[Cite as *State v. Badawi*, 2004-Ohio-4982.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

CLERMONT COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellant,	:	CASE NO. CA2003-09-074
	:	O P I N I O N
-vs-		9/20/2004
	:	
HANNA GEORGE BADAWI,	:	
Defendant-Appellee.	:	

CRIMINAL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
Case No. 96-CR-005391

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YOUNG, P.J.

{¶1} Plaintiff-appellant, the state of Ohio, appeals a decision of the Clermont Court of Common Pleas vacating the theft conviction of defendant-appellee, Hanna George Badawi.

{¶2} Badawi was born in 1947 in the city of Jerusalem, which at the time was part of the Hashemite Kingdom of Jordan. Badawi is not a citizen of the United States but has been a permanent resident in the U.S. since 1990. In November 1996,

Badawi was charged with stealing a credit card accidentally left at an ATM machine and subsequently using it twice to purchase merchandise and a money order. On August 20, 1997, pursuant to a plea bargain agreement, Badawi pled guilty to one count of theft in violation of R.C. 2913.02(A)(1).

{¶3} At the plea hearing, the trial court asked Badawi if he was a U.S. citizen. Badawi replied "not yet." The trial court then advised Badawi: "All right. Do you understand that there is a potential, and I'm just indicating that that's a potential, it's not up to me, it's up to the Department of Immigration and Naturalization, that should you be convicted, there is a potential that they can consider whether or not you should remain in the United States; you do understand that potential?" Badawi replied "yes." Badawi was sentenced to five years of community control and 60 days in jail.

{¶4} On July 29, 2003, Badawi moved for leave to withdraw his guilty plea and/or vacate his conviction on the ground that the trial court failed to advise him of the possible immigration consequences of his guilty plea as required under R.C. 2943.031. The state opposed the motion, arguing that even though the trial court did not provide the advisement in R.C. 2943.031 verbatim, its advisement was nevertheless in substantial compliance with R.C. 2943.031. At a hearing on Badawi's motion, the trial court noted that there was a split of authority between Ohio courts as to whether R.C. 2943.031 must be read verbatim to an accused. The court then granted

Badawi's motion, stating: "Well, I think this law needs to be tested. [T]here is a conflict, and I'd like to test it so I am going to grant the motion to test it."

{¶5} By entry filed on August 8, 2003, "[a]fter careful consideration of the pleadings submitted in support of and in opposition to [Badawi's] Motion and the cases from the Ohio appellate districts that have ruled on the issue raised by [Badawi]," the trial court granted Badawi's motion and vacated his theft conviction. The state now appeals, raising as its sole assignment of error that the trial court erred by vacating Badawi's conviction. Specifically, the state argues that the trial court's advisement to Badawi about the possible immigration consequences of his guilty plea was in substantial compliance with R.C. 2943.031.

{¶6} R.C. 2943.031(A) provides that "prior to accepting a plea of guilty or a plea of no contest to an indictment *** charging a felony ***, the court shall address the defendant personally, provide the following advisement to the defendant that shall be entered in the record of the court, and determine that the defendant understands the advisement:

{¶7} "'If you are not a citizen of the United States you are hereby advised that conviction of the offense to which you are pleading guilty (or no contest, when applicable) may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.'"

{¶8} As the trial court correctly noted, there is a split of authority between Ohio courts as to whether the advisement in R.C. 2943.031 must be read verbatim to an accused. In State v. Quran, Cuyahoga App. No. 80701, 2002-Ohio-4917, the Eighth Appellate District held that the fact that the General Assembly put the three required warnings – deportation, exclusion from the United States, and denial of naturalization – in quotation marks requires that R.C. 2943.031(A) be recited verbatim. Id. at ¶¶22-23:

{¶9} "The legislative purpose [of enacting R.C. 2943.031] was to place a non-citizen on notice that a guilty or no contest plea might result in his deportation, exclusion, or denial of naturalization. To that extent, *** it mandated that a judge personally give any defendant the advisement and determine that it was understood. *** We find *** that the requirements of R.C. 2943.031 are clear and unambiguous and must be enforced as written." Id.

{¶10} By contrast, in State v. Yanez, Hamilton App. No. C-020098, 2002-Ohio-7076, the First Appellate District held that a trial court need only substantially comply with R.C. 2943.031:

{¶11} "When dealing *** with the nonconstitutional warnings of Crim.R. 11(C)(2) – nature of the charge, maximum possible sentence, eligibility for probation or community control – the trial court need only 'substantially comply' with the rule. See State v. Ballard (1981), 66 Ohio St.2d 473, 475[.] ***

{¶12} "We hold that the statutory rights to receive the immigration-consequences warning is similar to the nonconstitutional warnings enumerated in Crim.R. 11(C)(2). As with those warnings, a substantial compliance standard of scrutiny determines whether the trial court gave each of the three warnings and ensured that the defendant knew what immigration consequences his plea might have. *** The substantial compliance must be affirmatively demonstrated on the record. See R.C. 2943.031(E)." Id. at ¶29, 31-32.

{¶13} Likewise, the Second, Fifth, Ninth, and Tenth Appellate Districts have held, without analysis, that a trial court need only substantially comply with R.C. 2943.031 when advising an accused of the possible immigration consequences of his guilty or no contest plea. See State v. Mason, Greene App. No. 2001-CA-113, 2002-Ohio-930; State v. Marafa, Stark App. Nos. 2002CA00099 and 2002CA00259, 2003-Ohio-257; State v. Abi-Aazar, Summit App. No. 21403, 2003-Ohio-4780; and State v. Ikharo (Sept. 10, 1996), Franklin App. No. 95APA11-1511.

{¶14} We are persuaded to follow the reasoning of the First Appellate District in Yanez. In particular, we agree that "[i]n light of the difficulties in literally communicating the quoted text of R.C. 2943.031(A) to a defendant who does not speak or read English by a trial court that probably does not speak the language of the defendant, absolute compliance cannot be achieved." Yanez, 150 Ohio App.3d at ¶33. We therefore hold that a trial court need only substantially comply with

R.C. 2943.031(A) when advising an accused of the possible immigration consequences of his guilty or no contest plea.

{¶15} In the case at bar, the trial court never determined whether its advisement to Badawi was in substantial or strict compliance with R.C. 2943.031(A). Rather, the court granted Badawi's motion on the mere ground that the statutory provision needed to be tested because of the split of authority between Ohio courts. We therefore reverse the trial court's grant of Badawi's motion and remand the case for the trial court to determine whether its advisement to Badawi was in substantial compliance with R.C. 2943.031(A). The state's assignment of error is accordingly sustained but on grounds other than the ones set forth by the state.

{¶16} Judgment reversed and remanded.

POWELL and VALEN, JJ., concur.