STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1620

State of Minnesota,
Respondent,

vs.

Arthur Rafie Mullins,
Appellant.

Filed August 31, 2020
Affirmed in part, reversed in part, and remanded
Bryan, Judge

Stearns County District Court
File No. 73-CR-14-10924

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

Janelle P. Kendall, Stearns County Attorney, Michael J. Lieberg, Chief Deputy County Attorney, St. Cloud, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

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

BRYAN, Judge

Appellant challenges his conviction, arguing that his guilty plea was not accurately entered. In addition, appellant challenges his sentence, arguing that the district court erred

in calculating his criminal-history score. First, we affirm the conviction, concluding that appellant's guilty plea established an accurate factual basis. Second, we remand this case for further development of the sentencing record, to provide the state an opportunity to establish appellant's criminal-history score.

FACTS

Respondent State of Minnesota charged appellant Arthur Rafie Mullins with one count of first-degree criminal sexual conduct and two counts of second-degree criminal sexual conduct. The state based the first-degree charge on allegations that between January 1, 2009, and March 1, 2013, Mullins sexually abused his step-daughter by placing his fingers inside her vagina. Mullins pleaded guilty to first-degree criminal sexual conduct and the state agreed to a stayed 360-month sentence. The state also agreed to dismiss the second-degree counts. The agreement for a stayed sentence was conditional. If Mullins failed to cooperate with the preparation of a presentence investigation report, failed to comply with the conditions of presentence release, or failed to appear at sentencing, then the state could argue for an executed term of imprisonment up to 360 months. Mullins explained that he understood the agreement and provided the following factual basis:

> Q: Sir, it's my understanding that, it looks like, from about January 1, 2009, through, it looks like, February of—or May of 2010, you were married to [C.M.]; is that correct?
> A: Yes.
> Q: Okay. And she had a daughter?
> A: Yes.
> Q: And I'm going to refer to her as Child A, but you know who I'm talking about; is that correct?
> A: Yes.
> Q: Okay. After you and [C.M.] divorced, you still stopped by from time to time till about March of 2013; is that correct?

A: Yes.
Q: Okay. And you agree that when you lived with [C.M.] and her daughter, Child A, you lived in a residence in the City of Sartell, County of Stearns, State of Minnesota?
A: Yes.
Q: Okay. Throughout that time Child A—the dates I'm talking about would be January l, 2009, through March 1, 2013—Child A was under the age of 13; is that correct?
A: Yes.
Q: And you had time to be alone with her; is that correct?
A: Yes.
Q: And do you agree throughout that time period you placed your finger inside her vagina?
A: Yes.
Q: Okay. And during this time as well you were more than 36 months older than Child A; is that correct?
A: Yes.
THE STATE: All right. Is that sufficient, your honor?
THE COURT: Yes. Any other questions, [defense counsel]?
DEFENSE COUNSEL: Nothing. Thank you.

The presentence investigation report concluded that Mullins's offense carried a 360-month presumptive prison sentence based on a criminal-history score of eight. Mullins failed to appear at the first sentencing hearing and a warrant was issued for his arrest. Several months later, Mullins was located and arrested. He appeared in custody at the second sentencing hearing. At that time, Mullins moved to withdraw his guilty plea on the grounds that he pleaded guilty only to get out of jail, that his former counsel failed to communicate with him at various times, and that his former counsel improperly transferred the case to another attorney. Because Mullins failed to appear at the first sentencing hearing, the state concluded that he violated the plea agreement. The state requested an executed sentence of 360 months.

The district court denied Mullins's motion to withdraw his plea and calculated that Mullins had a criminal-history score of 8.5. In relevant part, the district court included the following criminal-history points: one custody-status point, one point for each of his 2002 felony convictions for theft-from-person, one point for his 2003 felony conviction for receiving stolen property, and one point for his 2004 felony conviction for aiding and abetting theft. Mullins did not object,[1] and the district court imposed the presumptive sentence. This appeal followed.

D E C I S I O N

I. Accuracy of Guilty Plea

Mullins argues that he did not enter an accurate guilty plea.[2] Because the factual basis established all elements of the offense, we affirm Mullins's conviction.

A plea must be accurate to ensure that a defendant does not plead guilty "to a more serious offense than that for which he could be convicted if he insisted on his right to trial." *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). "To be accurate, a plea must be established on a proper factual basis." *Id.*; *Lussier v. State*, 821 N.W.2d 581, 588 (Minn. 2012). "The factual-basis requirement is satisfied if the record contains a showing that there is credible evidence available which would support a jury verdict that defendant is guilty of at least as great a crime as that to which he pled guilty." *State v. Genereux*, 272

[1] A defendant cannot forfeit appellate review of his criminal-history score. *State v. Scovel*, 916 N.W.2d 550, 553 n.5 (Minn. 2018).

[2] Mullins does not appeal the denial of his presentence request to withdraw from the plea. Instead, the basis of this appeal is that the facts admitted did not sufficiently establish the elements of first-degree criminal sexual conduct.

N.W.2d 33, 34 (Minn. 1978). "The district court typically satisfies the factual basis requirement by asking the defendant to express in his own words what happened." *Raleigh*, 778 N.W.2d at 94. "Assessing the validity of a plea presents a question of law that we review de novo." *Id.*

In this case, Mullins pleaded guilty to first-degree criminal sexual conduct. "A person who engages in sexual penetration with another person" is guilty of first-degree criminal sexual conduct if "the complainant is under 13 years of age and the actor is more than 36 months older than the complainant." Minn. Stat. § 609.342, subd. 1(a) (2008). Sexual penetration includes "any intrusion however slight into the genital or anal openings . . . of the complainant's body by any part of the actor's body." Minn. Stat. § 609.341, subd. 12(2)(i) (2008). Mullins's plea colloquy established the following facts: (1) he was married to C.M. from about January 1, 2009, through "February of—or May of 2010;" (2) after divorcing C.M., he continued to visit C.M. and her daughter until March 2013; (3) throughout that time period, from January 2009 to March 2013, C.M.'s daughter was under the age of 13; (4) throughout that time period, from January 2009 to March 2013, Mullins was 36 months older than C.M.'s daughter; (5) during that time period, C.M. and her daughter lived together in Sartell, Stearns County, Minnesota; and (6) throughout that time period Mullins placed his finger inside C.M.'s daughter's vagina.

Mullins challenges the accuracy of his plea for three reasons. First, he argues that the facts did not establish the element of intent. First-degree criminal sexual conduct requires "the general intent to sexually penetrate the victim." *State v. Bookwalter*, 541 N.W.2d 290, 296 (Minn. 1995). Intent "is a state of mind in which an act is done

consciously, with purpose," and can be inferred from the acts or circumstances themselves. *State v. Ness*, 707 N.W.2d 676, 687 (Minn. 2006) (stating that specific sexual or aggressive intent can be inferred from an individual's acts themselves when there is no other reason for an individual to commit those acts); *State v. Raymond*, 440 N.W.2d 425, 426 (Minn. 1989) ("Intent is an inference drawn by the jury from the totality of circumstances."). Here, the admitted facts and reasonable inferences arising from these facts established intent. At the plea hearing, Mullins was asked this question: "And do you agree throughout that time period you placed your finger inside her vagina?" Mullins answered, "Yes," agreeing with that factual statement. We conclude that, pursuant to *Ness* and *Raymond*, this statement was sufficient to establish the general intent element.

Second, Mullins argues that the facts did not establish venue. "It is clear that the state must prove beyond a reasonable doubt that the charged offense occurred in the charging county." *State v. Bahri*, 514 N.W.2d 580, 582 (Minn. App. 1994) (citing Minn. Const. art. I, §6), *review denied* (Minn. June 15, 1994). "The Minnesota Supreme Court has stated that '[v]enue is determined by all the reasonable inferences arising from the totality of the surrounding circumstances.'" *Id.* (quoting *State v. Carignan*, 272 N.W.2d 748, 749 (Minn. 1978)). "A criminal action arising out of an incident of alleged child abuse may be prosecuted either in the county where the alleged abuse occurred or the county where the child is found." Minn. Stat. § 627.15 (2008). We have previously held that "for the purpose of establishing venue in the limited area of child-abuse, a child can be 'found' in the county where the child resided either when the abuse occurred or when the abuse was discovered." *State v. Rucker*, 752 N.W.2d 538, 547 (Minn. App. 2008).

In this case, the stated facts and reasonable inferences arising from these facts established venue. Mullins stated that he lived with C.M. and her daughter in the city of Sartell in Stearns County when he was married to C.M. Mullins also stated that he continued to visit them from time to time after the divorce. The residence in Sartell was the only residence mentioned, and there is no indication in the colloquy that C.M. and her daughter lived anywhere else. In addition, the prosecutor clarified the time period that he is talking about is from January 2009 to March 2013:

> Q: Okay. And you agree that when you lived with [C.M.] and her daughter, Child A, you lived in a residence in the City of Sartell, County of Stearns, State of Minnesota?
> A: Yes.
> Q: Okay. Throughout that time Child A—the dates I'm talking about would be January l, 2009, through March 1, 2013—Child A was under the age of 13; is that correct?
> A: Yes

This clarification regarding the time frame is not limited to the question about the age of C.M.'s daughter, but also refers to the relevant time frame for venue. We conclude the colloquy established that during this time period of January 1, 2009, through March 1, 2013, C.M. and her daughter lived in Stearns County.[3] In addition, Mullins agreed that "throughout that time period," again referring to the time period from January 1, 2009,

[3] The state also directs this court to binding authority that permits consideration of statements in the criminal complaint to determine whether a guilty plea establishes the elements of a given offense. *See State v. Trott*, 338 N.W.2d 248, 252 (Minn. 1983); *see also Sanchez v. State*, 868 N.W.2d 282, 289 (Minn. App. 2015), *aff'd on other grounds*, 890 N.W.2d 716 (Minn. 2017), *State v. Eller*, 780 N.W.2d 375, 381 (Minn. App. 2010)). The state argues that the complaint in this case clearly identifies the "pink house" in Sartell where the conduct occurred. We need not address this argument because we conclude that the colloquy was sufficient to establish venue.

through March 1, 2013, he placed his finger inside the vagina of C.M.'s daughter. We conclude, therefore, that the offense took place in Stearns County and that the child was "found" in Sterns County.

Third, Mullins challenges the accuracy of his plea because the state used leading questions. The Minnesota Supreme Court has "repeatedly discouraged the use of leading questions to establish a factual basis," but the use of leading questions does not automatically invalidate a guilty plea. *Nelson v. State*, 880 N.W.2d 852, 860 (Minn. 2016) (collecting cases). Indeed, a defendant "may not withdraw his plea simply because the [district] court failed to elicit proper responses if the record contains sufficient evidence to support the conviction." *Raleigh*, 778 N.W.2d at 94. In this case, despite the form of the questions, Mullins's plea colloquy established all elements of the offense. We conclude that Mullins's plea was accurate and valid.

II. Criminal-History Score

Mullins argues that the district court erred in calculating his criminal-history score because the state failed to prove his custody status at the time of the offense and the appropriate weights of his prior felony convictions. "The State bears the burden of proof at sentencing to show that a prior conviction qualifies for inclusion within the criminal-history score." *Williams v. State*, 910 N.W.2d 736, 740 (Minn. 2018) (citing *State v. Marquetti*, 322 N.W.2d 316, 319 (Minn. 1982)). In this case, the state concedes that a remand is necessary. We agree. The record is insufficient to permit review Mullins's custody status at the time of the offense or the appropriate weights for his prior felony convictions. Because Mullins did not object to the district court's calculation of his

criminal-history score and the state's evidence was insufficient to carry its burden of proof, we remand the matter "to further develop the sentencing record so that the district court can appropriately make its determination." *State v. Outlaw*, 748 N.W.2d 349, 356 (Minn. App. 2008), *review denied* (Minn. July 15, 2008).

Affirmed in part, reversed in part, and remanded.