

NOTICE
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2018 IL App (5th) 150252-U

NO. 5-15-0252

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Monroe County.
)	
v.)	No. 14-CF-15
)	
JUSTIN DELANEY SHERRARD,)	Honorable
)	Dennis B. Doyle,
Defendant-Appellant.)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Chapman and Cates concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's denial of the defendant's motion to withdraw guilty plea is affirmed where there is a basis in the record from which the trial court could reasonably conclude that the defendant committed residential burglary.

¶ 2 The defendant, Justin Sherrard, appeals the circuit court's denial of his motion to withdraw his guilty plea. He argues that he is entitled to withdraw his guilty plea because there was not a sufficient factual basis to support the plea; specifically, there was no evidence that led to a reasonable conclusion that he committed residential burglary. For the following reasons, we affirm.

¶ 3 On February 14, 2014, the State charged the defendant with two counts of residential burglary (720 ILCS 5/19-3(a) (West 2012)) in that he knowingly and without authority entered two residences located in Columbia, Illinois, with the intent to commit a theft. On January 7, 2015, the defendant entered a guilty plea to one count of residential burglary. In exchange for the guilty plea, the State agreed to dismiss the second count of residential burglary and to recommend a sentence of four years' imprisonment to be followed by a two-year period of mandatory supervised release. The trial court admonished him in accordance with Illinois Supreme Court Rule 402 (eff. July 1, 2012).

¶ 4 The State provided the following factual basis:

"Your Honor, if the case were called for trial, witnesses would testify that on January 28th of 2014, the victims returned home to find their front door had been forced open and items were missing from inside. Several of the items were pawned on the same date as the burglary in Bridgeton, Missouri by this Defendant who's seen on video doing so, [and who] used his own name.

Neighborhood canvas produced a witness who saw a suspicious person in a vehicle, a large black SUV, which fit the description of the vehicle that went to the pawn shop on that same date."

The defendant and his counsel agreed that this was their understanding of the evidence that the State would present if the case went to trial. The court found the defendant's plea voluntary and the State's factual basis sufficient. It then accepted the defendant's plea and scheduled the sentencing hearing. On March 26, 2015, the court sentenced the defendant to four years' imprisonment.

¶ 5 On April 24, 2015, the defendant filed a motion to withdraw his guilty plea, arguing, among other things, that there was not a sufficient factual basis to support the plea. Specifically, the defendant argued that there was no evidence that he entered the residence without authority and committed the theft. He argued that the only crime derivable from the factual basis was that he was in possession of stolen goods. At the May 28, 2015, hearing on the motion to withdraw, the defendant cited *People v. Housby*, 84 Ill. 2d 415 (1981), *People v. Johnson*, 96 Ill. App. 3d 1123 (1981), and *People v. Ross*, 103 Ill. App. 3d 883 (1981), in support of his position that possession of stolen goods does not, by itself, establish that he committed the burglary and that corroborating evidence of his entry into the residence was necessary for a sufficient factual basis. In reply, the State argued there was circumstantial evidence of the defendant's entry into the residence based on the fact that the defendant was in possession of the stolen items, that he pawned those items on the same day as the residential burglary, and the similarity between the vehicles observed in the neighborhood where the residential burglary occurred and the pawn shop where the defendant was selling the stolen items.

¶ 6 After hearing the arguments, the trial court denied the defendant's motion to withdraw his guilty plea. In making this decision, the court noted that defense counsel equated the standard for an adequate factual basis to the requirement that the defendant must be proven guilty beyond a reasonable doubt at trial and stated as follows: "[T]here's no way the Court can be bound to have determined that there was proof beyond a reasonable doubt in order to accept a plea when the Court hasn't heard all the evidence and never has. So they're really apples and oranges. It's two different things." Defense

counsel conceded that he was not sure what the standard was for the sufficiency of a factual basis at a guilty plea hearing but argued that the factual basis must "meet the elements." The court disagreed with counsel that the elements were not met in that the recited factual basis indicated that the property was broken into, property was taken, and the defendant was found in recent unexplained possession of the stolen property. Thus, the court denied the defendant's motion to withdraw his guilty plea. The defendant appeals.

¶ 7 The trial court's decision to grant or deny a motion to withdraw guilty plea will not be disturbed on appeal unless the decision was an abuse of discretion. *People v. Dougherty*, 394 Ill. App. 3d 134, 140 (2009). An abuse of discretion will be found only where the court's ruling is arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the court. *People v. Donoho*, 204 Ill. 2d 159, 182 (2003). A defendant does not have an automatic right to withdraw a guilty plea. *Dougherty*, 394 Ill. App. 3d at 140. Instead, leave to withdraw the guilty plea should be granted where it appears that the plea was based on a misapprehension of the facts or the law, there is doubt as to defendant's guilt, defendant has a meritorious defense, or the ends of justice will be better served by submitting the case to a jury. *Id.*

¶ 8 Illinois Supreme Court Rule 402(c) (eff. July 1, 2012) provides that the trial court cannot enter a final judgment on a guilty plea without first determining that there is a factual basis for the plea. Rule 402(c) does not require strict compliance, but there must be at least substantial compliance. *Id.*; *People v. Barker*, 83 Ill. 2d 319, 329 (1980). The rule is intended to protect those accused of a crime by ensuring that they have not pleaded

guilty by mistake or under a misapprehension, or been coerced or improperly advised to plead to crimes that they did not commit. *People v. Bannister*, 378 Ill. App. 3d 19, 35 (2007). The factual basis for a guilty plea will generally consist of either an express admission by a defendant that he committed the acts alleged in the indictment or a recital to the court of the evidence that supports the allegations. *People v. White*, 2011 IL 109616, ¶ 17. There is sufficient factual basis as long as there is a basis anywhere in the record from which the court could reasonably reach the conclusion that defendant committed the elements of the offense to which he is pleading guilty. *Barker*, 83 Ill. 2d at 327-28. The quantum of proof necessary to establish a factual basis for the plea is less than that necessary to sustain a conviction following a full trial. *Id.* at 327.

¶ 9 The defendant's argument on appeal is not that the factual basis did not touch on the residential-burglary elements but that there was no evidence that led to a reasonable conclusion that he committed residential burglary. He relies on *Housby*, in which our supreme court rejected the previously long-held position that the recent and exclusive possession of items stolen in a burglary, without reasonable explanation, gives rise to an inference that the possession was obtained by burglary. *Housby*, 84 Ill. 2d at 422-23. Instead, the court limited the use of the permissive inference to cases in which it was considered in conjunction with other circumstantial evidence of guilt. *Id.* at 424. The court found that a defendant's due process rights would not be violated by the trial court's reliance on the inference where (1) there is a rational connection between defendant's recent possession of property stolen in the burglary and his participation in the burglary; (2) defendant's guilt of burglary is more likely than not to flow from his recent,

unexplained, and exclusive possession of the burglary proceeds; and (3) there is corroborating evidence of defendant's guilt. *Id.*

¶ 10 The defendant also cites *People v. Holm*, which involved a defendant who pled guilty to wilful obstruction or interference with lawful taking of wild animals (hunter harassment) under section 2(a) of the Hunter and Fishermen Interference Prohibition Act (720 ILCS 125/2(a) (West 2010)). *People v. Holm*, 2014 IL App (3d) 130583, ¶ 1. Defendant's private counsel filed a motion to withdraw the guilty plea, arguing that he was not guilty of hunter harassment and had pled guilty under duress. *Id.* The trial court denied his motion. *Id.* On appeal, the appellate court reversed the trial court's denial of defendant's motion to withdraw guilty plea, finding that defendant should have been permitted to withdraw the plea because his conduct was protected by a statutory exemption for tenants. *Id.* ¶ 15. In making this decision, the court noted that defendant had pled guilty to a noncriminal act. *Id.* ¶ 16.

¶ 11 In the present case, we disagree with the defendant's position that the factual basis was insufficient and find that this case is distinguishable from *Holm*. Unlike *Holm*, the defendant pled guilty to a criminal act, *i.e.*, residential burglary. A defendant commits the offense of residential burglary when he knowingly and without authority enters the dwelling of another with the intent to commit therein a theft. 720 ILCS 5/19-3(a) (West 2012). The factual basis offered by the State indicated that the victims returned home on January 28, 2014, to find their front door had been forced open and items missing from inside the home; on the same day as the burglary, the defendant pawned several of the stolen items in Bridgeton, Missouri, which was confirmed by video; a witness observed a

large, black SUV in the neighborhood where the residential burglary occurred; and the black SUV fit the description of the vehicle seen at the pawn shop where the defendant had sold the stolen merchandise. The defendant did not object to this factual basis.

¶ 12 We conclude that there existed adequate circumstantial evidence that the defendant was not merely in possession of stolen goods but had committed residential burglary. We further find that this circumstantial evidence was a sufficient basis for the court to reasonably conclude that he committed the offense. In so concluding, we note that this is not a case addressing the sufficiency of evidence to prove the defendant guilty beyond a reasonable doubt. This case addresses whether a court can reasonably determine whether the defendant committed a criminal offense prior to accepting his plea. These are two very distinct inquiries. Because we conclude that there is a basis from which the court could reasonably conclude that the defendant committed residential burglary, we find that the court did not abuse its discretion in denying the defendant's motion to withdraw guilty plea. Accordingly, we affirm the trial's court decision.

¶ 13 For the foregoing reasons the judgment of the circuit court of Monroe County is hereby affirmed.

¶ 14 Affirmed.