNR order if there was the likelihood of prosecution for murder if the child were to die.