

[Cite as *State v. Conley*, 2014-Ohio-5126.]

IN THE COURT OF APPEALS OF OHIO  
FOURTH APPELLATE DISTRICT  
ROSS COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	Case No. 14CA3430
vs.	:	
MAXINE E. CONLEY,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellant.	:	

---

APPEARANCES:

COUNSEL FOR APPELLANT <sup>1</sup> :	David A. Sams, P.O. Box 40, West Jefferson, Ohio 43162
COUNSEL FOR APPELLEE:	Matthew S. Schmidt, Ross County Prosecuting Attorney, 72 North Paint Street, Chillicothe, Ohio 45601

---

CRIMINAL APPEAL FROM MUNICIPAL COURT  
DATE JOURNALIZED: 11-12-14

---

<sup>1</sup>Different counsel represented appellant during the trial court proceedings.

ABELE, P.J.

{¶ 1} This is an appeal from a Ross County Common Pleas Court judgment of conviction and sentence. Maxine E. Conley, defendant below and appellant herein, assigns the following error for review:

“THE DEFENDANT-APPELLANT'S PLEA WAS  
UNKNOWING, UNINTELLIGENT AND INVOLUNTARY  
CONTRARY TO OHIO LAW AND THE STATE AND  
FEDERAL CONSTITUTIONS.”

{¶ 2} Appellant and Brody McGraw allegedly committed numerous, serious criminal offenses from July 2012 to August 2013. On November 20, 2013, appellant, with the advice of counsel, pled guilty to numerous charges, including, inter alia: (1) burglary in violation of R.C. 2911.12; (2) robbery in violation of R.C. 2911.02; (3) forgery in violation of 2913.31; and (4) complicity to aggravated robbery in violation of 2923.03. After engaging in a lengthy discussion with appellant and her counsel concerning her plea and the various rights that she would be waiving by entering a guilty plea, and after securing her signature to a written, detailed plea form that included the information that appellant's plea would "waive her right to have the prosecutor prove her guilty beyond a reasonable doubt on every element of each charge," the trial court accepted appellant's plea. Subsequently, the court sentenced appellant to serve fifteen years in prison. The court did not, however, orally advise appellant that her guilty plea would waive her right to have the prosecution prove her guilt beyond a reasonable doubt. This appeal followed.

{¶ 3} In her sole assignment of error, appellant asserts that the trial court did not, pursuant to Crim.R. 11(C), advise her that the prosecution in a criminal case is constitutionally required to prove a defendant's guilt beyond a reasonable doubt. Thus, appellant reasons, her guilty pleas

were unknowing, unintelligent and involuntary and her pleas should be invalidated, her convictions reversed and the case remanded to the trial court for further proceedings.

{¶ 4} The State of Ohio, plaintiff below and appellee herein, candidly, but reluctantly, concedes the issue under the authority of State v. Veney, 120 Ohio St.3d 176, 2008-Ohio-5200, which explicitly requires a court to orally inform a criminal defendant of the right to have the prosecution prove guilt beyond a reasonable doubt.

{¶ 5} Crim.R. 11(C)(2) requires that before a court accepts a guilty or no-contest plea, the court must give the warnings and notify the defendant of various constitutional rights, including the right to a jury trial, the right to confront one's accusers, the right to compulsory process, the privilege against self-incrimination and the right to require the state to prove guilt beyond a reasonable doubt. Crim.R. 11(C)(2)(a), (b) and (c). In Veney, the Supreme Court stated that courts must strictly comply with their duty to advise a defendant of the right to have the state prove guilt beyond a reasonable doubt.

{¶ 6} Thus, for a plea to be valid, a trial court must orally inform a criminal defendant, during the plea colloquy, of the rights set forth in Crim.R. 11(C)(2)(c). If the record reveals that a court did not so inform a defendant, the defendant's plea is constitutionally infirm and presumptively invalid. Veney. See, also, State v. Ballard (1981), 66 Ohio St.2d 473, 423 N.E.2d 115; State v. Caudill (1976), 48 Ohio St.2d 342, 358 N.E.2d 601; Boykin v. Alabama (1969), 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274; In re Winship (1970), 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368.

{¶ 7} In the case sub judice, we recognize that the trial court engaged in a lengthy discussion with appellant about her various statutory and constitutional rights. Additionally,

appellant signed a written, detailed plea form.<sup>2</sup> However, through oversight the trial court apparently did not orally and explicitly inform appellant that her guilty plea would waive her right to have the prosecution prove her guilt beyond a reasonable doubt. Consequently, under Veney the lack of strict compliance with Crim.R. 11(C)(2)(c) renders appellant's guilty pleas invalid.

{¶ 8} Accordingly, based upon the foregoing reasons, we hereby reverse the trial court's judgment of conviction and sentence and remand this matter to the trial court for further proceedings.

JUDGMENT REVERSED AND CAUSE  
REMANDED FOR FURTHER  
PROCEEDINGS CONSISTENT WITH  
THIS OPINION

---

<sup>2</sup> The prosecution's brief asserts that this type of case is an example of overly technical criminal procedure and will undermine public confidence in the criminal justice system, especially in view of the fact that appellant, with the assistance of counsel, desired to enter guilty pleas to the criminal charges. Moreover, appellant freely signed a plea form that contained the advisement that a guilty plea would waive her right to have the prosecution prove her guilt beyond a reasonable doubt. Although we may share in the prosecution's frustration concerning the increasing complexity of criminal law and procedure, especially as it relates to criminal pleas and Ohio felony sentencing, we, as an intermediate appellate court, must follow all Ohio Supreme Court decisions.

**JUDGMENT ENTRY**

It is ordered that the judgment be reversed and the case remanded for further proceedings consistent with this opinion. Appellant to recover of appellee the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Ross County Common Pleas Court to carry this judgment into execution.

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

McFarland, J. & Hoover, J.: Concur in Judgment & Opinion

For the Court

BY: \_\_\_\_\_

Peter B. Abele  
Presiding Judge

**NOTICE TO COUNSEL**

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.