STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1899

State of Minnesota,
Respondent,

vs.

Markus Wilton Eskew,
Appellant.

Filed November 18, 2019
Affirmed
Cochran, Judge

Ramsey County District Court
File Nos. 62-CR-18-465, 62-CR-18-732, 62-CR-18-1482

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

John Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota; and

Lyndsey Olson, St. Paul City Attorney, Maria DeWolf, Assistant City Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Erik I. Withall, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Connolly, Judge; and Reilly, Judge.

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

COCHRAN, Judge

Appellant Markus Wilton Eskew pleaded guilty to one count of interfering with an emergency call and two counts of violating a domestic abuse no contact order (DANCO). In this appeal, Eskew contends that his guilty plea to the emergency call charge was invalid and that the district court exceeded its authority in issuing the DANCO. Because we conclude that Eskew's guilty plea was valid and that the district court did not err in issuing the DANCO, we affirm.

FACTS

The state filed a complaint charging appellant Markus Wilton Eskew with interfering with an emergency call under Minn. Stat. § 609.78, subd. 2(1) (2016). The complaint related to an incident that occurred in January 2018. The complaint alleged that Eskew got into an argument with his significant other (A.R.H.) while driving in a car. A.R.H. was the driver and Eskew was the passenger. According to A.R.H., Eskew had accused her of being unfaithful to him. A.R.H. reported to police that Eskew was angry and that she was afraid he would assault her. She told police that as the argument continued, Eskew became violent. She then took out her cell phone and told Eskew that she was calling 911 because she was afraid. Eskew grabbed A.R.H.'s phone out of her hand and held on to her waist to pull on her, hindering her ability to communicate with emergency services. A.R.H. managed to get her cell phone back and communicate with the 911 operator when the operator called back.

Eskew pleaded guilty at the first appearance. In laying a factual basis for the plea, Eskew testified that he got into a "dispute" with A.R.H. He admitted that A.R.H. said she was going to call the police, and that he begged A.R.H. not to call. He then grabbed A.R.H.'s phone from out of her hands. Eskew admitted that there was a struggle over the phone, and that he materially interfered with A.R.H.'s ability to call the police. The district court accepted the guilty plea and set a sentencing date. The district court also issued a DANCO prohibiting Eskew from having contact with A.R.H.

Eskew violated the DANCO twice before sentencing. The state charged him for both violations. Eskew admitted to both violations and pleaded guilty to the two charges. At a consolidated sentencing hearing, the district court sentenced Eskew to 365 days in jail for the interfering with emergency call charge, 30 months in prison for the first DANCO violation, and 33 months in prison for the second DANCO violation.

Eskew appeals.

D E C I S I O N

Eskew contends that he should be allowed to withdraw his guilty plea to the interfering with an emergency call charge, arguing that his plea was invalid. He also argues that the district court did not have the authority to issue the DANCO because the emergency call charge lacked probable cause. The state responds that Eskew's challenge to his guilty plea is not properly before this court because Eskew did not first file a motion to withdraw his plea pursuant to Minn. R. Crim. P. 15.05. The state also maintains that Eskew's guilty plea was valid and that the district court acted within its authority when it issued a DANCO after Eskew pleaded guilty to interfering with an emergency call.

As a preliminary matter, we reject the state's argument that Eskew was required to file a motion to withdraw his guilty plea before challenging the validity of the plea on appeal. Although Minn. R. Crim. P. 15.05 provides that a defendant may seek to withdraw his plea "upon a timely motion," Minnesota appellate precedent makes clear that a defendant may directly appeal from a judgment of conviction arguing that his guilty plea is invalid. *See Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989) ("A defendant is free to simply appeal directly from a judgment of conviction and contend that the record made at the time of the plea was entered is inadequate in one or more of these respects [i.e., that the plea was not valid because it was not accurate, voluntary, or intelligent]."); *State v. Johnson*, 867 N.W.2d 210, 214 (Minn. App. 2015), *review denied* (Minn. Sept. 29, 2015).[1] Accordingly, we review the merits of Eskew's arguments. We first address whether Eskew is entitled to withdraw his guilty plea and then turn to his argument regarding the DANCO.

I. Eskew is not entitled to withdraw his guilty plea because his plea was valid.

A defendant does not have an absolute right to withdraw a guilty plea. *State v. Mikulak*, 903 N.W.2d 600, 603 (Minn. 2017). But a court must allow a defendant to do so if "withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. "A manifest injustice exists if a guilty plea is not valid." *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). "To be constitutionally valid, a guilty plea must be

[1] We note that the state's reliance on *State v. Klug*, 839 N.W.2d 723, 729 (Minn. App. 2013), to support its position that a defendant must move for plea withdrawal before seeking withdrawal on direct appeal is misplaced. We did not hold in *Klug* that a criminal defendant must move for plea withdrawal before seeking withdrawal on direct appeal.

accurate, voluntary, and intelligent." *Id.* "If a guilty plea fails to meet any of these three requirements, the plea is invalid." *Johnson*, 867 N.W.2d at 214. Whether a plea is valid is a question of law that appellate courts review de novo. *Raleigh*, 778 N.W.2d at 94.

Eskew challenges the accuracy of his plea. "The accuracy requirement protects a defendant from pleading guilty to a more serious offense than that for which he could be convicted if he insisted on his right to trial. To be accurate, a plea must be established on a proper factual basis." *Id.* (citations omitted). "The factual basis must establish sufficient facts on the record to support a conclusion that defendant's conduct falls within the charge to which he desires to plead guilty." *Munger v. State*, 749 N.W.2d 335, 337-38 (Minn. 2008) (quotation omitted).

Typically, the factual basis for the plea is established when the defendant describes the crime in his own words. *Lussier v. State*, 821 N.W.2d 581, 589 (Minn. 2012). "Still, a defendant may not withdraw his plea simply because the court failed to elicit proper responses if the record contains sufficient evidence to support the conviction." *Raleigh*, 778 N.W.2d at 94. A plea colloquy may be supplemented by other parts of the district court record, including the complaint. *Lussier*, 821 N.W.2d at 589 (citing *State v. Trott*, 338 N.W.2d 248, 252 (Minn. 1983) (permitting use of the whole record, including the complaint and photographs)).

Eskew argues that his guilty plea was inaccurate because there are not sufficient facts in the record to establish an essential element of interfering with an emergency call—that an emergency existed at the time the defendant interfered with the call. A person is guilty of interference with an emergency call if he "intentionally disrupts, impedes, or

interferes with an emergency call or who intentionally prevents or hinders another from placing an emergency call." Minn. Stat. § 609.78, subd. 2(1). "Emergency call" means "(1) a 911 call; (2) any call for emergency medical or ambulance service; or (3) any call for assistance from a police or fire department or for other assistance needed in an emergency to avoid serious harm to person or property, and an emergency exists." Minn. Stat. § 609.78, subd. 3(a)(1)-(3) (2016). "A call is not an emergency call unless 'an emergency exists.'" *State v. Hersi*, 763 N.W.2d 339, 343 (Minn. App. 2009) (quoting Minn. Stat. § 609.78, subd. 3 (2006)).

The interference with an emergency call statute does not define "emergency." *See* Minn. Stat. § 609.78. In *State v. Brandes*, this court considered the dictionary definition of "emergency" for guidance. 781 N.W.2d 603, 606 (Minn. App. 2010). We concluded that "emergency" means "'[a] serious situation or occurrence that happens unexpectedly and demands immediate action,' or '[a] condition of urgent need for action or assistance.'" *Id.* (quoting *The American Heritage College Dictionary* 449 (3d ed. 2000)). This court noted that an "emergency" does not always include "violence, a threat of violence, or the existence of a separate, underlying criminal offense . . . . Depending on the circumstances, an argument may constitute a serious event that demands immediate action." *Id.*

Eskew argues that his plea is inaccurate because, at the plea hearing, he admitted only that he had a "dispute" with A.R.H. before she attempted to call 911. He argues that the word "dispute" encompasses a broad range of non-emergency scenarios and that there is not sufficient evidence in the record to establish that an emergency existed. We disagree. According to the complaint, Eskew became violent when arguing with A.R.H. in the car.

While an ordinary argument may not rise to the level of an "emergency" as contemplated by the statute, we conclude that an argument that turns violent is sufficient to constitute a "serious situation" that "demands immediate action" and a "condition of urgent need for action or assistance," satisfying the emergency element. *See Brandes*, 781 N.W.2d at 606 (concluding that evidence that appellant "argued vociferously" with a victim over an extended period of time and refused to leave despite being told to do so, causing the victim to fear the appellant, and then was observed fighting with another person was sufficient to prove that an emergency existed).

Eskew maintains that the facts in the complaint are too general and conclusory to supplement his testimony and establish the emergency element, arguing that the allegations in the complaint require an "active imagination to conclude that an emergency prompted [A.R.H.] to call 911." Again, we disagree. A.R.H.'s statements that she was afraid that Eskew would assault her and that Eskew then "became violent," support the conclusion that the dispute between the two escalated beyond a "non-emergency scenario." Moreover, A.R.H. stated that Eskew held onto her waist to pull on her, and the 911 operator heard sounds of a struggle when A.R.H. initially called her. The complaint establishes that Eskew engaged in an angry argument with A.R.H., causing her to fear an assault, and that Eskew then became violent, prompting A.R.H. to call 911 because she was afraid. We conclude that there are sufficient facts in the record to establish that an emergency existed when Eskew interfered with A.R.H.'s 911 call and that, consequently, Eskew's guilty plea was accurate and valid.

II. The district court did not exceed its authority in issuing a DANCO after accepting Eskew's guilty plea.

Eskew also argues that we should reverse his convictions for violating the DANCO because the district court exceeded its authority by issuing the DANCO without probable cause. A district court may issue a DANCO order in a criminal proceeding for interfering with an emergency call if the crime was committed against a family or household member. *See* Minn. Stat. § 629.75, subd. 1 (2016) (providing that a court may issue a DANCO order when the defendant is charged with domestic abuse as defined in Minn. Stat. § 518B.01, subd. 2); Minn. Stat. § 518B.01, subd. 2(a)(3) (2016) (defining "domestic abuse" as including interfering with an emergency call under Minn. Stat. § 609.78, subd. 2, if it is committed against a family or household member). The statute restricts the district court's authority to issue a DANCO to cases in which:

> (1) the court has made a preliminary finding that there is probable cause to believe that the defendant has committed [a crime that would authorize the issuance of the DANCO], (2) the court has considered whether a no contact order is necessary for the safety of the victim or other persons, and (3) the court has issued a written order setting forth the conditions of release.

State v. Ness, 834 N.W.2d 177, 185 (Minn. 2013). These protections ensure that a defendant is afforded his or her right to due process under the Minnesota and the federal constitutions. *Id.* at 184-85.

Eskew's argument that the district court issued the DANCO without probable cause is identical to his argument that his guilty plea was invalid—that there was not probable cause to believe that an emergency existed at the time he interfered with the 911 call and

therefore there was not probable cause to support the issuance of the DANCO. The district court issued the DANCO only after accepting Eskew's guilty plea. And the district court had previously made a probable cause determination when it signed the complaint charging Eskew with interfering with an emergency call. As discussed above, we conclude that there are sufficient facts in the record to support Eskew's guilty plea and to establish that an emergency existed when he interfered with A.R.H.'s emergency call. Consequently, we find no merit to this argument.

Because there are sufficient facts in the record to support Eskew's guilty plea to interfering with an emergency call, and because the district court acted within its authority in issuing a DANCO, we affirm Eskew's convictions for interfering with an emergency call and violating a DANCO.

Affirmed.