[Cite as *State v. Sheets*, 2023-Ohio-2592.]

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

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	Case No. 22CA1
	:	
v.	:	
	:	DECISION AND
Lisa L. Sheets,	:	JUDGMENT ENTRY
	:	
Defendant-Appellant.	:	

APPEARANCES:

Timothy Young, Ohio Public Defender, Kimberly E. Burroughs and Peter Galyardt, Assistant Ohio Public Defenders, Columbus, Ohio, for Appellant.

Dave Yost, Ohio Attorney General, and Andrea K. Boyd, Special Prosecuting Attorney, Assistant Attorney General, Columbus, Ohio, for Appellee.

Smith, P.J.

{¶1} Appellant, Lisa L. Sheets, appeals the judgment of the Jackson County Court of Common Pleas convicting her of two counts of complicity to murder and one count of complicity to attempted murder. Sheets entered into a plea agreement to plead guilty to the three charges in exchange for the dismissal of the remaining counts of the indictment. On appeal, Sheets raises two assignments of error contending that, 1) the trial court reversibly erred when, after Ms. Sheets made a statement of factual innocence nearly contemporaneously to her entry of three

guilty pleas, the court failed to investigate the statement before it imposed a sentence; and 2) the trial court erred by failing to provide to her the statutorily-mandated advisories contained in R.C. 2903.42(A)(1), which require trial courts to inform violent offenders of the process for rebutting the presumption to register as a violent offender.

{¶2} Because we find no merit to the arguments raised under Sheets' first assignment of error, it is overruled. However, in light of the State's concession and because we find merit to the arguments raised under Sheets' second assignment of error, it is sustained. Accordingly, the judgment of the trial court is affirmed in part, reversed in part, and remanded to the trial court for further proceedings consistent with this opinion.

FACTS

{¶3} On December 23, 2020, a multi-count felony indictment was filed charging Sheets with two counts of complicity to aggravated murder, two counts of complicity to attempted murder, one count of complicity to felonious assault, and one count of tampering with evidence. The indictment also contained five firearm specifications. According to the subsequently-filed bill of particulars, Sheets was alleged to have aided and abetted her husband, Lonnie Sheets, in purchasing both a firearm and ammunition and in driving him to the scene of David Yeley's residence on Dark Hollow Road in Jackson County, Ohio where Lonnie fatally

shot Yeley. The bill of particulars also alleged that Sheets aided and abetted her husband in the aggravated murder of Tabitha Sheets and the attempted murder of Paul Sheets on the same night, at a difference residence that was located near Yeley's residence. The bill further alleged that the two fled in Sheets' car, disposed of the firearm, and washed the clothes they were wearing during the commission of the offenses.

{¶4} Sheets initially pled not guilty, but on the morning of the scheduled jury trial on December 13, 2021, she entered into plea negotiations with the State which resulted in a plea agreement. The plea agreement provided that Sheets would plead guilty to two amended counts of complicity to murder and one count of complicity to attempted murder in exchange for the dismissal of the remaining counts of the indictment as well as all of the firearm specifications. The plea agreement also contained a requirement that Sheets would provide an allocution, which was requested by the family members of the victims.

{¶5} A combined plea and sentencing hearing was held the same day. Before accepting Sheets' guilty pleas, the trial court conducted a Crim.R. 11 colloquy advising Sheets of her rights and the effects of her decision to plead guilty. Sheets voiced understanding and agreement at each stage of the plea colloquy and affirmed her prior execution of a written plea form and satisfaction with her counsel's representation and advice.

{¶6} The trial court thereafter moved to the sentencing portion of the hearing at which point Sheets was asked to provide an allocution, as had been agreed. Sheets stated as follows in open court and in front of several members of the victims' families:

> DEFENDANT: Um . . . tell him what I told you? Lonnie went . . . had me take him to Glenn Davis' to get a gun. He did not tell me the truth. He said he was going to get it on the third but he didn't he got it before then. Then he asked me to take him to Bugs' to get his clothes and his medicine. I waited up the road and even when he got up there, he said Bugs was dead. I killed him. I say why? He didn't answer me. He says take me to Paul and Tabby's. Paul owes me money and drugs. They got into a fight. An argument however you want to put it and next thing I know Tabby was shot and Paul was hurt. I did not know anything until it was afterwards. So, he kind of didn't tell me until after he did it.
>
> JUDGE: Anything else you want to state?
>
> DEFENDANT: Is that it? That's all.

{¶7} Thereafter, the trial court proceeded to impose lifetime prison terms with the possibility of parole after fifteen years on both counts of complicity to murder and a prison term of ten years, "with an additional possibility of five years on top of that[,]" on the complicity to attempted murder charge. The trial court ordered all of the sentences to run concurrently. Of specific relevance herein, the trial court also advised Sheets of her duties to register as a violent offender in the violent offender database (hereinafter "VOD"). Sheets now appeals from the trial

court's December 15, 2021 sentencing entry and sets forth the two assignments of error for our review.

ASSIGNMENTS OF ERROR

I. THE TRIAL COURT REVERSIBLY ERRED WHEN, AFTER MS. SHEETS MADE A STATEMENT OF FACTUAL INNOCENCE NEARLY CONTEMPORANEOUSLY TO HER ENTRY OF THREE GUILTY PLEAS, THE COURT FAILED TO INVESTIGATE THE STATEMENT BEFORE IT IMPOSED A SENTENCE.

II. THE TRIAL COURT ERRED BY FAILING TO PROVIDE MS. SHEETS STATUTORILY MANDATED ADVISORIES CONTAINED R.C. 2903.42(A)(1) [SIC], WHICH REQUIRE TRIAL COURTS INFORM VIOLENT OFFENDERS OF THE PROCESS FOR REBUTTING THE PRESUMPTION TO REGISTER AS A VIOLENT OFFENDER.

ASSIGNMENT OF ERROR I

{¶8} In her first assignment of error, Sheets contends that the trial court reversibly erred in accepting her guilty pleas because it failed to investigate a "statement of factual innocence" that she made "nearly contemporaneously to her entry of three guilty pleas" and prior to being sentenced. The record reveals that during the sentencing portion of the combined plea and sentencing hearing, Sheets was required to give a statement in allocution for the benefit of the victims' families as part of the plea agreement. During the statement, Sheets admitted to taking her husband to purchase a gun and admitted to driving him to both murder

scenes, but denied any knowledge that her husband had planned to kill the victims until after the crimes already occurred. Thus, Sheets essentially argues on appeal that her guilty pleas were not knowing, intelligent and voluntary in light of her statement made on the record and that the trial court erred in accepting the pleas and proceeding to sentencing. In support of her argument, Sheets claims that her statement either constituted a protestation of innocence, or at the very least, it demonstrated confusion as to the elements of the charged offenses, in particular the mens rea element of "purposely."

{¶9} The State initially responds by arguing that Sheets' statement during her allocution simply minimized her role in the crimes and did not constitute either a protestation of innocence, nor confusion regarding the elements of the charged offenses. The State further directs our attention to the fact that the statement at issue was not made during the plea hearing, but rather was made later during the sentencing portion of the hearing, and was made as part of the allocution that was required as part of the plea agreement. Thus, the State disputes Sheets' argument that the statement was made contemporaneously with the entry of her plea.

Standard of Review

{¶10} " 'When a defendant enters a plea in a criminal case, the plea must be made knowingly, intelligently, and voluntarily. Failure on any of those points renders enforcement of the plea unconstitutional under both the United States

Constitution and the Ohio Constitution.' " *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, 897 N.E.2d 621, ¶ 7, quoting *State v. Engle*, 74 Ohio St.3d 525, 527, 660 N.E.2d 450 (1996). "It is the trial court's duty, therefore, to ensure that a defendant 'has a full understanding of what the plea connotes and of its consequence.' " *State v. Montgomery*, 148 Ohio St.3d 347, 2016-Ohio-5487, 71 N.E.3d 180, ¶ 40, reconsideration granted in part and opinion modified on other grounds, 147 Ohio St.3d 1438, 2016-Ohio-7677, 63 N.E.3d 157, quoting *Boykin v. Alabama*, 395 U.S. 238, 244, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); *State v. Conley*, 4th Dist. Adams No. 19CA1091, 2019-Ohio-4172, ¶ 34.

{¶11} "In determining whether a guilty * * * plea was entered knowingly, intelligently, and voluntarily, an appellate court examines the totality of the circumstances through a de novo review of the record to ensure that the trial court complied with constitutional and procedural safeguards." *State v. Willison*, 4th Dist. Athens No. 18CA18, 2019-Ohio-220, ¶ 11. " '[A] plea does not qualify as intelligent unless a criminal defendant first receives "real notice of the true nature of the charge against him, the first and most universally recognized requirement of due process." ' " *State v. Montgomery*, *supra*, at ¶ 42, quoting *Bousley v. U.S.*, 523 U.S. 614, 618, 118 S.Ct. 1604, 140 L.Ed.2d 828 (1998), in turn quoting *Smith v. O'Grady*, 312 U.S. 329, 334, 61 S.Ct. 572, 85 L.Ed. 859 (1941).

Crim.R. 11(C)(2)(a)

{¶12} "Crim.R. 11(C) governs the process that a trial court must use before accepting a felony plea of guilty * * *." *Veney* at ¶ 8. Relevant here, Crim.R. 11(C)(2)(a) provides that before accepting a guilty plea, the trial court must address the defendant personally and determine "that the defendant is making the plea * * * with understanding of the nature of the charges * * *." "Substantial compliance with Crim.R. 11(C)(2)(a) * * * is sufficient for a valid plea because [it does] not involve constitutional rights." *Willison* at ¶ 13, citing *Veney* at ¶ 14. " ' "Substantial compliance means that, under the totality of the circumstances, appellant subjectively understood the implications of [the] plea and the rights * * * waived." ' " *Willison* at ¶ 13, quoting *State v. McDaniel*, 4th Dist. Vinton No. 09CA677, 2010-Ohio-5215, ¶ 13, in turn quoting *State v. Vinson*, 10th Dist. Franklin No. 08AP-903, 2009-Ohio-3240, ¶ 6.

{¶13} In *State v. Cassell*, 2017-Ohio-769, 79 N.E.3d 588, we explained as follows:

> Substantial compliance with Crim.R. 11(C)(2)(a) does not necessarily require a detailed recitation of the elements of a charge by the court. *State v. Wright*, 4th Dist. Highland No. 94CA853, 1995 WL 368319, *4 (Jun. 19, 1995). "In order for a trial court to determine that a defendant is making a plea with an understanding of the nature of the charge to which he is entering a plea, it is not always necessary that the trial court advise the defendant of the elements of the crime, or to specifically ask the defendant if he understands the charge, so long as the totality of the circumstances are such that the trial court is warranted in

> making a determination that the defendant understands the charge." *State v. Rainey*, 3 Ohio App.3d 441, 442, 446 N.E.2d 188 (10th Dist. 1982).

Cassell at ¶ 33.

{¶14} Furthermore, the Supreme Court of Ohio has observed that "the Constitution does not require that a trial court explain the elements of the charge, at least where the record contains a representation by defense counsel that the nature of the offense has been explained to the accused." *State v. Fitzpatrick*, 102 Ohio St.3d 321, 2004-Ohio-3167, 810 N.E.2d 927, ¶ 57, citing *Henderson v. Morgan*, 426 U.S. 637, 647, 96 S.Ct. 2253, 49 L.Ed.2d 108, fn. 13 (1976). *See also* 5 LaFave, Israel & King, Criminal Procedure (2d Ed. 1999) 164, Section 21.4(c). In *Fitzpatrick,* the Court went on to observe as follows regarding the duties of the trial court when accepting guilty pleas from defendants who are represented by counsel:

> "Apart from the small class of rights that require specific advice from the court under Rule 11(c), it is the responsibility of defense counsel to inform a defendant of * * * the attendant statutory and constitutional rights that a guilty plea would forgo."[1]

Fitzpatrick at ¶ 57, quoting *Libretti v. United States*, 516 U.S. 29, 50-51, 116 S.Ct. 356, 133 L.Ed.2d 271 (1995).

[1] *Libretti* was referencing Rule 11(c) of the Federal Rules of Criminal Procedure, which governs plea agreement procedures.

Legal Analysis

{¶15} Here, the totality of the circumstances demonstrates that Sheets' guilty pleas, at the time they were made and accepted by the trial court, were made knowingly, intelligently and voluntarily, with understanding of the elements of the offenses. The written plea agreement that Sheets signed set forth the three offenses to which Sheets was pleading guilty and stated that Sheets had "reviewed the facts and law of the case with [her] counsel." Further, the written plea form was signed by Sheets' counsel, who certified that he had "counseled [his] client to the best of [his] professional ability with respect to the facts and law of this case[]" and that he had "also diligently investigated [her] cause and assertions and possible defenses." Sheets' counsel also certified on the written plea form that "in [his] opinion," Sheets was acting "knowingly, voluntarily, and intelligently * * *."

{¶16} Moreover, the trial court engaged in the following exchange regarding Sheets' understanding of the nature of the offenses to which she was pleading guilty as part of the plea colloquy:

Q: So you have your high school diploma?

A: Yes.

Q: So, it's fair to say you can read and write English?

A: No.

Q: You cannot read English?

A: Not very well.

Q: Okay. Have you gone over then with . . .you've gone over the plea forms were you able to understand what the plea forms said?

A: Yes.

Q: So, you read English well enough that you can . . . understood the plea forms?

A: Mr. Nash explained them to me.

Q: Okay, you're satisfied with that explanation?

* * *

A: Yes.

* * *

Q: Do you have any questions about the plea agreement?

A: No.

Q: You've had enough time to talk with your attorney Mr. Nash about this case?

A: Yes.

Q: He's talked to you about this case and answered all your questions?

A: Yes.

Q: You've reviewed the discovery, indictment and other legal documents in this case with him?

A: Yes.

Q: You understand that if you plead guilty, you will not be having a trial in this case today?

A: Yes.

Q: Are you satisfied with your attorney's services?

A: Yes.

Q: Do you understand the nature of the allegations you are pleading guilty to today?

A: Yes.

Q: Do you have any questions about any of these offenses?

A: No.

Q: You understand if you plead guilty to these offenses, you're making a complete admission that you committed these crimes?

A: Yes.

{¶17} At the conclusion of the colloquy, the trial court accepted Sheets' guilty pleas to two counts of complicity to murder and one count of complicity to attempted murder and then it moved on to the sentencing portion of the hearing. It was not until the portion of the sentencing hearing where Sheets was required to face the victims' families and give an allocution that she denied knowing that her husband had intended to kill the victims until after the crimes had already occurred.

{¶18} On appeal, Sheets does not contend that her trial counsel rendered ineffective assistance of counsel with respect to the entry of her guilty pleas, nor does she argue that the plea colloquy conducted by the trial court failed to comply with Crim.R. 11. What Sheets does argue is that the statement she made during the allocution, which denied any knowledge of her husband's intention to murder the victims, indicates that either 1) she was making a protestation of innocence in connection with the entry of her plea; or 2) she was confused regarding the nature of the offenses to which she was pleading guilty. However, for the following reasons we find no merit to these arguments.

{¶19} Again, Sheets contends that her statement constituted either confusion regarding the elements of the offense or a protestation of innocence made "nearly" contemporaneously to the entry of her guilty pleas. With respect to Sheets' argument that her statement was a protestation of innocence, she likens her statement to a situation where an *Alford* plea is entered, which requires additional inquiry by the trial court. More specifically, she argues that her statement triggered a duty for the trial court "to inquire further and develop a factual basis for [her] guilty plea in order to dispel any doubt that [her] guilty plea is unknowing, unintelligent, and involuntary."

{¶20} *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970) provides a method by which a defendant is able to maintain his factual

innocence yet enter a plea of guilty. This Court has observed as follows regarding *Alford* pleas:

> "A defendant who believes himself to be innocent of the charges against him may rationally conclude that the evidence against him is so incriminating that there is a significant likelihood that a jury would find him guilty of the offense." Consequently, the defendant may rationally conclude that accepting a plea bargain is in his best interests, since he will avoid the risk of greater punishment if found guilty by a jury. When a defendant so chooses to enter this plea, it is known as an *Alford* plea of guilty. (Citations omitted.)"

State v. Hughes, 4th Dist. Highland No. 20CA2, 2021-Ohio-111, ¶ 9, quoting *State v. Byrd*, 4th Dist. Athens No. 07CA29, 2008-Ohio-3909, ¶ 16.

{¶21} " 'Where a defendant enters an *Alford* plea, the trial court must inquire into the factual basis surrounding the charges to determine whether the defendant is making an intelligent and voluntary plea.' " *Hughes* at ¶ 11, quoting *State v. Redmond*, 7th Dist. Mahoning No. 17MA0068, 2018-Ohio-2778, ¶ 11. Further, " '[t]he trial court may accept the guilty plea only if a factual basis for the guilty plea is evidenced by the record.' " *Id.* In *Hughes*, we explained that "in order to safeguard defendant's constitutional right to enter a plea voluntarily and intelligently, the judge must determine that the record 'contains strong evidence of actual guilt.' " *Hughes* at ¶ 10, quoting *Alford* at 37. We further explained in *Hughes* that "[b]ecause a heightened *Alford* inquiry allows the judge to 'test

whether the plea was being intelligently entered,' a trial court's failure to make the inquiry is a 'constitutional error' which invalidates the plea* * *." *Hughes* at ¶ 10.

{¶22} Sheets relies on *State v. Padgett*, 67 Ohio App.3d 332, 586 N.E.2d 1194 (2d Dist.) in support of her argument that her allocution statement imposed upon the trial court a heightened duty of inquiry under *Alford*. In *Padgett*, the defendant made a protestation of innocence during the plea colloquy, prior to the trial court's acceptance of the plea. *Id.* at 335-336. Although there is no indication from the record that Padgett's plea agreement provided for the entry of an *Alford* plea, the appellate court essentially determined that because "there were protestations of innocence during the plea proceedings[,]" and because "there was no discussion with Padgett concerning the sincerity of his protestations of innocence, or his reasons for pleading guilty notwithstanding his protestations of innocence[,]" the trial court failed to sufficiently meet its Crim.R. 11 obligations. *Id.* at 339.

{¶23} We find *Padgett* is inapplicable to the facts presently before us because the statement made by Sheets did not occur until after the trial court had already accepted her guilty pleas and had moved on to the sentencing phase of the hearing. *See State v. McClelland*, 2021-Ohio-3018, 176 N.E.3d 150, ¶ 16 (7th Dist.) ("* * * it is well settled that the *Alford* inquiry is not triggered where a protestation of innocence is made after the guilty plea is made and accepted"),

citing *State v. Gales*, 131 Ohio App.3d 56, 60, 721 N.E.2d 497 (7th Dist. 1999) and *State v. Corbett*, 8th Dist. Cuyahoga No. 99649, 2013-Ohio-4478, ¶ 7. As further noted in *McClelland*, " '[i]n order for a valid *Alford* plea to take place, the defendant must protest innocence at the same time he enters his guilty plea.' " *McClelland* at ¶ 18, quoting *State v. Holloway*, 7th Dist. Mahoning No. 17MA0048, 2018-Ohio-5393, ¶ 21, in turn citing *State v. Johnson*, 8th Dist. Cuyahoga No. 103408, 2016-Ohio-2840, ¶ 27. Sheets also refers to *McClelland* for the proposition that "if cause to doubt the validity of a guilty plea arises during the sentencing phase of a combined hearing, a court *should* re-open the plea portion of the hearing, reconsider its acceptance of the plea, and only accept the plea once it has verified the plea's knowing, voluntary, and intelligent nature." (Emphasis added). However, as already noted, Sheets' statement was not made during the plea phase of the hearing and the *McClelland* court did not hold that a trial court *must*, or even that it *should*, sua sponte re-open the plea portion of the hearing under these circumstances. It simply stated that a court *may* do so. *See McClelland* at ¶ 27 (reasoning in response to the State's argument that "an inquiry occurring at the sentencing portion of the hearing can save [a] plea deal," that "[i]t is not improper for a trial court to reopen a plea hearing at the adjacent sentencing portion of the hearing if the court realizes or is informed the defendant may have

earlier intended to assert actual innocence or if the court is concerned the record should be better developed for purposes of *Alford*").

{¶24} Although Sheets argues that the line between the plea and sentencing was blurred here in light of the fact that there was a combined plea and sentencing hearing, we find that the plea portion of the hearing had been definitively concluded at the time Sheets made her statement. Furthermore, there is no evidence in the record before us indicating that the plea agreement permitted the entry of an *Alford* plea or that the trial court had agreed to permit Sheets to enter an *Alford* plea. Again, there was no alleged protestation of innocence made until after the pleas had already been accepted and the court had moved on to sentencing and thus, we find both *Padgett* and *Alford* to be inapplicable.

{¶25} Moreover, we cannot conclude that the statement at issue constituted a protestation of innocence. Sheets admitted to taking her husband to purchase a gun and admitted to driving him to the first victim's house. She then admitted that she drove her husband to the second and third victims' house after her husband informed her that he had killed the first victim. She stated that her husband wanted to go to the second and third victims' house because they owed him money and drugs. Viewing Sheets' statement as a whole, being mindful of Sheets' admission that she knew her husband had already killed one person at the time she agreed to drive him to the next house of someone who owed him money and drugs, her claim

on appeal that her statement constituted a protestation of innocence is tenuous at best. We further find the State's argument to be well-taken to the extent it argues Sheets' statement was simply an attempt to minimize her conduct. Not only was the statement at issue not made contemporaneously with the entry of the guilty pleas, the statement was not spontaneous or made upon Sheets' own volition. Instead, the record indicates that the statement was made as part of an allocution requested by the victims' families that was a stipulation of the plea agreement, which, in our view, does not lend itself to being a protestation of innocence.

{¶26} Sheets secondarily argues that her statement, if not a protestation of innocence, demonstrated confusion on her part as to the elements of the offense or nature of the offense, which also triggered a duty on the part of the trial court to conduct a heightened inquiry before accepting her pleas. Sheets relies on *State v. Swift*, 86 Ohio App.3d 407, 621 N.E.2d 513 (11th Dist. 1993) for the proposition that if it becomes apparent to the trial court that a defendant is confused about the elements of the offenses charged, the trial court must clear up any confusion before accepting the pleas. Again, the statement at issue was not made until after the pleas had already been accepted by the trial court. Further, as set forth above, there is nothing in the hearing transcript that indicates Sheets was confused about the elements of the offenses or the nature of the offenses at the time she entered her guilty pleas. To the contrary, she affirmed on the record that her counsel had

discussed with her the law and facts related to her case, that she was satisfied with the services provided by her counsel, that she understood the nature of the offenses, and that she had no questions about the plea agreement. There is nothing on the record at the plea portion of the hearing that would have alerted the trial court that Sheets was confused about what she was doing.

{¶27} *Swift* relies on *State v. Funk,* 9th Dist. Medina No. 1499, 1986 WL 11921 and *Nash v. Israel* (C.A. 7, 1983), 707 F.2d 298, in support of its reasoning that "it is clear that a trial court must 'clear-up' any confusion on the part of the defendant before it can accept a guilty plea." *Swift* at 413. However, *State v. Funk* involved clear confusion on the part of the defendant regarding the maximum penalty *during the plea colloquy* and before acceptance of the plea. *Funk* at *1. Thus, it is factually distinguishable from the present case. *Nash* also involved a defendant expressly informing the trial court *during the plea colloquy* that he did not understand the charge to which he was pleading guilty. *Nash* at 301. In *Nash*, the State argued that because the defendant had received a copy of the complaint, which contained the elements of the charged offenses, and because he had heard the judge read the statements explaining the requisite intent of the charged crimes to the jury on the first day of trial, that Nash could not claim that he did not understand the charge to which he pled guilty. *Id.* at 302. The *Nash* court determined, however, that the State's argument was flawed, reasoning as follows:

> * * * the State, simply put, is arguing a case that is not before us. The factors relied upon by the State to establish Nash's understanding of the intent element would be relevant in a case in which the defendant stated at the guilty plea proceeding that he fully understood the charge, but later claimed that he had not. However, we are presented with a case in which the intent element was not explained to Nash after he explicitly stated that he did not understand the charge.

Id.

{¶28} Unlike Nash, Sheets did state at the guilty plea proceeding that she fully understood the charges. Now she claims she did not. Thus, per *Nash*, a review of the documents provided to Sheets, her and her counsel's written representations on the written plea form, and Sheets' statements during the plea colloquy are relevant in the present case and all lead to the conclusion that Sheets was not confused about the elements of the offenses to which she was pleading at the time she entered her guilty pleas, despite the statement she subsequently made during sentencing hearing.

{¶29} In *State v. Fitzpatrick*, *supra,* the Supreme Court of Ohio upheld a guilty plea as knowing, intelligent, and voluntary, despite an argument that a plea was invalid because the plea colloquy was inadequate as a result of the trial court's failure to ensure that the defendant made the plea with full understanding of the nature of the charges. *Fitzpatrick* at ¶ 55. Despite stating on the record during the plea colloquy that he understood the nature of the charges against him, Fitzpatrick made a statement during the penalty-phase that he would have never knowingly

harmed the victims. *Id.* at ¶ 60. He argued on appeal that his penalty-phase statement denying he acted with purpose or prior calculation and design demonstrated confusion on his part which, under the totality of the circumstances, indicated his plea was not knowing, intelligent, and voluntary. *Id.* at 55, 60. However, the Supreme Court rejected Fitzpatrick's arguments, reasoning as follows:

> Fitzpatrick's statements denying that he acted with purpose or prior calculation and design, however, do not necessarily imply a failure to understand those elements. *See, generally, North Carolina v. Alford* (1970), 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (upholding guilty plea of defendant who had denied his guilt while pleading guilty). Nor were Fitzpatrick's statements made during the plea hearing, as were the statements in *Swift*. Moreover, the record of the plea hearing contains express representations by Fitzpatrick and his counsel that the natures of the charges had been explained to him and that he understood them.

Fitzpatrick at ¶ 62.

{¶30} In light of the foregoing, we conclude that Sheets' statement did not constitute a protestation of innocence, and even assuming arguendo that it did, the statement was made after the trial court had accepted Sheets' guilty pleas and had concluded the plea portion of the proceedings. Thus, we cannot conclude that *Padgett* is applicable herein to the extent that it would require the trial court to conduct a heightened *Alford* inquiry before accepting Sheets' guilty pleas. Moreover, although the trial court was permitted to reopen the plea proceedings

during the sentencing phase in order to further inquire as to Sheets' understanding of the offenses to which she was pleading guilty per *McClelland, supra*, the trial court was not required to do so. Additionally, because a review of the record, including the plea hearing transcript, evidences Sheets' understanding of the nature and elements of the offenses to which she was pleading, her argument that her allocution statement indicated confusion on her part is not well-taken.

{¶31} Therefore, after considering the totality of the circumstances, we cannot conclude that Sheets' guilty pleas were not knowing, intelligent and voluntary or that the trial court erred in its acceptance of the pleas. Accordingly, we find no merit to Sheets' first assignment of error and the judgment of the trial court is affirmed.

ASSIGNMENT OF ERROR II

{¶32} In her second assignment of error, Sheets contends that the trial court erred by failing to provide her with the statutorily mandated advisories contained in R.C. 2903.42(A)(1), which she argues requires trial courts to inform violent offenders of the process for rebutting the presumption to register as a violent offender. In making her argument, Sheets concedes that her trial counsel failed to object to this error by the trial court, but nevertheless urges this Court to review the matter for plain error. The State concedes that the trial court erred by failing to provide these statutorily required notifications and further agrees that the matter

must be remanded for the trial court to provide Sheets the required advisements. In light of the State's concession and for the following reasons, we find merit to Sheets' second assignment of error.

{¶33} R.C. 2903.41 et seq., commonly known as Sierah's Law, became effective on March 20, 2019. 2018 Am.Sub.S.B. No. 231. *See State v. Walker*, 2021-Ohio-580, 168 N.E.3d 628, ¶ 29. As explained in *Walker*, "Sierah's Law created a VOD and requires violent offenders convicted of specified offenses, including attempted murder, to enroll in the database." *Id.* "Sierah's Law creates a presumption that violent offenders enroll in the database, and provides enrollment for a minimum of ten years. Re-enrollment in the database is required on an annual basis." *Id.*

{¶34} R.C. 2903.42(A)(1) provides, in pertinent part, as follows:

> (1) For each person who is classified a violent offender, it is presumed that the violent offender shall be required to enroll in the violent offender database with respect to the offense that so classifies the person and shall have all violent offender database duties with respect to that offense for ten years after the offender initially enrolls in the database. The presumption is a rebuttable presumption that the violent offender may rebut as provided in division (A)(4) of this section, after filing a motion in accordance with division (A)(2)(a) or (b) of this section, whichever is applicable. Each violent offender shall be informed of the presumption established under this division, of the offender's right to file a motion to rebut the presumption, of the procedure and criteria for rebutting the presumption, and of the effect of a rebuttal and the post-rebuttal hearing procedures and possible outcome, as follows:

> (a) If the person is classified a violent offender under division (A)(1) of section 2903.41 of the Revised Code, the court that is sentencing the offender for the offense that so classifies the person shall inform the offender before sentencing of the presumption, the right, and the procedure, criteria, and possible outcome.

{¶35} Because R.C. 2903.42(A)(1) states that "[e]ach violent offender *shall* be informed of the presumption * * *, of the offender's right to file a motion to rebut the presumption, of the criteria for rebutting the presumption, and of the effect of a rebuttal[,]" it is therefore a mandatory provision. (Emphasis added). *See State v. Walker, supra*, at ¶ 35.

{¶36} Sheets was convicted of two counts of complicity to murder and one count of complicity to attempted murder. Sheets argues that although the trial court advised her of the requirement that she enroll in the database, it failed to advise her of the process for rebutting the presumption of enrollment in the database. Although Sheets has failed to preserve this issue for appellate review, in the interests of justice we will conduct a plain error analysis of her arguments under this assignment of error. "[T]o establish plain error[, a] defendant must show that 'but for a plain or obvious error, the outcome of the proceeding would have been otherwise, and reversal must be necessary to correct a manifest miscarriage of justice.' " *State v. Schroeder*, 2019-Ohio-4136, 147 N.E.3d 1, ¶ 87 (4th Dist.), quoting *State v. Quarterman*, 140 Ohio St.3d 464, 2014-Ohio-4034, 19 N.E.3d 900, ¶ 16; Crim.R. 52.

{¶37} The Eighth District Court of Appeals has determined that a trial court's failure to advise a defendant regarding the process for rebutting the presumption of enrollment in the VOD constitutes reversible error. *See State v. Beard*, 2021-Ohio-2512, 177 N.E.3d 591, ¶ 59 (8th Dist.), citing *State v. Walker*, *supra*, at ¶ 59. In reaching its decision after conducting a plain error analysis, the *Beard* court reasoned as follows:

> In *State v. Walker*, 8th Dist., 2021-Ohio-580, 168 N.E.3d 628, this court recently held that a trial court commits reversible error when it fails to properly advise a violent offender of the presumption established under R.C. 2903.42(A)(1), the offender's right to file a motion to rebut the presumption, of the procedure and criteria for rebutting the presumption, and of the effect of a rebuttal and post-rebuttal hearing procedures and possible outcome. *Id.* at ¶ 31-42. In reaching this conclusion, this court observed that the defendant did not have an opportunity to prepare for an enrollment hearing, did not have an opportunity to file a written motion to rebut the presumption, and did not have the opportunity to present evidence to rebut the presumption. *Id.* at ¶ 38. He was, therefore, prejudiced by the trial court's failure to advise him of his right to rebut the presumption and by the lack of opportunity to present evidence and argument to rebut the presumption.
>
> The trial court similarly failed to advise Beard of the presumption established under R.C. 2903.42(A)(1) and of his right to file a motion to rebut the presumption. He, therefore, was deprived of the opportunity to present evidence to rebut the presumption. And since Beard pleaded guilty, there is insufficient evidence on which to conclude that Beard's attempts to rebut the presumption would have been futile.

Beard at ¶ 58-59, citing *Walker, supra*.

{¶38} As was the case in *Beard*, Sheets pled guilty to the charges at issue and as such, there is insufficient evidence in the record to conclude that an attempt to rebut the presumption would have been futile. Additionally, in the case sub judice, Sheets was indicted for complicity to commit the offenses at issue under a theory of aiding and abetting, unlike Beard, who appears to have been indicted as a principal offender. Therefore, we sustain Sheets' second assignment of error and find that the trial court reversibly erred in failing to provide Sheets with the mandatory advisements contained in R.C. 2903.42(A)(1).

{¶39} Accordingly, the trial court's judgment is affirmed in part and reversed in part. The case is remanded to the trial court to advise Sheets of the presumption of enrollment in the VOD under R.C. 2903.42(A)(1), her right to file a motion to rebut the presumption, the procedure and criteria for rebutting the presumption, and the effect of a rebuttal and post-rebuttal hearing procedures and possible outcome as required by R.C. 2903.42(A)(1). *See Beard* at ¶ 62.

JUDGMENT AFFIRMED IN PART AND REVERSED IN PART.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED IN PART AND REVERSED IN PART and costs be assessed to Appellant.

The Court finds there were reasonable grounds for this appeal.

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

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed 60 days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the 60-day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the 45-day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of 60 days, the stay will terminate as of the date of such dismissal.

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

Hess, J. and Wilkin, J. concur in Judgment and Opinion.

For the Court,

_____

Jason P. Smith
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.