

[Cite as *Cleveland v. Andujar*, 2018-Ohio-3571.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106867

CITY OF CLEVELAND

PLAINTIFF-APPELLEE

vs.

MERCEDES ANDUJAR

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Cleveland Municipal Court
Case No. 2017 TRD 027801

BEFORE: S. Gallagher, P.J., Blackmon, J., and Laster Mays, J.

RELEASED AND JOURNALIZED: September 6, 2018

ATTORNEY FOR APPELLANT

Rick L. Ferrara
2077 East 4th Street, Second Floor
Cleveland, Ohio 44114

ATTORNEYS FOR APPELLEE

Barbara A. Langhenry
City of Cleveland
Director of Law
By: Gina Villa
Assistant City Prosecutor
1200 Ontario Street, 8th Floor
Cleveland, Ohio 44113

SEAN C. GALLAGHER, J.:

{¶1} Mercedes Andujar appeals her conviction for leaving the scene of an accident in violation of Cleveland Codified Ordinance 435.17, which includes restitution being awarded to the victim in the amount of \$2,000. In this appeal, Andujar claims the trial court entered a finding of guilt upon her no contest plea without an explanation of circumstances as required under R.C. 2937.07. The city concedes the error and the disposition.

{¶2} According to the transcript of the plea colloquy, Andujar pleaded no contest to leaving the scene of an accident and the trial court immediately found her guilty. The city had not offered, and Andujar had not explicitly waived, the explanation of circumstances. Further, the trial court offered no explanation of what circumstances gave rise to the finding of guilt. *Berea v. Moorer*, 2016-Ohio-3452, 55 N.E.3d 1186, ¶ 13 (8th Dist.), citing *State v. Herbst*, 6th Dist. Lucas No. L-03-1238, 2004-Ohio-3157; *Columbus v. Chiles*, 2017-Ohio-8376, 87 N.E.3d 260, ¶ 20-21 (10th Dist.). Reversible error occurs if a trial court enters a finding of guilt on a no contest plea where there was not an explanation of circumstances or an explicit waiver and such an error is akin to the failure to establish facts sufficient to support a conviction. *Chiles* at ¶ 21. In this situation, double jeopardy attaches, which prevents the city from getting a second chance to meet its burden. *Id.*

{¶3} Accordingly, Andujar's conviction is reversed. This matter is remanded for the sole purpose of vacating the conviction and discharging Andujar.

It is ordered that appellant recover from 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 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.

SEAN C. GALLAGHER, PRESIDING JUDGE

PATRICIA ANN BLACKMON, J., and
ANITA LASTER MAYS, J., CONCUR