

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, :  
 : No. 110098  
 v. :  
 :  
 MARQWUAN BLAKEY, :  
 :  
 Defendant-Appellant. :

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JOURNAL ENTRY AND OPINION

**JUDGMENT: VACATED AND REMANDED**  
**RELEASED AND JOURNALIZED: April 15, 2021**

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Criminal Appeal from the Cuyahoga County Court of Common Pleas  
Case No. CR-18-627077-A

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***Appearances:***

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Brandon Piteo, Assistant Prosecuting Attorney, *for appellee*.

Brion P. Stenger, *for appellant*.

MARY EILEEN KILBANE, J.:

{¶ 1} Defendant-appellant Marqwuan Blakey (“Blakey”) appeals from his convictions for burglary, domestic violence, felonious assault, kidnapping, and menacing by stalking. Specifically, Blakey argues that his guilty plea was not

knowingly, intelligently, and voluntarily entered because the trial court failed to comply with the requirements of Crim.R. 11(C). Pursuant to Loc.App.R. 16(B), the state concedes this error. After a thorough review of the record and law, this court vacates Blakey's convictions and remands for further proceedings consistent with this opinion.

### **Factual and Procedural History**

{¶ 2} On March 23, 2018, a Cuyahoga County Grand Jury indicted Blakey on six counts of aggravated burglary in violation of R.C. 2911.11(A)(1), seven counts of aggravated burglary in violation of R.C. 2911.11(A)(2), two counts of domestic violence in violation of R.C. 2919.25(A) with a furthermore specification, one count of disrupting public services in violation of R.C. 2909.04(A)(3), three counts of menacing by stalking in violation of R.C. 2903.211(A)(1) with a furthermore specification, one count of felonious assault in violation of R.C. 2903.11(A)(1), one count of felonious assault in violation of R.C. 2903.11(A)(2), one count of kidnapping in violation of R.C. 2905.01(A)(2), two counts of aggravated menacing in violation of R.C. 2903.21(A), and one count of assault in violation of R.C. 2903.13(A). Both felonious assault charges, the kidnapping charge, one of the domestic violence charges, twelve of the aggravated burglary charges, and two of the menacing by stalking charges all carried one- and three-year firearm specifications. The assault

charge carried a one-year firearm specification.<sup>1</sup> The charges arose from two separate incidents on March 10 and March 13, 2018.

{¶ 3} Blakey initially pleaded not guilty to these charges. On October 31, 2018, the prosecutor and Blakey's counsel informed the court that they had negotiated a plea deal. The prosecutor outlined the charges to which Blakey was agreeing to plead guilty, and the court engaged in a Crim.R. 11 colloquy with Blakey.

{¶ 4} The court confirmed that Blakey understood the charges and maximum potential penalties he faced. The court went on to address the constitutional rights that Blakey would be waiving as follows:

THE COURT: Mr. Blakey, you are entitled to a fair trial on the original indictment consisting of 25 total counts. You are presumed innocent of the charges in that indictment. You cannot be considered guilty until the jury hears the evidence and finds beyond a reasonable doubt that you are guilty of one, some, or all of the charges. And I think as I mentioned, you're entitled to have a trial on those charges. At the same time, if you're doing it voluntarily, you're welcome to have a plea bargain. So that really is my question for you. If you enter into a plea bargain within the next couple of minutes, will you be doing so as your own choice?

BLAKEY: Yes, sir.

THE COURT: If you enter into a plea bargain, will you be doing it only because you are forced or pressured to plead guilty?

BLAKEY: No, sir.

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<sup>1</sup> Although this firearm specification was ultimately deleted, we are compelled to note that, regardless of the plea deal that was reached in this case, Blakey could not have been sentenced on this firearm specification pursuant to R.C. 2929.14(B)(1)(a) because the underlying assault charge was a misdemeanor. *See State v. Canady*, 8th Dist. Cuyahoga No. 107157, 2019-Ohio-106, ¶ 11; *State v. Williams*, 8th Dist. Cuyahoga No. 88841, 2007-Ohio-4577, ¶ 19.

The court then accepted Blakey's guilty pleas.

{¶ 5} Blakey pleaded guilty to two amended counts of burglary, one count of domestic violence, an amended count of felonious assault, an amended count of kidnapping, an amended count of domestic violence, an amended count of assault, and an amended count of menacing by stalking. The firearm specifications were deleted and the remaining counts of the indictment were dismissed. The court referred Blakey for a presentence investigation report.

{¶ 6} On November 29, 2018, the trial court sentenced Blakey to 11 years and six months in prison.

{¶ 7} On November 18, 2020, Blakey filed a notice of appeal and a motion for leave to file a delayed appeal pursuant to Loc.App.R. 5(A), which this court granted. Blakey presents one assignment of error for our review.

### **Legal Analysis**

{¶ 8} In his sole assignment of error, Blakey argues that the trial court erred by failing to advise him of his constitutional rights pursuant to Crim.R. 11. The state concedes this error.

{¶ 9} The underlying purpose of Crim.R. 11 is to convey certain information to a defendant so that they can make a voluntary and intelligent decision regarding whether to plead guilty. *State v. Ballard*, 66 Ohio St.2d 473, 479-480, 423 N.E.2d 115 (1981). "The standard for reviewing whether the trial court accepted a plea in compliance with Crim.R. 11(C) is 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).

{¶ 10} In order to ensure that a defendant enters a plea knowingly, intelligently, and voluntarily, a trial court must engage in an oral dialogue with the defendant in accordance with Crim.R. 11(C). *State v. Engle*, 74 Ohio St.3d 525, 527, 660 N.E.2d 450 (1996). Crim.R. 11(C) outlines the trial court's duties in accepting guilty pleas:

(2) In felony cases the court may refuse to accept a plea of guilty or a plea of no contest, and shall not accept a plea of guilty or no contest without first addressing the defendant personally and doing all of the following:

(a) Determining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, and if applicable, that the defendant is not eligible for probation or for the imposition of community control sanctions at the sentencing hearing.

(b) Informing the defendant of and determining that the defendant understands the effect of the plea of guilty or no contest, and that the court, upon acceptance of the plea, may proceed with judgment and sentence.

(c) Informing the defendant and determining that the defendant understands that by the plea the defendant is waiving the rights to jury trial, to confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant's favor, and to require the state to prove the defendant's guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself.

With respect to the nonconstitutional aspects of Crim.R. 11(C), including an understanding of the nature of the charges and the maximum penalty involved, the

trial court must substantially comply with the rule. *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, 897 N.E.2d 621, ¶ 14.

{¶ 11} With respect to the constitutional requirements of Crim.R. 11(C)(2)(c), however, trial courts must strictly comply with the requirements of the rule. *Id.* In conducting a plea colloquy, the trial court’s failure to inform a defendant of any right in that subsection invalidates the plea. *Id.* at ¶ 1. “Strict compliance does not require an exact recitation of the precise language of the rule, but instead focuses on whether the trial court explained or referred to the right in a manner reasonably intelligent to that defendant.” *State v. Schmick*, 8th Dist. Cuyahoga No. 95210, 2011-Ohio-2263, ¶ 8.

{¶ 12} After a thorough review of the plea hearing, we conclude that the trial court did not strictly comply with Crim.R. 11. The record indicates that the trial court did not mention Blakey’s right to confront witnesses against him, his right to subpoena witnesses on his own behalf, and his privilege against compulsory self-incrimination. Furthermore, while the court mentioned both a jury trial and the reasonable doubt standard, the court did not explicitly inform Blakey that he had a constitutional right to a trial by jury, and that the state was required to prove his guilt beyond a reasonable doubt. While the court stated that Blakey was “entitled” to certain things, it did not explain that by pleading guilty, Blakey was waiving the constitutional rights enumerated in Crim.R. 11(C)(2)(c).

{¶ 13} The trial court’s failure to strictly comply with the requirements of Crim.R. 11 renders Blakey’s plea invalid. We therefore vacate Blakey’s convictions

and remand this matter to the trial court for further proceedings consistent with this opinion.

{¶ 14} Judgment vacated and remanded.

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 common pleas 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.

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MARY EILEEN KILBANE, JUDGE

ANITA LASTER MAYS, P.J., and  
KATHLEEN ANN KEOUGH, J., CONCUR