

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-12-1114

Appellee

Trial Court No. CR0201103079

v.

Hugo Contrearius

DECISION AND JUDGMENT

Appellant

Decided: March 7, 2014

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
David F. Cooper, Assistant Prosecuting Attorney, for appellee.

Patricia Horner, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This is an appeal from a judgment of conviction and sentence entered by the
Lucas County Court of Common Pleas after defendant-appellant, Hugo Contrearius,

entered a plea of guilty to an amended charge of attempted rape. Appellant now challenges that judgment through the following assignment of error:

Plea hearing was not in compliance with Crim.R. 11(C)

{¶ 2} On December 22, 2011, appellant was indicted on one count of rape in violation of R.C. 2907.02(A)(2) and (B), a first degree felony. The charge stemmed from the attack and rape of a victim on the night of June 9, 2011, in a field next to a Fricker's restaurant in Maumee, Ohio. Upon arraignment, it became clear that appellant, a Mexican citizen whose native language is Spanish, did not fully understand the proceedings. The court, therefore, continued the case and appointed an interpreter to assist appellant and his counsel with his defense. Appellant subsequently entered a plea of not guilty.

{¶ 3} On March 19, 2012, the day the case was scheduled for trial, the parties appeared in court and notified the judge that they had reached an agreement under which appellant would be withdrawing his not guilty plea and entering a plea of guilty to an amended charge of attempted rape, a second degree felony. Following a lengthy colloquy through the interpreter, the court accepted appellant's guilty plea, found him guilty of attempted rape, and sentenced him to eight years in prison.

{¶ 4} In his sole assignment of error, appellant challenges the voluntariness of his guilty plea. Appellant contends that a statement he made during the colloquy demonstrates that he did not understand the charge of attempted rape, did not understand the defenses to the charge and did not understand to what he was pleading guilty.

{¶ 5} Crim.R. 11(C) sets forth the procedure that the trial court must follow in accepting a plea of guilty or no contest. The rule provides:

(2) In felony cases the court may refuse to accept a plea of guilty or a plea of no contest, and shall not accept a plea of guilty or no contest without first addressing the defendant personally and doing all of the following:

(a) Determining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, and, if applicable, that the defendant is not eligible for probation or for the imposition of community control sanctions at the sentencing hearing.

(b) Informing the defendant of and determining that the defendant understands the effect of the plea of guilty or no contest, and that the court, upon acceptance of the plea, may proceed with judgment and sentence.

(c) Informing the defendant and determining that the defendant understands that by the plea the defendant is waiving the rights to jury trial, to confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant's favor, and to require the state to prove the defendant's guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself.

{¶ 6} The underlying purpose of Crim.R. 11(C)(2) is to insure that the defendant has the information needed to make a voluntary and intelligent decision regarding whether to plead guilty. *State v. Ballard*, 66 Ohio St.2d 473, 479-480, 423 N.E.2d 115 (1981). With respect to the constitutional rights enunciated in Crim.R. 11(C)(2)(c), a trial court must strictly comply with the dictates of that rule. *State v. Colbert*, 71 Ohio App.3d 734, 737, 595 N.E.2d 401 (11th Dist.1991). A trial court, however, need not use the exact language found in that rule when informing a defendant of his constitutional rights. *Ballard, supra*, paragraph two of the syllabus. Rather, a trial court must explain those rights in a manner reasonably intelligible to the defendant. *Id.*

{¶ 7} For nonconstitutional rights, scrupulous adherence to Crim.R. 11(C) is not required. Rather, the trial court must substantially comply, provided no prejudicial effect occurs before a guilty plea is accepted. *State v. Stewart*, 51 Ohio St.2d 86, 364 N.E.2d 1163 (1977). “Substantial compliance means that under the totality of the circumstances the defendant subjectively understands the implications of his plea and the rights he is waiving.” *State v. Nero*, 56 Ohio St.3d 106, 108, 564 N.E.2d 474 (1990).

{¶ 8} The record reveals that at the start of the plea hearing below, appellant’s trial counsel informed the court that he and the interpreter had reviewed the plea form with appellant. The court then, through the interpreter, confirmed appellant’s name, age, level of education, that he was not at that time under the influence of any drug or alcohol, and that no one had promised him anything in exchange for his plea except for the state’s agreement to amend the charge from rape to attempted rape. The court then confirmed

appellant's understanding that he was subject to a potential prison sentence of eight years, that he would most certainly be deported at some time in the future, and that if he were permitted to remain in the United States he would receive a sexually-oriented offender classification which would include certain registration and verification requirements. After further confirming that appellant had reviewed the plea form with his counsel and interpreter, and that he was satisfied with his counsel's representation and his interpreter's assistance, the following discussion occurred.

THE COURT: I want to make sure you understand the charge that you are pleading guilty to. And the amended charge now reads that you, on or about the 9th day of June in 2011 while in Lucas County, Ohio, did knowingly attempt to engage in sexual conduct with another, when you purposely compelled the other person – that means the victim – to submit by force or threat of force. That's a charge of attempted rape in violation of 2907.02(B).

Now, Mr. Contrearius, the two words "sexual conduct" have a specific meaning in the law. Mr. Neumeyer, did you define what that means for him and was that a specific point of discussion between you and Mr. Contrearius?

MR. NEUMEYER: Yes, Your Honor.

THE COURT: Is that accurate, Mr. Contrearius, that you had this conversation about what sexual conduct means?

THE INTERPRETER: Yes.

THE COURT: And Mr. Contrearius, are you satisfied that you have a complete understanding as to what the two words “sexual conduct” means as it relates to the charge that you were indicted with?

THE DEFENDANT: Si.

THE COURT: And the amended charge to which you are pleading to?

THE INTERPRETER: Yes.

THE COURT: Sir, do you understand that by entering a plea of guilty, you are making a complete admission that you committed the offense in the amended charge?

THE INTERPRETER: Yes.

THE COURT: And did you say yes?

THE INTERPRETER: Yes. I’m sorry.

THE COURT: I’m sorry. And do you understand that as a result of this guilty plea, I’m going to enter a finding of guilt against you and that I may proceed with sentencing here today?

THE INTERPRETER: Yes.

{¶ 9} The court then proceeded to expressly inform appellant of each of the constitutional rights he was waiving by entering the guilty plea, and confirmed that appellant understood each of those rights and understood that he was waiving those rights

by entering a guilty plea. Upon further questioning by the court, appellant expressed his understanding that he was facing a maximum prison sentence of eight years, a mandatory five-year period of postrelease control, and the ramifications for violating the terms of postrelease control. After informing appellant of his appellate rights, the court asked appellant if it was his desire to waive his constitutional rights and enter a plea of guilty. Appellant responded “yes.” The court asked appellant if he had any questions for the court, his attorney or his interpreter, or any questions regarding the allegations of the offense to which he was pleading guilty. Appellant stated that he did not. The court then continued:

THE COURT: And again, you understand that by entering a plea of guilty to the charge of attempted rape, you’re telling me that you committed that offense and I will enter a finding of guilt based on that?

THE INTERPRETER: Yes.

THE COURT: Mr. Contrearius, knowing all that I put on the record here today, how do you plead to the charge of attempt to commit rape, a felony of the second degree, sir?

THE INTERPRETER: Guilty.

THE COURT: And sir, I need to ask you, why are you entering a plea of guilty to this charge?

THE INTERPRETER: Because on the day the event happened, I was drunk. I didn’t know what I was doing and I’m sorry.

{¶ 10} This is the statement that appellant asserts demonstrates he did not fully understand the offense with which he was charged and to which he was pleading guilty. Following this statement, however, the court continued to question appellant and his counsel as follows.

THE COURT: Well, I have a couple more questions. I think I understand what he means when he says he didn't know what he was doing, but we need to explore that. In the State of Ohio, voluntary intoxication is not a defense. Mr. Neumeyer, has this been a point of discussion that you've had between yourself and your client?

MR. NEUMEYER: Yes, Your Honor.

THE COURT: And do you feel he understands that?

MR. NEUMEYER: Yes, Your Honor. We spoke last Thursday about this. I informed him the court would ask him why he is entering this plea today. We discussed it. He knows what he did was wrong. He's just having a little trouble putting it into words. As we discussed and he can confirm, he did drink that night. He did do the act detailed in the indictment. He knows that it was wrong.

THE COURT: Mr. Contrearius, I took your statement to mean that you feel that had you not been drinking that night, it would not have happened?

THE INTERPRETER: Yes.

THE COURT: But I want to make sure that you're acknowledging that it did, in fact, happen; is that correct?

THE INTERPRETER: Yes.

{¶ 11} The court then handed appellant the plea form and instructed his attorney and interpreter to review the form again with appellant in open court. When the three had finished, the court noted for the record that appellant had reviewed the written plea with his counsel and interpreter and had asked a question or two. The court then asked appellant if his questions had been answered to his satisfaction. He responded that they had. The court then found that appellant had made a knowing, intelligent and voluntary plea of guilty to the charge of attempted rape, accepted the plea and found him guilty.

{¶ 12} Upon a review of the record, it is clear that the lower court strictly complied with the constitutional aspects of Crim.R. 11(C) and substantially complied with the nonconstitutional aspects of that rule in accepting appellant's guilty plea. The record demonstrates that the court took every precaution to ensure that appellant understood the charges to which he was pleading guilty, the ramifications of that plea and the rights he was waiving. Accordingly, the plea hearing fully complied with the requirements of Crim.R. 11(C) and the sole assignment of error is not well-taken.

{¶ 13} On consideration whereof, the court finds that appellant was not prejudiced or prevented from having a fair trial and the judgment of the Lucas County Court of

Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Stephen A. Yarbrough, P.J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
