[Cite as *State v. Arnold*, 2009-Ohio-2649.]

STATE OF OHIO, MONROE COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO,	)	
	)	CASE NO. 08 MO 7
PLAINTIFF-APPELLEE,	)	
	)	
- VS -	)	OPINION
	)	
LELAND ARNOLD,	)	
	)	
DEFENDANT-APPELLANT.	)	

CHARACTER OF PROCEEDINGS:	Criminal Appeal from County Court, Case No. 08-B-179 CRB.
JUDGMENT:	Affirmed.
APPEARANCES:	
For Plaintiff-Appellee:	Attorney Lynn K. Riethmiller Prosecuting Attorney 101 North Main Street Room 15 P.O. Box 430 Woodsfield, OH 43793
For Defendant-Appellant:	Attorney Kenneth Hurley Attorney Charles Osterland 6058 Royalton Road North Royalton, OH 44113

JUDGES:
Hon. Mary DeGenaro
Hon. Gene Donofrio
Hon. Cheryl L. Waite

Dated: June 5, 2009

[Cite as *State v. Arnold*, 2009-Ohio-2649.]
DeGenaro, J.

{¶1} This timely appeal comes for consideration upon the record in the trial court, and the parties' briefs. Appellant, Leland Arnold, appeals the decision of the County Court, Monroe County, Ohio that found him guilty of one count of aggravated menacing, and one count of reckless operation, and sentenced him accordingly. On appeal, Arnold argues that the trial court erred by failing to properly comply with Crim.R. 11 when it accepted his no contest plea to both charges. Arnold also argues that the trial court failed to comply with Traf.R. 10(D) when it accepted his no contest plea to the reckless operation charge.

{¶2} Upon review, Arnold's arguments are meritless. The trial court was not required to follow Crim.R. 11(C)(2) when accepting Arnold's no contest plea, since Crim.R. 11(C)(2) applies only to felonies and both of the charges in this case are misdemeanors. Instead, pursuant to Crim.R. 11(E), for the aggravated menacing charge, and Traf.R. 10(D), for the reckless operation charge, the trial court needed only to inform Arnold about the effect of a no contest plea, prior to accepting the plea. In this case, the trial court informed Arnold about the effect of a no contest plea during his arraignment. Accordingly, the judgment of the trial court is affirmed.

Facts

{¶3} Arnold was charged by complaint with two counts of aggravating menacing, first-degree misdemeanors pursuant to R.C. 2903.21. These charges stemmed from an incident where Arnold used his truck to intimidate his neighbor and his neighbor's son while they were riding their all-terrain vehicle.

{¶4} On July 9, 2008, Arnold's arraignment was held. Several other criminal defendants were arraigned at the same time. During the arraignment, the trial court informed Arnold and the other defendants of their rights to read the complaint; be informed of the nature of the charges; obtain a lawyer and a reasonable continuance to obtain a lawyer; have a lawyer assigned without cost; make no statement; have a jury trial; and have the court fix a reasonable bail. The court also advised them about the court's obligation to notify the Bureau of Motor Vehicles as to the traffic offense convictions. Importantly, the court also informed Arnold, together with the other

defendants, about the effect of a plea of guilty, no contest and not guilty.

{¶5} Arnold initially pleaded not guilty to the charges. However, on August 27, 2008 Arnold appeared for a change of plea hearing. The parties advised the court they had reached a plea agreement. The State explained that pursuant to this agreement, Arnold agreed to plead no contest to one count of aggravated menacing, and in exchange the State agreed to reduce the second aggravated menacing charge to a R.C. 4511.20 reckless operation charge. Further the State recommended that Arnold be sentenced to 120 days in jail, with 110 days suspended, and the 10 remaining days to be served via electronic monitored house arrest. Pursuant to the plea agreement, the State also recommended Arnold receive two years of community control, during which time he would be forbidden from driving past the residence of the victims, or having contact with the victims or their families. Lastly, the State recommended a $250.00 fine for the aggravating menacing charge and a $100.00 fine for the reckless operation charge. Arnold indicated this was also his understanding of the plea agreement.

{¶6} The trial court then held a brief colloquy with Arnold, explaining to him some of the rights he would give up by virtue of his plea. Specifically, the trial court told Arnold that by pleading no contest he would give up his rights to a jury trial, to have the State prove his guilt beyond a reasonable doubt, to cross-examine witnesses at trial, to subpoena witnesses, and his right against self-incrimination. Arnold indicated his understanding. Arnold then entered a plea of no contest to both count one, aggravated menacing, and amended count two, reckless operation. Arnold indicated he waived presentation of evidence and reserved no issues for appeal. The trial court accepted Arnold's plea as knowing and voluntary. The court then imposed the jointly-recommended sentence.

Crim.R. 11

{¶7} In his first of two assignments of error, Arnold argues:

{¶8} "The Appellant was not properly informed of his rights at the plea hearing so as to meet the requirements of Criminal Rule 11."

{¶9} As an initial matter, we note that Crim.R. 11 does not apply to Arnold's plea

to the reckless operation charge. This court has previously held that a plea to a R.C. 4511.20 reckless operation charge is governed by Traf.R. 10(D). *State v. Powell*, 7th Dist. No. 05MA50, 2006-Ohio-3477, at ¶11-17; see, also, Crim.R. 1(C). Arnold does allege violations of Traffic Rule 10(D) in his second assignment of error, which will be considered below.

{¶10} To the extent Arnold argues that the trial court's acceptance of his no contest plea to the aggravated menacing charge did not comply with Crim.R. 11, his argument is meritless. Arnold contends that the trial court was required to inform him of the Crim.R. 11(C)(2) rights he would waive by pleading no contest to the aggravated menacing charge. However, Crim.R. 11(C)(2) does not apply. Aggravating menacing is a misdemeanor and Crim.R. 11(C)(2) applies only to felonies. *State v. Watkins*, 99 Ohio St.3d 12, 2003-Ohio-2419, 788 N.E.2d 635, at ¶27.

{¶11} Instead, Crim.R. 11(E) applies. Crim.R. 11(E) states: "[i]n misdemeanor cases involving petty offenses the court may refuse to accept a plea of guilty or no contest, and *shall not accept such plea without first informing the defendant of the effect of the pleas of guilty, no contest, and not guilty*." (Emphasis added.)

{¶12} Arnold pleaded no contest to aggravated menacing, which is a first degree misdemeanor that subjected him to a maximum of 180 days in jail. R.C. 2903.21. As such, it is a petty offense. Crim.R. 2(D). Therefore, the trial court was required to inform him of the effect of his plea prior to accepting the plea, pursuant to Crim.R. 11(E). The effect of a plea is set forth in Crim.R. 11(B), which states in part:

{¶13} "With reference to the offense or offenses to which the plea is entered:

{¶14} "(1) The plea of guilty is a complete admission of the defendant's guilt.

{¶15} "(2) The plea of no contest is not an admission of defendant's guilt, but is an admission of the truth of the facts alleged in the indictment, information, or complaint, and the plea or admission shall not be used against the defendant in any subsequent civil or criminal proceeding.

{¶16} "(3) When a plea of guilty or no contest is accepted pursuant to this rule, the court, except as provided in divisions (C)(3) and (4) of this rule, shall proceed with

sentencing under Crim. R. 32."

{¶17} The trial court informed Arnold of the effect of a no contest plea during his arraignment. Specifically, the trial court stated:

{¶18} "A plea of no contest is not an admission of guilt, but it is an admission of the truth of the facts alleged in the complaint. A plea of no contest shall not be used against you in any later civil or criminal proceeding, and your case would be heard today."

{¶19} To the extent Arnold argues that the trial court should have also explained the effect of the no contest plea during the *plea hearing*, his argument is meritless. For one, Arnold fails to show how he was prejudiced by the fact that this explanation was not repeated during the plea hearing. Further, in *State v. Perkins*, 10th Dist. No. 07AP-924, 2008-Ohio-5060, the Tenth District held that the trial court complied with Crim.R. 11(E), where it explained the effect of the plea during a mass arraignment hearing, but not at the defendant's plea hearing. *Perkins* at ¶54. In so holding, the court in *Perkins* found the following dicta from the Ohio Supreme Court "instructive":

{¶20} "Crim.R. 11(E) requires that a trial court inform the defendant of the effect of the plea before accepting a no-contest or guilty plea. *It does not, however, require that this information be necessarily given at the same hearing.* * * * [T]rial courts often conduct mass arraignment hearings in which defendants are informed of their constitutional rights as well as the effect of the plea of guilty, no-contest, and not guilty. See, e.g., *State v. Trushel*, 3d Dist. No. 13-04-44, 2005-Ohio-3763; *State v. Lanton*, 2d Dist. No. 02CA124, 2003-Ohio-4715; *State v. Maley*, 7th Dist. No. 01 CO 38, 2002-Ohio-5220." *State v. Jones*, 116 Ohio St.3d 211, 2007-Ohio-6093, 877 N.E.2d 677, at fn. 3 (emphasis added).

{¶21} We agree with the reasoning set forth in *Perkins* and *Jones* and accordingly hold that a trial court complies with Crim.R. 11(E) when it explains the effect of a plea during an arraignment. Accordingly, Arnold's first assignment of error is meritless.

Traf.R. 10(D)

{¶22} In his second assignment of error, Arnold argues:

{¶23} "The Trial Court failed to comply with the provisions of Traffic Rule 10(D) when it accepted the Appellant's no contest plea to the charge of reckless operation."

{¶24} This court has held that a plea to a R.C. 4511.20 reckless operation charge is governed by Traf.R. 10(D). *Powell* at ¶11-17; see, also, Crim.R. 1(C). In *Watkins,* supra, the Ohio Supreme Court discussed Traf.R. 10(D), and noted that the requirements therein are identical in all respects to Crim.R. 11(E). *Watkins* at ¶15.

{¶25} Traf.R. 10(D) states, in pertinent part:

{¶26} "In misdemeanor cases involving petty offenses, except those processed in a traffic violations bureau, the court may refuse to accept a plea of guilty or no contest and shall not accept such pleas without first informing the defendant of the effect of the plea of guilty, no contest, and not guilty." Traf.R. 10(D).

{¶27} The effect of a no contest plea is defined in Traf.R. 10(B)(2):

{¶28} "The plea of no contest is not an admission of defendant's guilt, but is an admission of the truth of the facts alleged in the complaint and such plea or admission shall not be used against the defendant in any subsequent civil or criminal proceeding." Traf.R. 10(B)(2).

{¶29} The trial court explained the effect of a no contest plea during Arnold's arraignment. Accordingly, the trial court complied with the provisions of Traf.R. 10(D) when accepting Arnold's no contest plea to the reckless operation charge.

{¶30} Arnold makes an additional argument that the trial court was required to issue a citation for the reckless operation charge, presumably because the original complaint did not charge him with reckless operation. This argument is meritless. As part of his plea deal with the State, Arnold agreed to plead no contest to an amended charge of reckless operation. In addition, Arnold indicated he waived presentation of evidence to this charge and that he reserved no issues for appeal.

{¶31} In sum, Arnold's arguments are meritless. The trial court was not required to follow Crim.R. 11(C)(2) when accepting Arnold's no contest plea, since Crim.R.

11(C)(2) applies only to felonies and both of the charges in this case are misdemeanors. Instead, pursuant to Crim.R. 11(E), for the aggravated menacing charge, and Traf.R. 10(D), for the reckless operation charge, the trial court needed only to inform Arnold about the effect of a no contest plea, prior to accepting the plea. A review of the record reveals the trial court informed Arnold about the effect of a no contest plea during his arraignment. Accordingly, the judgment of the trial court is affirmed.

Donofrio, J., concurs.

Waite, J., concurs.