

[Cite as *State v. Donaldson*, 2018-Ohio-4872.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 106812

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**ERIC DONALDSON**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
AFFIRMED

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-17-620166-A

**BEFORE:** S. Gallagher, J., McCormack, P.J., and Celebrezze, J.

**RELEASED AND JOURNALIZED:** December 6, 2018

## **ATTORNEYS FOR APPELLANT**

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SEAN C. GALLAGHER, J.:

{¶1} Eric Donaldson appeals his convictions entered upon his pleading guilty to the indictment. We affirm.

{¶2} During an argument with his girlfriend, Donaldson punched her on the left side of the face. The victim bled severely but did not seek medical attention until the next morning after she was unable to control that bleeding. Donaldson accompanied the victim to the emergency room and remained with her at all times. In light of Donaldson's presence, the victim told the health care providers that she had been hit with a beer bottle during a bar fight. The victim's jaw was broken, and she was advised to follow up with a surgeon that week and limit herself to a liquid diet. Two days after the assault, Donaldson took the victim to Seattle, Washington. While there, Donaldson threatened the victim and prohibited her from voluntarily

leaving. Eventually, the victim was able to travel back to Cleveland, Ohio, and police were immediately contacted.

{¶3} Donaldson pleaded guilty to felonious assault and abduction for the events occurring on the night of the assault until the victim freed herself while in Seattle, Washington.<sup>1</sup> Donaldson was sentenced to an aggregate six-year term in prison — five years for the felonious assault and one year for the abduction.

{¶4} In his first and second assignments of error, Donaldson claims that the trial court lacked subject-matter jurisdiction over the abduction charge under R.C. 2901.11(A)(1) because no element of the offense occurred in Ohio, and he additionally claims that his trial counsel was ineffective for failing to timely address the jurisdictional impediment. *See, e.g., State v. Yarbrough*, 104 Ohio St.3d 1, 2004-Ohio-6087, 817 N.E.2d 845, ¶ 56-57. According to Donaldson, the facts underlying the abduction charge occurred only while he and the victim were in Seattle.

{¶5} An ineffective assistance of counsel claim, in part, requires a demonstration that trial counsel's performance was deficient. *State v. Trimble*, 122 Ohio St.3d 297, 2009-Ohio-2961, 911 N.E.2d 242, ¶ 98, citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). In other words, if the trial court possessed jurisdiction over the abduction charge, Donaldson's trial counsel could not have rendered ineffective assistance in failing to challenge that aspect of the proceeding.

{¶6} “A person is subject to criminal prosecution and punishment” in Ohio if that person “commits an offense under the laws” of Ohio, “any element of which takes place” in Ohio. R.C.

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<sup>1</sup> The trial court dismissed one count of domestic violence upon Donaldson's entering a guilty plea to the remaining charges.

2901.11(A)(1). Under R.C. 2905.02(A)(2), no person, by force or the threat of force, shall knowingly restrain the liberty of another person under circumstances that place the other person in fear. As alleged in the indictment, Donaldson was accused of abducting the victim from the moment of the assault until the time the victim freed herself by traveling back to Cleveland. The indictment listed the date of the abduction offense as occurring between June 22, 2016 (the day of the assault) and July 17, 2016. Thus, the time frame within which the abduction occurred necessarily demonstrates that the crime was not alleged to have entirely occurred outside the territorial boundaries of Ohio. The indictment properly invoked the subject-matter jurisdiction of the trial court. *State v. Mbodji*, 129 Ohio St.3d 325, 2011-Ohio-2880, 951 N.E.2d 1025, ¶ 21.

{¶7} Contrary to Donaldson’s appellate argument, he pleaded guilty to a crime that took place during a period of time that extended beyond the dates when he and the victim were in Seattle. Further, Donaldson’s reliance on the state’s summarization of the events for the purposes of the plea colloquy and for the sentencing hearing are misplaced. Invoking the jurisdiction of a court “‘depends on the state of things at the time of the action brought.’” *Fed. Home Loan Mtge. Corp. v. Schwartzwald*, 134 Ohio St.3d 13, 2012-Ohio-5017, 979 N.E.2d 1214, ¶ 25, quoting *Mollan v. Torrance*, 22 U.S. 537, 539, 6 L.Ed. 154 (1824). The trial court’s jurisdiction was properly invoked in this case based on the allegation that the conduct occurred while Donaldson and the victim were in Ohio. Although a demonstration that the original allegations were false may defeat jurisdiction, it is only once the allegations are challenged that the basis for subject-matter jurisdiction must be supported with additional evidence. *M.W. v. D.M.*, 8th Dist. Cuyahoga No. 105758, 2018-Ohio-392, ¶ 11, citing *Schwartzwald* and *Rockwell Internatl. Corp. v. United States*, 549 U.S. 457, 473, 127 S.Ct. 1397, 167 L.Ed.2d 190 (2007). The invocation of the trial court’s jurisdiction was not challenged below, and therefore, the state

bore no burden to present evidence in support of the court's subject-matter jurisdiction. As a direct result, it would be expected that the record would not demonstrate the basis of the trial court's subject-matter jurisdiction beyond the allegations as advanced in the indictment.

{¶8} Generally, the absence of a record would preclude appellate review of this issue upon the direct appeal; however, in this case the force or threat element of the abduction charge was in part demonstrated through the assault perpetrated against the victim and the restraint of the victim's liberty that began at the Cleveland-area hospital, before the victim was taken to Seattle, and continued until the victim freed herself in Seattle. Thus, the state established that an element of the abduction charge occurred in Ohio and the trial court was not divested of jurisdiction. The first two assignments of error are overruled.

{¶9} In the third assignment of error, Donaldson claims the trial court failed to ensure that he "subjectively" understood the implications of the plea and the rights being waived because the trial court failed to ask him if he understood the constitutional rights he was waiving after each right was explained on the record. The only citations to authority presented in support of the third assigned error are references to black letter law. According to Donaldson:

The trial court is required to explain the effect of the plea prior to accepting that plea, but rigid adherence is not necessary. Criminal Rule 11(E); *City of Garfield Heights v. Mancini*, 121 Ohio App.3d 155, 157, 699 N.E.2d 132 (1997). Substantial compliance is sufficient so long as, under the totality of the circumstances, defendant subjectively understands the implications of the plea and the rights being waived. *State v. Nero*, 56 Ohio St.3d 106, 108, 564 N.E.2d 474 (1990).

The state is not disputing the standard. However, Donaldson's argument, that reversible error occurs through the trial court's failure to ask whether the defendant understands each right as it is explained, has been previously considered and rejected.

{¶10} Although it is strongly recommended that a trial judge stop after naming each constitutional right and ask if the defendant subjectively understands that right as just explained, the failure to do so will not necessarily invalidate a plea. *State v. Holt*, 9th Dist. Summit No. 21835, 2004-Ohio-3252, ¶ 11, citing *State v. Ballard*, 66 Ohio St.2d 473, 479-480, 423 N.E.2d 115 (1981). The purpose of Crim.R. 11(C) “is to convey to the defendant certain information so that he can make a voluntary and intelligent decision whether to plead guilty.” *Id.*, citing *Ballard*. Providing an explanation of the rights that will be forgone upon pleading guilty satisfies the general purpose of Crim.R. 11(C).

{¶11} The Ohio Supreme Court rejected the proposition of law requiring courts to abide by the model change of plea hearing as discussed in *Ballard*, and so, too, must we. The third assignment of error is overruled.

{¶12} For the first time at oral argument, Donaldson claimed that *State v. Miller*, 8th Dist. Cuyahoga No. 105363, 2018-Ohio-843, in which a divided panel concluded that the failure to inform the defendant that he is waiving his constitutional rights by pleading guilty, demonstrated that the defendant did not understand his constitutional rights. *Id.*, *accepted for review in State v. Miller*, 2018-Ohio-4288, 2018 Ohio LEXIS 2572. In *Miller*, the trial court explained the defendant’s constitutional rights in terms of the rights the defendant maintained upon going to trial instead of notifying the defendant that he was waiving those rights. *Id.* Donaldson failed to present any arguments pertaining to *Miller* in his appellate briefing under App.R. 16(A)(7) and failed to file a notice of his intent to rely on *Miller* under App.R. 21(I) before oral argument. In light of appellant’s reliance on *Miller*, we have reviewed that decision in relation to this case. Even if we considered the new argument based on *Miller*, Donaldson has conceded that “the trial court explained the constitutional rights that [he] would waive by entering a guilty plea \* \* \*.”

Donaldson's sole contention is that the trial court explained the constitutional rights without stopping and asking him if he subjectively understood each right after it was explained. As noted above, that contention is based on an exemplary plea colloquy, not that which is required.

{¶13} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.<sup>2</sup> The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

SEAN C. GALLAGHER, JUDGE

TIM McCORMACK, P.J., and  
FRANK D. CELEBREZZE, JR., J., CONCUR

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<sup>2</sup> We decline Donaldson's request to have this court waive the payment of the appellate court costs.