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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0453**

State of Minnesota,
Respondent,

vs.

Ladena Pacheco,
Appellant.

**Filed December 26, 2017
Affirmed
Jesson, Judge**

Hennepin County District Court
File No. 27-CR-16-1132

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Kelly O'Neill Moller, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara Euteneuer, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Jesson, Judge; and Florey, Judge.

UNPUBLISHED OPINION

JESSON, Judge

As appellant Ladena Pacheco discovered, keeping a rental car past the agreement's expiration date can lead to criminal liability. After failing to return a rental car when it was

due, Pacheco pleaded guilty to theft of rental property with indifference to the owner's rights. The district court accepted the guilty plea and convicted her. On direct appeal, Pacheco argues the guilty plea was inaccurate because it did not establish the necessary elements: that she took the rented property with intent to exercise temporary control only and that the control exercised manifested an indifference to the rights of the owner. We determine that there is a sufficient factual basis for her plea and we affirm.

FACTS

In January 2016, the state charged appellant Ladena Pacheco with theft of rented personal property under Minnesota Statutes section 609.52, subdivision 2(a)(9), 2(a)(9)(iii) (2014).¹ The probable cause affidavit stated that Pacheco rented a car from Budget Car Rental on October 30, 2015, but did not return it on the date the rental agreement ended, October 31, 2015. On November 3, 2015, Pacheco went into the rental office, paid all outstanding costs, and extended the rental agreement through November 4, 2015. However, the new due date soon passed, and Pacheco failed to return the car. Budget Car Rental unsuccessfully attempted to contact Pacheco and request that she return the car. Eventually, police located the car unoccupied in a hotel parking lot on December 18, 2015.

In January 2017, Pacheco pleaded guilty to an amended charge of theft of rental property with indifference to the owner's rights under Minnesota Statutes section 609.52, subdivision 2(a)(5)(i) (2014), in exchange for a three-year stay of imposition. At the guilty

¹ This provision applies to individuals who “lease[] or rent[] personal property under a written instrument and . . . do[] not return the property to the lessor at the end of the lease or rental term, plus agreed-upon extensions, with intent to wrongfully deprive the lessor of possession of the property.” Minn. Stat § 609.52, subd. 2(a)(9), (2)(a)(9)(iii).

plea hearing, the district court ensured that Pacheco had sufficient time with her attorney to discuss her rights, options, and consequences of pleading guilty. Pacheco stated that she was comfortable with her decision to plead guilty.

To develop a factual basis for the plea, Pacheco's attorney asked a series of questions. Pacheco testified that she rented a car and then extended the lease. She admitted that the rental agreement expired, she had possession of the car, she was supposed to bring the vehicle back, and she did not return it. Pacheco did explain that the car was stolen from her at one point after the rental agreement expired, but she admitted that she had possession of the car prior to it being stolen. The testimony continued, in relevant part:

Q: But before the vehicle was stolen from you -- and of course you had no control over the vehicle being stolen and whether or not that was going to happen and how to track down where the vehicle was at. Of course when it was taken from you that was outside of your control. But before that occurred you had control of the vehicle?

A: Yes.

Q: And they wanted -- the Budget rental car agency wanted their vehicle back, but you didn't bring it back to them?

A: It was kind of an argument thing that was going on, and I should have been more on top of that.

Q: You should have brought it back to them, but you didn't; is that correct?

A: Yeah, but then there was a contract saying that, you know, I could keep it more because we switched from one credit card to the next and --

Q: And in all of that, they asked you to bring the vehicle back, but you didn't bring the vehicle back? You disregarded what they asked for?

A: Yeah, I did think everything was going to be fine, and I should have paid more attention definitely, for sure.

Q: And you knew that they wanted their vehicle back and that that put them at a disadvantage being the owners of the vehicle?

.....

A: Yes. I didn't comply the way that I should have with the situation.

The district court accepted the guilty plea and stayed the imposition of the sentence, placing Pacheco on probation for three years. After successfully completing probation, the conviction would be reduced from a felony to a misdemeanor. Minn. Stat. § 609.13, subd. 1(2) (2014). This appeal follows.

DECISION

Pacheco argues on direct appeal that she should be able to withdraw her guilty plea due to its inaccuracy, because it was not supported by a sufficient factual basis. To be constitutionally valid, guilty pleas must be accurate, voluntary, and intelligent. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). An accurate plea is one established by a proper factual basis. *Id.* While this court should be “wary” of situations where the defendant is asked only a series of leading questions, a plea is not invalidated simply because the court failed to “elicit proper responses[,] if the record contains sufficient evidence to support the conviction.” *Id.* This court assesses the validity of a guilty plea de novo. *Id.*

Pacheco pleaded guilty to theft of rental property with indifference to the owner's rights under Minnesota Statutes section 609.52, subdivision 2(a)(5)(i). This crime required

the state to prove Pacheco (1) took the rented property with intent to exercise temporary control only and (2) the control exercised manifests an indifference to the rights of the owner or the restoration of the property to the owner. Minn. Stat § 609.52, subd. 2(a)(5), 2(a)(5)(i); *see also State v. Beito*, 332 N.W.2d 645, 648 (Minn. 1983). We first address each element separately, and then address Pacheco’s argument that a sufficient factual basis was not established because there were leading questions and there was other testimony, regarding the car being stolen and confusion over the expiration date, that undercut the evidence.

The first contested element is whether Pacheco took the rented property with intent to exercise temporary control over it. At the hearing, Pacheco testified that the rental extension expired and she knew she was supposed to bring the car back. Yet she continued to keep control of the vehicle for some period of time and chose not to return it. This testimony is sufficient to establish Pacheco’s intent to exercise control over the car.

The second contested element is whether the control exercised by Pacheco manifested an indifference to the rights of the owner, or the restoration of the property to the owner. This manifests-an-indifference element has not been explicitly defined, but is discussed in several cases. In *Beito*, the court determined that the element was satisfied when the defendant stole a truck, drove it to another location, and abandoned it in a parking lot. 332 N.W.2d at 647, 648-49. In *State v. O’Hagan*, the court held the district court did not abuse its discretion when it did not include “willful, reckless, or malicious disregard” in its jury instruction for the manifests-an-indifference element. 474 N.W.2d 613, 620 (Minn. App. 1991), *review denied* (Minn. Sept. 25, 1991). The court instead stated the

element is satisfied by “using or abusing the property in a manner that exposes it to risk of damage, or using it so that it is in fact damaged. Examples might be . . . leasing, renting or borrowing the property for a period and continuing to use it beyond the period.” *Id.* Here the testimony shows that Pacheco had possession of the car after the rental agreement, knew that the rental company wanted the car back, and chose not to return it. Importantly, Pacheco knew not returning the car put Budget Car Rental at a disadvantage. This fits within the scope of the element’s requirements pursuant to *Beito* and *O’Hagan*, and there are sufficient facts to show that the control exercised manifested an indifference to the rights of the rental company.

Pacheco argues that the use of leading questions by her attorney to create the factual record invalidates the accuracy of her plea. We disagree. While leading questions are discouraged in a guilty plea hearing, this court has held that using leading questions “does not by itself invalidate a guilty plea.” *Barnslater v. State*, 805 N.W.2d 910, 914 (Minn. App. 2011). Here, the questions and answers on the record establish the required elements and provide a sufficient factual basis.

Pacheco also contends that testimony that the car was stolen, and that she was confused about the rental expiration date, establish that she did not exercise temporary control over the car and that she did not have an indifference to the rights of the owner. We again disagree. It is accurate that statements that negate an essential element of the crime may destroy the factual basis of a plea. *State v. Iverson*, 664 N.W.2d 346, 350 (Minn. 2003). However, the testimony Pacheco points to does not negate any essential element of the crime. There is testimony that the car was stolen, but Pacheco nonetheless admitted

that she had possession of the car after the agreement expired, but before it was stolen, and decided not to return it. The fact the car was later stolen does not absolve Pacheco of these facts. Similarly, while Pacheco did express that there was some confusion over the expiration date, she testified that after the confusion, Budget Car Rental asked that she bring the car back and she disregarded that request. This testimony does provide context for some of the facts, but it does not change or negate the testimony that Pacheco had possession of the rental car past the expiration date, knew she was supposed to return it, and decided not to.

This is unlike *Mikulak*, where the defendant pleaded guilty to “knowingly violat[ing]” the predatory offender registration statute. *State v. Mikulak*, ___ N.W.2d ___, 2017 WL 5474128, at *3 (Minn. Nov. 15, 2017). The court determined that knowledge of the law at the time of the violation was an element of the offense, thus the defendant testifying at the plea hearing that he was unaware of the law at the time of the offense failed the accuracy requirement, as it explicitly negated an element of the charged offense. *Id.* at *4-5. Here on the other hand, there was no testimony from Pacheco, including that the car was stolen and her initial confusion about the expiration end date, that negated an element of the crime. This is because there was a period of time – before her car was stolen and after her confusion – where Pacheco had possession of the car, knew she was supposed to return it, but did not.²

² Additionally, theft of rental property with indifference to the owner’s rights does not encompass a knowledge-of-the-law element, but instead requires (1) intent to exercise temporary control over rented property and (2) the control exercised must manifest an indifference to the rights of the owner or the restoration of the property to the owner. *See*

Because there was a sufficient factual basis for both of the required elements, we determine that the guilty plea was accurate.

Affirmed.

Minn. Stat § 609.52, subd. 2(a)(5), 2(a)(5)(i). Both of these elements are satisfied, and no testimony negates either element.