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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1407**

State of Minnesota,
Respondent,

vs.

Nicholas Mark Peterson,
Appellant.

**Filed July 1, 2019
Affirmed
Hooten, Judge**

Crow Wing County District Court
File No. 18-CR-18-1344

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

Donald F. Ryan, Crow Wing County Attorney, Brainerd, Minnesota; and

Scott A. Hersey, Special Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Hooten, Judge; and Reilly,
Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

Appellant challenges his convictions for fleeing a peace officer in a motor vehicle and fourth-degree assault of a peace officer, arguing that he should be allowed to withdraw his guilty plea. We affirm.

FACTS

A little after midnight in early April 2018, Officer Halverson saw a vehicle parked in the corner of a Walmart parking lot. The officer parked his squad car behind the vehicle and began speaking with one of the passengers who had just exited the vehicle. Officer Halverson then approached the vehicle, and as he did so, the driver put his hands over his face and attempted to turn his body away. The officer recognized the driver from prior contacts as appellant Nicholas Peterson and knew that he had a warrant out for his arrest. Officer Halverson asked Peterson his name, and Peterson said it was Jacob. While the officer was speaking with dispatch, Peterson rolled up his window, locked the door, and backed his vehicle up. At this point, Officer Halverson activated the emergency lights on his squad car, drew his pistol, and commanded Peterson to turn off the vehicle. Peterson accelerated away from Officer Halverson.

Sergeant Timm arrived in a squad car just as Peterson was fleeing through the parking lot and was able to use his squad car to spin Peterson's vehicle around. Peterson exited his vehicle and was brought to the ground by several officers. After some resistance on Peterson's part, the officers were able to handcuff him. Peterson continued to resist, and while the officers were searching his person, Peterson kicked one of them in the groin.

Peterson was charged with one count of fleeing a peace officer in a motor vehicle, one count of obstructing legal process by interfering with a peace officer, and one count of fourth-degree assault of a peace officer. Peterson filed a pro se motion to dismiss the charges against him. Though he was initially represented by a public defender, Peterson requested to proceed as a pro se defendant, and the district court granted his request. While resolving Peterson's request to represent himself, the district court addressed Peterson's motion to dismiss saying, in part, "I kind of considered that maybe that you're challenging whether or not you were appropriately seized." Peterson confirmed that this was his argument. And the district court agreed to hear the motion to dismiss at a later date.

On the date of the hearing for Peterson's motion to dismiss, rather than argue his motion to dismiss, Peterson accepted the state's plea offer, the terms of which were that he would plead guilty to the fleeing and assault charges, receive a stayed sentence, and enter treatment. The district court accepted Peterson's guilty plea and sentenced him accordingly. This appeal follows.

DECISION

Peterson argues that he should be allowed to withdraw his plea. A defendant must be allowed to withdraw a guilty plea at any time if it is necessary to correct a manifest injustice. Minn. R. Crim. P. 15.05, subd. 1. "A manifest injustice exists if a guilty plea is not valid." *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). A guilty plea must be accurate, voluntary, and intelligent in order to be valid. *Id.* The validity of a guilty plea is reviewed de novo. *Id.* Peterson specifically contends that his guilty plea was invalid because it was inaccurate. "To be accurate, a plea must be established on a proper factual

basis.” *Id.* Establishing a factual basis is typically accomplished by asking the defendant to explain what happened. *Id.* But “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.” *Id.*

Peterson pleaded guilty to two charges. He asserts that the factual basis was inadequate for both. The first charge was for fleeing a peace officer in a motor vehicle. Minn. Stat. § 609.487, subd. 3 (2016). The statute reads: “Whoever by means of a motor vehicle flees or attempts to flee a peace officer who is acting in the *lawful discharge of an official duty*, and the perpetrator knows or should reasonably know the same to be a peace officer, is guilty of a felony” *Id.* (emphasis added).

Peterson argues that because he did not specifically admit that Officer Halverson was acting in the lawful discharge of an official duty, the factual basis did not support this element. It is true that Peterson did not make this specific admission during his plea hearing. But he admitted that he knew the man approaching him was a police officer, that the emergency lights on the officer’s vehicle were on, and that the police officer wanted him to stop. Based upon these admissions, it can be reasonably inferred that Officer Halverson was acting in the lawful discharge of his official duties.

Moreover, caselaw makes it clear that a guilty plea “may be supplemented by other evidence to establish the factual basis for [the] plea.” *Lussier v. State*, 821 N.W.2d 581, 589 (Minn. 2012). This other evidence can include the criminal complaint because 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). Peterson admitted at a

prior hearing that he had received a copy of the complaint, and at his plea hearing, he admitted to having received the discovery materials from the state and going through them. Peterson also agreed that he “fully [understood] the facts that the State would” present at trial to prove his guilt. In the statement of probable cause in the criminal complaint, it is clear that Officer Halverson was “on patrol” at the time of the incident. Accordingly, we are satisfied that Peterson “judicially admitted,” *id.*, the lawful-discharge-of-an-official-duty element and that it was supported by the factual basis for the guilty plea.

Peterson also argues that the factual basis was inadequate because, by challenging the constitutionality of Officer Halverson’s stop, he was essentially contradicting an element of the crime—i.e., that Officer Halverson was in the *lawful* discharge of a duty. For this argument, Peterson relies on caselaw indicating that a factual basis 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.” *State v. Iverson*, 664 N.W.2d 346, 350 (Minn. 2003). *Iverson* based this statement of law on *Chapman v. State*, 162 N.W.2d 698 (Minn. 1968). And *Chapman* makes it clear that these “statements that negate” are statements made by a defendant at the time he pleaded guilty. See 162 N.W.2d at 703 (explaining that plea withdrawal is allowed when “[s]tatements made by the defendant at the time his plea was interposed negated the existence of an essential element of the crime charged”).

But Peterson’s challenge to the constitutionality of the stop was made prior to the hearing during which he pleaded guilty, so it did not come during the guilty plea and therefore did not negate an essential element of the crime. Moreover, at the plea hearing,

the district court specifically asked Peterson, “Do you understand that by accepting this plea agreement you’re waiving your right to omnibus hearings” on the constitutionality of the stop. Peterson agreed and therefore waived the argument. Thus, he did not “negate an essential element of the charged crime.” *Iverson*, 664 N.W.2d at 350.

Peterson also challenges the factual basis for the charge of fourth-degree assault of a peace officer. Minn. Stat. § 609.2231, subd. 1 (2016). That statute criminalizes assaulting a peace officer, and a peace officer is defined as “a person who is licensed under section 626.845, subdivision 1, and *effecting a lawful arrest or executing any other duty imposed by law.*” *Id.* (emphasis added). As with the fleeing-an-officer charge, Peterson argues that the factual basis did not support the lawfulness element of the charge because he did not specifically admit to it. But, at the plea hearing, Peterson agreed that when he was stopped after fleeing from Officer Halverson, he “fought or struggled” with officers before kicking one in the groin. So it can be inferred that the assaulted officer was helping to conduct a lawful arrest following Peterson’s attempt to flee. Moreover, the probable cause statement in the criminal complaint makes it clear that the officer who was assaulted was helping perform a search following an arrest when Peterson kicked him in the groin. We are also satisfied with the adequacy of the factual basis on this element.

Because the factual bases are adequate for both charges, we conclude that Peterson’s guilty plea was accurate and valid.

Affirmed.