[Cite as *Cleveland v. Greene*, 2024-Ohio-4899.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

CITY OF CLEVELAND,	:	
Plaintiff-Appellee,	:	No. 113417
v.	:	
TERRENCE GREENE,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: October 10, 2024

Criminal Appeal from the Cleveland Municipal Court
Case No. 2022-TRC-006471

Appearances:

Mark Griffin, Cleveland Director of Law, Aqueelah A. Jordan, Chief Prosecuting Attorney, and Michael Ferrari, Assistant Prosecuting Attorney, *for appellee*.

Summit Legal Defenders and Joseph Shell, *for appellant*.

SEAN C. GALLAGHER, J.:

{¶ 1} Defendant-appellant, Terrence Greene, appeals his judgment of conviction after pleading guilty to having physical control of a vehicle while under the influence. Upon review, we reverse the judgment and remand the case with

instructions for the trial court to vacate the plea and to conduct further proceedings in the case.

{¶ 2} After being involved in a three-car accident in Cleveland on May 5, 2022, Greene was cited with driving under the influence in violation of Cleveland Cod.Ord. 433.01, along with two other traffic-code violations. Greene initially entered a plea of not guilty to the charges. After further proceedings, the matter was set for a suppression hearing on March 16, 2023. On that date, after the City of Cleveland set forth a plea agreement on the record, Greene entered a plea of guilty to an amended charge of having physical control of a vehicle while under the influence, a misdemeanor of the first degree in violation of R.C. 4511.194, and the remaining charges were nolled. A sentencing hearing was held on November 15, 2023. The trial court imposed 180 days in jail with suspended time, a $1,000 fine with $200 suspended, one year of probation, and other conditions. The trial court also ordered Greene to pay restitution in the amount of $5,780 "if your insurance doesn't cover it."

{¶ 3} Greene timely filed this appeal. He raises two assignments of error, under which he claims that (1) the trial court erred in accepting Greene's guilty plea without complying with Crim.R. 11(E), and alternatively that (2) the trial court's restitution order violates R.C. 2929.28 and 2929.281.

{¶ 4} We conduct a de novo review to determine whether the trial court accepted Greene's plea in compliance with Crim.R. 11(E). *See Lakewood v. Hoctor*, 2023-Ohio-375, ¶ 3 (8th Dist.), citing *State v. Meadows*, 2022-Ohio-4513, ¶ 18 (8th

Dist.). "Ohio's Crim.R. 11 outlines the procedures that trial courts are to follow when accepting pleas." *State v. Dangler*, 2020-Ohio-2765, ¶ 11. The rule "sets forth distinct procedures, depending upon the classification of the offense involved." *State v. Jones*, 2007-Ohio-6093, ¶11.[1] Because this is a misdemeanor case that involves a plea of guilty to a petty offense, Crim.R. 11(E) applies.

{¶ 5} Crim.R. 11(E) instructs as follows:

> In 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.

{¶ 6} In *Jones*, the Supreme Court of Ohio construed Crim.R. 11(E) to require that before accepting a plea to a misdemeanor involving a petty offense, "a trial court is required to inform the defendant only of the effect of the specific plea being entered." *Id.* at ¶ 20. As explained in *Jones*, "[a]lthough Crim.R. 11(E) does not require the trial court to engage in a lengthy inquiry when a plea is accepted to a misdemeanor charge involving a petty offense, the rule does require that certain information be given on the 'effect of the plea.'" *Id.* at ¶ 51. This requirement is not met by statements advising the defendant of the maximum penalty, the right to a jury trial, or other rights. *See id.* at ¶ 22. Instead, a trial court must inform the defendant of the effect of the plea, as defined under Crim.R. 11(B), either orally or in writing before accepting the plea. *See id.* at ¶ 25, 51. Relevant hereto,

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[1] We note that Crim.R. 11(C)(2), which applies in felony cases, includes a procedure that "is more elaborate than that for misdemeanors." *Id.* at ¶ 12.

Crim.R. 11(B)(1) provides that "[t]he plea of guilty is a complete admission of the defendant's guilt." However, the focus in reviewing pleas is not on whether the trial judge used the precise verbiage of the rule, but on whether the dialogue demonstrates that the defendant understood the consequences of his plea. *See Dangler* at ¶ 12.

{¶ 7} In *Dangler*, the Supreme Court of Ohio held in part that when a criminal defendant seeks to have his conviction reversed on appeal, "a trial court's *complete* failure to comply with a portion of Crim.R. 11(C) eliminates the defendant's burden to show prejudice." (Emphasis in original.) *Dangler*, 2020-Ohio-2765, at ¶ 15, citing *State v. Sarkozy*, 2008-Ohio-509, ¶ 22. Although the procedures for pleas in misdemeanor cases under Crim.R. 11(D), for serious offenses, and Crim.R. 11(E), for petty offenses, are not as extensive as in felony cases under Crim.R. 11(C), "whenever accepting a plea of guilty or no contest, the trial court is required to inform the defendant of the effect of the plea." *Jones,* 2007-Ohio-6093, at ¶ 21, citing Crim.R. 11(C)(2)(b), (D), and (E).

{¶ 8} Subsequent to *Dangler*, Ohio appellate courts have consistently held that when there is a complete failure by the trial court to comply with Crim.R. 11(E) when accepting a plea to a petty misdemeanor, a prejudice analysis is not required, and the plea must be vacated. *See, e.g., State v. O'Brien-Devilliers*, 2024-Ohio-1432, ¶ 50 (11th Dist.); *State v. Dumas*, 2024-Ohio-2731, ¶ 7 (2d Dist.); *Cleveland v. Byers*, 2023-Ohio-4542, ¶ 15-17 (8th Dist.); *Cleveland v. Martin*, 2023-Ohio-448, ¶ 22-24 (8th Dist.); *Hoctor*, 2023-Ohio-375, at ¶ 7-8 (8th Dist.); *State v. Clay*, 2022-

Ohio-631, ¶ 11 (2d Dist.). We understand that municipal court judges often face large dockets, especially in a major city like Cleveland, and getting individual cases through the process can take time and present challenges when informing defendants of the requisite information during pleas. Nevertheless, minimum requirements that must be adhered to by trial courts are established pursuant to Crim.R. 11.

{¶ 9} Pursuant to this court's recent en banc decision in *State v. Fontanez*, 2024-Ohio-4579 (8th Dist.), a trial court does not completely fail to comply with Crim.R. 11(C) by failing to inform the defendant that his guilty plea is a complete admission of guilt when it is obvious from the context of the plea colloquy that the defendant understood the effect of a plea of "guilty," which is a commonly used word. *Id.* at ¶ 12-14. *Fontanez* applied the common-sense approach to the review of Crim.R. 11 plea colloquies that was articulated in *Dangler* and *State v. Miller*, 2020-Ohio-1420. *Fontanez* at ¶ 18. It was determined that Fontanez understood that his guilty plea was an admission of guilt when the plea colloquy demonstrated that Fontanez knowingly admitted he committed the specific acts described by the judge during the plea colloquy. *Id.* at ¶ 14. It was also found that the Supreme Court of Ohio's decision in *State v. Griggs*, 2004-Ohio-4415, which held that "'a defendant who has entered a guilty plea without asserting actual innocence is presumed to understand that he has completely admitted his guilt[,]'" remains good law on the issue of a defendant's subjective understanding of the effect of a guilty plea. *Fontanez* at ¶ 15, quoting *Griggs* at ¶ 19. However, that presumption may be

rebutted by support from the record. As held in *Fontanez,* "[W]here a trial court does not explicitly state that a guilty plea constitutes a complete admission of guilt during a Crim.R. 11 colloquy but the court otherwise complies with the rule and the defendant does not assert actual innocence, we may presume that the defendant understood that his guilty plea was a complete admission of guilt." *Id.* at ¶ 20. Like *Fontanez*, *Griggs* was a case in which the factual basis for the plea was placed on the record and the record demonstrated the defendant's understanding of the effect of a guilty plea. *See id.* at ¶ 16. That is not the case herein.

{¶ 10} In this case, the trial court failed to make any mention of admission of guilt during the Crim.R. 11 plea colloquy, and it does not appear from the record that the trial court informed Greene of the effect of the plea, either orally or in writing, at any time prior to accepting Greene's plea of guilty to the petty offense.[2] Although the trial court engaged in a brief colloquy with Greene and informed him of limited constitutional rights, Greene expressed some confusion during the exchange and the court did not have any dialogue with Greene that would reflect he understood the effect of his plea. Moreover, the factual basis for the plea was not placed on the record, it is not obvious from the context of the plea colloquy that the defendant understood the effect of a guilty plea, and the presumption that Greene understood his plea was a complete admission of guilt is refuted by the record. In fact, the transcript reflects that Greene initially entered a plea of "no contest" when

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[2] As noted in *Jones*, Crim.R. 11(E) does not require this information necessarily be given at the same hearing. *Id.* at ¶ 20, fn. 3.

asked, "What is your plea to the Charge 4911.194?" The trial court then informed Greene that it "has to be a guilty plea to get the [plea] deal," but it did not explain to him the difference, let alone the effect of a guilty plea.

{¶ 11} In the end, the record demonstrates the trial court completely failed to inform Greene of the effect of a plea of guilty as required by Crim.R. 11(E). Under these circumstances, Greene's plea must be vacated. Appellant's first assignment of error is sustained. Again, we understand the busy nature of municipal court proceedings, but the Supreme Court has made the Crim.R. 11 requirements clear, and we are mandated to follow the review standard.

{¶ 12} Greene's alternative argument concerns the restitution order. Although we find some merit to the second assignment of error, the order of restitution is rendered moot by our resolution of the first assignment of error. Should there be any restitution ordered upon remand, the trial court shall conduct an evidentiary hearing and comply with R.C. 2929.28 and 2929.281.[3]

{¶ 13} The trial court's judgment is reversed, and the case is remanded with instructions for the trial court to vacate Greene's plea and to conduct further proceedings consistent with this opinion.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

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[3] We note that it appears the city concedes a remand for a restitution hearing would be warranted if Greene had not prevailed on his first assignment of error.

It is ordered that a special mandate issue out of this court directing the Cleveland Municipal Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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SEAN C. GALLAGHER, JUDGE

EILEEN A. GALLAGHER, P.J., CONCURS;
MARY J. BOYLE, J., CONCURS IN JUDGMENT ONLY