

IN THE COURT OF APPEALS OF IOWA

No. 2-097 / 11-0863
Filed February 15, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MORRIS DEAN BOUCHARD,
Defendant-Appellant.

Appeal from the Iowa District Court for Clinton County, David H. Sivright, Jr., Judge.

A defendant appeals his judgment and sentence for domestic abuse assault with a weapon, contending that his attorney was ineffective in allowing him to plead guilty to a crime for which there was no factual basis in the record.

AFFIRMED.

Mark C. Smith, State Appellate Defender, and Vidhya K. Reddy, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, Michael L. Wolf, County Attorney, and Elizabeth Srp, Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

VAITHESWARAN, P.J.

Morris Dean Bouchard pleaded guilty to domestic abuse assault with a weapon, based on an episode with his wife. See Iowa Code § 708.2A(1), (2)(c) (2009). The district court accepted the plea and entered judgment and sentence.

On appeal, Bouchard contends the plea lacked a factual basis and his trial attorney was ineffective in failing to challenge it on this ground. See Iowa R. Crim. P. 2.8(2)(b); *State v. Schminkey*, 597 N.W.2d 785, 788 (Iowa 1999) (“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.”). He does not take issue with the “assault” component of the crime. Instead, he focuses on whether “domestic abuse” was established.

“Domestic abuse” has alternate definitions. One of them requires a showing that the assault occurred “between family or household members who resided together at the time of the assault.” Iowa Code § 236.2(2)(a). Bouchard concedes that the person he was charged with assaulting was his wife and therefore a “family member,” but asserts the record lacks any indication that the two “resided together at the time of the assault.”¹

When determining whether a factual basis exists to support a guilty plea, “we consider the entire record before the district court at the guilty plea hearing, including any statements made by the defendant, facts related by the prosecutor, the minutes of testimony, and the presentence report.” *Schminkey*, 597 N.W.2d

¹ The trial information only referred to this domestic abuse definition and not to the alternate definition of assault “between separated spouses or persons divorced from each other and not residing together at the time of the assault.” See Iowa Code § 236.2(2)(b). For that reason, we do not rely on this alternate definition to establish a factual basis.

at 788. “This record, as a whole, must disclose facts to satisfy the elements of the crime.” *State v. Keene*, 630 N.W.2d 579, 581 (Iowa 2001). The State does not need to “extract a confession from the defendant.” *Id.*; see also *Schminkey*, 597 N.W.2d at 793 (Carter, J., dissenting) (suggesting that “the only practical standard” to apply in determining whether a factual basis exists is whether the record contains “indicia of a prima facie case”). But neither should the State “rely on inferences to establish a factual basis.” See *State v. Morris*, 677 N.W.2d 787, 789 (Iowa 2004) (Larson, J., dissenting).

The minutes of testimony did not specifically recite that Bouchard and his wife lived together at the time of the assault. However, the captions on the complaint and trial information included Bouchard’s address, which was the same as the address for Bouchard’s wife contained in the minutes. Additionally, according to a statement written by Bouchard’s wife, Bouchard referred to his wife’s desire for a divorce and stated, “[T]ake everything you want now because I will take a saw and cut everything down the middle.” This statement disclosed that his wife’s belongings were in the home at the time of the assault.

We conclude Bouchard’s plea to domestic abuse assault with a weapon was supported by a factual basis. Accordingly, Bouchard’s attorney was not ineffective in failing to challenge the factual basis for the plea.

AFFIRMED.