STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1018

State of Minnesota,
Respondent,

vs.

Jared Phillip Renner,
Appellant.

Filed May 13, 2019
Affirmed
Klaphake, Judge[*]

Polk County District Court
File No. 60-CR-17-705

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Gregory Widseth, Polk County Attorney, Scott A. Buhler, First Assistant County Attorney, Crookston, Minnesota (for respondent)

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

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

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

KLAPHAKE, Judge

Appellant Jared Phillip Renner filed this appeal from a final judgment of conviction and sentence for first-degree burglary following a guilty plea. Renner argues that he should be allowed to withdraw his guilty plea because it was inaccurate. Because the record does not support his argument, we affirm.

D E C I S I O N

Respondent State of Minnesota charged Renner with first-degree burglary, felony pattern of stalking, three counts of violation of a domestic-abuse no-contact order (DANCO), and two counts of domestic assault involving his wife, D.J.J. Renner contends that his *Norgaard* guilty plea to first-degree burglary is inaccurate because it did not establish the nonconsensual-entry element of that offense and argues that he should be allowed to withdraw the plea.

A defendant does not have an absolute right to withdraw a guilty plea. *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). But a court must permit a defendant to withdraw a guilty plea, even after sentencing, if it is necessary to correct a manifest injustice. Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice occurs if a plea is not valid; to be valid, a plea must be accurate, voluntary, and intelligent. *Raleigh*, 778 N.W.2d at 94. This court reviews the validity of a guilty plea de novo.[1] *State v. Johnson*, 867 N.W.2d 210, 214-15 (Minn. App. 2015), *review denied* (Minn. Sept. 29, 2015).

[1] The state argues that "the time has come—once and for all—to apply the 'plain error' standard of review . . . to all alleged errors that may have occurred during the plea-taking

The accuracy requirement is intended to protect the defendant from pleading guilty to a charge more serious than he could be convicted of if he went to trial. *Williams v. State*, 760 N.W.2d 8, 12 (Minn. App. 2009) (citing *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994)), *review denied* (Minn. Apr. 21, 2009). This goal is accomplished by establishing a "proper factual basis" for the plea, usually by asking the defendant to explain the circumstances of the crime in his own words. *Id.* (quotation omitted). But where the defendant is unable to do so because of "absence of memory on the essential elements of the offense," a factual basis may be established through a *Norgaard* plea in which the defendant acknowledges that the state has sufficient evidence to obtain a conviction. *Id.* (*see State ex rel. Norgaard v. Tahash*, 110 N.W.2d 867, 871-72 (Minn. 1961) (affirming guilty plea where defendant has no recollection of the events which resulted in his arrest)). A *Norgaard* plea is accurate if it is supported by a strong factual basis and the defendant "specifically acknowledge[s] on the record at the plea hearing" that the evidence the state would likely present against him is "sufficient for a jury, applying a reasonable doubt standard, to find [him] guilty." *Johnson*, 867 N.W.2d at 215 (quotation omitted). This acknowledgement is a critical component of an accurate *Norgaard* plea. *Williams*, 760 N.W.2d at 12-13.

To evaluate the accuracy of Renner's guilty plea, we must identify the essential elements of first-degree burglary. Under Minn. Stat. § 609.582, subd. 1(c) (2016), whoever

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process, including an alleged lack of a sufficient factual basis for a guilty plea." This type of policy argument is best made to the supreme court.

(1) enters a building without consent, (2) commits, or intends to commit, a crime within the building, and (3) assaults a person within the building, is guilty of first-degree burglary.

Minnesota law defines "[e]nters a building without consent" for purposes of burglary offenses as entry into a building "without the consent of the person in lawful possession" or "remain[ing] within a building without the consent of the person in lawful possession." Minn. Stat. § 609.581, subd. 4(a), (c) (2016).

Renner concedes that D.J.J. was in lawful possession of the home they both owned and that he had no legal right to exercise control over it due to the DANCO, but contends that his *Norgaard* plea is nonetheless inaccurate with respect to the nonconsensual-entry element of the offense because "the record is completely devoid of any evidence that [he] did not have consent to be in his home on . . . the date the alleged burglary occurred." He argues that "the state failed to present any evidence that [he] entered the home, or that he remained in the home, without D.J.J.'s consent."

The state first argues that Renner did not have consent to enter D.J.J.'s home because "the domestic abuse no-contact order issued against him made his entry into the victim's residence unlawful, whether she purported to consent to the entry or not." The state relies on *State v. Colvin*, in which the supreme court stated that "violation of the no-entry provision of an OFP satisf[ies] the illegal entry element of burglary." 645 N.W.2d 449, 454 (Minn. 2002). However, there was no evidence that the defendant in *Colvin* had the consent of the victim to enter her home. *Id.* at 450-51. *Colvin* is therefore distinguishable from this case, and the state has not established that Renner entered D.J.J.'s home without her consent.

The state next argues that even if Renner "initially entered [D.J.J.'s] residence with her 'consent' . . . , [his] assault upon her while inside of that residence, in direct violation of the DANCO . . . should be deemed to have resulted in a withdrawal of [D.J.J.'s] initial consent to enter."[2]

The record establishes that Renner remained in D.J.J.'s home without consent. As part of the factual basis to support his plea, Renner affirmed that in March 2017 he was subject to a DANCO that prohibited him from contacting his wife, D.J.J., and that he was aware of the DANCO. He affirmed that for a period of approximately two and a half months, including March 2017, he had been in contact with D.J.J. and had been at her residence on several occasions.

Renner agreed that, if the matter went to trial, D.J.J. would testify that on or about March 9, 2017, the two of them went out with some friends and Renner was drinking. Renner agreed that D.J.J. would further testify that they were driving back to D.J.J.'s home from Bagley, that Renner was upset with D.J.J., that "she had pulled into the Bagley sales barn hoping there was a camera there," and that Renner assaulted her at the sales barn. Renner agreed that D.J.J. would also testify that they returned to her home and that while

[2] The state also argues that because Renner pleaded guilty and did not challenge the accuracy of his guilty plea before the district court, he has forfeited the issue. "A claim that the factual basis for the [guilty] plea was insufficient, however, is a challenge to the validity of the plea itself. Thus, by pleading guilty, a defendant does not waive the argument that the factual basis of his guilt was not established." *State v. Iverson*, 664 N.W.2d 346, 350 (Minn. 2003). And if the record provides a sufficient basis for a meaningful review, a challenge to the validity of a guilty plea may be raised for the first time on appeal. *State v. Newcombe*, 412 N.W.2d 427, 430 (Minn. App. 1987), *review denied* (Minn. Nov. 13, 1987). We therefore address the merits of Renner's argument.

inside the home, Renner "started choking her, [] put [his] fingers down her throat, threw her around the house, and she received bruises on her legs and arms and an abrasion in her mouth from that." D.J.J. "would testify that [Renner] took her phones and her keys from her during this incident, and that [he] did that so she [couldn't] call for help." Finally, Renner agreed that he had made a statement to police in which he stated that "in the past [he had] blacked out from drinking and that [D.J.J.] had told [him] the next morning that [he] had choked her."

The state submitted the probable cause portion of the complaint as additional support for Renner's guilty plea. The complaint alleged that after Renner and D.J.J. got back into the vehicle at the sales barn, D.J.J. "started honking the horn hoping someone would hear." Following the March 23 incident, D.J.J. told police that Renner assaulted her both at the sales barn and in her home. D.J.J. also stated that "the next morning, [Renner] said that he was sorry." The complaint alleged that police were called to D.J.J.'s home due to Renner's actions on March 23, April 2, and April 6, 2017. D.J.J. told police that Renner "[had] been living with her for a while because he didn't have anywhere to go," that "there was a physical altercation between her" and Renner approximately two weeks prior that she had not reported, and that "she felt bad for [Renner], so she took him back to try to help him out."

The record shows that on March 9, 2017, D.J.J. consented to Renner's entry into her home, after which he assaulted her, stayed the night, and apologized the next morning. Although D.J.J. did not explicitly withdraw her consent or ask Renner to leave, his assault revoked the consent. Courts in other jurisdictions have held, in the context of a burglary

conviction, that "the defendant's privilege to be on the premises has been withdrawn where the actions of the person giving permission to enter reasonably indicate to the defendant that such permission has been revoked." *State v. Walker*, 600 N.W.2d 606, 610 (Iowa 1999) (reasoning that victim's resistance to defendant's assault and her begging him to stop indicated defendant no longer had victim's permission to be in her home); *see also Hambrick v. State*, 330 S.E.2d 383, 385-86 (Ga. Ct. App. 1985) ("When [the defendant's] ulterior purpose beyond the bounds of a friendly visit became known to [the victim], who was the source of the authority, and he reacted against it, a reasonable inference could be drawn that the authority to remain ended."). By assaulting D.J.J., Renner overstepped the boundaries of her consent, and by staying the night, he remained in the home without her consent, satisfying the nonconsensual-entry element.

Affirmed.