STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1805

State of Minnesota,
Respondent,

vs.

Christopher Michael Means,
Appellant.

Filed October 2, 2017
Reversed and remanded
Peterson, Judge

Hennepin County District Court
File No. 27-CR-15-36035

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

Michael O. Freeman, Hennepin County Attorney, Cheri A. Townsend, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Halbrooks, Judge; and Smith, Tracy M., Judge.

U N P U B L I S H E D O P I N I O N

PETERSON, Judge

In this appeal from his conviction of first-degree aggravated robbery, appellant argues that his guilty plea was not accurate because the record does not show that he knew

that others were going to take the victim's property or that he intended to aid in the commission of the robbery. We reverse and remand.

FACTS

Appellant Christopher Michael Means was one of three people who assaulted another person in Minneapolis. Means and the other assailants followed the victim when he got off a light-rail train. Means threw the first punch, hitting the victim in the back of the head, and all three punched the victim as he fell down and then tried to escape. The victim said that Means was his primary attacker. The victim's injuries included a broken nose, a deviated septum, a five-centimeter laceration to his forehead, and knee damage. During the assault, one of the other assailants took the victim's cigarettes.

A surveillance video showed the assault and assisted police in identifying Means. He was charged with first-degree aggravated robbery and entered a guilty plea with no agreement as to what his sentence would be.

During the plea hearing, Means testified that he had been drinking on the night of the offense and some gang members on the train with him, who he did not know, "were . . . the people that [he] went and committed [the] robbery with." Means admitted that he punched the victim and knocked him to the ground, but he denied that he and the other assailants decided beforehand to beat up or rob the victim. He testified that he remembered only parts of the incident because he blacked out, and he did not remember standing over the victim to prevent his escape. Means agreed that he was part of the group that "did this," and he knew that it was wrong.

The prosecutor asked whether Means "basically helped out the other two guys," knowing that "they were going to rob" the victim, and Means said, "No. I didn't know that we were going to rob him, sir." He testified, "I thought it was, like, going to be me and him—not, you know, other people." Means acknowledged that the robbery occurred, but he testified that he did not remember it. When pressed, Means agreed that while he did not take anything from the victim, his assault enabled the others to "get away with the cigarettes." When asked why he pleaded guilty, Means said, "I'm just pleading guilty because I know what I did was wrong, and I know that I don't remember, but I wouldn't be here if it wasn't serious." The prosecutor then stated, "I'm satisfied with the *Norgaard* plea, your Honor."

After a bench conference, the prosecutor again asked Means whether, despite his inebriation, he believed statements that the victim and one of the other assailants made to police, and Means answered, "If I say yeah, then I'll be—a lie, because I don't know, you know, what went on that night." He stated that he was "guilty to a certain extent" because he hit the victim.

Defense counsel again questioned Means, asking:

> Q: And although you don't remember it, you're not saying that a robbery didn't occur, you just can't remember; is that correct?
> A: Yes, sir.
> Q: And after reading the police reports and having me describe what's on the video, you're aware that you continued to punch him after that initial blow?
> A: Yes, sir.
> Q: And that as you and the other people were beating him up, they were also taking property from him?
> A: Yes, sir.

Q: And you and I have talked about the theory of aiding and abetting, correct?
A: Yes, sir.
Q: Would you agree that you're guilty of this offense?
A: Yes, sir.

The prosecutor then questioned Means again and asked whether, in light of his failure to remember the facts, Means would agree to allow the judge to examine the complaint and police reports "in the process of accepting your plea of guilty," to ensure that Means was "pleading guilty to an offense that he's guilty of." Means agreed.

The district court accepted the plea, entered a conviction, and imposed a 48-month executed sentence. This appeal followed.

D E C I S I O N

Means argues that his guilty plea is invalid and, therefore, he must be allowed to withdraw it. He contends that his plea is invalid because it is inaccurate. In a pro se brief, Means essentially makes the same argument.

The validity of a guilty plea is a question of law subject to de novo review, and the defendant has the burden to establish that a plea is invalid. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). "To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent." *Id.* If a guilty plea fails to meet any of these three requirements, the plea is invalid. *State v. Theis*, 742 N.W.2d 643, 650 (Minn. 2007). "A defendant is free to simply appeal directly from a judgment of conviction and contend that the record made at the time the plea was entered is inadequate in one or more of these respects." *Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989).

"A guilty plea is inaccurate if it is not supported by a proper factual basis." *State v. Johnson*, 867 N.W.2d 210, 215 (Minn. App. 2015), *review denied* (Minn. Sept. 29, 2015). A factual basis is proper if there are sufficient facts on the record to establish that the defendant's conduct was within the charge to which he pleaded guilty. *Id.* If the defendant's statements during his plea negate an essential element of the offense, the factual basis for the plea is inadequate. *State v. Iverson*, 664 N.W.2d 346, 350 (Minn. 2003). Means argues that his guilty plea is inaccurate "because he testified he did not know the principals were going to commit a crime and he did not intend to aid the commission of that crime."

Means pleaded guilty to first-degree aggravated robbery.

> Whoever, having knowledge of not being entitled thereto, takes personal property from the person or in the presence of another and uses or threatens the imminent use of force against any person to overcome the person's resistance or powers of resistance to, or to compel acquiescence in, the taking or carrying away of the property is guilty of robbery . . . .

Minn. Stat. § 609.24 (2014). "Whoever, while committing a robbery, . . . inflicts bodily harm upon another, is guilty of aggravated robbery in the first degree . . . ." Minn. Stat. § 609.245, subd. 1 (2014). At the plea hearing, Means testified that he did not take anything from the victim but admitted that his assault enabled the others to "get away with the cigarettes."

Under the aiding-and-abetting statute, "[a] person is criminally liable for a crime committed by another if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime." Minn. Stat. § 609.05, subd. 1

(2014). The intent element of aiding and abetting "embodies two important and necessary principles: (1) that the defendant knew that his alleged accomplices were going to commit a crime, and (2) that the defendant intended his presence or actions to further the commission of that crime." *State v. Milton*, 821 N.W.2d 789, 805 (Minn. 2012) (quotation omitted); *see State v. Mahkuk*, 736 N.W.2d 675, 682 (Minn. 2007) (stating that aiding and abetting first-degree murder requires proof that the defendant "knew that his alleged accomplices were going to commit a crime and . . . intended his presence or actions to further the commission of that crime"); *State v. Gates*, 615 N.W.2d 331, 337 (Minn. 2000) (stating, "[t]o impose liability for aiding and abetting, the state must show that the defendant played a knowing *role* in the commission of the crime" (quotation omitted)), *overruled on other grounds by Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354 (2004).

Means's testimony at the plea hearing was insufficient to establish that he committed first-degree aggravated robbery. Means admitted that he assaulted the victim, but he denied that he and the other assailants planned to rob the victim or that he knew that the other assailants planned to rob the victim. Means agreed that the district court could examine the complaint and the police reports to ensure that he was guilty of the offense to which he was pleading guilty, but, although the police reports establish Means's participation in the assault, they also state that Means said that he did not intend to rob the victim.

We also reject the state's argument that Means's plea is a valid *Norgaard* plea. In a *Norgaard* plea, a defendant may "plead guilty even though he or she claims a loss of

memory, through amnesia or intoxication, regarding the circumstances of the offense." *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994); *State ex rel. Norgaard v. Tahash*, 261 Minn. 106, 110 N.W.2d 867 (1961). But to make a valid *Norgaard* plea, the defendant must admit "that he or she is likely to be convicted of the crime charged." *State v. Solberg*, 882 N.W.2d 618, 621 n.1 (Minn. 2016). When Means was asked if he agreed that the information contained in the complaint and the police reports would support a guilty verdict to the charge of robbery, he said, "No."[1]

Because there are not sufficient facts on the record to establish that Means's conduct constituted first-degree aggravated robbery, we reverse and remand to the district court so that Means can withdraw his guilty plea.

Reversed and remanded.

[1] For the same reason, Means's plea is also not a valid *Alford* plea. An *Alford* plea requires the defendant to maintain innocence while conceding that a jury would likely convict on the charged offense. *State v. Goulette*, 258 N.W.2d 758, 760-61 (Minn. 1977).