



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. PD-1566-15

EX PARTE ANNA KNELSEN, Appellee

**ON APPELLEE’S PETITION FOR DISCRETIONARY REVIEW
FROM THE EIGHTH COURT OF APPEALS
EL PASO COUNTY**

KEEL, J., filed a dissenting opinion in which WALKER, J., joined.

DISSENTING OPINION

Appellee claimed, and the habeas court held, that her guilty plea was involuntary because of the manner in which the trial court conducted the plea. The El Paso Court of Appeals did not address that aspect of the habeas court’s ruling. I would remand the case to the court of appeals to address the involuntary plea claim. Because the majority does not, I dissent.

Due process requires that a guilty plea be “both ‘voluntary’ and ‘intelligent.’” *Brady v. United States*, 397 U.S. 742, 747 (1970). A defendant must make the waivers associated with a guilty plea “with sufficient awareness of the relevant circumstances and

likely consequences.” *United States v. Ruiz*, 536 U.S. 622, 629 (2002), *quoting Brady*, 397 U.S. at 748.

For his guilty plea to be constitutionally valid, then, the defendant must have an actual awareness of the nature and gravity of the charges against him and of the constitutional rights and privileges that he necessarily relinquishes—in short, “a full understanding of what the plea connotes and of its consequence.”

Davison v. State, 405 S.W.3d 682, 686–87 (Tex. Crim. App. 2013), *quoting Boykin v. Alabama*, 395 U.S. 238, 244 (1969). The voluntary nature of the plea must be “spread on the record.” *Boykin*, 395 U.S. at 242.

According to the habeas judge’s view of the record in this case, the trial judge ran “rough shod” over Appellee and her attorney and “was forcing the issue” of the guilty plea and “pushed” Appellee by “drilling” her with questions such as, “You had marijuana?” He thus concluded that the plea was involuntary. The court of appeals did not address this conclusion. Because the majority does not remand for the court of appeals to consider this aspect of the habeas court’s ruling, I dissent.

Filed: June 7, 2017

Do Not Publish