IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. MARKUS WILLIAMSON, Appellant.	No. 37918-0-II UNPUBLISHED OPINION

Penoyar, A.C.J. — Markus Williamson appeals his felony harassment conviction, arguing that the trial court violated his right to due process because no factual basis existed in the record to support his guilty plea. He contends that the record fails to show that the police officers he threatened to kill suffered any reasonable fear. We affirm.

FACTS

According to Gibbon & Sons Towing employees Darnell and Spencer, the following events took place on November 19, 2007.[1] Williamson entered Gibbon & Sons Towing, became belligerent, and began to yell at Darnell about towing his vehicle. When Darnell asked Williamson to leave the premises, Williamson refused. Darnell then requested assistance from Spencer, and Williamson became increasingly combative, striking Darnell's chin and punching Spencer in the face. Eventually, Darnell and Spencer wrestled Williamson to the ground and held him there while they waited for the police to arrive.

When Lakewood Police officers Tenney and Bell arrived at the scene, Tenney ordered

[1] Williamson does not dispute the facts of this case. When asked what he was able to recall about the November 19 incident, he responded, "I don't remember what happened." Report of Proceedings (RP) (May 29, 2008) at 12.

Williamson to give him his hands. Williamson refused to comply, and continued to disobey Tenney's orders. Finally, Tenney and Bell each took a hold of Williamson's arms and forcibly placed him into handcuffs. At that point, the officers advised Williamson that he was under arrest. Williamson screamed at Spencer, "You black nigger, I'm going to kill you!" Clerk's Papers (CP) at 5. The officers commanded Williamson to stop making racial slurs, to which he replied, "Fuck you, I'll kill all niggers." CP at 5.

The officers took Williamson to a patrol car, where he kicked, spit, and yelled. They then placed him in restraints and a spit mask. When the officers entered the patrol car to transport Williamson to jail, Williamson repeatedly threatened to kill both officers. He also continued to make racial slurs.

On November 20, the State charged Williamson with one count of malicious harassment, two counts of felony harassment, two counts of fourth degree assault, one count of second degree criminal trespass, and one count of resisting arrest. On April 18, 2008, the State amended the information, dropping the second degree criminal trespass charge and adding one count of first degree burglary and two counts of intimidating a public servant.

On May 8, 2008, Williamson entered an *Alford/Newton*[2] plea to one count of felony harassment and two counts of fourth degree assault pursuant to a second amended information. Williamson declared in his statement on plea of guilty for the felony harassment charge:

> I believe I am innocent of the charges, but after discussing the evidence [with] my attorney realize the likelihood of conviction is substantial and I want to take advantage of the prosecutor's offer because at the time of the incident I was off my prescription medication [and] intoxicated . . . and do not recall much of what occurred.

[2] *State v. Newton*, 87 Wn.2d 363, 552 P.2d 682 (1976); *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

CP at 35.

Williamson also acknowledged in his statement on plea of guilty for the felony harassment charge that he "did unlawfully [and] knowingly threaten to cause bodily injury, immediately or in the future to [Tenney and Bell] [and] by words or conduct place [them] in reasonable fear." CP at 28.

On May 8, the trial court accepted Williamson's guilty plea. The trial court questioned Williamson as to whether he reviewed his statement on plea of guilty with his attorney and understood it. He responded affirmatively. It also reviewed with Williamson the constitutional rights he would be waiving as a result of his guilty plea, and Williamson assured the trial court that he understood that he would be waiving certain rights. Ultimately, the trial court accepted Williamson's plea, satisfied that it was "knowingly, intelligently, and voluntarily made." Report of Proceedings (RP) (May 8, 2008) at 9.

Williamson now appeals.

ANALYSIS

Williamson argues that the record fails to establish that Tenney and Bell were placed in reasonable fear that he would kill them, or that he understood the relationship between his conduct and the crime of felony harassment. The State argues that Williamson failed to preserve any claim regarding an insufficient factual basis under CrR 4.2(d) because the "factual basis" component of CrR 4.2(d) is not a constitutional requirement in itself.[3] Although we find that

[3] The State argues that, even if we find that Williamson preserved his right to appeal the validity of his guilty plea, the record demonstrates that Williamson satisfied the trial court that his plea was knowing and voluntary.

Williamson did not waive this issue, his argument that no factual basis existed in the record to support his plea fails.

An *Alford/Newton* plea allows a defendant to plead guilty in order to take advantage of a plea bargain even if he is unable or unwilling to admit guilt. *See State v. Newton*, 87 Wn.2d 363, 372, 552 P.2d 682 (1976)(citing *North Carolina v. Alford*, 400 U.S. 25, 31, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970)). Even where a defendant does not admit guilt, CrR 4.2(d) requires that the trial court find a factual basis supporting the plea:

> **Voluntariness.** The court shall not accept a plea of guilty, without first determining that it is made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea. The court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea.

The plain language of CrR 4.2 does not define what constitutes a factual basis for a plea and it does not expressly preclude a trial court from finding sufficient factual basis based on the original charges. *State v. Zhao*, 157 Wn.2d 188, 198, 137 P.3d 835 (2006). Also, "[t]he factual basis requirement of CrR 4.2(d) does not mean the trial court must be convinced beyond a reasonable doubt that defendant is in fact guilty;" there must only be sufficient evidence, from any reliable source, for a jury to find guilt. *Zhao*, 157 Wn.2d at 198 (quoting *Newton*, 87 Wn.2d at 370).

In this case, there was evidence in the record for a jury to find Williamson guilty of one or more of the crimes for which the State charged him. The declaration for determination of probable cause states that Williamson repeatedly refused to comply with Tenney's orders to give him his hands and stand up, and that he kicked, spit, and yelled when the officers placed him in the patrol car. There was therefore sufficient evidence for a jury to find Williamson guilty of resisting

[4] A person is guilty of resisting arrest if he intentionally prevents or attempts to prevent a peace

arrest.[4] Furthermore, the declaration states that Williamson punched both Spencer and Darnell in the face. Thus, there was also sufficient evidence for a jury to find him guilty of fourth degree assault.[5]

Moreover, Williamson's argument that the record lacked evidence that Tenney and Bell were placed in reasonable fear that he would kill them is irrelevant. A person is guilty of harassment[6] if, without lawful authority, that person knowingly threatens to cause bodily injury immediately or in the future to the person threatened or to any other person, and that person by words or conduct[7] places the threatened person in reasonable fear that the threat will be carried out. RCW 9A.46.020(1)(a)(i) and (b). A jury could have inferred fear in the officers and concluded that Williamson was guilty of felony harassment based on the evidence provided in the declaration; the officers were not, as Williamson seems to argue, required to testify that they were in fact fearful at the time Williamson made threats to them.

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officer from lawfully arresting him. RCW 9A.76.040.

[5] A person is guilty of fourth degree assault if, under circumstances not amounting to assault in the first, second, or third degree assault, or custodial assault, he assaults another. RCW 9A.36.041.

[6] A person who harasses another is guilty . . . of a felony if either of the following applies: (i) The person has previously been convicted in this or any other state of any crime of harassment, as defined in RCW 9A.46.060, of the same victim or members of the victim's family or household or any person specifically named in a [no-contact] or no-harassment order; or (ii) the person harasses another person under subsection (1)(a)(i) of this section by threatening to kill the person threatened or any other person.

RCW 9A.46.020(2)(b).

[7] "Words or conduct" includes, in addition to any other form of communication or conduct, the sending of an electronic communication. RCW 9A.46.020(1)(b).

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Penoyar, A.C.J.

We concur:

Hunt, J.

Quinn-Brintnall, J.