

IN THE COURT OF APPEALS OF IOWA

No. 17-0380
Filed November 22, 2017

STATE OF IOWA,
Plaintiff-Appellee,

vs.

QUINTIN D. CLEMONS,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Mark J. Smith and Paul L. Macek, Judges.

Quintin Clemons appeals after pleading guilty, challenging the factual basis for his felony-eluding conviction. **SENTENCES VACATED AND REMANDED FOR FURTHER PROCEEDINGS.**

Mark C. Smith, Appellate Defender, and Shellie L. Knipfer, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, and Sheryl Soich, Assistant Attorney General, for appellee.

Considered by Danilson, C.J., and Doyle and Mullins, JJ.

DOYLE, Judge.

Quintin Clemons appeals following his guilty plea to operating without owner's consent, felony eluding, and trafficking in stolen weapons. Clemons claims his trial counsel was ineffective in permitting him to plead guilty to felony eluding when the record did not support a factual basis for the charge. Because Clemons specifically denied an element of that offense at the plea hearing, the State did not establish a factual basis for the plea, and Clemons's trial counsel was therefore ineffective in permitting him to plead guilty. We therefore vacate his sentences and remand for further proceedings.

I. Background Facts and Proceedings.

On July 6, 2016, Clemons was driving in excess of the posted speed limit on a city street in Davenport. As soon as police officers gave pursuit of Clemons, he sped away. At one point, Clemons was traveling ninety miles per hour in a twenty-five-miles-per-hour zone. Clemons lost control of his car, crashed it, and fled the scene. While investigating the abandoned car, officers located an Illinois ID card belonging to Clemons, live ammunition, a .45 caliber pistol, and marijuana. Security camera video shows Clemons fleeing the scene.

The State charged Clemons with first-degree theft, felony eluding, trafficking in stolen weapons, carrying weapons, felon in possession of a firearm, and possession of marijuana. Pursuant to a written plea agreement, Clemons pled guilty to operating without owner's consent, felony eluding, and trafficking in stolen weapons. The State agreed to dismiss the remaining charges.

On January 18, 2017, the district court held a hearing on the plea. The court accepted Clemons's written plea of operating without owner's consent.

During the plea colloquy for the felony-eluding charge, and after explaining the elements of the offense, the court asked Clemons what he had done to commit the crime of felony eluding. After an off-the-record discussion with his plea counsel, Clemons responded that he “was drinking, riding around; and there wasn’t a marked squad car, it was unmarked; I guess [the police officer] hit his lights, and I proceeded to speed off.” The court asked if he knew it was a police officer, and Clemons responded, “Yes.” When asked if the officer turned on his siren, Clemons said, “No sir. I just seen the lights.” Clemons admitted he knew it was a squad car, that he was under the influence of alcohol at the time, and that he exceed the speed limit by twenty-five miles per hour or more. The prosecutor was asked for any other factual basis. The prosecutor stated he had watched the squad car video and it indicated the officer did turn on his siren and lights. The court asked Clemons if he had any objection to the factual statement by the prosecutor, and Clemons responded, “No objections.” The court found a factual basis for Clemons’s plea, found Clemons entered the plea knowingly and voluntarily, and accepted Clemons’s guilty plea to felony eluding.

The district court sentenced Clemons to a term not to exceed two years in prison on the operating-without-consent charge and terms of no more than five years on the eluding and trafficking charges. The court ordered Clemons to serve the eluding and trafficking sentences consecutively to each other and concurrently to the operating-without-consent sentence.

On appeal, Clemons claims his plea counsel was ineffective by allowing him to plead guilty to felony eluding when no factual basis existed in the record to support the conviction.

II. Standard of Review.

We review ineffective assistance of counsel claims de novo. See *State v. Finney*, 834 N.W.2d 46, 49 (Iowa 2013); *Everett v. State*, 789 N.W.2d 151, 159 (Iowa 2010). A de novo review applies to ineffective assistance for such claims are rooted in the Sixth Amendment to the United States Constitution. See *State v. Thorndike*, 860 N.W.2d 316, 319 (Iowa 2015). “In a criminal case, an ineffective-assistance-of-counsel claim ‘need not be raised on direct appeal from the criminal proceedings in order to preserve the claim for postconviction relief purposes.’” *Id.* (quoting Iowa Code § 814.7(1) (2016)). However, such claims may be raised on direct appeal when the record is adequate to permit a ruling. See *Finney*, 834 N.W.2d at 49; *State v. Willis*, 696 N.W.2d 20, 22 (Iowa 2005). The record here allows us to review Clemons’s ineffective-assistance claim on direct appeal.

III. Discussion.

To succeed on a claim of ineffective assistance of counsel, Clemons must demonstrate “(1) his trial counsel failed to perform an essential duty, and (2) this failure resulted in prejudice.” *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006) (quoting *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). “Where a factual basis for a charge does not exist, and trial counsel allows the defendant to plead guilty anyway, counsel has failed to perform an essential duty.” *State v. Schminkey*, 597 N.W.2d 785, 788 (Iowa 1999). In such a case, prejudice is inherent. See *id.*

Before accepting a plea of guilty, the court must determine the plea has a factual basis. See Iowa R. Crim. P. 2.8(2)(b); *State v. Sisco*, 169 N.W.2d 542, 548 (Iowa 1969). “The factual basis must be contained in the record, and the record,

as a whole, must disclose facts to satisfy all elements of the offense.” *State v. Ortiz*, 789 N.W.2d 761, 767-68. A factual basis may be determined from (1) statements of the defendant; (2) statements of the prosecutor; (3) examination of the presentence report; and (4) the minutes of evidence. See *id.* at 768; *Schminkey*, 597 N.W.2d at 788. We need only be satisfied the facts support the crime, “not necessarily that the defendant is guilty.” *State v. Keene*, 630 N.W.2d 579, 581 (Iowa 2001) (quoting 1A Charles Alan Wright, *Federal Practice and Procedure* § 174, at 199 (1999)).

Clemons pled guilty to eluding under Iowa Code section 321.279(3). This section provides a driver “eludes or attempts to elude a *marked* official law enforcement vehicle that is driven by a uniformed peace officer.” Iowa Code § 321.279(3) (emphasis added.) While using the preferred method to establish a factual basis,¹ the district court asked Clemons what actions led to the charge of felony eluding. It was at this time Clemons actively denied the law enforcement vehicle was marked; Clemons stated, “there wasn’t a marked squad car, it was unmarked.” The State did not challenge Clemons’s denial of this element at the plea hearing.

Although “[f]acts do not cease to exist because they are ignored,”² Clemons’s denial of the existence of a marked law enforcement vehicle challenges the facts necessary to satisfy the elements of felony eluding. Our court has held “it is error for the court to find that a factual basis exists when the defendant actively

¹ During the plea colloquy, “[t]he preferable method [to determine the factual basis] would be for the judge to ask the defendant, ‘What did you do?’” *State v. Williams*, 224 N.W.2d 17, 19 (Iowa 1974).

² Aldous Huxley, *Notes on Dogma*, in *Proper Studies* 205 (1927).

contests a fact constituting an element of the offense in the absence of circumstances warranting the conclusion that the defendant's protestations are 'unworthy of belief.'" *State v. Elphic*, No. 14–0600, 2015 WL 408092, at *4 (Iowa Ct. App. Jan. 28, 2015) (quoting *United States v. Culbertson*, 670 F.3d 183, 190–91 (2d Cir. 2012)), cited with approval in *State v. Perkins*, 875 N.W.2d 190, 194 (Iowa Ct. App. 2015).

The State argues Clemons's plea was valid because his statements are "unworthy of belief." In support of this argument, the State notes that Clemons knew a police officer pursued him and that the minutes of testimony establish the law enforcement vehicle was marked. We do not agree. The knowledge possessed by Clemons that, indeed, he was pursued by law enforcement does not equate to eluding a *marked* law enforcement vehicle. Further, our review of the record fails to reveal facts that support the marked status of the law enforcement vehicle. The minutes of testimony, drafted by the prosecutor and not adopted by Clemons, indicate "Officer Mayer, who was in uniform and using a marked squad car, pursued the vehicle [driven by Clemons] and activated his emergency lights and siren."³ This is a flawed factual-basis determination, as the plea colloquy never established a factual basis for the marked nature of the law enforcement

³ The minutes of testimony reference and incorporate "the attached investigative reports." With electronic filing, it is difficult to determine which documents were in fact attached to the minutes. In any event, Officer Mayer's field case report supplement, which was presumably attached to the minutes of evidence, only indicates the officer activated his emergency lights and siren. The report is devoid of any information as to whether the squad car was marked or not. We do note that Officer Mayer's affidavit, attached to a search warrant application, states Clemons's "vehicle fled at a high rate of speed from a marked police units with both lights and siren activated." This affidavit is not part of an investigative report and does not appear to have been attached to or referenced in the minutes of testimony.

vehicle. *Finney*, 834 N.W.2d at 56 (finding “conclusory statement[s] by the county attorney that he believed there was a factual basis [as] insufficient to support the plea”); see also *Ryan v. Iowa State Penitentiary*, 218 N.W.2d 616, 619 (1974).

IV. Conclusion.

“We conclude that a factual basis to support a guilty plea is so fundamental that it cannot be waived.” *Perkins*, 875 N.W.2d at 194. Because Clemons actively contested a fact constituting an element of felony eluding, Clemons’s trial counsel was ineffective in allowing him to go forward with the guilty plea. Accordingly, we vacate his sentences and remand to allow the State an opportunity to establish a factual basis. See *State v. Gines*, 844 N.W.2d 437, 442 (Iowa 2014). If the State can establish a factual basis for the charge, the district court shall resentence Clemons on all three convictions. See *id.* If the State cannot establish a factual basis, the district court should vacate all three convictions to return the State to the position it had before the parties’ plea agreement, and the State may reinstate any charges it dismissed in contemplation of the plea agreement. See *id.*

SENTENCES VACATED AND REMANDED FOR FURTHER PROCEEDINGS.