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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0724**

State of Minnesota,
Respondent,

vs.

Fikret Konjaric,
Appellant.

**Filed March 25, 2019
Affirmed
Hooten, Judge**

Anoka County District Court
File No. 02-CR-17-5726

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Joseph David Van Thomme, Ramsey City Attorney, Stillwater, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Kathryn Lockwood, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Reyes, Judge; and Cochran,
Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

In this appeal from a conviction for failure to drive with due care, in violation of
Minn. Stat. § 169.14, subd. 1 (2016), appellant Fikret Konjaric seeks to withdraw his guilty

plea under the manifest-injustice standard. He argues that his plea was factually inaccurate. We affirm.

FACTS

Konjaric, while driving his car, went through an intersection with a light facing his direction that was either just about to turn red or was definitively red. There was another vehicle going through the same intersection in a direction perpendicular to the direction he was driving. Konjaric's car struck the other vehicle, causing \$6,473.20 in damages to the other vehicle.

The state charged Konjaric with one count of failure to drive with due care in violation of Minn. Stat. § 169.14, subd. 1 (2016). After consulting with his attorney, Konjaric pleaded guilty to the charge. On the record, Konjaric's attorney went over the plea agreement with him, and the district court confirmed with Konjaric that he had gone through the agreement with his attorney. Konjaric explicitly affirmed the following: that he was driving his car on the date in question and went through a light that was "a close call between a yellow and a red light"; that going through an intersection when the light is a close call between yellow and red is "a dangerous thing" because "other drivers might not be expecting [him] to be coming through the intersection"; that "driving in a dangerous way" does not represent due care; that his "driving conduct during [the] accident constituted a failure to use due care"; and that he was guilty of the offense. Konjaric did not specifically admit that he was driving over the speed limit when his car struck the other vehicle.

The district court accepted his plea. The court then sentenced him to 90 days in jail stayed for one year with probation during that time and ordered that either he or his automobile liability insurer pay for the \$6,473.20 in damages that he caused to the other vehicle. Konjaric now directly appeals to this court, asking us to order the district court to allow him to withdraw his plea.

DECISION

Konjaric argues that he should be allowed to withdraw his guilty plea because it was inaccurate. There is no absolute right to withdraw a guilty plea after it has been entered. *Perkins v. State*, 559 N.W.2d 678, 685 (Minn. 1997). However, “a court must allow withdrawal of a guilty plea if withdrawal is necessary to correct a ‘manifest injustice.’” *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010) (quoting Minn. R. Crim. P. 15.05, subd. 1). A manifest injustice occurs if a plea is not valid. *Id.* at 94. Whether a guilty plea is valid is a question of law that this court reviews de novo. *Id.*

A constitutionally valid plea must be voluntary, intelligent, and accurate. *Id.* To be accurate, a guilty plea must be supported by a proper factual basis. *Id.* A proper factual basis requires that there be “sufficient facts on the record to support a conclusion that defendant’s conduct falls within the charge to which he desires to plead guilty.” *Kelsey v. State*, 214 N.W.2d 236, 237 (Minn. 1974); *see also Nelson v. State*, 880 N.W.2d 852, 859 (Minn. 2016) (“The factual-basis requirement is satisfied if the record contains a showing that there is credible evidence available which would support a jury verdict that defendant is guilty.” (quotation omitted)). Typically, the district court may establish the factual basis by asking the defendant to express in his own words what happened. *Raleigh*, 778 N.W.2d

at 94. But a defendant may not withdraw his plea simply because the district court “failed to elicit proper responses if the record contains sufficient evidence to support the conviction.” *Id.*

Konjaric makes two arguments to support his claim that his guilty plea was factually inadequate. First, he argues that “speeding” is an essential element of a conviction for failure to drive with due care under Minn. Stat. § 169.14, subd. 1, and that because he never admitted to “speeding,” the factual basis for his plea was inadequate. Second, he argues that the factual basis of his plea was insufficient even if speeding is not an element of failure to drive with due care.

The full language of Minn. Stat. § 169.14, subd. 1, is as follows:

Subdivision 1. Duty to drive with due care. No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions. Every driver is responsible for becoming and remaining aware of the actual and potential hazards then existing on the highway and must use due care in operating a vehicle. In every event speed shall be so restricted as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the highway in compliance with legal requirements and the duty of all persons to use due care.

Konjaric first claims that the plain language of the statute unambiguously requires that a defendant convicted under Minn. Stat. § 169.14, subd. 1 must be “speeding.” In other words, appellant asserts that unless a defendant is violating a statutory speed limit, a defendant cannot be convicted of violating the duty-to-drive-with-due-care statute. He draws support for this from the fact that the subdivision explicitly references speeding in subdivision one and from the fact that Minn. Stat. § 169.14 is titled “Speed Limits, Zones;

Radar.” Finally, he references a number of cases where courts referenced Minn. Stat. § 169.14, subd. 1, in the context of individuals breaking posted speed limits.

These arguments are meritless. The plain language of the statute does not require a predicate finding that a defendant drove in excess of a posted or statutory speed limit; it requires that he or she fail to use “due care” while driving. Minn. Stat. § 169.14, subd. 1. Subdivision one does not address statutory speed limits, but it imposes an independent “due care” requirement. As the state points out, subdivision one focuses on the reasonableness of speed, given the driving conditions and hazards, that is commensurate with due care, while it is subdivision two that concerns itself with specific statutory “speed limits.” *Compare* Minn. Stat. § 169.14, subd. 1, *with* Minn. Stat. § 169.14, subd. 2 (2016). *See also* *Caraco Pharm. Labs., Ltd. v. Novo Nordisk A/S*, 566 U.S. 399, 412, 132 S. Ct. 1670, 1680 (2012) (noting that courts are to consider questions of statutory interpretation by looking at the context of the entire statute).

While Konjaric is correct that both the title of the statute and subdivision one reference speeding, that is not cause to disregard the plain language of the remainder of the statute. *See Lee v. Fresenius Med. Care, Inc.*, 741 N.W.2d 117, 123 (Minn. 2007) (“[We] will not disregard a statute’s clear language to pursue the spirit of the law.”). And while Konjaric cites to cases where courts have referenced Minn. Stat. § 169.14 in the context of speeding, he has failed to point to a single case where a court has held that subdivision one can *only* be violated by breaking a statutory speed limit.

We therefore conclude that a defendant need not violate a statutory speed limit to establish a violation of Minn. Stat. § 169.14, subd. 1, because the plain language of the statute does not contain that requirement.

Konjaric's second argument is that if speeding is not an element, the factual basis of his plea was still insufficient. He argues that: (1) his "conduct is not prohibited by any Minnesota law"; (2) the only potential wrongdoing that he admitted to was entering an intersection when the traffic light was showing yellow, which is not illegal, and because this behavior is legal under one statute, it cannot be criminalized under another statute; and (3) if this conduct constituted a failure to use due care, the statute would be constitutionally void for vagueness. The state counters that the factual basis for the plea was sufficient.¹

Konjaric's second argument is also meritless. He admitted on the record that when he went through the intersection it was "a close call" as to whether the light was yellow or red; that another vehicle was "beginning to turn or go through the intersection" when he entered the intersection; that his vehicle struck that vehicle; that going through an intersection when the light is a close call between yellow and red is dangerous because "other drivers might not be expecting [him] to be coming through the intersection"; that driving in a dangerous way does not constitute "due care"; and that his driving conduct "during this accident constituted a failure to use due care."

¹ Throughout the state's brief it refers to the Department of Public Safety Crash Report. Appellant also refers to the crash report. But this report was never filed in the district court and was never introduced as an exhibit. Therefore, it is not part of the appellate record for this case, and we will not consider the contents of the report. Minn. R. Civ. App. P. 110.01 ("The documents filed in the trial court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases.").

Minn. Stat. § 169.14, subd. 1, requires that drivers use due care to avoid “actual and potential hazards then existing.” It also requires that, “In every event speed shall be so restricted as may be necessary to avoid colliding with any . . . vehicle.” Konjaric’s own words establish that he struck another vehicle with his car by dangerously going through a light at a moment other cars were not expecting him to enter the intersection. This failure to drive with due care is the exact type of behavior that the plain language of the statute expressly prohibits. We conclude that the factual basis established at Konjaric’s allocution is sufficient to constitute a failure to drive with due care in violation of Minn. Stat. § 169.14, subd. 1.

There is also no merit to Konjaric’s contention that because Minnesota law “does not prohibit a driver from entering an intersection during a yellow light,” he cannot be punished for driving through an intersection when facing a yellow light. The entire point of Minn. Stat. § 169.14 is to cover a multitude of situations where different subdivisions restrict driving behavior in different circumstances. For example, normally drivers must drive at or under posted speed limits. Minn. Stat. § 169.14, subd. 2(a) (2018). When drivers are passing another vehicle on a two-lane highway, and certain other circumstances are present, the speed limit is increased by ten miles per hour. Minn. Stat. § 169.14, subd. 2a (2018). Similarly, while drivers are normally free to go through yellow lights, they cannot when doing so constitutes a failure to use due care. Konjaric’s claim that he cannot be punished under one statute that specifically prohibits what he did when his actions were generally permitted under another is therefore baseless.

Finally, Konjaric makes a cursory claim that if the factual basis for his guilty plea was found to be sufficient, then Minn. Stat. § 169.14, subd. 1, would be void for vagueness because of a lack of clarity regarding what behavior is prohibited. “The void-for-vagueness doctrine requires that a legislative enactment define a criminal offense with sufficient definiteness and certainty that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.” *State v. Campbell*, 756 N.W.2d 263, 269 (Minn. App. 2008), *review denied* (Minn. Dec. 23, 2008) (quotations omitted).

This argument is similarly meritless; the behavior that subdivision one prohibits is clear and does not encourage arbitrary enforcement. It requires that, regardless of other traffic laws, drivers use due care to be aware of hazards and avoid collisions. Minn. Stat. § 169.14, subd. 1. Just as this requires driving slower than otherwise legal posted speed limits at times, it also requires that drivers use due care generally when driving, including when passing through intersections. *See id.* Konjaric’s claim that Minn. Stat. § 169.14, subd. 1, is void for vagueness therefore fails.

A conviction for failure to drive with due care, in violation of Minn. Stat. § 169.14, subd. 1, does not require that a defendant be driving in excess of a posted speed limit. Furthermore, because a defendant is not required to violate some other statute in order to establish a violation of Minn. Stat. § 169.14, subd. 1, and the statute is not void for vagueness, the factual basis for Konjaric’s plea was sufficient. We therefore sustain Konjaric’s conviction because we find no basis to allow him to withdraw his guilty plea.

Affirmed.