

[Cite as *State v. Troiano*, 2010-Ohio-3019.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 09AP-862
v.	:	(C.P.C. No.08CR09-6549)
	:	
James T. Troiano,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 30, 2010

Ron O'Brien, Prosecuting Attorney, and *John H. Cousins, IV*,
for appellee.

Yeura R. Venters, Public Defender, and *John W. Keeling*, for
appellant.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶1} Defendant-appellant, James T. Troiano, appeals from a judgment of conviction and sentence entered by the Franklin County Court of Common Pleas. Because the trial court did not comply with Crim.R. 11 when it accepted appellant's guilty plea, we reverse that judgment and remand the matter for further proceedings.

{¶2} On September 8, 2008, a Franklin County Grand Jury indicted appellant with one count of rape in violation of R.C. 2907.02, one count of kidnapping in violation of R.C. 2905.01, and one count of gross sexual imposition in violation of R.C. 2907.05.

Appellant initially entered not guilty pleas to those charges. Appellant subsequently withdrew his not guilty pleas and entered guilty pleas to all three charges. The trial court accepted appellant's guilty pleas, found him guilty, and sentenced him accordingly.

{¶3} Appellant appeals and assigns the following errors:

[1.] THE TRIAL COURT ERRED BY IMPOSING CONSECUTIVE SENTENCES WITHOUT MAKING THE REQUIRED STATUTORY FINDINGS PURSUANT TO R.C. 2929.14(E)(4).

[2.] THE TRIAL COURT ERRED WHEN IT FAILED TO COMPLY WITH CRIM.R. 11 BY INFORMING THE DEFENDANT THAT THE STATE WAS REQUIRED TO PROVE HIS GUILT BEYOND A REASONABLE DOUBT AND BY FAILING TO PROPERLY ASCERTAIN THAT THE DEFENDANT UNDERSTOOD THE NATURE OF THE CHARGE AGAINST HIM.

{¶4} Because it is determinative of this appeal, we first address appellant's second assignment of error. Appellant contends the trial court did not comply with Crim.R. 11(C) when it accepted his guilty plea. Specifically, appellant argues the trial court failed to inform him that by entering a guilty plea, he waived his constitutional right to not be compelled to testify against himself at trial. We agree.

{¶5} Crim.R. 11(C) governs the procedure that a trial court must follow before accepting a guilty plea. Crim.R. 11(C)(2) provides:

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.

{¶6} A trial court must strictly comply with the critical constitutional requirements referenced in Crim.R. 11(C)(2)(c). *State v. Carter*, 10th Dist. No. 02AP-294, 2002-Ohio-6967, ¶11 (citing *State v. Ballard* (1981), 66 Ohio St.2d 473, paragraph one of the syllabus). Although strict compliance is required, a trial court is not required to use the exact language contained in Crim.R. 11(C)(2)(c). The trial court must explain the constitutional rights that a defendant waives by pleading guilty in a manner reasonably intelligible to the defendant. *Ballard* at paragraph two of the syllabus; *State v. Anderson* (1995), 108 Ohio App.3d 5, 11; *Carter*.

{¶7} Here, the trial court informed appellant that by entering a guilty plea, he waived his rights to a jury trial, to confront one's accusers, to compulsory process, and to require the state to prove guilt beyond a reasonable doubt. However, the trial court did not inform appellant that he also waived his privilege against compulsory self-incrimination. See *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, ¶31 (listing the five constitutional rights set forth in Crim.R. 11 that a trial court must advise defendant of before accepting guilty plea).

{¶8} Before accepting appellant's guilty plea, the trial court advised appellant that "if you had a trial * * * it would be up to you as to whether you testified at the trial on your own behalf because you have that right. Do you understand you're giving up the right to testify on your own behalf today?" (Plea Hearing p. 14). This advisement informs appellant of his right to testify on his own behalf, a constitutional right that is not listed in Crim.R. 11(C)(2)(c). *State v. Exline*, 8th Dist. No. 87945, 2007-Ohio-272, ¶19; *Rock v. Arkansas* (1987), 483 U.S. 44, 49-52, 107 S.Ct. 2704, 2708-10 (recognizing right). The trial court, however, did not inform appellant of his right against compulsory self-incrimination, a separate and distinct constitutional right that is set forth in Crim.R. 11(C)(2)(c). *State v. Haines* (Nov. 14, 1995), 8th Dist. No. 49721 (trial court's advisement of defendant's right to testify does not satisfy requirement to explain right against self-incrimination).

{¶9} The state argues that we should consider other evidence in the record to determine whether the trial court properly informed appellant that he waived his right against self-incrimination, such as an "Entry of Guilty Plea" form appellant signed before his plea hearing. We disagree. As the *Veney* court noted, "pursuant to the strict-compliance standard * * * the trial court must orally inform the defendant of the rights set forth in Crim.R. 11(C)(2)(c) during the plea colloquy for the plea to be valid." *Veney* at ¶29. This language is clear: to determine whether a trial court strictly complies with Crim.R. 11(C)(2)(c), a reviewing court may only consider the colloquy between the trial court and the defendant at the time the defendant seeks to enter the guilty plea.

{¶10} Because the trial court did not orally inform appellant during the plea colloquy of his constitutional right against self-incrimination, it failed to strictly comply with

Crim.R. 11(C)(2)(c). *Veney* at ¶32. The trial court's failure renders appellant's guilty pleas invalid.

{¶11} Appellant's second assignment of error is sustained. That disposition renders appellant's first assignment of error moot. Accordingly, we reverse the judgment of the Franklin County Court of Common Pleas and remand the matter for further proceedings.

Judgment reversed and cause remanded.

BRYANT and FRENCH, JJ., concur.
