

[Cite as *State v. Jenkins*, 2016-Ohio-8563.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO)	CASE NO. 15 MA 0202
)	
PLAINTIFF-APPELLEE)	
)	
VS.)	OPINION
)	
DAVID R. JENKINS)	
)	
DEFENDANT-APPELLANT)	

CHARACTER OF PROCEEDINGS:	Criminal Appeal from the Court of Common Pleas of Mahoning County, Ohio Case No. 15 CR 181
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JUDGMENT:	Affirmed.
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APPEARANCES:

For Plaintiff-Appellee:	Atty. Paul J. Gains Mahoning County Prosecutor Atty. Ralph M. Rivera Assistant Prosecuting Attorney 21 West Boardman Street, 6 th Floor Youngstown, Ohio 44503
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For Defendant-Appellant:	Atty. Edward A. Czopur DeGenova & Yarwood, Ltd. 42 North Phelps St. Youngstown, Ohio 44503
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JUDGES:

Hon. Cheryl L. Waite
Hon. Mary DeGenaro
Hon. Carol Ann Robb

Dated: December 27, 2016

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WAITE, J.

{¶1} Appellant David R. Jenkins appeals an October 15, 2015 Mahoning County Common Pleas Court judgment entry. Appellant contends that the trial court failed to fully advise him of his right to compulsory process, thus his plea was not entered into knowingly, intelligently, and voluntarily. Pursuant to *State v. Barker*, 129 Ohio St.3d 472, 2011-Ohio-4130, 953 N.E.2d 826, Appellant's argument is without merit and the judgment of the trial court is affirmed.

Factual and Procedural

{¶2} Appellant, a juvenile at the time of the offense, was indicted on one count of aggravated riot, a felony of the fourth degree in violation of R.C. 2917.02(A)(2), (C); one count of involuntary manslaughter, a felony of the first degree in violation of R.C. 2903.04(A), (C); one count of felonious assault, a felony of the second degree in violation of R.C. 2903.11; one count of aggravated assault with a firearm specification attached, a felony of the fourth degree in violation of R.C. 2903.12 and R.C. 2903.12(A)(2), (B); and two counts of felony life murder. The charges stemmed from a bar fight where Appellant shot and killed another juvenile involved in the fight.

{¶3} On September 17, 2014, the state filed a motion to relinquish jurisdiction of the case pursuant to Juv.R. 29 and Juv.R. 30. On February 26, 2015, the juvenile court ruled that counts 1, 2, 3, and 5 required mandatory bindover to the common pleas court. While count 4 did not mandate a bindover, Appellant waived an amenability hearing and agreed to be bound over on that count as well. Appellant was 18 years old at the time.

{¶4} Appellant entered into a Crim.R. 11 plea agreement where he agreed to enter a guilty plea on the involuntary manslaughter, aggravated assault with firearm specification, and aggravated assault charges. In exchange, the state would dismiss the two murder and felonious assault charges. On August 26, 2015, the trial court held a plea hearing. During the hearing, the parties entered into a colloquy where the trial court advised Appellant of the rights he was giving up as a result of his plea. Approximately one hour later, the court recalled the case and held a second plea hearing, because the judge apparently was concerned that he had not adequately conveyed Appellant's right to remain silent during the first plea hearing.

{¶5} On October 7, 2015, the trial court sentenced Appellant to one year of incarceration on the aggravated riot count, eleven years for involuntary manslaughter, one year for aggravated assault, and three years on the firearm specification. The sentences for aggravated riot and aggravated assault were ordered to run concurrently, but consecutive to the involuntary manslaughter sentence. The firearm specification was ordered to run consecutively to all counts. Appellant was credited with 413 days served. This timely appeal followed.

ASSIGNMENT OF ERROR

THE TRIAL COURT DID NOT COMPLY WITH CRIM. R. 11(C)(2)(C) IN THAT IT DID NOT INFORM APPELLANT OF HIS RIGHT TO COMPULSORY PROCESS, THEREFORE, THE PLEA WAS NOT MADE KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY REQUIRING REVERSAL.

{¶6} Appellant argues that the trial court did not adequately advise him of his right to compulsory process. As compulsory process is a constitutional right, Appellant argues that strict compliance is required. Consequently, Appellant argues that his plea was not knowingly, intelligently, and voluntarily entered.

{¶7} In response, the state cites to several Ohio appellate cases where courts, including this Court, have found that a verbatim recitation of a defendant's rights is not required. The state also argues that if an explanation of a right is present on the record, a court can resort to other documents, including a written plea agreement, to determine if the explanation was sufficient. Here, the state argues that the written plea agreement signed by Appellant fully explained his right to compulsory process.

{¶8} Before a trial court may accept a defendant's guilty plea, the court must inform the defendant of four constitutional rights. *State v. Rothbotham*, 173 Ohio App.3d 642, 2007-Ohio-6227, 879 N.E.2d 856 (7th Dist.), ¶ 7, citing *State v. Ballard*, 66 Ohio St.2d 473, 423 N.E.2d 115 (1981), paragraph one of the syllabus. These rights include a defendant's privilege against compulsory self-incrimination, right to a jury trial, right to confront his accusers, and right to compulsory process. *Id.* Strict compliance to notify a defendant of his constitutional rights is required; however, a trial court is not required to cite to the exact language of Crim.R. 11. *State v. Wheeler*, 7th Dist. No. 08 MA 53, 2009-Ohio-2647, ¶ 23, citing *Ballard, supra*, at paragraph two of the syllabus.

{¶9} The trial court must also notify the defendant of his nonconstitutional rights. The notification as it regards nonconstitutional rights is reviewed for substantial compliance. *Rothbotham, supra*, at ¶ 18. Nonconstitutional rights include: (1) the nature of the charges; (2) the maximum penalty involved; (3) whether the defendant is eligible for probation; and (4) that the court may immediately proceed to sentencing after accepting the plea. *Id.*

{¶10} Appellant solely contests whether the trial court strictly complied with the requirement to notify him of his right to compulsory process. Appellant argues that the court's use of the phrase "[a]nd if you wanted to, you can bring witnesses in on your own behalf; although, you have no obligation to do or say anything" did not adequately inform him of this right. (Appellant's Brf., p. 5.)

{¶11} The Ohio Supreme Court examined whether the phrase "right to call witnesses to speak on your behalf" sufficiently notified a defendant of their right to compulsory process. *State v. Barker*, 129 Ohio St.3d 472, 2011-Ohio-4130, 953 N.E.2d 826, ¶ 1. The Court held that such language was a reasonably intelligible explanation of a defendant's right to compulsory process. *Id.* at ¶ 20. The Court explained that "to call" means to summon or command and conveys the idea that someone is required to appear or perform. *Id.* at ¶ 17-18. These terms are more understandable than legal terms such as "compulsory process," "subpoena," and "compel witnesses." *Id.* The Court also examined whether other portions of the record, namely the written plea agreement, could be reviewed when resolving any

ambiguity. *Id.* at ¶ 1. The Court answered this question in the affirmative. *Id.* at ¶ 25.

{¶12} At the plea hearing in the instant matter, the judge stated “[y]ou have a right to confront your accusers and witnesses. You have a right to cross examine them. And if you wanted to, you can bring witnesses in on your own behalf; although, you have no obligation to do or say anything.” (1/21/16 Plea Hearing Tr., pp. 13-14.) Appellant contends that the word “bring” is not sufficiently similar to the word “call” as used in *Barker*. Appellant’s argument essentially revolves around semantics. Although “bring” and “call” are not synonyms, it is clear that the trial court was attempting to use common verbiage instead of legalese. Pursuant to *Barker*, common language is acceptable and can be beneficial in helping a defendant understand his rights, so long as the language reasonably explains these rights. Further, there is nothing within this record to indicate that Appellant did not understand this right.

{¶13} We also note that Appellant’s written plea agreement stated: “I UNDERSTAND THAT BY ENTERING THIS PLEA, I WAIVE CERTAIN FUNDAMENTAL CONSTITUTIONAL AND STATUTORY RIGHTS, NAMELY * * * TO HAVE COMPULSORY SUBPOENA PROCESS FOR OBTAINING WITNESSES IN MY FAVOR.” (8/28/15 Crim.R. 11 Plea Agreement, p. 4.) Again, *Barker* permits the use of this language to demonstrate that Appellant was adequately informed of his right to compulsory process. Accordingly, Appellant’s sole assignment of error is without merit and is overruled.

Conclusion

{¶14} Appellant contends that the trial court did not adequately notify him of his right to compulsory process, thus his plea was not knowingly, intelligently, and voluntarily entered. However, pursuant to *Barker, supra*, the trial court's language clearly placed Appellant on notice of his right to compulsory process. Not only did Appellant sign the written plea agreement, the trial court also ensured that Appellant read, signed, and understood the plea agreement on the record. (8/26/15 Plea Hrg. Tr., p. 8; 8/26/15 Continued Plea Hrg. Tr., pp. 2-4.) Accordingly, the judgment of the trial court is affirmed.

DeGenaro, J., concurs.

Robb, J., concurs.