

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : CASE NO. CA2014-10-216
 :
 - vs - : OPINION
 : 4/13/2015
 :
 HUNTER DYLAN FRAZER, :
 :
 Defendant-Appellant. :

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2014-07-1162

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PIPER, P.J.

{¶ 1} Defendant-appellant, Hunter Frazer, appeals his conviction in the Butler County Court of Common Pleas for involuntary manslaughter.

{¶ 2} Frazer and his two accomplices planned a robbery, and Frazer supplied his accomplices airsoft guns and gloves to carry out the crime. While Frazer waited in the car, his accomplices broke into an apartment, but one of the residents inside fought back in self-

defense. As a result, one of Frazer's accomplices, Antonio Heath, was stabbed to death.

{¶ 3} Frazer agreed to be charged with involuntary manslaughter through a bill of information, and waived a grand jury indictment and jury trial. Frazer pled guilty to involuntary manslaughter in exchange for the state not charging him with complicity to burglary, robbery, and murder.

{¶ 4} During the plea hearing, the trial court explained what a bill of information was, as well as how Frazer was waiving his right to indictment and related processes by being charged through the bill of information. Frazer told the trial court that he understood the ramifications, and wanted to proceed on the bill of information. The trial court then engaged in a plea colloquy with Frazer, specific to the other rights Frazer was waiving by nature of his plea. Frazer acknowledged an understanding of his rights, and stated his wish to proceed with the plea.

{¶ 5} When the trial court asked the state to provide the facts, the state read from the bill of information, and also noted that further facts had been developed earlier that morning during a meeting between the state, defense counsel, and the trial court in the trial court's chambers. The state offered to make those facts a part of the record, but defense counsel waived any further fact development, and noted that the parties and court were aware of the salient facts so that no other facts were needed. The trial court completed its colloquy, and thereafter accepted Frazer's plea as being knowingly, intelligently, and voluntarily given. The trial court sentenced Frazer to six years in prison. Frazer now appeals his conviction, raising the following assignment of error.

{¶ 6} THE TRIAL COURT ERRED BY ACCEPTING DEFENDANT'S GUILTY PLEA AS IT WAS NOT MADE KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY.

{¶ 7} Frazer argues in his assignment of error that the trial court erred in accepting his plea and that his trial counsel was ineffective for advising him to forego the indictment

process to be charged by the bill of information.

{¶ 8} "When a defendant enters a plea in a criminal case, the plea must be made knowingly, intelligently, and voluntarily. Failure on any of those points renders enforcement of the plea unconstitutional under both the United States Constitution and the Ohio Constitution." *State v. Ackley*, 12th Dist. Madison No. CA2013-04-010, 2014-Ohio-876, ¶ 8. Crim.R. 11(C)(2) governs the process a trial court must follow to ensure a guilty plea to a felony charge is knowing, intelligent, and voluntary. *Id.* According to Crim.R. 11(C)(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.

{¶ 9} The trial court must maintain strict compliance with the notification requirements for constitutional rights identified in Crim.R. 11(C)(2)(c), otherwise the defendant's plea is invalid. *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, ¶ 31. However, with respect to the nonconstitutional notifications required by Crim.R. 11(C)(2)(a) and (b), the trial court need only substantially comply. *Id.* at ¶ 14.

{¶ 10} "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." *State v. Nero*, 56 Ohio St.3d 106, 108 (1990). To show that a trial court did not substantially comply with Crim.R. 11(C)(2)(a) and (b), and therefore that the appellant did not enter his plea knowingly, intelligently, and voluntarily, an appellant must demonstrate both that he failed to subjectively understand the consequences of his plea, and that he was prejudiced by this failure. *Veney* at ¶ 16-17. "There is no easy or exact way * * * to determine what someone subjectively understands. If the defendant receives the proper information, then we can ordinarily assume that he understands that information." *State v. Carter*, 60 Ohio St.2d 34, 38 (1979).

{¶ 11} Specific to a trial court's duty to ensure that a defendant understands the charges against him, the trial court is not required to explain the various elements of the offense. *State v. Rivera*, 12th Dist. Butler No. CA2013-05-072, 2014-Ohio-3378, ¶ 28. However the trial court may be called upon to clarify any misunderstanding on the part of the defendant where the defendant indicates confusion with regard to the charge. *State v. Fitzpatrick*, 102 Ohio St.3d 321, 2004-Ohio-3167, ¶ 61. There is no requirement that a court enter into a discussion with a defendant or defendant's counsel to ensure there is an understanding where no uncertainty is otherwise indicated. *State v. Dotson*, 12th Dist. Preble No. CA2007-11-025, 2008-Ohio-4965, ¶ 10.

{¶ 12} While Frazer argues that his plea was not knowingly, intelligently, and voluntarily made because he did not understand the charge against him, the record clearly indicates that the trial court complied with the requirements of Crim.R. 11. The trial court opened the plea hearing, and the state indicated that Frazer was before the court on "one count of involuntary manslaughter which is a felony of the first degree." The trial court then explained in detail what a bill of information is, as well as the implications of being charged by a bill of information instead of an indictment. Frazer stated that he understood the nature of

being charged by a bill of information, and verified that he had signed various forms requesting a bill of information and waiving his right to indictment and a jury trial. The trial court asked Frazer, "Is it your desire to go forward with pleading guilty to this charge of involuntary manslaughter without taking advantage of your case going through those other channels?" Frazer replied, "Yes, sir."

{¶ 13} The trial court did not move forward with the plea colloquy until the court had verified with Frazer that he had signed each of the indictment and jury waiver forms, had taken the opportunity to consult with counsel regarding each of the forms, and that Frazer understood the implication of his choice to be charged by a bill of information. After verifying Frazer's understanding and desire to be charged by a bill of information, the trial court continued its colloquy specific to the guilty plea.

{¶ 14} The trial court first determined that Frazer was of proper mind to engage in the plea process, and then explained the nature of the charge against him. The court stated, "it is involuntary manslaughter. It is a felony of the first degree. As a result of your being convicted in this case, there is a presumption that the appropriate sentence that I would give you would be a prison sentence." The court then addressed more details of the prison sentence, as well as issues regarding postrelease control. After its lengthy explanation of those issues, the court asked Frazer, "Do you understand the charge against you and the possible penalties?" Frazer then responded, "Yes, Your Honor."

{¶ 15} Despite Frazer's acknowledgement that he understood the charge against him, Frazer now claims that he did not have an understanding of the nature of the charge against him because the state gave no "extensive recitation of the facts and circumstances underlying the charge on the record." While we agree that the state simply read the bill of information into the record when asked for a recitation of the facts, there is no indication in the record that the lack of detailed facts recited at the plea hearing resulted in any uncertainty

as to the charge against Frazer.

{¶ 16} The state offered the facts that Frazer "did cause the death of another as a proximate result of the offender's committing or attempting to commit a felony which constitutes the offense of involuntary manslaughter, a first degree felony, in violation of Revised Code Section 2903.04 * * *."¹ The state then noted that more facts had been discussed during the pre-hearing meeting in the trial court's chambers and offered to put those facts into the record. Frazer then waived "any further reading of the facts," given that the parties and court had previously discussed the facts in detail.

{¶ 17} Although the record does not indicate that Frazer was at the previous discussion, the trial court expressly addressed the statement of facts with Frazer.

And then I'm going to ask you a question, Mr. Frazer, about the facts also, some have been recited in the bill of information and there were some underlying facts too. It's not so important as far as the underlying facts and additional facts are concerned, but at least those in the bill of information here, do you admit, and the prosecutor's recited those, do you admit that the prosecutor's statement of facts is an accurate statement of what happened?

Frazer responded, "Yes. Yes, Your Honor."

{¶ 18} At no time, however, did Frazer indicate that he was unaware of the "underlying facts and additional facts" mentioned by the trial court or that he disagreed with the facts as they had been discussed earlier that day. Nor did Frazer express any indication that he did not understand his charge because of the lack of facts, or indicate that he did not commit involuntary manslaughter as that charge was indicated and explained within the bill of information.

1. According to R.C. 2941.05, a bill of information must contain "a statement that the accused has committed some public offense therein specified * * * in any words sufficient to give the accused notice of the offense of which he is charged." See *also* Crim.R. 7(B). The bill of information in the case sub judice clearly stated that Frazer had committed involuntary manslaughter, and made specific reference to the criminal statute Frazer was accused of violating. As such, the bill of information complied with the statutory requirements for a valid charging instrument.

{¶ 19} Moreover, Frazer's argument fails to acknowledge that the trial court addressed the facts in further detail during the plea hearing, and specifically addressed the nature of the charge as it related to what Frazer could have been charged with. The trial court began to discuss the negotiated plea, specific to the state agreeing to not charge Frazer with the more serious crimes that it could have brought based on Frazer's actions on the night of the break-in. The court stated,

So I think in general terms, I'll try to flush that out some on my own and I may be going wrong, if I am, let me know. I mean to do what happened here, there could potentially be a charge of burglary, breaking into somebody else's apartment for some illegal purpose. It could be aggravated burglary, perhaps, I don't know if it'll be aggravated or not. It could just be burglary. There could be murder as opposed to just involuntary manslaughter and maybe robbery as well, and maybe aggravated – or complicity. As I understand you were out in the car and somebody else went in, so it could be complicity to any of these, or those charges themselves. So, we could be looking at some form of robbery or complicity to robbery, some form of burglary or complicity to burglary, and not just involuntary manslaughter but perhaps murder. That's the way I'm seeing it as I'm at least have [sic] become generally acquainted with the background of this case.

{¶ 20} Despite the trial court asking the parties to correct any misunderstanding of the facts, Frazer never indicated that the trial court misinterpreted the facts or proceeded under any misapprehension related to what happened on the night of the break-in. The trial court addressed the facts that there had been a burglary, a robbery, and a murder. The trial court also addressed the facts that Frazer waited in the car while his accomplices went into the apartment, and that Frazer agreed to plead to involuntary manslaughter in exchange for not being charged with the more serious offenses. Satisfied with the factual recitation, the trial court's discussion of the facts, as well as his agreement with the plea as negotiated, Frazer pled guilty to involuntary manslaughter without ever once suggesting that he did not understand the charge against him.

{¶ 21} The exchanges between the trial court and Frazer, as well as Frazer's signed plea form, indicate that Frazer was aware of the charge against him, the rights he was waiving, and the repercussions for pleading guilty. At no time did Frazer express any hesitation in moving forward with his plea, and he never once indicated that he did not understand the nature of the charge against him or the effect of pleading guilty. As such, we find that Frazer's plea was intelligently, knowingly, and voluntarily made.

{¶ 22} Having found that Frazer's plea was valid, we also find that he received effective assistance of counsel. While Frazer indicates that he would not have pled guilty had he understood the nature of the charge against him, the record does not support his contention.

{¶ 23} The United States Supreme Court established a two-part test in regard to ineffective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984). That test requires an appellant to establish that first, "his trial counsel's performance was deficient; and second, that the deficient performance prejudiced the defense to the point of depriving the appellant of a fair trial." *State v. Myers*, 12th Dist. Fayette No. CA2005-12-035, 2007-Ohio-915, ¶ 33. Regarding the first prong, an appellant must show that his counsel's representation "fell below an objective standard of reasonableness." *Strickland*, 466 U.S. at 688. The second prong requires appellant to show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694.

{¶ 24} Essentially, Frazer argues that his counsel was ineffective for not dissuading him from agreeing to be charged through a bill of information and for not seeking discovery so that Frazer could better understand the facts and evidence underlying the charge against him. However, Frazer never once indicated during his plea hearing that he was unhappy with his representation, or that he did not want to move forward with being charged by the bill of

information.

{¶ 25} As discussed above, the trial court discussed at length the bill of information, what it was, what it entailed, and the impact of being charged in that manner rather than through the more traditional means of indictment by grand jury. At every turn, Frazer expressed his desire to be charged through a bill of information, and never once indicated that his attorney had not given full counsel regarding waiving indictment or the implications of not seeking additional discovery. Nor did Frazer indicate at any time that he was unaware of what evidence the state had to support the charge of involuntary manslaughter or the other charges the state could have brought. There is no indication that Frazer's counsel failed to address the facts or evidence with Frazer, or that Frazer proceeded with his plea not knowing the factual or evidentiary basis for his charge.

{¶ 26} By agreeing to be charged through the bill of information, Frazer agreed to forego grand jury indictment. He did not, however, have to forego receiving a bill of particulars. According to R.C. 2941.07 and Crim.R. 7(E), Frazer was entitled to a bill of particulars if he had any questions regarding the nature of the charges against him, or on what factual/evidentiary basis the state was proceeding. However, Frazer made no such request because the case was plea bargained in order that Frazer could avoid greater exposure to a penalty on the other offenses with which he could have been charged.

{¶ 27} The trial court itself noted that in exchange for Frazer pleading on a bill of information to involuntary manslaughter, the state agreed that it would not charge Frazer with burglary, robbery, and murder, all of which arose out of the planned break-in, and all for which Frazer could have been indicted. Frazer acknowledged in open court that he understood that he was being charged with involuntary manslaughter and that in exchange for his guilty plea, he was avoiding the consequences that were likely to occur if the case was presented to the grand jury specific to being charged with several more serious crimes.

{¶ 28} There is simply no indication in the record that Frazer's counsel was ineffective for not stopping Frazer from pleading to the bill of information or seeking additional discovery to further explain the facts underlying the charge. See *State v. Dingus*, 12th Dist. Madison No. CA91-08-025, 1992 WL 80710 (Apr. 20, 1992) (finding no ineffective assistance of counsel where bill of information was valid and appellant understood the charges against him); and *State v. Hurst*, 12th Dist. Brown No. CA2014-02-004, 2014-Ohio-4890 (finding no ineffective assistance of counsel where appellant waived indictment after a full discussion of the issue with the trial court so that appellant understood the implications of being charged by a bill of information and the processes he waived by being charged by a bill of information rather than indictment).

{¶ 29} After reviewing the record, we find that Frazer did not receive ineffective assistance of counsel. There is no indication that had Frazer been indicted, rather than charged by a bill of information, that he would not have pled guilty, or that Frazer would not have moved forward on the plea agreement had Frazer's attorney acted any differently. Having found that Frazer received effective assistance of counsel and that his plea was knowing, intelligent, and voluntary, Frazer's sole assignment of error is overruled.

{¶ 30} Judgment affirmed.

HENDRICKSON and M. POWELL, JJ., concur.