[Cite as *State v. Anderson*, 2023-Ohio-2870.]

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO,	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Plaintiff - Appellee	:	Hon. John W. Wise, J.
	:	Hon. Craig R. Baldwin, J.
-vs-	:	
	:	
ROY L. ANDERSON, JR.	:	Case No. 23 CAA 01 0009
	:	
Defendant - Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Delaware County Court of Common Pleas, Case No. 22 CR I 07 0405
JUDGMENT:	Affirmed
DATE OF JUDGMENT:	August 16, 2023

APPEARANCES:

For Plaintiff-Appellee

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Delaware County Prosecutor

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For Defendant-Appellant

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Baldwin, J.

{¶1} The appellant appeals his conviction in part, arguing that his guilty pleas on counts two and three of his indictment were not knowingly, intelligently, or voluntarily given because the trial court failed to conduct an *Alford* inquiry. Appellee is the State of Ohio.

STATEMENT OF THE FACTS AND THE CASE

{¶2} On July 8, 2022, the appellant engaged in contact with protected person T.A. in direct violation of a protection order that prohibited him from having contact with her. T.A. told officers at the scene that the appellant, who officers observed standing beside T.A. next to a minivan, told her that he was going to beat her. When law enforcement arrived at the scene the appellant fled on foot, but was arrested in a nearby parking lot and thereafter detained in the county jail.

{¶3} A complaint was filed against the appellant regarding the July 8, 2022 incident, which noted the appellant's prior protection order violations, and bond was set at $75,000.00. On July 9, 10, 11, and 12, 2022, while in jail, the appellant made over sixty telephone calls from the jail to a phone of which T.A. was in possession in violation of the aforesaid protective order. In addition, the appellant sent a number of letters to T.A. from jail in violation of the protective order, conduct for which he was not charged.

{¶4} On July 14, 2022, a grand jury indicted the appellant on seven counts as follows: count one, recklessly violating a protective order on July 8, 2022, in violation of R.C. 2919.27, and of having previously been convicted of or pleaded guilty to three previous violations of a protective order, a felony of the fifth degree; counts two, three, four, and five, recklessly violating a protective order, on July 9, 10, 11, and 12, 2022, in

violation of 2919.27, having previously been convicted of or pleaded guilty to three previous violations of a protective order, felonies of the fifth degree; count six, menacing by stalking in violation of R.C. 2903.211, a felony of the fourth degree; and, count seven, violating a protection order while committing a felony offense in violation of R.C. 2919.27(A)(1) and 2919.27(B)(4), a felony of the third degree. The appellant was arraigned on July 25, 2022, at which time he pleaded not guilty.

{¶5} On November 7, 2022, the appellant entered into a negotiated plea agreement with the appellee in which the appellant agreed to plead guilty to counts one, two, and three of the indictment, all felonies of the fifth degree. In exchange, the appellee agreed to dismiss counts four, five, six, and seven; to forego a sentencing recommendation and recommend a presentence investigation; and, to forego indictment of the appellant for mailing letters to the protected person from jail in violation of the protection order. The trial court engaged in the requisite Crim.R. 11(C) colloquy, during which the appellant stated that he did not intend to telephone T.A. from jail, but rather, called his cell phone which, unbeknownst to him, was in her possession. The exchange regarding counts two and three proceeded as follows:

> THE COURT: Okay. And then Counts 2 and 3 - - And I don't know whether these are for calls or letters or what you all have agreed to on Counts 2 and 3. It's July 9th and July 10th.
>
> Did you all have an arrangement as to what you were - -
>
> UNIDENTIFIED SPEAKER: That's calls (inaudible).
>
> THE DEFENDANT: It's supposed to be calls, yes, sir.
>
> THE COURT: Calls, okay.

Did you - - You made calls to [T.A.] from the jail after you were arrested?

THE DEFENDANT: I made phone calls to my phone, but I didn't know that she had my phone.

THE COURT: Okay.

THE DEFENDANT: I was trying - - When I was at Speedway, I ran and I lost my phone; but I - - I did make phone calls to that - - to my phone.

THE COURT: Okay. She pick up and answer the phone?

THE DEFENDANT: Didn't nobody pick up. Her sister picked up on - - on a - - on a later date and told me that she had my phone.

THE COURT: Okay.

THE DEFENDANT: And I never called back again.

{¶6} The trial court continued with the colloquy, confirming that the appellant had three prior convictions for violation of a protection order, one for which he was on post-release control supervision at the time of the July 8, 2022 incident; confirming his understanding of the charges and his plea agreement; and, advising him of the potential sentence for his crimes.

{¶7} The plea agreement was memorialized in a November 8, 2022 Written Text of Criminal Rule 11(F) Agreement, which provided that the appellant agreed to enter a guilty plea to counts one, two, and three; that the appellee agreed to dismiss counts four, five, six, and seven; that the appellee would recommend a PSI; that the appellant agreed to waive his rights to appeal, including but no limited to the grounds listed in Ohio Revised Code §2953.08; and, provided that the appellee would address sentencing factors but not make specific recommendations as the length of any prison term, and would not indict

the appellant for violating the protection order by mailing letters to the protected person from the jail. The appellant executed the plea agreement, in which he acknowledged that he understood the agreement was a binding contract between him and the appellee, and that he had reviewed the agreement with his attorney, understood what it said, and agreed to it.

{¶8} In addition, a November 8, 2022 Withdrawal of Former Pleas of Not Guilty and Written Plea of Guilty to Counts One, Two and Three of the Indictment and Judgment Entry on Guilty Plea was executed by the appellant in which he pleaded guilty to the crimes of Violating a Protection Order as charged in Counts One, Two, and Three of the Indictment; admitted that he committed the crimes set forth in Counts One, Two, and Three of the indictment; acknowledged that he may be sentenced to a definite prison term of six, seven, eight, nine, ten, eleven, or twelve months per Count; and, acknowledged that consecutive sentences may be imposed by the trial court.

{¶9} The sentencing hearing took place on December 19, 2022, at which time the trial court sentenced the appellant to eleven months for each count, and ordered they be served consecutively, for a total of thirty-three months in prison.

{¶10} The appellant filed an untimely *pro se* appeal, but was appointed appellant counsel who was granted a motion for a delayed appeal. Appellant sets forth the following sole assignment of error:

{¶11} "I. APPELLANT'S STATE AND FEDERAL CONSTITUTIONAL RIGHTS WERE VIOLATED BY GUILTY PLEAS AS TO COUNTS TWO AND THREE THAT WERE NOT ENTERED KNOWINGLY, INTELLIGENTLY, OR VOLUNTARILY DUE TO

THE FAILURE TO CONDUCT AN EXTENDED *ALFORD* INQUIRY DESPITE PROTESTATIONS OF INNOCENCE."

{¶12} The appellant argues that the trial court was required to conduct an extended *Alford* inquiry because he claimed innocence regarding counts two and three of the indictment, and that its failure to do so requires reversal of his convictions on counts two and three and remand to the trial court with instructions to conduct a proper *Alford* inquiry. We disagree.

STANDARD OF REVIEW

> . . . A reviewing court will not reverse a trial court's decision to accept or reject a defendant's guilty plea unless the court abused its discretion. "Abuse of discretion" means that the court acted in an unreasonable, arbitrary, or unconscionable manner or employed a view or action that no conscientious judge could honestly have taken. *State v. Taylor*, 2017-Ohio-4395, 93 N.E.3d 1, ¶ 9 (4th Dist.). Any error by the trial court in accepting or rejecting a guilty plea is subject to a harmless error analysis and will not be reversed unless the defendant can show the error was prejudicial, which means it affected the outcome of the case. *Id.* at ¶ 14-16.
>
> However, where a defendant contends that a guilty plea is invalid because the trial court failed to comply with nonconstitutional requirements of Crim.R. 11(C)(2)(a) and (b) or the constitutional requirements set out in Crim.R. 11(C)(2)(c) or imposed by *Alford, infra*, a reviewing court undertakes a de novo review. *State v. Cassell,* 2017-Ohio-769, 79 N.E.3d 588, ¶ 30 (4th Dist.) ("An appellate court determining whether a guilty plea

> was entered knowingly, intelligently, and voluntarily conducts a de novo review of the record to ensure that the trial court complied with the constitutional and procedural safeguards.").

State v. Hughes, 4th Dist. Highland No. 20CA2, 2021-Ohio-111, ¶¶ 5-6.

{¶13} In this case, the appellant contends that his constitutional rights were violated because the trial court failed to conduct an *Alford* inquiry. Accordingly, we review the matter *de novo.*

ANALYSIS

{¶14} The crimes set forth in counts two and three of the indictment, and that are at issue herein, were violating a protection order in violation of R.C. 2919.27, which provides in pertinent part:

> (A) No person shall recklessly violate the terms of any of the following:
>
> (1) A protection order issued or consent agreement approved pursuant to section 2919.26 or 3113.31 of the Revised Code;
>
> (2) A protection order issued pursuant to section 2151.34, 2903.213, or 2903.214 of the Revised Code;
>
> (3) A protection order issued by a court of another state.
>
> (B)(1) Whoever violates this section is guilty of violating a protection order.
>
> (2) Except as otherwise provided in division (B)(3) or (4) of this section, violating a protection order is a misdemeanor of the first degree.

(3) Violating a protection order is a felony of the fifth degree if the offender previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for any of the following:

(a) A violation of a protection order issued or consent agreement approved pursuant to section 2151.34, 2903.213, 2903.214, 2919.26, or 3113.31 of the Revised Code;

(b) Two or more violations of section 2903.21, 2903.211, 2903.22, or 2911.211 of the Revised Code, or any combination of those offenses, that involved the same person who is the subject of the protection order or consent agreement;

(c) One or more violations of this section.

(4) If the offender violates a protection order or consent agreement while committing a felony offense, violating a protection order is a felony of the third degree.

{¶15} "Recklessly" is defined by R.C. 2901.22(C) as heedless indifference to the consequences of an action; that is, the person disregards a substantial and unjustifiable risk that his conduct is likely to cause a certain result or is likely to be of a certain nature. Reckless conduct is distinguishable from conduct that is intentional or knowing.

{¶16} The appellant stated during the November 7, 2022, hearing that he did not knowingly call the protected person, T.A., but rather was merely calling his cell phone to determine its location. However, the culpable mental state at issue is not knowingly; it is recklessly. This is a distinction with a difference, as the appellant did not protest the fact that he was pleading guilty to reckless conduct. Instead, he stated that he did not know

that T.A. had his phone when he called it sixty times from jail. "[A] defendant who has entered a guilty plea without asserting actual innocence is presumed to understand that he has completely admitted his guilt." *State v. Griggs,* 103 Ohio St.3d 85, 2004-Ohio-4415, ¶19.

{¶17} The appellant did not plead guilty in juxtaposition to protestations of innocence. Rather, the appellant entered into a negotiated plea deal in which he agreed to plead guilty to three fifth degree felony offenses in exchange for the appellee's dismissal of two fifth degree felonies, a fourth degree felony, and a third degree felony, as well as an agreement that that the appellee would not charge the appellant with additional felonies based upon the letters he mailed to T.A. from jail. Accordingly, an *Alford* inquiry was not triggered. We therefore find that the appellant's sole assignment of error is without merit and is overruled.

CONCLUSION

{¶18} Based upon the foregoing, the judgment of the Delaware County Court of Common Pleas is hereby affirmed.

By: Baldwin, J.

Gwin, P.J. and

Wise, John, J. concur.