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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Du Page County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 12-DT-681
	)	
MARK A. HUETTNER,	)	Honorable
	)	Liam C. Brennan,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE BIRKETT delivered the judgment of the court.  
Justices McLaren and Hudson concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court properly denied defendant's motion to withdraw his guilty plea: the factual basis, even if erroneous on a tangential point, was sufficient to establish defendant's guilt and did not give rise to a defense; the court did not fail to consider defendant's assertion against the factual basis; and the court properly rejected defendant's testimony and found that defendant's health issues did not invalidate his plea.

¶ 2 Defendant, Mark A. Huettner, appeals from the judgment of the circuit court of Du Page County denying his motion to withdraw his guilty plea. Because the trial court did not abuse its discretion in denying the motion to withdraw the guilty plea, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged by complaint with, among other traffic offenses, one count of driving while under the influence (DUI) (625 ILCS 5/11-501(a)(1) (West 2012)) and one count of leaving the scene of an accident (625 ILCS 5/11-402(a) (West 2012)). Defendant pled guilty to both charges, and the State nol-prossed the remaining charges.

¶ 5 At the January 7, 2014, plea hearing, the trial court admonished defendant pursuant to Illinois Supreme Court Rule 402(a) (eff. July 1, 2012). In doing so, the court asked defendant if he understood that by pleading guilty there would be no trial, to which defendant answered, “Yes, [y]our [h]onor.” When asked if he understood that it would be up to the court to sentence him within the applicable range, he responded, “Yes, [y]our [h]onor.” When the court asked him if he had been promised anything, or threatened, to plead guilty, defendant answered, “No, [y]our [h]onor.” When asked if he was pleading guilty freely and voluntarily, defendant answered, “Yes, [y]our [h]onor.”

¶ 6 As a factual basis, the prosecutor stated that, if called as a witness, Officer Tinsley of the Aurora police department would testify that, on February 24, 2012, at approximately 4 p.m., defendant was involved in a traffic accident. Defendant then fled the scene without rendering aid or providing any information to the other driver. The other driver called 911 and provided defendant’s vehicle description and license plate number.

¶ 7 Officer Tinsley would further testify that, shortly after receiving a radio dispatch regarding the 911 call, he observed defendant’s vehicle, stopped the vehicle, and spoke to defendant. Officer Tinsley smelled a strong odor of an alcoholic beverage on defendant’s breath. Defendant was taken by ambulance to a local hospital and had his blood drawn. A forensic scientist would testify that defendant’s blood alcohol level was 0.25. Defendant stipulated to the factual basis.

¶ 8 The record also contained a traffic citation and complaint charging defendant with leaving the scene of a traffic accident causing vehicular damage. Attached to the citation and complaint was a written statement prepared by the arresting officer, which stated that defendant, while driving, disobeyed a stop sign, caused an accident, and fled the scene.

¶ 9 The trial court found that defendant understood the nature of the charges and the possible penalties, that he pled guilty freely and voluntarily, and that there was a sufficient factual basis for the plea. Therefore, the court accepted defendant's guilty plea.

¶ 10 At the sentencing hearing, the trial court initially commented that it did not recall the facts of the case. The prosecutor stated that there was an accident, defendant left the scene of the accident, and the police "ended up finding [defendant] at his home." The court sentenced defendant to 7 days in jail, 24 months' conditional discharge, a \$1250 fine, and fees and costs.

¶ 11 Defendant filed a motion to withdraw his guilty plea,<sup>1</sup> in which he asserted that, on February 7, 2014, he contacted his defense counsel from a hospital emergency room, stating that he wanted to withdraw his guilty plea. Defendant advised counsel that, because of a recent diagnosis of diabetes, he believed that his blood sugar was high, which caused him not to be "thinking straight at the time of his plea." According to the motion to withdraw, defendant was in pain and "not thinking clearly" when he pled guilty. Defendant "wanted to get [the case] over with but was unable to think clearly, nor deliberate nor understand the significance of his actions." Defendant further asserted that, while his case was pending, he had been hospitalized

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<sup>1</sup> Defendant filed his motion to withdraw before sentencing. The trial court dismissed it without prejudice and allowed him to refile it after sentencing.

regularly, because of GERD<sup>2</sup> and chronic pancreatitis, and that his “medical conditions coupled with his recent diabetes diagnosis” caused him to “unknowingly and involuntarily” plead guilty.

¶ 12 Defendant’s motion to withdraw alternatively claimed that he was not guilty of DUI. In that regard, defendant asserted that the police did not stop him while he was driving, as stated in the factual basis. Instead, the police “stopped” him at his grandfather’s house and did not witness him driving.

¶ 13 Defendant attached to the motion a medical report stating that he had been diagnosed with diabetes mellitus “in January 2014.” Defendant also included an e-mail from his treating physician, Dr. Jawal Saade, stating that, beginning in 2013, defendant had more than 20 emergency-room visits because of his pancreatitis. According to Dr. Saade, since early 2013, defendant had been “under the stress of his chronic morbidities,” including abdominal pain related to pancreatitis, depression, chronic use of medical narcotics, and his recently developed diabetes. Dr. Saade opined that the “combination of medical stress” on defendant “might at times and in certain conditions affect his judgment.”

¶ 14 Defendant included his own affidavit in support of the motion to withdraw, in which he averred that he was not guilty of the charges. He further averred that when he pled guilty he was not aware that he was diabetic and therefore had been suffering from a very high, but undiagnosed, blood sugar level. According to defendant, he “felt sick” and was in pain during the guilty-plea hearing. He did not “know what was wrong with [him]” and pled guilty without knowing what he was doing. He pled guilty to “get out of the courtroom” and was “not [himself] and [he] was not thinking straight.” Once his blood sugar was under control, he was able to

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<sup>2</sup> GERD stands for gastroesophageal reflux disease, a digestive disorder. See [www.webmd.com/heartburn-gerd/guide/reflux-disease-gerd-1](http://www.webmd.com/heartburn-gerd/guide/reflux-disease-gerd-1) (last visited Sept. 15, 2016).

think clearly and “immediately contacted [his] attorney to ask to withdraw [his] guilty plea.” Finally, defendant averred that, even though the prosecutor stated at the guilty-plea hearing that he had been stopped while driving, he was not. Instead, the police arrested him at his grandfather’s house.

¶ 15 At the hearing on the motion to withdraw, defendant testified that when he pled guilty he was suffering from chronic pancreatitis, depression, and severe anxiety. Although he had not been diagnosed with diabetes until after the guilty-plea hearing, he believed that he had been suffering from it when he pled guilty. According to defendant, before he pled guilty he had been hospitalized for 10 days in November 2013 and went to the emergency room in December 2013. He was hospitalized for approximately one week in late January 2014, at which time he was diagnosed with diabetes. At the time of the guilty-plea hearing, he had been taking medication for his digestive problems, depression, and anxiety. According to defendant, he was under the influence of those medications during the plea hearing.

¶ 16 Defendant testified that he “felt foggy” during the guilty-plea hearing and that he thought his blood sugar was extremely low, because he had not been able to “keep any food down.” During the guilty-plea hearing, he had “headaches, naus[ea], [felt] light-headed, [and] dizzy like [he] was going to pass out.” He had vomited 7 times that morning and 20 times the day before the hearing.

¶ 17 When asked if he understood what he was doing when he pled guilty, defendant answered, “Not really.” He “did not think of what was going on and the actual consequences of it.” He did not believe that “if [he] was in [his] right mind” he would have pled guilty.

¶ 18 When asked if he was guilty of DUI, he said no, because he was at his grandfather’s house. When the trial court asked about the relevance of that testimony, defense counsel

explained that it related to defendant's claim that there was an insufficient factual basis. The court commented, however, that defense counsel presumably knew the facts, did not object, and stipulated to the factual basis.

¶ 19 When asked if he had understood what he was being asked during the guilty-plea hearing, defendant answered that his mind "was just really foggy" and that he did not recall. According to defendant, he was "[v]ery stressed out." His stomach had been "on fire" from heartburn and worry and he had "foggy judgment." He had just wanted "to get [the guilty plea] over with" because of his physical condition. According to defendant, he had not been thinking clearly, had been in physical pain, and could not recall the proceeding.

¶ 20 On cross-examination, defendant testified that, due to illness, he had not worked during December 2013 and January 2014. During that time, he went to his medical appointments. He admitted that, after being diagnosed with diabetes, he was not prescribed medication, because the doctor believed that it could be controlled by diet.

¶ 21 Defendant admitted that he remembered his mother bringing him to court and remembered the judge and his counsel. He understood the nature of the charges and the possible penalties, although he could not recall the judge admonishing him. He remembered pleading guilty and understood the significance of doing so.

¶ 22 According to defendant, on the day of the plea hearing, he told his counsel that he felt foggy, weak, and that he might pass out. He also told his mother that he might pass out.

¶ 23 On redirect examination, defendant stated that, although he knew what pleading guilty meant, he did not understand during the plea hearing what he was doing or why he was pleading guilty.

¶ 24 When the trial court asked about defendant's anxiety medication, defendant explained that he had been taking it for several months before the plea hearing and had taken the prescribed dosage on the day of the hearing. When asked if he understood what was happening when he took his anxiety medicine, defendant answered yes. He added that he did not believe that the anxiety medicine affected his ability to understand what was going on during the plea hearing.

¶ 25 When the trial court asked about his pain medication, defendant answered that he had taken the prescribed dosage on the day of the hearing. He admitted that he had been able to understand what people were saying to him when he was taking the pain medication, although he believed that it had affected him the day of the hearing because it "kind of [gave him] a feeling of euphoria and [made his] body feel different."

¶ 26 The trial court commented that it was "amazing" that defendant's diabetes was so out of control yet he was not given any medication for it. The court noted that defendant's diabetes did not affect his ability to understand the plea proceeding. When the court asked defense counsel if there was any evidence that defendant was so sick that he felt compelled to plead guilty, counsel noted that defendant testified that he was sick and wanted to get the proceeding over with.

¶ 27 In ruling, the trial court found that defendant had suffered from significant health issues. The court further found that defendant had been taking anxiety and pain medication when he pled guilty. The court considered it significant, however, that defendant had been familiar with those medications and admitted that they had not affected his ability to understand the plea proceeding.

¶ 28 The trial court carefully considered defendant's testimony about not being able to recall the plea proceeding. The court noted that, although defendant made a bare assertion that he could not recall the plea proceeding, he admitted that he could remember specific aspects such as

his counsel, the nature of the charges, and pleading guilty. The court noted that there was nothing about the plea colloquy that called into question whether defendant knowingly and voluntarily pled guilty. The court pointed to the fact that, while asking a series of questions calling for a “yes” answer, which defendant answered appropriately, it interposed a question calling for a “no” answer and defendant answered that question appropriately. The court emphasized that defendant had been aware of what he was doing and saying and had answered “yes” when asked if he was knowingly and voluntarily pleading guilty. In assessing defendant’s credibility, the court did not believe that defendant had been laboring under a fog when he pled guilty. Instead, the court believed that defendant had “buyer’s remorse” as to his guilty plea. Thus, the court denied the motion to withdraw, and defendant filed a timely appeal.

¶ 29

## II. ANALYSIS

¶ 30 Defendant contends that the trial court abused its discretion in denying his motion to withdraw his guilty plea. Specifically, he argues that: (1) the failure of the factual basis to establish that he drove, or was in physical control of, a vehicle while intoxicated gave rise to a meritorious defense to DUI; (2) because the court failed to address his claim regarding the factual basis, it did not adequately consider whether the ends of justice would be better served by allowing him to withdraw his guilty plea; and (3) his physical and mental condition precluded him from knowingly and voluntarily pleading guilty, including recognizing the inadequate factual basis.

¶ 31 The decision to grant or deny a motion to withdraw a guilty plea rests in the sound discretion of the trial court, and thus is reviewed for an abuse of discretion. *People v. Baez*, 241 Ill. 2d 44, 109-10 (2011). An abuse of discretion will be found only where the court’s ruling is arbitrary or fanciful, or where no reasonable person would take the court’s view. *People v.*



*Delvillar*, 235 Ill. 2d 507, 519-20 (2009). Leave to withdraw should be granted if it appears that: (1) the plea was based on a misapprehension of fact or law; (2) there is doubt as to the defendant's guilt; (3) the defendant had a meritorious defense; or (4) the ends of justice will be better-served by a trial. *People v. Davis*, 145 Ill. 2d 240, 244 (1991). A defendant does not have an automatic right to withdraw a guilty plea, and must show a manifest injustice under the facts of the case. *Baez*, 241 Ill. 2d at 110. Subjective impressions, without objective proof, are insufficient grounds upon which to withdraw a guilty plea. *Davis*, 145 Ill. 2d at 244. An assertion of innocence, without factual substance, is insufficient to permit the withdrawal of a guilty plea if the defendant was adequately informed under Rule 402(a) of the nature of the charges and the consequences of the plea. *People v. Dumas*, 50 Ill. App. 3d 637, 641 (1977). The trial court is responsible for assessing the credibility of witnesses at a hearing on a motion to withdraw a guilty plea. *People v. Mercado*, 356 Ill. App. 3d 487, 497 (2005).

¶ 32 We begin with defendant's claim that, absent the factual assertion that the police observed him driving his vehicle, there was no factual support that he was driving or in actual physical control of his vehicle while intoxicated, as required to establish DUI. We disagree.

¶ 33 Illinois Supreme Court Rule 402(c) (eff. July 1, 2012) provides that a trial court cannot enter a final judgment on a guilty plea without first determining that there is a factual basis for the plea. *People v. White*, 2011 IL 109616, ¶ 17. The factual basis for a guilty plea generally will consist of either an express admission by the defendant that he committed the acts alleged in the indictment or a recital to the court of the evidence that supports the allegations. *White*, 2011 IL 109616, ¶ 17. There is a sufficient factual basis as long as there is a basis anywhere in the record up to the final judgment from which the trial court could reasonably conclude that the defendant actually committed the acts with the intent, if any, required to constitute the offense to

which he is pleading guilty. *People v. Brazee*, 316 Ill. App. 3d 1230, 1236 (2000). When determining whether a factual basis exists, the trial court need not ferret out possible defenses for the defendant and may accept a guilty plea even when the defendant maintains his innocence. *People v. Bassette*, 391 Ill. App. 3d 453, 457 (2009); *People v. Ottomanelli*, 153 Ill. App. 3d 565, 569 (1987). It is not necessary that the factual basis rise to the level of proof at a trial. *Bassette*, 391 Ill. App. 3d at 456.

¶ 34 Even if the factual basis proffered by the State was incorrect in stating that Officer Tinsley stopped defendant while defendant was driving, it still contained facts that supported the DUI charge. According to the factual basis proffered, Officer Tinsley would testify that defendant was in a traffic accident and fled the accident scene. Those assertions reasonably implied that, irrespective of whether Officer Tinsley actually stopped defendant while defendant was driving, defendant was driving the vehicle. Further, the written statement attached to the citation and complaint stated that defendant, while driving, disobeyed a stop sign, caused an accident, and fled. Additionally, the State asserted in the factual basis that defendant was taken via ambulance to a hospital where his blood was drawn. The test results showed that defendant had a blood alcohol content of 0.25. For purposes of accepting the guilty plea, such factual assertions collectively provided a sufficient basis to establish the elements of DUI. See *People v. Lurz*, 379 Ill. App. 3d 958, 967 (2008) (elements of DUI are that a defendant drove or was in actual physical control of a vehicle and was under the influence of alcohol). As noted, it was not necessary that the factual basis rise to the level of proof at a trial. See *Bassette*, 391 Ill. App. 3d at 456. Thus, there was an adequate factual basis for defendant's guilty plea, irrespective of any error as to whether Officer Tinsley stopped defendant while he was driving.

¶ 35 Nor did defendant have a meritorious defense that would justify setting aside his guilty plea. As discussed, the mere fact that the police did not stop defendant while defendant was driving does not mean that the State could not prove that defendant was driving or in actual physical control of his vehicle. See *Lurz*, 379 Ill. App. 3d at 969 (observation of a defendant driving is not an indispensable prerequisite for a DUI conviction). Indeed, the offered factual basis and the record implied that there was such evidence, independent of whether Officer Tinsley stopped defendant while defendant was driving. That is so notwithstanding defendant's barebones testimony that the police encountered him at his grandfather's house. Therefore, defendant did not demonstrate that he had a meritorious defense to DUI.

¶ 36 Alternatively, defendant asserts that the trial court failed to address his claim regarding the factual basis, and thus failed to adequately consider whether the ends of justice would be better served by allowing him to withdraw his guilty plea and present his defense. The court, however, did address that claim. When defendant testified that he was not guilty of DUI, because he was at his grandfather's house, the court asked why that testimony was relevant. When defense counsel answered that it related to defendant's claim regarding the factual basis, the court stated that defendant "presumably knew the facts" yet stipulated to the factual basis. The court's question and response to counsel's answer show that the court was aware of, and considered, defendant's claim.<sup>3</sup>

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<sup>3</sup> Even if the trial court failed to adequately consider defendant's claim regarding the factual basis, he was not prejudiced. As explained, there was a sufficient factual basis to support the guilty plea and defendant did not show that he had a meritorious defense. Thus, the ends of justice would not have been better served by allowing defendant to withdraw his guilty plea.

¶ 37 That leaves defendant's contention that his physical and mental condition during the plea hearing prevented him from knowingly and voluntarily pleading guilty, including recognizing the deficiency in the factual basis. That contention, however, is belied by the trial court's findings and the record.

¶ 38 The trial court found that defendant admitted that his medications did not affect his ability to understand the plea proceeding. The court further found that defendant's diabetes, which did not require medication, did not affect his ability to understand the proceeding. The court emphasized that, although defendant made a "bare assertion" that he could not recall the plea proceeding, he admitted that he could remember certain aspects. Further, the court found that the plea colloquy did not indicate that defendant's plea was not knowing or voluntary. Additionally, the court found that defendant was not credible when he testified that he was in a "fog" during the plea hearing. Rather, the court found that defendant was suffering from a case of "buyer's remorse." As noted, the court was in the best position to assess defendant's credibility. See *Mercado*, 356 Ill. App. 3d at 497.

¶ 39 Not only was defendant's testimony found incredible, the remaining evidence did not establish that defendant's condition rendered him incapable of knowingly and voluntarily pleading guilty. Although Dr. Saade opined that defendant's mental condition "might at times and in certain conditions affect his judgment," he did not specify how it might, or, more importantly, that it did so at the plea hearing. Although, as the trial court found, defendant suffered from significant health issues, he failed to establish that his health rendered his guilty plea unknowing or involuntary. Likewise, he did not show that his health interfered with his ability to recognize any error in the factual basis. Thus, defendant does not show that the trial court abused its discretion in denying his motion to withdraw his guilty plea.

¶ 40

III. CONCLUSION

¶ 41 For the reasons stated, we affirm the judgment of the circuit court of Du Page County. As part of our judgment, we grant the State's request that defendant be assessed \$50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 42 Affirmed.