

2021

## State v. Brinkman 2021-Ohio-2473

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### Recommended Citation

King, Jamie (2021) "State v. Brinkman 2021-Ohio-2473," *Ohio Northern University Law Review*. Vol. 48: Iss. 2, Article 10.

Available at: [https://digitalcommons.onu.edu/onu\\_law\\_review/vol48/iss2/10](https://digitalcommons.onu.edu/onu_law_review/vol48/iss2/10)

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**State v. Brinkman  
2021-Ohio-2473**

I. INTRODUCTION

Approximately 95% of all convictions are resolved by defendants taking a plea.<sup>1</sup> When defendants plead guilty, they are waiving numerous rights afforded to them by the Constitution of the United States and the Constitution of Ohio.<sup>2</sup> Such rights include “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.”<sup>3</sup> Pleas are required to be entered on the record knowingly and voluntarily to ensure the defendant is entirely aware of the consequences of their decision.<sup>4</sup> Thus, due to the severity of the decision, courts shall comply with the rules set out to protect such defendants upon entering their guilty pleas.<sup>5</sup>

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

In *State v. Brinkman*, the trial court, the Cuyahoga County Common Pleas Court, failed to properly comply with Criminal Rule 11(C)(2)(c).<sup>6</sup> The case at bar was a capital case, in which the appellant, Brinkman, was attempting to plead guilty to the charges of aggravated murder, aggravated burglary, kidnapping, and abuse of a corpse.<sup>7</sup> At a pretrial hearing, Brinkman informed the court of his intention to change his not guilty plea to a guilty plea as to all charges.<sup>8</sup> During the appellant’s initial plea colloquy, the trial court advised Brinkman of the constitutional rights he was waiving by doing so.<sup>9</sup> Upon informing Brinkman of the rights he was waiving, the court asked him to respond in the affirmative if he understood the particular right being waived.<sup>10</sup> The court proceeded to address the following rights: the right to have an attorney, the right to a trial by jury or judge, the right to

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1. RONALD J. ALLEN ET AL., CRIMINAL PROCEDURE: ADJUDICATION AND RIGHT TO COUNSEL 1256 (Rachel E. Barkow et al. eds., 3d ed. 2020).

2. *Id.* at 1257 (citing *Boykin v. Alabama*, 395 U.S. 238, 242 (1969)); OHIO CONST.

3. OHIO CRIM. R. 11(C)(2)(c) (2021).

4. *See* ALLEN, *supra* note 1, at 1257.

5. OHIO CRIM. R. 11(C) (2021).

6. *State v. Brinkman*, Slip Opinion No. 2021-Ohio-2473 at ¶ 1 (2021).

7. *Id.*

8. *Id.* at ¶¶ 1-2.

9. *Id.* at ¶ 3.

10. *Id.*

compel witnesses, and the right to remain silent.<sup>11</sup> The appellant responded “yes” when asked by the court if he understood the specific right being waived.<sup>12</sup> The trial court noted for the record that the appellant’s plea was deemed knowingly and voluntarily given and as such accepted.<sup>13</sup>

Due to the nature of the charges and there being a death specification, it was necessary for a three-judge panel to hear the state’s case.<sup>14</sup> However, a couple of days later, upon review of the record, the court became aware of an issue with the plea colloquy.<sup>15</sup> The court repeated the list of constitutional rights that the appellant was waiving, along with the previously neglected rights for the state to prove his guilt beyond a reasonable doubt and the right to confront witnesses.<sup>16</sup> After the appellant’s right were addressed again, the court did not require the appellant to reenter his guilty plea on the record.<sup>17</sup> Instead, the panel made their ruling and entered the appellant’s guilt.<sup>18</sup> The appellant was subsequently given the death penalty on the capital charges, and an additional 47 years for the remaining charges.<sup>19</sup> The case reached the Ohio Supreme Court as a result of the appellant appealing both his convictions and sentences.<sup>20</sup>

### III. COURT’S DECISION AND ANALYSIS

Appellant argues that due to the trial court’s failure to inform him of his right to confront witnesses and the right to have his guilt proved beyond a reasonable doubt, that his guilty plea entered and accepted should be deemed invalid.<sup>21</sup> The State argues that the court complied with Crim.R. 11(C)(2)(c) because it accepted the plea after the second reading of appellant’s rights.<sup>22</sup> However, the Court noted, this is a serious choice to make, and as such, a plea must “be made knowingly, intelligently, and voluntarily; otherwise, the defendant’s plea is invalid.”<sup>23</sup> The Court stated under such standard, trial courts must inform defendants of their rights and the defendants must understand that a consequence of their decision to plead

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11. *Brinkman*, 2021-Ohio-2473 at ¶ 3.

12. *Id.*

13. *Id.* at ¶ 4.

14. *Id.* at ¶ 5.

15. *Id.* at ¶ 6.

16. *Brinkman*, 2021-Ohio-2473 at ¶ 6.

17. *Id.* at ¶ 7.

18. *Id.*

19. *Id.*

20. *Id.* at ¶ 8.

21. *Brinkman*, 2021-Ohio-2473 at ¶ 9.

22. *Id.* at ¶ 13.

23. *Id.* at ¶ 10, (quoting *State v. Bishop*, 156 Ohio St.3d 156, 2018-Ohio-5132, 124 N.E.3d 766 at ¶ 10 (2018) (lead opinion) (citing *Clark* at ¶ 25)).

guilty includes those rights being waived.<sup>24</sup> By ensuring defendants are aware of this consequence, the Court noted, it provided defendants the opportunity to make an informed decision prior to pleading guilty.<sup>25</sup>

The Court supported its reasoning with *Veney*, in which it was held that Crim.R. 11(C)(2)(c) requires strict compliance.<sup>26</sup> In *Veney*, the plea was determined to be invalid due to the trial court's failure to read the defendant his right for the state to prove his guilt beyond a reasonable doubt.<sup>27</sup> Here, the Court stated that the record did not demonstrate that the trial court strictly complied with the rule.<sup>28</sup> The Court noted that the record showed that the appellant's plea was accepted after the first reading of his rights but prior to the second.<sup>29</sup> The Court further supports its rationale with the verbiage of O.R.C. 2945.06.<sup>30</sup> The Court held that R.C. 2945.06 requires the guilty plea to occur before the State presents evidence.<sup>31</sup> The Court also supported this stance with the wording of Crim.R. 11(C)(2)(c) – in which it is stated that a guilty plea's acceptance precedes the panel determining sentencing.<sup>32</sup>

The Court further contended that the appellant was not fully informed of the rights he was waiving pursuant to the rule, including the right to confront witnesses and the right for his guilt to be proven beyond a reasonable doubt.<sup>33</sup> Due to the trial court's failure to read the entirety of the rights to be waived, and the reading of the rights in full after the plea was accepted, the Court held that the appellant's plea is void.<sup>34</sup> The reason for the rule, the Court added, is for defendants to “make a voluntary and intelligent decision whether to plead guilty.”<sup>35</sup> To allow the reading of the rights after pleading guilty would contradict such purpose.<sup>36</sup> Another issue that arose at the trial court level was the fact that the appellant was not again asked to enter his plea of guilty.<sup>37</sup> The Court added that it is solely the duty

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24. *Id.* at ¶ 11.

25. *Id.* (citing *State v. Miller*, 159 Ohio St.3d 447, 2020-Ohio-1420, 151 N.E.3d 617 at ¶ 18 (2020)); *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, 897 N.E.2d 621 at ¶ 18 (2008).

26. *Brinkman*, 2021-Ohio-2473 at ¶ 12 (citing *Veney*, 120 Ohio St.3d at ¶ 32).

27. *Id.* (citing *Veney*, 120 Ohio St.3d at ¶ 30).

28. *Id.* at ¶ 14.

29. *Id.*

30. *Id.* at ¶ 15.

31. *Brinkman*, 2021-Ohio-2473 at ¶ 15.

32. *Id.*

33. *Id.* at ¶ 16.

34. *Id.* at ¶¶ 16-17.

35. *Id.* at ¶ 17 (quoting *Veney*, 120 Ohio St.3d at ¶ 18).

36. *Brinkman*, 2021-Ohio-2473 at ¶ 17.

37. *Id.*

of the trial court to inform defendants of their rights prior to accepting a guilty plea and not the responsibility of the attorneys to address the issue.<sup>38</sup>

The Court held that the trial court failed to strictly comply with the rule, and therefore the appellant's plea was invalid.<sup>39</sup> To ensure that the rule is properly complied with, the Court suggested that trial courts use the rule "as a checklist and explain the information to the defendant in a manner that can be easily understood."<sup>40</sup> In order for a guilty plea to be upheld, the defendant must be fully informed of all rights being waived by doing so.<sup>41</sup> Because the rule was not strictly complied with, none of the attorneys brought the issue to the trial court's attention, and after the entirety of the rights were read the second time, the appellant was not asked to reenter his plea, the Court held the appellant's plea to be invalid.<sup>42</sup> The judgment accepting the appellant's guilty plea was vacated and remanded to the trial court.<sup>43</sup>

#### IV. ANALYSIS

Prior to accepting a guilty plea in a felony case, Ohio Criminal Rule 11(C)(2)(c) requires "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."<sup>44</sup> The Court's decision in *Brinkman* is correct in that a trial court should not be permitted to evade a rule that protects defendants while making a decision which effectively waives their constitutional rights prior to pleading to criminal charges.

In a similar case from the Sixth Appellate District, the appellant accepted a plea offer from the State after being indicted on multiple counts, including vehicular assault.<sup>45</sup> During the appellant's plea hearing, the trial court did not inform him of his right against self-incrimination at trial.<sup>46</sup> The trial court then proceeded to accept appellant's plea, found him guilty of

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38. *Id.* at ¶ 18 (citing *State v. Montgomery*, 148 Ohio St.3d 347, 2016-Ohio-5487, 71 N.E.3d 180 at ¶ 40 (2016)) (quoting *Boykin v. Alabama*, 395 U.S. 238, 244, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969)).

39. *Id.* at ¶ 19.

40. *Id.* at ¶ 20.

41. *Brinkman*, 2021-Ohio-2473 at ¶ 21 (quoting *Boykin*, 395 U.S. at 244).

42. *Id.* at ¶¶ 19, 22.

43. *Id.* at ¶ 23.

44. OHIO CRIM.R. 11(C)(2)(c) (2021).

45. *State v. Hamilton*, No. L-21-1150, 2022-Ohio-139 at ¶¶ 2-3 (Ohio Ct. App. 2022).

46. *Id.* at ¶ 4.

vehicular assault, and scheduled a hearing for sentencing.<sup>47</sup> After being sentenced, the appellant appealed on the basis of the court's failure to strictly adhere to Crim.R. 11(C)(2)(c).<sup>48</sup> On appeal, the Court of Appeals held that the failure to adhere to the rule rendered the plea invalid.<sup>49</sup> The Court of Appeals noted that due to the trial court's failure to comply with the rule, "appellant's decision whether to plead no contest cannot be deemed knowing, intelligent, and voluntary."<sup>50</sup>

*Brinkman* and *Hamilton* are similar in that the higher courts require that the trial courts must strictly adhere to Crim.R. 11(C)(2)(c). In citing *Brinkman*, *Hamilton* stated that even missing one right that will be waived by pleading guilty renders the plea invalid, due to the appellant not entering his plea knowingly, intelligently, and voluntarily as required by the rule.<sup>51</sup> Although *Hamilton* is a Court of Appeals decision, it demonstrates the necessity of all trial courts to strictly comply with the rule.

In *State v. McLemore*, the Eighth Appellate District held that the trial court did sufficiently comply with Crim.R. 11(C)(2)(c).<sup>52</sup> In *McLemore*, the appellant was charged 10 counts, including aggravated murder.<sup>53</sup> The appellant agreed to a plea deal and the court proceeded to the plea colloquy.<sup>54</sup> The appellant appealed based on the court accepting his guilty plea, because it was not knowingly, intelligently, or voluntarily entered.<sup>55</sup> However, the Court of Appeals distinguished this case from *Brinkman* on the ground that Crim.R. 11(C)(2)(c) was strictly complied with.<sup>56</sup> The Court of Appeals affirmed the judgment of the trial court, noting that all constitutional rights were addressed, the appellant indicated that he understood them all, and nothing in the record suggested otherwise.<sup>57</sup>

The trial court in *McLemore*, unlike in *Brinkman*, addressed all requirements of Crim.R. 11(C)(2)(c).<sup>58</sup> It follows that a trial court complying with the rule would not be overturned on appeal. However, the trial court in *Brinkman* did not comply with the rule and therefore the plea was considered invalid.<sup>59</sup> Again, due to the seriousness of the decision to

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47. *Id.* at ¶ 5.

48. *Id.* at ¶¶ 5-7.

49. *Id.* at ¶ 10.

50. *Hamilton*, 2022-Ohio-139 at ¶ 10 (citing *Brinkman*, 2021-Ohio-2473 at ¶ 11; *Miller*, 2020-Ohio-1420 at ¶ 18).

51. *Id.*

52. *State v. McLemore*, No. 109827, 2021-Ohio-3356 at ¶ 14 (Ohio Ct. App. 2021).

53. *Id.* at ¶ 3.

54. *Id.* at ¶¶ 6-7.

55. *Id.* at ¶¶ 9-10.

56. *Id.* at ¶ 14.

57. *McLemore*, 2021-Ohio-3356 at ¶¶ 14, 24.

58. *Id.* at ¶ 14.

59. *Brinkman*, 2021-Ohio-2473 at ¶ 19.

plea, it is necessary that trial courts comply with Crim.R. 11(C)(2)(c) to ensure that defendants are fully aware of the constitutional rights they are waiving by doing so.

In addition to the requirements of Crim.R. 11(C)(2)(c), trial courts are responsible for informing defendants intending to plead guilty of the following: maximum and minimum sentences, any possible forfeiture or restitution, sentencing guidelines, waiver of the right to appeal or seek postconviction relief if included in a plea agreement, and the impact a conviction may have pertaining to the defendant's citizenship.<sup>60</sup> The plea will not be considered to have been entered "knowingly" unless it is indicated that the defendant understands both the waiver of rights under Crim.R. 11(C)(2)(c) and the aforementioned consequences of pleading guilty.<sup>61</sup> Criminal Rule 11 in effect holds trial courts accountable to ensure that defendants understand all relevant consequences of pleading guilty. To accept less than required by the rule would do a disservice to defendants, whose lives are on the line, and who are the sole individual to endure the consequences of such a decision.

## V. CONCLUSION

Trial courts in Ohio do and are expected to strictly comply with Criminal Rule 11 pertaining to guilty pleas. While strictly complying, courts are adhering to the rules as well as protecting defendants from making uninformed decisions that will greatly affect their lives moving forward. Criminal records may affect various aspects of defendants' lives. Whether it be personal, work related, or otherwise, the decision to plead guilty demonstrably affects criminal defendants. Thus, Ohio's trial courts should be expected to adhere to the rules prescribed to them, and properly inform defendants of the rights they are losing by pleading guilty. The Supreme Court of Ohio, in *Brinkman*, got it right by requiring trial courts to strictly comply to the rules set before them.

JAMIE KING

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60. See ALLEN, *supra* note 1, at 1258.

61. *Id.*