

[Cite as *Bedford Hts. v. Boykin*, 2011-Ohio-452.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94403

CITY OF BEDFORD HEIGHTS

PLAINTIFF-APPELLEE

vs.

TAMARA J. BOYKIN

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Bedford Municipal Court
Case No. 09-CRB-01532

BEFORE: Celebrezze, P.J., Jones, J., and Cooney, J.

RELEASED AND JOURNALIZED: February 3, 2011

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FRANK D. CELEBREZZE, JR., P.J.:

{¶ 1} Defendant-appellant, Tamara Boykin, appeals her conviction for assault claiming the trial court failed to obtain a knowing, intelligent, and voluntary waiver of her right to counsel. Based on the record before us and the applicable case law, we reverse and remand.

{¶ 2} As the result of a physical altercation between appellant and a friend of hers, which occurred in the early morning hours of August 1, 2009,

appellant was charged with assault¹ in the city of Bedford Heights and tried in the Bedford Municipal Court. According to appellant, she filled out all the necessary paperwork, but was told she exceeded the income limit to obtain court-appointed counsel. The matter proceeded to a bench trial on November 10, 2009, where appellant represented herself. After trial, the trial judge found appellant guilty and sentenced her accordingly. This appeal followed wherein appellant argues that the trial judge failed to obtain a knowing, intelligent, and voluntary waiver of her right to counsel.

Law and Analysis

{¶ 3} The Sixth Amendment to the United States Constitution and Section 10, Article I of the Ohio Constitution guarantee a criminal defendant the right to assistance of counsel when his conviction could result in a jail sentence. *State v. Mootispaw*, Highland App. No. 09CA33, 2010-Ohio-4772, ¶18, citing *State v. Wellman* (1974), 37 Ohio St.2d 162, 171, 309 N.E.2d 915. “Where a defendant convicted of a serious offense is unable to obtain counsel, counsel shall be assigned to represent the defendant, unless the defendant after being fully advised of his or her right to assigned counsel, knowingly, intelligently, and voluntarily waives the right to counsel.” Crim.R. 32(B). Waiver of the right to counsel must be in accordance with Crim.R. 44(C). Crim.R. 32.3(D). Not only must the defendant’s waiver of his right to counsel

¹ R.C. 2903.13, a first degree misdemeanor.

be made in open court, the trial court's determination with regard to whether a defendant is able to obtain counsel must also be made in open court. Crim.R. 44(C) and (D).

{¶ 4} Here, the court did not conduct any colloquy before allowing appellant to engage in self-representation. The city concedes, and a thorough review of the record reveals, that appellant was never advised of her right to counsel and the possible consequences that could accompany a waiver of this right. "Although there is no prescribed colloquy in which the trial court and a pro se defendant must engage before a defendant may waive his right to counsel, the court must ensure that the defendant is voluntarily electing to proceed pro se and that the defendant is knowingly, intelligently, and voluntarily waiving the right to counsel." *State v. Hughley*, Cuyahoga App. Nos. 92588 and 93070, 2009-Ohio-5824, ¶27.

{¶ 5} Because the trial court failed to comply with Crim.R. 44, we find that appellant did not knowingly, intelligently, and voluntarily waive her right to counsel. Appellant's sole assignment of error is sustained. See *State v. Goss*, Cuyahoga App. No. 84469, 2005-Ohio-883, ¶4.

{¶ 6} This cause is reversed and remanded to the lower court for further proceedings consistent with this opinion.

It is ordered that appellant recover of said appellee 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 Bedford Municipal Court to carry this judgment into execution.

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

FRANK D. CELEBREZZE, JR., PRESIDING JUDGE

LARRY A. JONES, J., and
COLLEEN CONWAY COONEY, J., CONCUR