STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0006

State of Minnesota,
Respondent,

vs.

Alex Bernard Cuffy,
Appellant.

Filed January 4, 2021
Affirmed
Bryan, Judge

Dakota County District Court
File Nos. 19HA-CR-18-2810, 19HA-CR-18-2809

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, Abigail H. Rankin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Florey, Judge; and Bryan, Judge.

NONPRECIDENTIAL OPINION

BRYAN, Judge

In this direct appeal, appellant challenges the accuracy of his guilty pleas and the district court's decision to deny his motion for a sentencing departure. Because appellant's admissions provide sufficient evidence to support the guilty pleas, we conclude that both

pleas were accurate and valid. In addition, we conclude that the district court did not abuse its discretion when it denied appellant's motion to depart.

FACTS

In October 2018, respondent State of Minnesota charged appellant Alex Bernard Cuffy with two counts of possession of theft tools under Minnesota Statutes section 609.59 (2018), for two separate offenses. The first offense occurred on September 1, 2018, at a retail clothing store in Eagan, Minnesota. According to the complaint, an employee saw Cuffy enter a dressing room carrying items of clothing and a bag from another retail store. The employee heard "rustling" and noticed that when Cuffy left the dressing room he had fewer items than when he entered. Officers stopped and searched Cuffy and found a "large magnet" that the officers recognized could remove security tags. Cuffy told the officers that he brought the magnet with him to the store "to see if it worked."

The second offense occurred on October 28, 2018, at a Walmart in West St. Paul. According to the complaint, store employees saw Cuffy use a "key," known as an "alpha key," to remove security packaging from electronic items. An officer stopped and searched Cuffy and found the "alpha key" and over $500 worth of stolen electronics in his jacket pocket.

Cuffy waived his right to trial and entered guilty pleas for both offenses. At the joint plea hearing, Cuffy confirmed that he understood the plea petitions and the rights that he was giving up by pleading guilty. He also agreed that he had discussed the decision with his attorney. Cuffy confirmed his desire to enter a guilty plea in both cases, and his attorney asked the following questions to establish a factual basis:

Q: So I'll start with court file ending in 2809[.] . . . Mr. Cuffy, back on October 28, 2018, were you at the Walmart in West St. Paul, Dakota County, State of Minnesota?
CUFFY: Yeah.
Q: And you went into the store and you had I guess what's termed as an "alpha" key that would remove kind of the security packaging on some hard drives; is that correct?
CUFFY: Yep.
Q: And you had used that key to remove the packaging, and then you attempted to leave the store with those hard drives; is that correct?
CUFFY: Yep.
Q: And you'd agree that that alpha key would meet the definition of possessing a burglary tool; is that correct?
CUFFY: Yep.
Q: And going into there, you had the intent to take those hard drives, and no one gave you permission from the store to take those; is that correct?
CUFFY: Yep.

. . . .

Q: So in file ending in 2810, I'm going to take your attention back to September 1st, 2018. Did you go to the Tommy Hilfiger store—I believe that's at the Eagan outlet mall—in Dakota County, Minnesota?
CUFFY: Yes.
Q: And you had on you one of those kind of electronic magnets that would remove the magnets that are on clothing; is that correct?
CUFFY: Yep.
Q: And you went into that store, and you had selected some shirts that were not yours. And in fact, you didn't have to use the magnet but you went into the store intending to use it if you had to; is that correct?
CUFFY: Yep.
Q: And you took those shirts with the intent to take them; is that correct?
CUFFY: Yep.
Q: And that's—and that magnet that you had would be considered a burglary tool; is that correct?
CUFFY: Yep.

Prior to sentencing, Cuffy moved the district court for a downward sentencing departure. Cuffy argued that his offense was less serious than the typical felony offense for possession of burglary or theft tools because his offense occurred during the day, and the value of the goods at issue for one offense exceeded the misdemeanor theft threshold by only $15. Cuffy requested that the district court impose a gross misdemeanor sentence and stay execution of the prison term imposed. The state opposed a departure noting that Cuffy was not charged with theft, so the statutory dollar thresholds had limited applicability. In addition, the state emphasized that Cuffy did not merely possess the theft tools, but also used the tools and attempted to leave the stores with the stolen items. The state also argued that Cuffy used two different types of tools in each case and that the "alpha key" can be used on multiple lock types used by electronics stores. The state requested that the district court stay imposition of a felony sentence in both cases and place Cuffy on probation.

The district court denied Cuffy's request for a gross misdemeanor sentence, explaining that the offenses were "premeditated[,] . . . not like a spontaneous theft," and that Cuffy "had every opportunity to back off" but did not do so. The district court concluded, "I can't find any facts and circumstances that are less onerous unless I make it up, which I can't." The district court accepted the felony level convictions, but stayed imposition of a sentence, and placed Cuffy on probation for three years. This sentence would result in the conversion of both convictions to standard misdemeanors upon successful completion of probation. Cuffy did not move the district court to withdraw his guilty pleas, and instead filed this direct appeal.

DECISION

I. Accuracy of Cuffy's Guilty Pleas

Cuffy argues that his guilty pleas must be withdrawn because the pleas are inaccurate and, therefore, invalid. Because there is a sufficient factual basis to support his guilty pleas, we disagree.

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 may permit a plea withdrawal after imposition of a sentence when a guilty plea is not constitutionally valid. *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.*

Cuffy challenges only the accuracy of his pleas. "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); *see also Lussier v. State*, 821 N.W.2d 581, 588 (Minn. 2012). "The factual basis must establish sufficient facts on the record to support a conclusion that [the] defendant's conduct falls within the charge to which he desires to plead guilty." *Munger v. State*, 749 N.W.2d 335, 338 (Minn. 2008) (quotation omitted). A factual basis must be established for all 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). "A defendant bears the burden of showing his plea was invalid. Assessing the validity of a plea presents a question of law that we review de novo." *Raleigh*, 778 N.W.2d at 94 (citations omitted).

Cuffy argues that his pleas are inaccurate because, although they included admissions regarding each and every essential element of the offense, they lacked "sufficient detail" to permit the district court to determine guilt.[1] Cuffy relies on two cases for this argument: *State v. Hoaglund*, 240 N.W.2d 4 (Minn. 1976), and *Shorter v. State*, 511 N.W.2d 743 (Minn. 1994). We are not persuaded for two reasons. First, neither of the two cases relied on by Cuffy supports the proposition that accuracy requires admission of any details beyond the essential elements of the offense. To establish guilt, the kidnapping statute at issue in *Hoaglund* required proof that the accused person acted to fulfill one of the four specified statutory purposes. 240 N.W.2d at 4. The supreme court reversed the conviction because the factual basis did not address this element of the offense. *Id.* at 4-6 (stating that the defendant "was not asked, nor did he testify to, his purpose in taking the girl, even though a critical issue of his guilt under the statute depended on whether he confined her for one of the specified unlawful purposes"). Here, Cuffy does not dispute that he admitted each and every essential element of the offenses when he pleaded guilty. Therefore, *Hoaglund* does not apply.

The decision in *Shorter* also does not stand for the proposition cited by Cuffy. Contrary to Cuffy's argument, the supreme court in *Shorter* did not require admission of

[1] Cuffy also seems to argue that the pleas lack accuracy because his attorney asked leading questions. Using leading questions is discouraged, but not fatal to the validity of the plea. *Nelson v. State*, 880 N.W.2d 852, 860 (Minn. 2016) ("[W]e have never held that the use of leading questions automatically invalidates a guilty plea, and we decline to do so in this case."). Instead we consider whether the record contains sufficient evidence to support the conviction, even when that evidence consists of answers to leading questions. *Id.* at 859; *Raleigh*, 778 N.W.2d at 95.

details beyond the elements of the offense. 511 N.W.2d at 746-47. Instead, the supreme court reversed the district court's denial of Shorter's motion to withdraw his guilty plea because of several "highly unusual facts" of the case, including the fact that "the Minneapolis police department reopened its investigation and was prepared to testify before the trial court that the original police investigation into Shorter's case was incomplete." *Id.* at 746. In addition, Shorter claimed that the state failed to disclose required information, but based on the deficient record, the supreme court could not determine whether any discovery violation occurred. *Id.* The supreme court rejected the validity of Shorter's guilty plea because the substandard police investigation and possible discovery violation rendered the plea involuntary and unintelligent. *See id*. at 746-47 ("It is clear, however, that the effect of the substandard police investigation on appellant was compounded by defense counsel's inability to locate his corroborating witnesses, whether or not that inability was due to a discovery violation by the prosecutor."). While the supreme court also criticized the use of leading questions to establish the factual basis in support of Shorter's guilty plea, *id.* at 747, *Shorter* does not stand for the proposition that accuracy requires the accused to admit any details beyond the essential elements of the offense. Given the absence of legal support for this proposition, we decline to adopt a new standard of accuracy based on the facts and record before us.

Second, we conclude that under the existing standard for accuracy, the factual basis in this case was sufficient to establish Cuffy's guilt in both cases. Cuffy admitted all elements of each offense at the plea hearings. *See* Minn. Stat. § 609.59 (providing that to be guilty of possessing theft tools, a person must possess "any device, explosive, or other

instrumentality with intent to use or permit the use of the same to commit burglary or theft"). Regarding the theft of electronics from Walmart, Cuffy admitted he possessed an "alpha key," he used the "alpha key" to remove security packaging containing hard drives, and he did so because he intended to take the hard drives from the store without the permission of the store. Regarding the theft of clothes, Cuffy admitted he possessed an electronic magnet used to remove security tags from clothing, and he intended to use the device to take clothes that did not belong to him. These admissions provide a sufficient factual basis to conclude that the admitted conduct "falls within the charge to which he desire[d] to plead guilty." *See Munger*, 749 N.W.2d at 338. Because we conclude that Cuffy's pleas are accurate, the pleas are valid and Cuffy is not entitled to withdraw his guilty pleas.

II. Downward Durational Departure

Cuffy also argues that the district court abused its discretion when it denied his motion for a downward departure. Because the district court carefully evaluated the record before exercising its discretion, the district court did not abuse its discretion when it sentenced Cuffy to the presumptive sentence.

The Minnesota Sentencing Guidelines establish presumptive sentences for felony offenses. Minn. Stat. § 244.09, subd. 5 (2018). A district court "may" depart from the presumptively appropriate guidelines sentence only if "identifiable, substantial, and compelling circumstances" warrant doing so. *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016) (quoting Minn. Sent. Guidelines 2.D.1). "[D]epartures from the guidelines are discouraged and are intended to apply to a small number of cases." *Id.* The sentencing

guidelines provide "a nonexclusive list of factors that may be used as reasons for departure." *State v. Hicks*, 864 N.W.2d 153, 157 (Minn. 2015) (quoting Minn. Sent. Guidelines 2.D.3.). A downward durational departure is justified when an offender's conduct is less serious than the typical conduct involved in a given offense. *See State v. Rund*, 896 N.W.2d 527, 532 (Minn. 2017).

Based on Cuffy's lack of prior convictions and the severity levels for the offenses, application of the sentencing guidelines results in a presumptive stayed sentence. The district court accepted this presumptive disposition and stayed imposition of sentence. When the district court follows the presumptive guidelines disposition, we generally will not interfere "as long as the record shows the sentencing court carefully evaluated all the testimony and information presented before making a determination." *State v. Pegel*, 795 N.W.2d 251, 255 (Minn. App. 2011) (quotation omitted). In fact, the supreme court predicted that it would be a "rare case" that would warrant reversal of a district court's refusal to depart. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). We "afford the [district] court great discretion in the imposition of sentences and reverse sentencing decisions only for an abuse of that discretion." *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014) (quotation omitted).

Cuffy argues that the district court abused its discretion when it denied his request to impose a gross misdemeanor sentence. On appeal, Cuffy contends that his offense is less serious than the typical offense because his offenses occurred during the day, did not involve a weapon, and the value of the goods at issue for one offense exceeded the misdemeanor theft threshold by only $15. We disagree. As the district court correctly

noted, the relevant offense here is possession of theft tools, not theft. To depart, the district court has to compare the conduct in this case to the typical conduct in other possession-of-theft-tools offenses, not the typical misdemeanor or gross misdemeanor theft crime. The district court concluded that Cuffy's possession of an "alpha key" and an electronic magnet indicated that his conduct was premeditated, not spontaneous or impulsive. The district court also determined that Cuffy had "every opportunity" to stop the offense, but chose not to do so. Moreover, in this case, Cuffy possessed two different types of tools and actually used the "alpha key" to remove the packaging for the hard drives. After reviewing the facts in the record and considering Cuffy's arguments, the district court explained that it could not find "any facts and circumstances that are less onerous" than the typical facts constituting possession of theft tools. As a result, the district court determined that it could not depart from the presumptive guidelines sentence and impose a gross misdemeanor sentence.

Based on this record, Cuffy has not shown that the district court failed to "carefully evaluate[] all the testimony and information presented before making a determination." *See Pegel*, 795 N.W.2d at 255. Accordingly, we conclude that this is not one of those rare instances in which the district court abused its sentencing discretion when it stayed imposition of sentence and placed Cuffy on probation.

Affirmed.