[Cite as *State v. Ingram*, 2010-Ohio-1093.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO,	)	
	)	CASE NO. 09 MA 98
PLAINTIFF-APPELLEE,	)	
	)	
- VS -	)	O P I N I O N
	)	
LATOYA INGRAM,	)	
	)	
DEFENDANT-APPELLANT.	)	

CHARACTER OF PROCEEDINGS: Criminal Appeal from Common Pleas Court, Case No. 07CR793.

JUDGMENT: Affirmed.

APPEARANCES:

For Plaintiff-Appellee:

Attorney Paul Gains
Prosecuting Attorney
Attorney Ralph Rivera
Assistant Prosecuting Attorney
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For Defendant-Appellant:

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JUDGES:

Hon. Joseph J. Vukovich
Hon. Gene Donofrio
Hon. Cheryl L. Waite

Dated: March 17, 2010

VUKOVICH, P.J.

¶{1} Defendant-appellant Latoya Ingram appeals after pleading guilty in the Mahoning County Common Pleas Court. She contends that, when advising her of the right against self-incrimination, the trial court was required to explain that any exercising of this right cannot be held against her at trial. She also argues that the court should have advised her of the elements of the offense and any potential defenses that she was waiving in order to ensure that she understood the nature of the charge against her.

¶{2} However, these arguments all lack merit. In accepting a guilty plea, the court need not define the right against self-incrimination, the court need not outline the elements of the offense, and the court need not explain any potential defenses. As such, the judgment of the trial court is affirmed.

STATEMENT OF THE CASE

¶{3} On June 11, 2007, appellant fired five shots into the back of her boyfriend, Sherman Moody, as he laid face down on the floor of their residence in Youngstown, Ohio. She was indicted for murder, which is defined as purposely causing the death of another. See R.C. 2903.02(A), (D) (a felony-life offense). She was also indicted for a firearm specification in violation of R.C. 2941.145(A).

¶{4} She was appointed both counsel and co-counsel to assist her. Various pretrials and plea negotiations proceeded over the next year as counsel explored the issues of competency, insanity, and battered woman's syndrome (based upon abuse by her father and two prior partners, not by this victim).

¶{5} On January 16, 2009, appellant signed a plea agreement. Due to the unavailability of the court, the plea hearing took place on February 5, 2009. The state amended the murder charge to voluntary manslaughter, which is defined as knowingly causing the death of another while under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the defendant into using deadly force.

See R.C. 2903.03(A). Appellant pled guilty to this first degree felony and the firearm specification.

¶{6} A presentence investigation was ordered, and sentencing proceeded on May 22, 2009. The court sentenced appellant to ten years for voluntary manslaughter and three years for the firearm specification, for a total of thirteen years in prison. Appellant filed timely notice of appeal from the May 28, 2009 sentencing entry.

ASSIGNMENT OF ERROR NUMBER ONE

¶{7} Appellant sets forth two assignments of error on appeal, the first of which contends:

¶{8} "MS. INGRAM'S PLEA IS INVALID FOR THE COURT'S FAILURE TO COMPLY WITH THE SUBSTANTIAL RIGHTS PORTIONS OF THE CRIM.R. 11 COLLOQUY IN VIOLATION OF [THE CONSTITUTION]."

¶{9} Pursuant to Crim.R. 11(C)(2)(c), a court accepting a felony plea must inform the defendant and determine that the defendant understands that the defendant is waiving the various constitutional rights listed therein. One of these rights is that the defendant cannot be compelled to testify against herself at trial. A guilty plea is constitutionally infirm if the defendant is not informed in a reasonable manner of her privilege against self-incrimination. *State v. Ballard* (1981), 66 Ohio St.2d 473, 478.

¶{10} Appellant concedes that the court advised her of her right against self-incrimination by stating the she was waiving her right not to testify at trial or other proceedings.[1] However, without providing any law in support, she claims that merely advising her that she cannot be compelled to testify against herself at trial is insufficient because the court must also explain that no negative inference can be drawn from choosing to remain silent.

¶{11} To the contrary, this court has explained that the court need only inform the defendant of the constitutional rights listed in Crim.R. 11(C)(2)(c) and receive the defendant's affirmative answer that she understands those rights; if this occurs, then the court need not define or further explain those rights. *State v. Giovanni*, 7th Dist.

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[1]The language used by the court need not exactly match the phraseology of the rule. *State v. Ballard* (1981), 66 Ohio St.2d 473, 478. See, also, *State v. Giovanni*, 7th Dist. No. 08MA180, 2009-Ohio-3333, fn.1 (where the court used the same language as was used by the court in the case before us), citing *State v. Rowbotham*, 173 Ohio App.3d 642, 2007-Ohio-6227, ¶20-22.

No. 08MA180, 2009-Ohio-3333, ¶15-17. We specifically held that after advising a defendant of the right against self-incrimination, the court need not explain that the right is preserved by prohibiting the state from commenting on the defendant's refusal to testify at trial. Id. at ¶13, 16, citing *Ballard*, 66 Ohio St.2d at 479 (essentially holding that advising of the bare rights in Crim.R. 11(C)(2)(c) is sufficient); *State v. Baier* (June 30, 1999), 7th Dist. No. 98BA11 (court need not define "compulsory process" when defendant responds affirmatively that he understands this right). Accordingly, this assignment of error is without merit.

ASSIGNMENT OF ERROR NUMBER TWO

¶{12} Appellant's second assignment of error alleges:

¶{13} "MS. INGRAM'S PLEA IS INVALID FOR THE COURT'S FAILURE TO SUBSTANTIALLY COMPLY WITH CRIM.R. 11(C)(2) AND ADVISE HER ON THE ELEMENTS OF THE CHARGE AGAINST HER AND THE POTENTIAL DEFENSES SHE WAS RELINQUISHING WHEN SHE PLED GUILTY."

¶{14} Pursuant to Crim.R. 11(C)(2)(a), the court must determine that the defendant is making the plea voluntarily, with understanding of the nature of the charges. Notably, division (a), as compared to division (c) addressed above, does not require the court to inform the defendant about the nature of the charges but only requires the court to determine that she understands the nature of the charges. Appellant raises two claims regarding this rule.

¶{15} First, she alleges that the court failed to substantially comply with Crim.R. 11(C)(2)(a) by failing to advise her of the elements of voluntary manslaughter. However, it is not the court's duty to provide this information where the record contains evidence that the defendant is aware of the nature of the offense. *State v. Fitzpatrick*, 102 Ohio St.3d 331, 2004-Ohio-3167, ¶56-57, citing *Henderson v. Morgan* (1976), 42 U.S. 637; *State v. Harris*, 7th Dist. No. 08MA30, 2008-Ohio 6298, ¶22 ("the trial court does not itself need to inform the accused of the actual elements of the charged offense; a defendant can obtain this information from whatever source, be it from the trial court, the prosecutor, or some other source"); *State v. Campbell* (May 30, 1995), 7th Dist. No. 88CA217. The test is whether the totality of the circumstances shows that the defendant was provided with notice of the nature of the charge from some

source. Id. See, also, *State v. Carter* (1979), 60 Ohio St.2d 34, 38-40 (and noting a presumption that defense counsel informed the client of the nature of the charge), distinguishing *Henderson*, 42 U.S. 637.

¶{16} Here, the prosecutor stated that appellant was indicted for one count of murder in violation of R.C. 2903.02(A) with a firearm specification in violation of R.C. 2941.145(A). The prosecutor then noted the amendment to the indictment as part of the plea agreement. (Plea Tr. 2). Defense counsel represented that he went over the plea agreement with appellant "in depth" on January 16, 2009, when the plea agreement was signed, and that he met with appellant again prior to the February 5, 2009 plea hearing to confirm her continued assent to the plea agreement. Appellant advised the court that she went over the written plea thoroughly with her attorney. (Plea Tr. 4).

¶{17} The court then asked appellant if she understood that she was pleading guilty to one count of first degree felony voluntary manslaughter in violation of R.C. 2903.03(A) and a firearm specification. (Plea Tr. 4-5). After advising her of other rights and restrictions, the court asked if she was freely and voluntarily making the plea. (Plea Tr. 8). She answered affirmatively and acknowledged that no one forced her to plead or promised her anything. (Plea Tr. 8-9).

¶{18} The written plea was signed by appellant and her attorney. The court had her confirm that everything in the written plea was fully explained to her. She acknowledged that she had the opportunity to read the document and that she had no questions regarding it. (Plea Tr. 9). Notably, the written plea agreement states:

¶{19} "COUNSEL HAS ADVISED ME AND I FULLY UNDERSTAND THE NATURE OF THE CHARGE(S) AGAINST ME AND THE ELEMENTS CONTAINED THEREIN."

¶{20} The existence of this statement combined with appellant's answers to the court's questions establishes the court's basis for determining that she understood the nature of voluntary manslaughter with a firearm specification. See *State v. Johnson*, 7th Dist. No. 07MA8, 2008-Ohio-1065, ¶14-15. See, also, *State v. Roman*, 7th Dist. No. 06MA32, 2007-Ohio-5243, ¶20-25, 31. Under the totality of the circumstances, we conclude that the court substantially complied with Crim.R. 11(C)(2)(a)'s requirement

that the court determine that the defendant's plea was voluntary with an understanding of the nature of the charges. This argument is thus overruled.

¶{21} Appellant's second argument under this assignment of error is that a trial court cannot ensure that a plea is voluntary without advising the defendant of the potential affirmative defenses that she is giving up by pleading guilty. Initially, it should be noted that appellant fully explored the issues of competency and insanity. She also extensively contemplated a battered woman's syndrome defense. She had an attorney plus co-counsel. Her case was set for pretrial multiple times, and various plea negotiations were attempted. It is unreasonable to assume that she was unaware of the existence of affirmative defenses, including self-defense.

¶{22} In any event, Crim.R. 11(C)(2) speaks nothing of an advisement concerning all existing affirmative defenses or a determination that the defendant knows of the available defenses. Thus, the Supreme Court has held that the court is not required to apprise the pleading defendant of the availability of defenses. *State v. Reynolds* (1988), 40 Ohio St.3d 334, 335-336 (even where the same statute that defines the offense defines various affirmative defenses). This court and others have likewise rejected the argument made by appellant here. See, e.g., *State v. Kramer*, 7th Dist. No. 01CA107, 2002-Ohio-4176, ¶24 (court need not advise of affirmative defenses such as self-defense); *State v. DelSol* (May 2, 1996), 7th Dist. No. 95CA91. See, also, *State v. Goddard*, 3d Dist. No. 16-06-05, 2007-Ohio-1229, ¶13; *State v. Exline*, 8th Dist. No. 87945, 2007-Ohio-272, ¶24. This argument is therefore meritless. As such, this assignment of error is overruled.

¶{23} For the foregoing reasons, the judgment of the trial court is hereby affirmed.

Donofrio, J., concurs.
Waite, J., concurs.