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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0766**

State of Minnesota,
Respondent,

vs.

Omar Kwabena Walford,
Appellant.

**Filed May 13, 2019
Affirmed
Johnson, Judge**

Hennepin County District Court
File No. 27-CR-16-14016

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

Michael O. Freeman, Hennepin County Attorney, Minneapolis, Minnesota (for
respondent)

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

Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Jesson,
Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

In 2015, Omar Kwabena Walford rented a 2014 Mitsubishi Lancer from the Hertz
car rental company and never returned it. In 2016, he pleaded guilty to theft of leased or

rented personal property. On appeal, he argues that his guilty plea is invalid on the ground that there is an inadequate factual basis. We conclude that Walford's guilty plea has an adequate factual basis and, therefore, affirm.

FACTS

In May 2016, the state charged Walford with theft of leased or rented personal property, in violation of Minn. Stat. § 609.52, subd. 2(a)(9)(iii) (2014). The complaint alleged as follows: On October 15, 2015, Walford rented a car for one day from the Hertz retail location at the Minneapolis-St. Paul International Airport. Walford did not return the car the next day and did not extend the term of the rental. Hertz employees tried to contact Walford at the telephone numbers and e-mail address he had provided, but they were unsuccessful. In November 2015, Hertz sent Walford a letter by certified mail in which it demanded that he return the car. Walford signed a receipt for the certified letter but did not return the car or contact Hertz. In December 2015, law-enforcement officers recovered the car at the address Walford had provided to Hertz. By that time, Walford had accrued \$3,739 in rental charges.

In November 2016, Walford and the state entered into a plea agreement. Walford agreed to plead guilty, and the state agreed to request a sentence of 19 months of imprisonment with execution stayed and three years of probation, and the state also agreed to dismiss another theft charge. At the plea hearing, Walford pleaded guilty pursuant to the agreement after acknowledging that he had had an opportunity to consult with his attorney and did not have any questions.

In January 2018, before sentencing, Walford moved to withdraw his guilty plea. The district court denied the motion in February 2018 in an eight-page order. At sentencing, the district court imposed a sentence consistent with the terms of the plea agreement. But at Walford's request, the district court executed the sentence and committed him to the commissioner of corrections. Walford appeals.

D E C I S I O N

Walford argues that his guilty plea is invalid. He does not challenge the district court's denial of his motion to withdraw the plea. Rather, he contends that the circumstances surrounding his guilty plea do not satisfy the requirements of a constitutionally valid plea. A criminal offender may challenge the validity of a guilty plea on direct appeal without regard for any prior motion to withdraw the plea. *State v. Iverson*, 664 N.W.2d 346, 350 (Minn. 2003); *Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989).

"To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent." *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). If a guilty plea does not meet all three of these requirements, it is invalid. *State v. Theis*, 742 N.W.2d 643, 650 (Minn. 2007). "A defendant bears the burden of showing his plea was invalid." *Raleigh*, 778 N.W.2d at 94. In determining whether a guilty plea is invalid, this court applies a *de novo* standard of review. *State v. Mikulak*, 903 N.W.2d 600, 603 (Minn. 2017).

In this case, Walford argues that his guilty plea is invalid on the ground that the accuracy requirement is not satisfied. "The main purpose of the accuracy requirement is to protect a defendant from pleading guilty to a more serious offense than he could be convicted of were he to insist on his right to trial." *State v. Trott*, 338 N.W.2d 248, 251

(Minn. 1983). To satisfy the accuracy requirement, a guilty plea must “be established on a proper factual basis.” *Raleigh*, 778 N.W.2d at 94. A proper factual basis exists if there are “sufficient facts on the record to support a conclusion that defendant’s conduct falls within the charge to which he desires to plead guilty.” *Iverson*, 664 N.W.2d at 349 (quoting *Kelsey v. State*, 214 N.W.2d 236, 237 (Minn. 1974)). Stated somewhat differently, a proper factual basis exists if “the record contains a showing that there is credible evidence available which would support a jury verdict that defendant is guilty of at least as great a crime as that to which he pled guilty.” *Nelson v. State*, 880 N.W.2d 852, 859 (Minn. 2016) (quoting *State v. Genereux*, 272 N.W.2d 33, 34 (Minn. 1978)). A proper factual basis exists if a defendant admits the necessary facts at the plea hearing or if the necessary facts may be inferred from the admitted facts. *See id.* at 859-61. “The factual basis of a plea is inadequate when the defendant makes statements that negate an essential element of the charged crime because such statements are inconsistent with a plea of guilty.” *Iverson*, 664 N.W.2d at 350.

To determine whether Walford’s guilty plea is supported by a proper factual basis, we must identify the essential elements of the offense of conviction. A person is guilty of theft of leased or rented personal property if he: (1) leases or rents the property “under a written instrument”; (2) “does not return the property to the lessor at the end of the lease or rental term, plus agreed-upon extensions”; and (3) acts “with intent to wrongfully deprive the lessor of possession of the property.” Minn. Stat. § 609.52, subd. 2(a)(9)(iii); *see also* 10 Minn. Dist. Judges Ass’n, *Minnesota Practice—Jury Instruction Guides—Criminal* § 16.16, at 774-75 (6th ed. 2015).

Walford first contends that there is an inadequate factual basis for his plea on the ground that the record does not establish the first element, that he rented the car from Hertz “under a written instrument.” See Minn. Stat. § 609.52, subd. 2(a)(9)(iii). In response, the state acknowledges that the factual record does not include a copy of a written rental agreement or any reference to a written rental agreement. But the state contends that the factual basis is nonetheless proper because Walford admitted that he entered into an agreement with Hertz and because it is common knowledge that large, nationwide car-rental companies such as Hertz routinely rent vehicles to members of the public pursuant to written agreements and would not do so pursuant to an oral agreement.

The factual basis of a guilty plea may be not only the facts that are admitted by a defendant or otherwise present in the record but also the inferences that may be drawn from those facts. As the supreme court has explained, “‘It is well established that before a plea of guilty can be accepted, the trial judge must make certain that facts exist *from which the defendant’s guilt of the crime charged can be reasonably inferred.*’” *Nelson*, 880 N.W.2d at 861 (emphasis added) (quoting *State v. Neumann*, 262 N.W.2d 426, 430 (Minn. 1978)). Walford admitted at the plea hearing that he rented a car from Hertz and that there was a “contract.” The primary lay definition of the word “contract” is “[a]n agreement between two or more parties, especially one that is written and enforceable by law” or “[t]he writing or document containing such an agreement.” *The American Heritage Dictionary of the English Language* 409 (3d ed. 1996). Accordingly, it is reasonable to interpret Walford’s admission to mean that he rented the car pursuant to a written contract. Walford does not

contend that a written contract is not a “written instrument.” Thus, the factual record supports the inference that Walford rented the car “under a written instrument.”

Walford also contends that there is an inadequate factual basis for his plea on the ground that the record does not establish the third element, that he “inten[ded] to wrongfully deprive [Hertz] of possession of the property.” See Minn. Stat. § 609.52, subd. 2(a)(9)(iii). At the plea hearing, Walford admitted that he rented a car from Hertz and that he never returned it. Walford’s attorney asked him whether he “didn’t have permission to take it beyond the contract” but “did so anyway.” Walford answered, “Correct.” “Intent is generally proved by inferences drawn from a person’s words or actions in light of all the surrounding circumstances.” *Nelson*, 880 N.W.2d at 860 (quotation omitted). In this case, Walford’s words and actions demonstrate that he knew that he was required to return the rental car but did not do so. Thus, the factual record supports the inference that Walford intended to deprive Hertz of possession of the car.

Walford further contends that the factual basis of his plea is inadequate on the ground that it consists mostly of his responses to his attorney’s leading questions. The supreme court has “repeatedly discouraged the use of leading questions to establish a factual basis.” *Id.* The supreme court has encouraged district courts to establish a factual basis for a guilty plea “by asking the defendant to express in his own words what happened.” *Raleigh*, 778 N.W.2d at 94. But the supreme court has “never held that the use of leading questions automatically invalidates a guilty plea.” *Nelson*, 880 N.W.2d at 860. In this case, the use of leading questions did not interfere with the making of a record that is an adequate basis for Walford’s guilty plea.

In sum, Walford's guilty plea is not invalid.

Affirmed.