STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1218

State of Minnesota,
Respondent,

vs.

Jared Otha Washington,
Appellant.

Filed July 20, 2020
Affirmed
Cochran, Judge

Dakota County District Court
File No. 19HA-CR-18-2636

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

James C. Backstrom, Dakota County Attorney, Anna Light, Assistant County Attorney, Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sharon E. Jacks, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Cochran, Judge; and Bryan, Judge.

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

COCHRAN, Judge

In this direct appeal from final judgment, appellant argues that his guilty pleas to three counts of first-degree aggravated robbery are invalid because they were inaccurate. We affirm.

FACTS

The state charged appellant Jared Otha Washington with four counts of first-degree aggravated robbery under Minn. Stat. § 609.245, subd. 1 (2018), four counts of second-degree assault under Minn. Stat. § 609.222, subd. 1 (2018), one count of first-degree burglary under Minn. Stat. § 609.582, subd. 1(b) (2018), one count of theft of a motor vehicle under Minn. Stat. § 609.52, subd. 2(a)(17) (2018), and one count of fleeing a peace officer in a motor vehicle under Minn. Stat. § 609.487, subd. 3 (2018). The state later amended one count of first-degree aggravated robbery to attempted first-degree aggravated robbery. The complaint alleged that on October 10, 2018, Washington and his two cousins drove around the Twin Cities, robbed three victims at gunpoint, attempted to rob a fourth victim, and fled from police.

Washington agreed to plead guilty to three counts of first-degree aggravated robbery (counts one, three, and eight), one count of fleeing a peace officer (count eleven), and one count of attempted first-degree aggravated robbery (count five) in exchange for the state dismissing the remaining charges. Before pleading guilty, Washington signed a plea petition in which he acknowledged, among other things, that he understood the charges against him. Washington also signed a *Norgaard* addendum to the plea petition. In the

addendum, he acknowledged that he did not recall the circumstances of the offenses, but reviewed the evidence the state would offer against him at trial and believed there was a substantial likelihood that he would be found guilty beyond a reasonable doubt. Washington also confirmed that he was making no claim that he was innocent.

At the plea hearing, Washington pleaded guilty to the five offenses. Washington explained that he signed the *Norgaard* addendum because he did not have a complete memory of the offenses. According to Washington, his memory was impaired because he had taken a number of narcotics. Washington acknowledged that he had reviewed the police reports related to his case and agreed that there was a substantial likelihood that he would be found guilty of the offenses if evidence consistent with the police reports was introduced at trial.

Washington's attorney questioned him about the incidents. Washington remembered the circumstances relating to the first count of first-degree aggravated robbery. He recalled driving himself and his two cousins to Apple Valley to find a specific person, whom the three believed had cheated them during a recent drug sale. According to Washington, when they found that person, Washington's cousins got out of the vehicle, pointed guns at the victim, and took his belongings. Washington took the victim's debit card.

Washington stated that after the first robbery, he took more narcotics and, as a result, his memory of the events involving the other victims was "hazy." However, Washington agreed that the police reports indicated: that he drove the group to the robbery and attempted robbery locations, that he obtained property from the robbery victims, that the

victims were robbed at gunpoint, and that the police found multiple guns in the car he was driving. Washington also remembered some of the events relating to the last robbery and remembered attempting to flee from police to avoid being arrested.

After Washington was questioned by his attorney, the prosecutor questioned Washington about the state's evidence. Washington agreed that he did not have any reason to doubt the accuracy of the evidence. He also agreed that if he went to trial, the state intended to present evidence showing that he was involved in each of the offenses as the driver of the group, that he knew that his cousins were planning on robbing each of the victims, and that police found multiple loaded guns in the vehicle. Washington agreed that the evidence that the state would likely offer against him was sufficient for a jury to find him guilty of the offenses to which he pleaded guilty.

The district court found a sufficient factual basis for Washington's guilty pleas to count one (first-degree aggravated robbery) and count eleven (fleeing a peace officer) based on Washington's own memory and description of the events involved in those counts. The court then addressed count three (first-degree aggravated robbery), count five (attempted first-degree aggravated robbery), and count eight (first-degree aggravated robbery) as *Norgaard* pleas. The district court found that there was sufficient evidence to support a guilty verdict on all three counts and that Washington's three *Norgaard* pleas were "voluntarily, knowingly and intelligently entered." The district court accepted all five guilty pleas and adjudicated Washington guilty of each of the offenses. The district court then sentenced Washington on all five counts.

Washington appeals.

D E C I S I O N

Washington seeks to invalidate his guilty pleas to the three counts of first-degree aggravated robbery (counts one, three, and eight).[1] We are not persuaded.

"To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent." *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). 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). Whether a guilty plea is valid is a question of law that we review de novo. *State v. Johnson*, 867 N.W.2d 210, 214-15 (Minn. App. 2015), *review denied* (Minn. Sept. 29, 2015).

Washington challenges only the accuracy of his pleas. The accuracy requirement protects a defendant from "pleading guilty to a more serious offense than he could be convicted of were he to insist on his right to trial." *Johnson*, 867 N.W.2d at 215 (quoting *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983)). A plea is accurate "if the record contains a showing that there is credible evidence available" that demonstrates that the defendant's conduct falls within the charge to which he is pleading guilty. *Lussier v. State*, 821 N.W.2d 581, 588-89 (Minn. 2012). The factual basis for the plea must establish all of the elements of the offense to which the defendant is pleading guilty. *State v. Jones*, 921 N.W.2d 774, 779 (Minn. App. 2018), *review denied* (Minn. Feb. 27, 2019).

The factual basis is usually established by questioning the defendant to prompt him to explain the "circumstances surrounding the crime." *Williams v. State*, 760 N.W.2d 8,

[1] Washington does not challenge his pleas to the other two offenses: attempted first-degree aggravated robbery (count five) and fleeing a peace officer (count eleven).

12 (Minn. App. 2009) (quoting *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994)), *review denied* (Minn. Apr. 21, 2009). But a defendant who claims a loss of memory regarding the circumstances of the offense may still plead guilty to an offense by entering a *Norgaard* plea. *Ecker*, 524 N.W.2d at 716-17. A *Norgaard* plea is appropriate if the defendant "claims a loss of memory, through amnesia or intoxication, regarding the circumstances of the case." *Id.* In such a case, "the record must establish that the evidence against the defendant is sufficient to persuade the defendant and his or her counsel that the defendant is guilty or likely to be convicted of the crime charged." *Id.* at 716.

An adequate factual basis for a *Norgaard* plea consists of two components: "a strong factual basis and the defendant's acknowledgment that the evidence would be sufficient for a jury to find the defendant guilty beyond a reasonable doubt." *Williams*, 760 N.W.2d at 12-13. The defendant should "specifically acknowledge on the record at the plea hearing that the evidence the State would likely offer against him is sufficient for a jury, applying a reasonable doubt standard, to find the defendant guilty." *Theis*, 742 N.W.2d at 649.

Washington argues that his pleas to aggravated robbery were not accurate when entered because the factual basis was not sufficient to demonstrate that Washington's conduct falls within the charge of aggravated robbery for any of the three counts. The crime of aggravated robbery involves the following elements: (1) wrongful taking of another's personal property from the victim's person or presence, (2) through force or threat of force, and (3) while armed with a dangerous weapon. Minn. Stat. §§ 609.24, .25, subd. 1. Washington argues that there is no factual basis of him personally taking personal property, using or threatening to use force, or being armed with a dangerous weapon.

Washington acknowledges that "the factual basis may have established that he aided and abetted his cousins in committing aggravated robbery," but argues that his aggravated-robbery pleas were not valid because he was not charged with aiding and abetting aggravated robbery, "did not plead guilty to it, and was not convicted of it." The state responds that Washington's argument lacks merit because there is no legal distinction between a principal offender and an accomplice who aids and abets the principal's crime. We agree with the state.

The Minnesota Supreme Court has "long held that aiding and abetting is not a separate substantive offense." *State v. DeVerney*, 592 N.W.2d 837, 846 (Minn. 1999); *see also State v. Ostrem*, 535 N.W.2d 916, 922 (Minn. 1995) ("It is undisputed that aiding and abetting is not a separate substantive offense."); Minn. Stat. § 609.05, subd. 1 (2018) ("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."). And, as the state points out, a factual basis that establishes that the defendant is guilty of aiding and abetting a robbery is sufficient to sustain a conviction for aggravated robbery. *See State v. DeFoe*, 280 N.W.2d 38, 40 (Minn. 1979) (affirming a defendant's conviction for aggravated robbery based on an aiding and abetting theory). Moreover, "a jury can convict a defendant of aiding and abetting a substantive crime despite the absence of any 'aiding and abetting' language in the complaint." *DeVerney*, 592 N.W.2d at 846. Because aiding and abetting is not a separate substantive offense, Washington's pleas to first-degree aggravated robbery are accurate if they establish the elements of first-degree aggravated robbery either as a principal or as an accomplice.

With these legal principles in mind, we consider the accuracy of Washington's pleas to the three counts of first-degree aggravated robbery (counts one, three, and eight). The district court accepted Washington's plea to count one based on his own memory of the events. As such, Washington's plea to count one was not a *Norgaard* plea. Based on his memory, Washington admitted that he was the driver of the vehicle involved in the robbery, and that he and his cousins specifically sought out the victim. He further admitted that his cousins exited the vehicle with firearms, pointed the firearms at the victim, and took the victim's property. Washington's description of the events provided a sufficient factual basis to demonstrate that Washington aided and abetted the first-degree aggravated robbery charged in count one. *See* Minn. Stat. §§ 609.05, .24, .245, subd. 1; *Jones*, 921 N.W.2d at 779 (noting that for a guilty plea to be accurate a factual basis must be established for all elements of the offense). Washington's plea to count one was accurate.

We conclude that Washington's *Norgaard* pleas to the other two first-degree aggravated-robbery counts (counts three and eight) were also accurate. First, the record contains a strong factual basis to support the pleas. Washington acknowledged that the police reports and potential testimony reflect the following facts: Washington drove the vehicle involved in both robberies; in both instances, Washington and his cousins followed the victim in their vehicle for a short time before two persons, armed with handguns, exited the vehicle and robbed the victim; and the persons armed with handguns took personal property from each victim through force or the threat of force. Further, the police reports and potential testimony indicate that police found multiple loaded weapons in the vehicle that Washington was driving. The record contains a strong factual basis to demonstrate

that Washington aided and abetted the aggravated robberies charged in counts three and eight. *See Williams*, 760 N.W.2d at 12-13 (requiring a strong factual basis to support the plea).

Second, Washington repeatedly agreed that he was likely to be found guilty beyond a reasonable doubt of counts three and eight. At the plea hearing, defense counsel, the state, and the district court each asked Washington if the evidence was sufficient for a jury to find him guilty beyond a reasonable doubt. Washington agreed every time. It is clear that when Washington entered his plea he did so based on his belief that a jury would convict him based on the state's evidence. *See Ecker*, 524 N.W.2d at 717 (concluding that the defendant's *Norgaard* plea was accurate because, among other reasons, the record showed that he pleaded guilty "based on his probable guilt and the likelihood a jury would convict him"). Therefore, Washington's *Norgaard* pleas to counts three and eight were accurate.

In sum, we conclude that Washington did not plead guilty to a more serious charge than he could have been convicted of had he gone to trial on the three aggravated-robbery charges because aiding and abetting a crime is not a lesser-charge from the crime charged. And Washington's three aggravated robbery pleas (counts one, three, and eight) were accurate. Therefore, we conclude that Washington's pleas are valid.

Affirmed.