FILED
DEC 27 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,) Filed December 27, 1983

vs.)

JERRY LEE MUTCHLER,) 3-356
83-309

Defendant-Appellant.)

Appeal from Page District Court - J. C. Irvin and Leo Connolly, Judges.

Defendant appeals from the judgment and sentence entered upon his guilty plea to the crime of delivery of a schedule I controlled substance in violation of Iowa Code section 204 401(1)(b) (1981). REVERSED.

Charles Harrington, Appellate Defender, and LuAnn White, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Valencia Voyd McCown, Assistant Attorney General, for plaintiff-appellee.

Heard by Donielson, P.J., and Schlegel and Hayden, JJ.

HAYDEN, J.

Defendant Jerry Lee Mutchler, appeals from the judgment and sentence entered upon his guilty plea to the crime of delivery of a schedule I controlled substance in violation of Iowa Code section 204.401(1)(b) (1981). Defendant asserts on appeal that there was not a sufficient factual basis for his guilty plea and that his guilty plea was not knowing and voluntary because he was incorrectly advised of the penal consequences of his plea.

The defendant entered a guilty plea to a charge of delivery of the controlled substance mescaline. Pursuant to the plea bargain, the State agreed not to prosecute a second charge against the defendant (possession of a schedule I controlled substance with intent to deliver) and not to prosecute the defendant's common law wife on charges arising out of the same incident. The defendant indicated his belief at the guilty plea proceeding that he had in fact delivered the drug mescaline to a police "associate." A subsequent laboratory analysis indicated there were no controlled substances in the material which the defendant had sold. The State filed a notice of exculpatory evidence relating the results of the laboratory analysis on the materials sent by the Page County Sheriff's Department to the Iowa State Criminalistics Laboratory. The defendant then filed a timely motion in arrest of judgment asserting, among other things, that there was no factual basis demonstrating his guilt of the crime charged. The trial court, after a review of the record at sentencing, overruled the motion.

Our review of criminal proceedings is on assigned error. State v. Cullison, 227 N.W.2d 121, 126-27 (Iowa 1975). When a criminal defendant, as here, raises issues involving the violation of basic constitutional safeguards, however, we make an independent evaluation of the totality of the circumstances. Id.

A court cannot accept a defendant's guilty plea if there is no factual basis to support the plea. Iowa R. Crim. P. 8(2)(b). It is also fundamental that the absence of a factual basis supporting the crime to which defendant is pleading guilty is

fatal to the plea even if it is clear that the defendant is guilty of another crime to which he has not pled. State v. Schoelerman, 315 N.W.2d 67 (Iowa 1982); State v. Sanders, 309 N.W.2d 144 (Iowa Ct. App. 1981). The issue in this case is whether laboratory test results concluding that the substance defendant delivered was not the controlled substance which he was charged with delivering sufficiently undermines the factual basis of the plea so that the court should allow him to withdraw the plea. We conclude that the trial court erred by not allowing a withdrawal of the defendant's guilty plea. The purpose of the factual basis requirement is to preclude convictions for crimes of which the accused is not in fact guilty. State v. Sanders, 309 N.W.2d at 145. Although the defendant in the guilty plea proceeding answered affirmatively when asked if he knew the substance was mescaline, the laboratory test results show that the substance was not mescaline and not a controlled substance. These results were the only evidence showing exactly what the substance was. Since this evidence clearly indicates that the defendant could not possibly be guilty of the crime charged, the trial court's ruling must be reversed. Defendant is allowed to withdraw his guilty plea and proceed anew.

REVERSED.

Donielson, P.J., concurs; Schlegel, J., dissents.

SCHLEGEL, J. (dissenting)

I dissent from the majority's holding that the laboratory report so seriously undermined the factual basis for the guilty plea as to require the trial court to grant defendant's motion in arrest of judgment. The admission into evidence at trial of scientific evidence such as the State Criminalistics Laboratory report is governed by the supreme court's decision in State v. Hall, 297 N.W. 2d 80 (Iowa 1980), cert. denied, 450 U.S. 927, 101 S. Ct. 1384, 67 L. Ed. 2d 359 (1981). As the court's decision in that case demonstrates, there must be foundation evidence indicating the reliability of scientific evidence before it is admissible. Id. at 83-88. The laboratory report in this case was not subjected to those requirements. Moreover, assuming it would have been admitted into evidence at a trial of this case, I do not believe it is conclusive evidence that defendant did not deliver a schedule I controlled substance.

The laboratory test results unquestionably cast doubt on the nature of the substance sold by defendant. I do not believe, however, that the test results so seriously undermine the factual basis for the guilty plea as to require the trial court to grant defendant's motion in arrest of judgment. The factual basis requirement does not compel the trial court to resolve all contradictory evidence in the case. United States v. Webb, 433 F. 2d 400, 403 (1st Cir. 1970), cert. denied, 401 U.S. 958, 91 S. Ct. 986, 28 L. Ed. 2d 242 (1971). The trial court specifically questioned the defendant at the plea proceeding as to whether he delivered to the State's agent the controlled substance mescaline. Defendant unequivocally responded in the affirmative.

I believe defendant's reliance on Schoelerman as requiring a contrary result is misplaced. The facts in that case which failed to establish the essential elements of false use of a financial instrument were undisputed. State v. Schoelerman, 315 N.W. 2d 67, 70 (Iowa 1982). Defendant unquestionably had signed his own name to a worthless check with an intent to defraud. Id. The

evidence of the nature of the substance defendant delivered to the State's agent, however, is equivocal. While it is close, I would hold that even in light of the additional exculpatory evidence, there was a sufficient factual basis in the record for defendant's guilty plea.