

No. 1-12-1538

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 DV 74659
	)	
BELINDA BEDELL,	)	Honorable
	)	Yolande M. Bourgeois,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE PUCINSKI delivered the judgment of the court.  
Presiding Justice Hyman and Justice Mason concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Trial court was presented with sufficient factual basis for defendant's guilty plea where court heard facts under which it could reasonably conclude that defendant committed the charged act of child endangerment; the judgment of the trial court is affirmed.

¶ 2 Pursuant to a negotiated guilty plea, defendant Belinda Bedell was convicted of endangering the life or health of a child and was sentenced to 18 months of probation. On appeal, defendant contends the State failed to provide an adequate factual basis for her guilty

plea and this case should be remanded to allow her to plead anew. In the alternative, defendant asserts that if her factual basis contention was forfeited by her post-plea counsel's failure to include it in the motion to withdraw her plea, that omission constituted ineffective assistance of counsel. We affirm.

¶ 3 On February 19, 2012, defendant was charged with endangering the life and health of a child, domestic battery, and possession of drug paraphernalia. The complaint for endangering the life and health of a child charged that "while intoxicated and holding her 4-day-old daughter," defendant "dropped [the child] to the ground causing minor injuries."

¶ 4 That same day, a probable cause hearing was held before Judge Edward Harmening. The assistant State's Attorney informed the trial court that defendant was seen throwing her newborn baby to the ground after attempting to sell the child. A crack pipe was found on defendant. A police officer reported to the court that defendant was not present at that hearing because she was at a hospital awaiting psychiatric evaluation.

¶ 5 On February 23, 2012, the hearing resumed before Judge Caroline Kate Moreland, with defendant present in court and represented by the public defender. The assistant State's Attorney described the events at issue to the trial court:

"The officers arrived at 92nd and Cottage and spoke to witnesses that stated that the Defendant was attempting to sell her baby for approximately \$2000. The Defendant was also observed by witnesses throwing the baby down to the ground. The officers also observed a crack pipe sticking out of her pocket. This baby was born February 14th of this year."

¶ 6 The trial court made a finding of probable cause to detain defendant. Bond was set and defense counsel stated a trial demand.

¶ 7 On March 2, 2012, the parties appeared before Judge Yolande Bourgeois at the proceeding in which defendant entered her plea and was sentenced. The State informed the trial court that defendant would plead guilty to child endangerment and the remaining charges would be nol-prossed. The court indicated defendant would be sentenced to 18 months of probation. After additional colloquy, the court addressed defendant:

"Ms. Bedell, you are charged with endangering the life or health of a child on February 18, 2012, at 9204 South Cottage Grove, Chicago, Cook County, in that you, while intoxicated and holding your four-day-old daughter, you dropped her to the ground causing minor injuries. Do you understand the charge placed against you?

DEFENDANT: Yes, your Honor.

THE COURT: How do you plead, guilty or not guilty?

DEFENDANT: Guilty."

¶ 8 The court acknowledged defendant's signed jury waiver and ascertained the voluntary nature of her plea. The court then requested the factual basis for defendant's plea, which was given as follows:

"MS. KERSTEN [assistant State's Attorney]: If this matter had proceeded to trial, the State would have called Rhonda Cook and Mark Judeh, that last name is J-u-d-e-h. They both would

have identified the Defendant in open court, testified that on or about February 18th of this year at 9204 South Cottage Grove in Chicago, Cook County, Illinois, they observed the Defendant with a very young infant child and that while she was holding that child, the child did fall to the ground causing minor injuries.

MS. SCHLEGEL [assistant Public Defender]: So stipulated that would be the testimony at trial.

THE COURT: Let the record reflect that the Defendant understands the nature of the charge against her, the possible penalties of her case under the law, the plea has been given freely and voluntarily, a factual basis exists for the plea, and the plea will be accepted. There will be a finding of guilty on the charge of endangering the life or health of a child in the manner and form charged in the complaint."

¶ 9 The court asked defendant if she wished to address the court before sentence was imposed, and defendant responded no. The court sentenced defendant to 18 months probation and ordered her to undergo a mental health evaluation and complete parenting classes. Defendant was ordered to pay fines, fees and costs of \$440 and was told her probation would terminate in August 2013. The court also advised defendant of her right to appeal upon first filing a written motion to withdraw her guilty plea.

¶ 10 On March 19, 2012, defense counsel filed a motion to vacate defendant's guilty plea. Counsel later filed an amended motion to vacate the plea, asserting defendant's plea was entered

unknowingly and without defendant "being fully aware of what a guilty plea was and the consequences thereof." The trial court denied the motion to vacate defendant's plea.

¶ 11 On appeal, defendant contends her guilty plea must be set aside because the trial court accepted the plea without hearing an adequate factual basis for the charge of child endangerment, in violation of Illinois Supreme Court Rule 402(c) (eff. July 1, 1997). Defendant further asserts on appeal that if this court determines she forfeited that argument by failing to raise it in the motion to vacate her plea, that omission constituted ineffective assistance by her post-plea counsel.

¶ 12 As a threshold matter, we consider defendant's contention that although she did not challenge the factual basis of her plea as part of her post-plea motion, this court should address her contentions under the plain error doctrine, which allows consideration for forfeited issues. Because the first step in plain error review is to determine whether a clear and obvious error occurred (*People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007)), we proceed to the merits of defendant's argument.

¶ 13 Defendant contends Supreme Court Rule 402(c) was violated because the State did not provide a sufficient factual basis for the crime to which she pled. Defendant argues the prosecution needed to include in the factual basis for her plea that she acted with the requisite *mens rea* for the offense of child endangerment. She points out the factual basis that was read to the court only stated that her child fell to the ground, which could have been accidental. The State responds that the complete record of the trial court proceedings shows the court sufficiently informed defendant of the nature of the charge prior to her plea.

¶ 14 Supreme Court Rule 402(c) provides that a trial court cannot enter a final judgment on a plea of guilty without first determining that there is a factual basis for the plea. Ill. S. Ct. R. 402(c) (eff. July 1, 1997). 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 they did not commit." *People v. Bannister*, 378 Ill. App. 3d 19, 35 (2007) (quoting *People ex rel. Daley v. Suria*, 112 Ill. 2d 26, 32 (1986)). Put another way, the rule is meant to allow the trial court "to insure that defendant is not pleading guilty to a crime which his acts and mental state do not support." *People v. Barker*, 83 Ill. 2d 319, 327-28 (1980).

¶ 15 The factual basis for a guilty plea generally will consist of either: (1) an express admission by the defendant that he or she committed the acts alleged in the indictment; or (2) a recital to the court of the evidence that supports the allegations in the indictment. *People v. White*, 2011 IL 109616, ¶ 17, citing *Boykin v. Alabama*, 295 U.S. 238 (1969) (a plea obviates, or renders unnecessary, the prosecutor's burden of proof by supplying the evidence and the verdict against the defendant). Rule 402(c) does not require strict compliance; rather, substantial compliance is sufficient. *Barker*, 83 Ill. 2d at 327-29. Moreover, the quantum of proof necessary to establish a factual basis for a plea is less than that necessary to sustain a conviction after a full trial. *Id.*; see also *People v. Bassette*, 391 Ill. App 3d 453, 456 (2009) (applying principles of Rule 402(c) admonitions in probation revocation proceeding).

¶ 16 Addressing the requirements for the factual basis of a guilty plea and applying those requirements to the facts before it, the court in *Bassette* noted:

"A prosecutor's statement of a factual basis does not constitute 'evidence.' Nor is the prosecutor's statement of the factual basis the equivalent of a trial, at which the State must present evidence proving beyond a reasonable doubt each of the elements of the offense with which the defendant is charged." *Id.*

¶ 17 Because the purpose of Rule 402(c) is to enable a judge to determine that the conduct of a defendant constitutes the offense charged, the trial court may look anywhere in the record to find a sufficient factual basis for the plea. *People v. Banks*, 213 Ill. App. 3d 205, 211 (1991). Rule 402(c) is satisfied if there is a basis anywhere in the record up to the entry of the final judgment from which the judge could reasonably reach the conclusion 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).

¶ 18 When a defendant challenges the sufficiency of the factual basis that the State presented to support a guilty plea, the standard of review is whether the court abused its discretion in determining that a factual basis existed for the plea. *In re Interest of C.K.G.*, 292 Ill. App. 3d 370, 376-77 (1997). We therefore reject defendant's contention that we should apply a *de novo* standard of review. An abuse of discretion occurs when a trial court's ruling is arbitrary, fanciful, or unreasonable, meaning that no reasonable person could take the court's view. *People v. Anderson*, 367 Ill. App. 3d 653, 664 (2006).

¶ 19 A person violates the child endangerment statute when he or she willfully causes or permits the life or health of a child to be endangered or willfully causes or permits a child to be placed in circumstances that endanger the child's life or health. 720 ILCS 5/12-21.6(a) (West

2010). Willful conduct is synonymous with knowing conduct. *People v. Jordan*, 218 Ill. 2d 255, 270 (2006). Knowledge is ordinarily proven through circumstantial evidence, rather than direct proof; thus, for the trier of fact to conclude that the defendant acted knowingly, the State only must present sufficient evidence from which an inference of knowledge can be made.

*People v. Melton*, 282 Ill. App. 3d 408, 417-18 (1996).

¶ 20 Defendant contends the factual basis presented to the court did not establish she willfully harmed her 4-day-old baby because there was no evidence to show the child did not slip from her arms accidentally. Endangering a child refers to a potential or possibility of injury and "does not refer to conduct that will result or actually results in harm, but rather to conduct that could or might result in harm." *People v. Collins*, 214 Ill. 2d 206, 215 (2005).

¶ 21 In the March 2, 2012, proceedings at which the trial court accepted defendant's plea, the court admonished defendant as to the nature of the charge against her and stated defendant was intoxicated while holding the child. Defendant also was present in court on February 23, 2012, when the court found probable cause to detain defendant. The prosecutor told the court that police officers had spoken to witnesses who reported defendant was trying to sell her baby and that she threw the child to the ground.

¶ 22 The parties do not address whether the statements to the trial court on different court dates before three different judges are to be considered as a whole in determining whether the court has heard a sufficient factual basis for a defendant's plea or if only the facts as presented to Judge Bourgeois at the March 2 plea hearing can be considered. The cases set out above provide that the "factual basis will be established as long as there is a basis *anywhere in the record up to the final judgment* from which the judge could reasonably reach the conclusion that the

defendant actually committed the acts with the intent, if any, required" for the offense to which he or she is pleading guilty. (Emphasis added.) *Barker*, 83 Ill. 2d at 327-28; *Brazee*, 316 Ill. App. 3d at 1236.

¶ 23 Even viewing only the facts that were presented to the judge accepting defendant's plea, all that was required for Judge Bourgeois to find a factual basis for the plea was for the judge to reasonably conclude that the defendant committed acts that endangered the life of her child. See *Barker*, 83 Ill. 2d at 327-28; *People v. Royark*, 215 Ill. App. 3d 255, 270 (1991) (measure of proof necessary for factual basis is less than that required to sustain conviction). The judge read to defendant a charge that defendant dropped her child to the ground while in an impaired state. Under those facts, the court could reasonably conclude that defendant caused the life or health of her child to be endangered, meaning that defendant knowingly engaged in conduct that could result in harm to the child. Therefore, the trial court's finding of a factual basis to support the charge of child endangerment did not constitute an abuse of discretion.

¶ 24 Defendant relies on *People v. Vinson*, 297 Ill. App. 3d 819 (1997), to contend the record must provide a basis for the judge to reasonably conclude that the defendant committed the acts with the required *mens rea* for the offense. The facts of *Vinson* are in stark contrast to those here; in *Vinson*, the trial court accepted the defendant's plea absent any "recitation or stipulation of facts" and based only on that defendant's admission that he committed the offense and a report as to the defendant's fitness in which the defendant asserted that the killing was accidental. *Id.* at 821-22. In remanding to allow the defendant to withdraw his plea and plead anew, the appellate court stated in *Vinson* that it had no proof before it that the court did or "could have satisfied itself that a factual basis" existed for the defendant's plea. *Id.* at 822. Here, in contrast to *Vinson*,

the trial court was presented with facts to support the charge against defendant. *Vinson* does not hold that the court is required to make a separate and specific finding as to a defendant's *mens rea* to find a factual basis for a plea.

¶ 25 Here, the court did not abuse its discretion in finding a sufficient factual basis to accept defendant's guilty plea. Accordingly, no error occurred that would allow defendant relief under the plain error rule. Moreover, because we have concluded that the State presented an adequate factual basis for defendant's plea, defendant cannot set forth a contention of the ineffectiveness of her post-plea counsel.

¶ 26 Accordingly, the judgment of the trial court is affirmed.

¶ 27 Affirmed.