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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0950**

State of Minnesota,
Respondent,

vs.

Travers Davel McDaniel,
Appellant.

**Filed March 4, 2019
Affirmed
Reilly, Judge**

Olmsted County District Court
File No. 55-CR-17-6178

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

Mark A. Ostrem, Olmsted County Attorney, Jennifer D. Plante, Senior Assistant County Attorney, Rochester, Minnesota (for respondent)

Catheryn Middlebrook, Chief Appellate Public Defender, Andrea Barts, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Reilly, Judge; and
Bratvold, Judge.

UNPUBLISHED OPINION

REILLY, Judge

Appellant challenges the accuracy of his plea to a felon-in-possession-of-a-firearm charge pursuant to Minn. Stat. § 624.713, subd. 1(2) (2016). Because we determine that the plea is accurate, and therefore valid, we affirm.

FACTS

On September 12, 2017, appellant Travers McDaniel and his girlfriend were in their car which stalled in the middle of the road. McDaniel's girlfriend flagged down police officers. While the officers were directing traffic around the stalled vehicle, McDaniel entered the driver's seat of a police squad car. While officers attempted to physically remove McDaniel from the squad car, a civilian attempted to block the squad car with his own car in order to assist the officers. McDaniel resisted the officers, drove the squad car over the curb, hit the civilian car, and fled the scene in the squad car. The squad car contained a rifle located on the ceiling of the front-passenger compartment. Officers pursued McDaniel and shortly thereafter discovered the abandoned squad car. The squad car's rifle had been moved from its original location on the ceiling to the passenger seat. With the help of the K9 unit, officers found McDaniel nearby, lying down on the ground. McDaniel then continued to flee on foot. The officers again used the K9 unit to finally apprehend him.

Based upon these events, the state charged McDaniel with felon in possession of a firearm, theft of a firearm, theft of a motor vehicle, fleeing police in a motor vehicle, fleeing on foot (misdemeanor), and third-degree test refusal (gross misdemeanor). At a hearing

on November 28, 2017, McDaniel planned to plead guilty to the felon-in-possession-of-a-firearm offense in exchange for dismissal of the other charges. Because McDaniel planned to argue for departure, the court warned that departure was uncommon and that McDaniel carried the burden to show that substantial and compelling reasons existed for the court to depart at sentencing. When the court began to question McDaniel regarding the waiver of his rights, McDaniel changed his mind. The court granted a recess to give McDaniel time to speak to his attorney. After the recess, McDaniel again indicated that he wished to plead guilty, however, he hesitated during the plea colloquy. The court rescheduled the case to that afternoon to allow McDaniel to have additional time to think about his decision. After the matter was reconvened, the following exchange occurred on the record:

DEFENSE COUNSEL: On that day you—did you end up in possession of a firearm?

MCDANIEL: I possessed a vehicle that there was a firearm inside of; yes.

DEFENSE COUNSEL: And you had access to that firearm while you were inside that vehicle; correct?

MCDANIEL: Correct.

Then the state questioned McDaniel on the record:

STATE: Mr. McDaniel, you were sit—you were seated in the driver's seat of that vehicle; correct?

MCDANIEL: Correct.

STATE: And the firearm was located in the passenger seat of the vehicle; is that correct?

MCDANIEL: I do not know where it was located, I only know that it was somewhere inside the vehicle.

STATE: Okay. You wouldn't disagree that it was located in the passenger compartment of the vehicle; correct?

MCDANIEL: No.

The court explained to McDaniel that he should not plead guilty if he could not testify to a factual basis for the offense. Additionally, the court explained that it was unwilling to take a plea from “someone that’s not willing to admit that they violated the law.” The court then advanced McDaniel’s case and scheduled a pretrial.

At the pretrial hearing, McDaniel again wished to take advantage of the state’s plea agreement offer. In exchange for McDaniel pleading guilty to the felon-in-possession charge, the state agreed to dismiss the remaining charges. After reexamining McDaniel on the rights he was waiving by pleading guilty, McDaniel pleaded guilty to the felon-in-possession-of-a-firearm charge. The following factual basis was elicited during McDaniel’s felon-in-possession plea:

DEFENSE COUNSEL: Mr. McDaniel, you have a controlled substance conviction from 2014; correct?¹

MCDANIEL: Yes.

DEFENSE COUNSEL: And you are a convicted felon?

MCDANIEL: Yes.

DEFENSE COUNSEL: And you do not—you do not have the right to possess a firearm; correct?

MCDANIEL: No.

DEFENSE COUNSEL: Or ammunition?

MCDANIEL: No.

DEFENSE COUNSEL: On September 12th of 2017 you had the chance that you were in a motor vehicle; correct?

MCDANIEL: Yes.

DEFENSE COUNSEL: A police car?

MCDANIEL: Yes.

DEFENSE COUNSEL: And you were driving the police car?

MCDANIEL: Yes.

DEFENSE COUNSEL: And there was some ammunition in the police car?

¹ Minn. Stat. § 62A.712, subd. 5 (2016) defines crimes of violence to include chapter 152 controlled-substance crimes. Therefore, the factual basis for McDaniel’s ineligibility to possess a firearm was properly laid.

MCDANIEL: Yes.
DEFENSE COUNSEL: And a firearm?
MCDANIEL: Yes.
DEFENSE COUNSEL: And you knew that there was an ammunition and some fire—
MCDANIEL: Yes.
DEFENSE COUNSEL: —or a firearm and some ammunition in the police car?
MCDANIEL: Yes.
DEFENSE COUNSEL: You had access to these things?
MCDANIEL: Yes.
DEFENSE COUNSEL: And so you would agree that you were in possession of both the firearm and the ammunition since you had access to it in the police car—
MCDANIEL: Yes.
DEFENSE COUNSEL: and you knew about those items.
MCDANIEL: Yes.

The court then asked McDaniel the following questions:

COURT: In fact, Mr. McDaniel, those firearms in the police cars are usually mounted like right either behind your head or down right between the two seats; right?
MCDANIEL: Yes.
COURT: So you could see it when you got into the car.
MCDANIEL: Yes.
COURT: And you knew that you could get ready access to it because it was — it was there and readily accessible to a police officer, and certainly now that you're in the car, readily accessible to you?
MCDANIEL: Yes.

The court found that McDaniel's testimony provided a sufficient factual basis and accepted McDaniel's guilty plea. McDaniel now appeals, asserting that he should be allowed to withdraw his guilty plea because it was inaccurate and therefore invalid.

DECISION

I. Standard of Review

While “[a] defendant has no absolute right to withdraw a guilty plea after entering it” withdrawal must be allowed “to correct a manifest injustice.” *Taylor v. State*, 887 N.W.2d 821, 823 (Minn. 2016) (quotation omitted); Minn. R. Crim. P. 15.05, subd. 1. A guilty plea is valid if it is intelligent, voluntary, and accurate. *Taylor*, 887 N.W.2d at 823. A plea is invalid and constitutes a manifest injustice if it does not meet those three requirements. *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). The defendant bears the burden of proving that the plea was invalid. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). On appeal, this court reviews the validity of a guilty plea de novo. *Id.*

II. Accuracy of Plea

McDaniel challenges only the accuracy of his plea. “The accuracy requirement protects a defendant from pleading guilty to a more serious offense than that for which he could be convicted if he insisted on his right to trial.” *Id.* For a guilty plea to be accurate, it must be supported by a proper factual basis, with “sufficient facts on the record to support a conclusion that defendant’s conduct falls within the charge to which he desires to plead guilty.” *State v. Iverson*, 664 N.W.2d 346, 349-50 (Minn. 2003) (quotation omitted). The factual basis of a plea is inadequate if a defendant makes statements that negate an essential element of the charged offense. *Id.* at 350. This court reviews the sufficiency of the factual basis for the plea from the record made when the defendant entered the plea. *State v. Lillemo*, 410 N.W.2d 66, 69 (Minn. App. 1987).

a. The Plea Colloquy Sufficiently Establishes the Elements of the Crime

McDaniel argues that the plea was inaccurate because he did not admit that he ever possessed the firearm/ammunition and because he did not admit that he ever touched the firearm/ammunition or knowingly exercised dominion and control over them. According to Minn. Stat. § 624.713, subd. 1(2) (2016), in order to support the felon-in-possession charge the state was required to prove that (1) the defendant knowingly possessed a firearm or consciously exercised dominion and control over it; (2) the defendant had been convicted of a crime of violence; and (3) the defendant's act took place on or about September 12, 2017 in Olmstead County. McDaniel asserts that the factual basis must include the elements necessary to satisfy constructive possession, which is established by either (1) proof that the item was in a place under the defendant's exclusive control to which other people did not normally have access or (2) proof of a strong probability, inferable from other evidence, that the defendant was at the time consciously exercising dominion and control over it, even if the item was in a place to which others had access. *State v. Florine*, 226 N.W.2d 609, 611 (Minn. 1975). However, we note that the state was required to prove that the defendant "knowingly possessed a firearm" or "consciously or knowingly exercised dominion and control over it." *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017). We determine that the factual basis is sufficient to support that McDaniel knowingly possessed the firearm. At the plea hearing, McDaniel admitted that he had knowledge of the firearm and ammunition in the police squad car and that he was in possession of both items.

McDaniel also argues that even though he knew about the firearm, it does not mean that he possessed it. *State v. Smith*, 749 N.W.2d 88, 96 (Minn. App. 2008) (noting that “it is not illegal for [a prohibited person] to be in the presence of firearms – as long as he does not possess them”). However, McDaniel was not simply in the “presence of firearms” in this case. Here, McDaniel was fleeing the police in the police squad car that he had stolen. The firearm, located in the upper compartment on the passenger side of the squad car, was clearly visible and accessible to McDaniel.

b. Leading Questions Do Not Render a Plea Inaccurate

McDaniel also argues that the plea was inaccurate because the factual basis was established through the use of leading questions, rather than through McDaniel’s own testimony. McDaniel is correct that his admissions consisted exclusively of leading questions by the attorneys and single-word answers by himself. And the supreme court has “cautioned against the use of exclusively leading questions to establish a proper factual basis for a guilty plea.” *Lussier v. State*, 821 N.W.2d 581, 589 (Minn. 2012) (citations omitted); *see also Raleigh*, 778 N.W.2d at 94. Nevertheless, “[a] defendant may not withdraw his plea simply because the court failed to elicit proper responses if the record contains sufficient evidence to support the conviction.” *Raleigh*, 778 N.W.2d at 94; *see also Barnslater v. State*, 805 N.W.2d 910, 914 (Minn. App. 2011) (“The use of leading questions is therefore disfavored, but it does not by itself invalidate a guilty plea.”). The court may “look to the whole record, beyond what the defendant said, when evaluating the quality of a guilty plea’s factual basis.” *Barnslater*, 805 N.W.2d at 914. By pleading guilty, a defendant “in effect judicially admit[s] the allegations contained in the complaint.”

State v. Trott, 338 N.W.2d 248, 252 (Minn. 1983). “The complaint may provide a factual basis for a defendant’s plea, and [reviewing courts] are permitted to examine the complaint to assess whether a defendant’s plea was accurate.” *Sanchez v. State*, 868 N.W.2d 282, 289 (Minn. App. 2015), *aff’d*, 890 N.W.2d 716 (Minn. 2017). Here, the complaint states that McDaniel stole a police squad car. McDaniel fled in the squad car, disregarded police, hit a civilian vehicle, and damaged police property. The squad car was found by police with the firearm moved from its holding place to the passenger seat. Because the record contains sufficient evidence to support his conviction, McDaniel’s argument is unavailing.

c. No Statements to Negate Possession Were Made During the Plea

McDaniel argues that statements made during the November hearing negate elements of the crime. If the defendant’s plea colloquy negates an essential element of the charged crime, the factual basis is inadequate. *Iverson*, 664 N.W.2d at 350. While it is true that during the November hearing McDaniel made statements that appeared to negate his knowledge of the firearm inside of the squad car, the district court stopped those proceedings in order to give McDaniel time to think about his decision to plead guilty. During the rescheduled December pretrial hearing—one month later—McDaniel did not say anything that would negate the possession element of the crime. In fact, as discussed above, McDaniel agreed that he was in possession of the firearm. Therefore, McDaniel’s argument that he said things to negate an element of the crime is without merit.

Based upon our review of the plea colloquy, in conjunction with the facts in the complaint, we determine that McDaniel's plea to felon-in-possession is accurate and valid.

Affirmed.