

**IN THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
PORTAGE COUNTY, OHIO**

IN THE MATTER OF:	:	<b>O P I N I O N</b>
R.A.	:	<b>CASE NO. 2009-P-0063</b>
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Civil Appeal from the Court of Common Pleas, Juvenile Division, Case No. 2009 JCA 724.

Judgment: Reversed and remanded.

*Victor V. Vigluicci*, Portage County Prosecutor and *Pamela J. Holder*, Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Appellee State of Ohio).

*Timothy Young*, Ohio Public Defender and *Brooke M. Burns*, Assistant State Public Defender, 250 East Broad Street, #1400, Columbus, OH 43215-9308 (For Appellant R.A.).

MARY JANE TRAPP, P.J.

{¶1} R.A. appeals a delinquency adjudication which stemmed from his involvement in a robbery. He claims the court failed to comply with the requirements of Juv.R. 29(D) before accepting his admission to the charges against him. We agree, and therefore reverse and remand this case to the Portage County Court of Common Pleas, Juvenile Division, for further proceedings consistent with this opinion.

{¶2} **Sustentative Facts and Procedural History**

{¶3} On March 15, 2009, R.A. then 15 years old, was charged in Cuyahoga County with two counts of aggravated robbery, in violation of R.C. 2911.01(A)(1), felonies of the first degree if committed by an adult. The complaint was later amended to include a firearm specification for each charge. The charges arose from R.A.'s involvement in an attempted robbery.

{¶4} While R.A. was confined in the Cuyahoga County Juvenile Detention Center, he had an argument with a detention center staff member over a letter, which escalated into a physical altercation between him and another staff member. As a result, a second complaint was filed, also in the Cuyahoga County Juvenile Court, charging him with two counts of assault, in violation of R.C. 2903.13(A), misdemeanors of the first degree.

{¶5} On July 16, 2009, the Cuyahoga County Juvenile Court held an adjudicatory hearing in both cases. After accepting his admission in both cases, the court adjudicated him delinquent on the assault charges. The court also adjudicated him delinquent on an amended charge of complicity to aggravated robbery with a one-year firearm specification, after finding that he was not the principal offender in the robbery and had not specifically targeted the victims for robbery.

{¶6} At the hearing, the Cuyahoga County Juvenile Court proceeded to the disposition of the assault counts. It committed him to the detention center but ordered the matter closed without further action after crediting him for time already served. For his disposition of the aggravated robbery counts, however, the court ordered him transferred to Portage County Juvenile Court, because he is a resident of that county.

{¶7} The Portage County Court of Common Pleas, Juvenile Division, after a dispositional hearing, committed R.A. to the custody of the Ohio Department of Youth

Services for a minimum period of one year for the complicity to aggravated robbery count, and one year for the firearm specification, to be served consecutively.

{¶8} R.A. now appeals from the judgment raising the following two assignments of error:

{¶9} “[1.] The juvenile court committed plain error and violated [R.A.’s] right to due process when it accepted his statement as an admission and adjudicated him delinquent of aggravated robbery without complying with the requirements of Juv.R. 29 (July 16, 2009, T.pp. 1-19). Fifth and Fourteenth Amendments to the United States Constitution; Article I, Section 16 of the Ohio Constitution.

{¶10} “[2.] [R.A.] was denied the effective assistance of counsel when trial counsel failed to object to the juvenile court’s failure to comply with the requirements of Juv.R. 29(B) and (D). Sixth and Fourteenth Amendments to the United States Constitution. (July 16, 2009, T.pp 1-16).”

{¶11} R.A. contends the Cuyahoga County Juvenile Court did not comply with Juv.R. 29 when it accepted his admission regarding the aggravated robbery charges.

{¶12} “Juvenile delinquency proceedings must comport with the requirements of due process.” *In re Jordan*, 11th Dist. No. 2001-T-0067, 2002-Ohio-2820, ¶10, citing *In re Gault* (1967), 387 U.S. 1. “Ohio codified the due process requirement in Juv.R. 29. Juv.R. 29(D) provides \*\*\* that a court shall not accept an admission without first addressing the juvenile personally and determining that he or she is making the admission voluntarily, with understanding of the nature of the allegations and the consequences of entering the admission. A rote recitation of the language contained in Juv.R. 29(D) is not necessary. However, the trial court must determine that the juvenile understands the allegations contained in the complaint and the consequences of the

admission.” Id., citing *In re Clark* (2001), 141 Ohio App.3d 55, 59-60. “The analysis employed in determining whether a juvenile’s admission complies with Juv.R. 29 is similar to that used in determining whether a criminal defendant’s guilty plea complies with Crim.R. 11. In other words, the trial court must determine whether the juvenile adequately understood his or her rights and the effect of the admission.” Id. citing *In re West* (1998), 128 Ohio App.3d 356, 359. “The court is not required to give a detailed explanation of each element of the offense brought against a juvenile but must ensure the juvenile has some basic understanding of the charge.” Id., citing *In re Flynn* (1995), 101 Ohio App.3d 778, 782.

{¶13} “Before the court may accept a juvenile’s admission, the court must personally address the juvenile and conduct an on-the-record discussion to ascertain whether the admission is voluntary and is made with an understanding of the nature of the allegations and the possible ramifications of the admission.” *In re Jackson* (Nov. 14, 2001), 9th Dist. No. 20647, 2001 Ohio App. Lexis 5074, \*7. citing Juv.R. 29(D)(1) and *In re McKenzie*, 102 Ohio App.3d, 275, 277. Juv.R. 29(D) places an affirmative duty upon the juvenile court requiring the court to personally address the juvenile before the court and determine that the juvenile, not merely the attorney, understands the nature of the allegations and the consequences of entering the admission. *In re Beechler* (1996), 115 Ohio App.3d 567, 571.

{¶14} Furthermore, in construing Juv.R. 29(D), the courts have established that the applicable standard for the trial court’s acceptance of an admission is substantial compliance. “For purposes of juvenile delinquency proceedings, substantial compliance means that in the totality of the circumstances, the juvenile subjectively understood the

implications of his plea.” *In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919, ¶113. *In re Christopher R.* (1995), 101 Ohio App.3d 245, 248.

{¶15} The juvenile court’s degree of compliance with Juv.R. 29 is reviewed de novo. See *In re Beckert* (Aug. 8, 1996), 8th Dist. 68893, 1996 Ohio App. LEXIS 3319.

{¶16} Here, at the adjudicatory hearing, prior to accepting his admission to the assault charges, the court engaged in the requisite Juv.R. 29 colloquy with R.A. The court asked him if he understood the nature of the assault charges. The court also informed him of his rights to remain silent; to call witnesses to testify on his behalf; to have the state prove every element of assault beyond a reasonable doubt; and to cross-examine witnesses testifying against him. The court asked him if he understood his rights and the consequences of admitting to the assault charges. The court then asked him to describe the incident leading to the assault charges. After the colloquy, the court accepted his admission to the assault charges and adjudicated him delinquent on the two assault counts.

{¶17} Immediately after finding R.A. delinquent on the assault counts, the court proceeded to ask R.A. to describe what occurred on the night of the robbery. After R.A. related the incident, the court, *without any further inquiry or discussion*, found R.A. delinquent regarding the aggravated robbery charges. The court did not engage in any colloquy with R.A. to ensure he understood that robbery was a first-degree felony if committed by an adult, or that the charge carried a firearm specification. Neither did the court inform him of the consequences of his admission, namely, that he could be committed to the Department of Youth Services. The court also failed to inform R.A. that the firearm specification would result in an additional mandatory term of

commitment. Given this record, the court failed to comply, substantially or otherwise, with the requirements of Juv.R. 29(D)(1).

{¶18} R.A. did not raise an objection in the Cuyahoga County Juvenile Court regarding the trial court's acceptance of his admission. However, the courts have recognized that a trial court's failure to substantially comply with Juv.R. 29(D) constitutes plain error. See, e.g., *In the Matter of Tabler*, 4th Dist. No. 06CA30, 2007-Ohio-411, ¶15; *In re Smith*, 5th Dist. No. 2004-CA-64, 2005-Ohio-1434, ¶14; *In re Etter* (1998), 134 Ohio App.3d 484, 493. In *Jordan*, this court stated that "[a] failure to substantially comply with Juv.R. 29(D) constitutes prejudicial error, warranting a reversal of the judgment so as to permit the juvenile to plead anew." *Jordan* at ¶11, citing *In re Royal* (1999), 132 Ohio App.3d 497.

{¶19} Therefore, we sustain R.A.'s first assignment of error.<sup>1</sup> The ineffective-assistance-of-counsel claim raised in his second assignment of error is moot.

{¶20} The judgment of the Portage County Court of Common Pleas, Juvenile Division, is reversed, and the case is remanded for further proceedings consistent with this opinion. For the new adjudication hearing, the Portage County Court of Common Pleas, Juvenile Division, is to decide whether to transfer the proceedings back to Cuyahoga County Juvenile Court pursuant to R.C. 2151.271.

DIANE V. GRENDALL, J.,

COLLEEN MARY O'TOOLE, J.,

concur.

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1. On appeal, the state concedes the merit of R.A.'s claim and agrees that he is entitled to a re-adjudication regarding the robbery charges.