

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, :  
 : No. 108825  
 v. :  
 :  
 JOSE LEBRON, :  
 :  
 Defendant-Appellant. :

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JOURNAL ENTRY AND OPINION

**JUDGMENT: AFFIRMED**  
**RELEASED AND JOURNALIZED: April 16, 2020**

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Criminal Appeal from the Cuyahoga County Court of Common Pleas  
Case Nos. CR-13-575558-A and CR-17-620914-A

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***Appearances:***

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Glen Ramdhan and Katherine E. Mullin, Assistant Prosecuting Attorneys, *for appellee*.

Law Office of John T. Forristal, and John T. Forristal, *for appellant*.

RAYMOND C. HEADEN, J.:

{¶ 1} Defendant-appellant Jose Lebron (“Lebron”) appeals from the trial court’s judgment, entered after guilty pleas, sentencing him to three years of

incarceration. Lebron contends his pleas were in violation of Crim.R. 11(C)(2)(c). For the reasons that follow, we affirm.

## **I. Factual and Procedural History**

{¶ 2} On July 26, 2013, Lebron was named in a four-count indictment including two charges of domestic violence, one charge of abduction, and one charge of disrupting public services in Cuyahoga C.P. No. CR-13-575558-A (“2013 case”). Lebron pleaded not guilty to the indictment on August 30, 2017.

{¶ 3} In a separate case — Cuyahoga C.P. No. CR-17-620914-A (“2017 case”) — Lebron was named in a seven-count indictment on August 31, 2017, charging two counts of rape, kidnapping, assault, two counts of felonious assault, and domestic violence. Lebron pleaded not guilty to the charges on September 8, 2017.

{¶ 4} Lebron withdrew his previously entered not guilty pleas, and pleaded guilty in both cases on November 7, 2018. In the 2013 case, Lebron pleaded guilty to domestic violence, in violation of R.C. 2919.25(A), a felony of the third degree, as charged in Count 1, and the state nolleed Counts 2, 3, and 4. Lebron pleaded guilty in the 2017 case to sexual battery, in violation of R.C. 2907.03(A), a felony of the third degree, as charged in amended Count 1; assault, in violation of R.C. 2903.13(A), a felony of the fourth degree, as charged in Count 4; and domestic violence, in violation of R.C. 2919.25(A), a misdemeanor of the first degree, as charged in Count 7. Counts 2, 3, 5, and 6 were nolleed.

{¶ 5} The court accepted Lebron’s guilty pleas and found him guilty. The parties waived a presentence-investigation report (“PSI”), and the court scheduled a sentencing hearing on November 14, 2018.

{¶ 6} During the sentencing hearing, the court imposed a two-year sentence under the 2013 case. In the 2017 case, the court sentenced Lebron to three years on Count 1, one year on Count 4, and six months on Count 7. The sentences in Counts 1, 4, and 7 of the 2017 case were to be served concurrently to one another and concurrent to the two-year sentence imposed in the 2013 case. The court found Lebron to be a Tier III sex offender.

{¶ 7} Lebron filed a joint request for consideration for postconviction relief on April 10, 2019, which was subsequently denied on April 26, 2019. Lebron’s joint motion for judicial release, filed on June 28, 2019, was denied on July 31, 2019. In the 2017 case, Lebron filed a motion for return of property — his cell phone — on May 21, 2019, that was granted on June 17, 2019, and a memorandum to withdraw detainer — related to his jail credit — on June 10, 2019, that was denied on June 26, 2019.

{¶ 8} On July 19, 2019, Lebron filed a motion for delayed appeal. This court granted Lebron’s motion for delayed appeal and appointed appellate counsel in July 2019. On appeal, Lebron presents the following assignment of error for our review:

The trial court failed to comply with the requirements of Crim.R. 11(C)(2)(c) when it accepted Mr. Lebron’s guilty plea.

## II. Law and Analysis

### A. Standard of Review

{¶ 9} When reviewing a plea's compliance with Crim.R. 11(C), we apply a de novo standard of review. *State v. Cardwell*, 8th Dist. Cuyahoga No. 92796, 2009-Ohio-6827, ¶ 26, citing *State v. Stewart*, 51 Ohio St.2d 86, 364 N.E.2d 1163 (1977). An appellate court reviews the totality of the circumstances and determines whether the plea hearing complied with Crim.R. 11(C). *State v. Hudson-Bey*, 8th Dist. Cuyahoga No. 104245, 2016-Ohio-7722, ¶ 7.

### B. Crim.R. 11 (C)(2)(c)

{¶ 10} The purpose of Crim.R. 11(C) is to provide the defendant with relevant information so that he can make a voluntary and intelligent decision whether to plead guilty. *State v. Ballard*, 66 Ohio St.2d 473, 480, 423 N.E.2d 115 (1981). Before accepting a guilty plea in a felony case, a court must comply with Crim.R. 11(C) and “conduct an oral dialogue with the defendant to determine that the plea is voluntary and the defendant understands the nature of the charges and the maximum penalty involved, and to personally inform the defendant of the constitutional guarantees he is waiving by entering a guilty plea.” *State v. Martin*, 8th Dist. Cuyahoga Nos. 92600 and 92601, 2010-Ohio-244, ¶ 5.

{¶ 11} A trial court must strictly comply with the Crim.R. 11(C)(2)(c) requirements that relate to the waiver of constitutional rights. *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, 897 N.E.2d 621, ¶ 18. With respect to the nonconstitutional requirements of Crim.R. 11, set forth in Crim.R. 11(C)(2)(a) and

(b), reviewing courts consider whether there was substantial compliance with the rule. *State v. Hill*, 8th Dist. Cuyahoga No. 106542, 2018-Ohio-4327, ¶ 8, citing *Veney* at ¶ 14-17. “Substantial compliance means that under the totality of the circumstances the defendant subjectively understands the implications of his plea and the rights he is waiving.” *Hill* at ¶ 8, quoting *State v. Nero*, 56 Ohio St.3d 106, 108, 564 N.E.2d 474 (1990). Additionally, before a plea will be vacated due to a violation of the defendant’s nonconstitutional rights, the defendant must show prejudice. *Martin* at ¶ 7. “The test for prejudice is whether the plea would have otherwise been made.” *Id.*, citing *Veney* at ¶ 17.

{¶ 12} In his assignment of error, Lebron contends that the trial court failed to comply with Crim.R. 11(C)(2)(c), and thereby, rendered his pleas not made knowingly, voluntarily, and intelligently because prior to accepting his pleas the trial court did not ask whether Lebron waived each individual constitutional right, but stated all of the applicable constitutional protections and then asked whether the defendant was willing to give up those rights and enter a guilty plea.

{¶ 13} At Lebron’s sentencing hearing, the following exchange was intended to notify the defendant of the constitutional rights he would waive by entering guilty pleas:

THE COURT: Very good. As I’m sure you are aware, you are entitled to certain basic constitutional rights. I will go over those rights with you so the record is clear that you understand your rights before you enter a plea. I would like you to feel free to interrupt me if there is anything you need to have explained.

You have a right to a trial by jury as to both cases or you may give up that right and have your cases tried by a judge without a jury. You

have a right to confront the state's witnesses against you and you can cross-examine them through your lawyers. You have a right to subpoena witnesses. That means you can have people brought in here to testify in your defense. You have a right to a lawyer throughout these proceedings either retained by you or appointed by the court. At trial you have a right to testify yourself or you may choose not to testify and no one may comment if you decide to remain silent. Furthermore, you may not be forced to give any testimony against yourself.

Finally, you do not have to prove a thing. The prosecutor has the burden of proving the state's case as to both of these cases by evidence beyond a reasonable doubt.

Now, do you understand that by pleading guilty you will be giving up those rights?

[LEBRON]: Yes, your Honor.

(Tr. 11-12.)

{¶ 14} The Ohio Supreme Court has stated “the best method of informing a defendant of his constitutional rights is to use the language contained in Crim.R. 11(C), stopping after each right and asking the defendant whether he understands the right and knows that he is waiving it by pleading guilty.” *Ballard*, 66 Ohio St.2d at 479, 423 N.E.2d 115. However, trial courts need not recite Crim.R. 11(C) verbatim and failure to utilize the exact language does not invalidate the plea. *Id.* at 480. “Rather, the focus, upon review, is whether the record shows that the trial court explained or referred to the right in a manner reasonably intelligible to that defendant.” *Id.*

{¶ 15} The trial court's colloquy, as cited above, satisfies the rigors of Crim.R. 11(C)(2). The court advised Lebron that he was waiving his rights (1) to a jury trial, (2) to confront witnesses against him, (3) to have a compulsory process for obtaining witnesses in his favor, (4) to require the state to prove his guilt beyond

a reasonable doubt, and (5) to remain silent and not testify, without comment on the fact that he did not testify. “Although it is strongly recommended that a trial judge stop after naming each constitutional right and ask if the defendant subjectively understands that right as just explained, the failure to do so will not necessarily invalidate a plea.” *State v. Donaldson*, 8th Dist. Cuyahoga No. 106812, 2018-Ohio-4872, ¶ 10, citing *State v. Holt*, 9th Dist. Summit No. 21835, 2004-Ohio-3252, ¶ 11, citing *Ballard*, 66 Ohio St.2d at 479-480, 423 N.E.2d 115. A plea is not invalidated because the trial judge did not stop and ask the defendant whether he waived each individual right. *State v. Parks*, 8th Dist. Cuyahoga No. 86312, 2006-Ohio-1352, ¶ 11.

{¶ 16} We cannot say under the instant facts that the trial judge failed to explain the waiver of Lebron’s constitutional rights in a reasonably intelligible manner. The prosecutor explained the plea agreement. (Tr. 4-6.) Both defense attorneys met with Lebron multiple times, prior to the hearing, and attested to full disclosure with their client and the exchange of full discovery. (Tr. 8-9.) Defense counsel confirmed the plea agreements’ accuracy. (Tr. 8-9.) Lebron verified his twelfth grade education and indicated he understood the initial recitation of the plea agreement between the attorneys and trial judge. (Tr. 10.) Lebron denied being under the influence of any alcohol, narcotic drugs, or medications of any kind. (Tr. 10.) Lebron voiced his satisfaction with his counsel. (Tr. 10-11.) The trial judge then listed the constitutional rights in a clear and concise manner. (Tr. 11-12.) The trial judge referenced and explained the constitutional rights and their waiver in a

manner reasonably intelligible to Lebron thereby satisfying the strictures of Crim.R. 11(C)(2). *Parks*. The trial judge explained the defendant would be giving up his constitutional rights by entering a guilty plea and received confirmation from Lebron that he understood this was the impact of his guilty plea. (Tr. 12.)<sup>1</sup>

{¶ 17} For the foregoing reasons, we find the trial court strictly complied with the requirements of Crim.R. 11(C) in accepting Lebron's waiver of his constitutional rights and we overrule his assignment of error.

{¶ 18} Judgment affirmed.

It is ordered that appellee recover from appellant 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 common pleas court to carry this judgment into execution. The defendant's convictions having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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<sup>1</sup> The facts of the instant case are distinguishable from this court's recent decisions in *State v. Looby*, 2018-Ohio-842, 108 N.E.3d 547 (8th Dist.); *State v. Miller*, 8th Dist. Cuyahoga No. 105363, 2018-Ohio-843, *discretionary appeal allowed*, 153 Ohio St.3d 1502, 2018-Ohio-4288, 109 N.E.3d 1259; and *State v. Smith*, 8th Dist. Cuyahoga No. 107956, 2019-Ohio-3769. In *Looby*, *Miller*, and *Smith*, the trial courts clearly instructed the defendants-appellants of their constitutional rights relative to a right to trial, but failed to determine whether the defendants-appellants understood those rights would be waived upon entering guilty pleas. Absent the defendants-appellants' acknowledgment that their guilty pleas would result in a waiver of the enumerated constitutional rights, the trial courts did not strictly comply with the requirements of Crim.R. 11(C)(2)(c) and the guilty pleas were invalid. Here, the trial court specifically instructed Lebron that by entering a guilty plea he waived the identified constitutional rights, and Lebron acknowledged his understanding that his guilty plea would result in a waiver of those rights.



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

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RAYMOND C. HEADEN, JUDGE

LARRY A. JONES, SR., P.J., and  
KATHLEEN ANN KEOUGH, J., CONCUR