STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1851

In the Matter of the Welfare of:
J.J.W., Juvenile.

Filed May 23, 2011
Affirmed
Schellhas, Judge

Sherburne County District Court
File No. 71-JV-08-576

Kelly J. Keegan, Kevin M. Morrison, Anoka, Minnesota (for appellant J.J.W.)

Lori Swanson, Attorney General, Peter R. Marker, Assistant Attorney General, St. Paul, Minnesota; and

Kathleen A. Heaney, Sherburne County Attorney, Tim Sime, Assistant County Attorney, Elk River, Minnesota (for respondent State of Minnesota)

Considered and decided by Stoneburner, Presiding Judge; Wright, Judge; and Schellhas, Judge.

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

SCHELLHAS, Judge

Appellant challenges the district court's denial of his motion to withdraw his guilty plea, arguing that the record is insufficient to support a factual basis for the plea. Because we conclude that, under the totality of circumstances, the factual basis for the plea is sufficient, we affirm.

FACTS

On July 10, 2008, the Sherburne County Attorney filed a juvenile-delinquency petition in district court charging appellant J.J.W., then 14 years old, with one count of first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(a) (2006), and one count of second-degree criminal sexual conduct in violation of Minn. Stat. § 609.343, subd. 1(a) (2006). The petition alleges that appellant admitted to a detective that he went behind an "entertainment set" with five-year-old H.A.R., where he "unzipped his pants and [H.A.R.] put her hand inside his pants and rubbed his penis up and down." The petition also alleged, based on a witness's statement, that appellant told H.A.R. to "lick this right here" and said "that's my wiener and touch it."

On August 19, appellant underwent a psychosexual evaluation. On September 23, at his first pretrial hearing, appellant was represented by counsel and requested a continuance of the pretrial because he was awaiting the results of his psychosexual evaluation. On November 10, when appellant returned to court for another pretrial, he had the results of the psychosexual evaluation. According to the evaluation, appellant admitted to "having [H.A.R.] touch his penis on one occasion, exposing his penis to her on five occasions, and having [H.A.R.] show him her vagina on one occasion." Appellant reported that the events occurred "in the main room in the basement in front of the television" while appellant and H.A.R. were "playing hide and seek."

With assistance of his counsel, appellant pleaded guilty to second-degree criminal sexual conduct on November 10. The prosecutor questioned appellant as follows:

> THE PROSECUTOR: [J.J.W.], on May 1st, 2008, were you at your house in Elk River?
> THE RESPONDENT: Ah huh.
> THE PROSECUTOR: Yes?
> THE RESPONDENT: Yes.
> THE PROSECUTOR: And also at your house was a girl with the initials H.A.R. Do you know who I am talking about?
> THE RESPONDENT: Yes.
> THE PROSECUTOR: And while she was at your house, is it true that you took down your pants and she rubbed your penis?
> THE RESPONDENT: Yes.
> THE PROSECUTOR: And you would agree that H.A.R. is younger than three years younger than you, is that correct?
> THE RESPONDENT: Yes.
> THE PROSECUTOR: In fact, she is about five or six; is that right?
> THE RESPONDENT: Yes.
> THE PROSECUTOR: How old are you?
> THE RESPONDENT: Fifteen.
> THE PROSECUTOR: That makes you more than three years older than her, is that correct?
> THE RESPONDENT: Yes.
> THE PROSECUTOR: Is that sufficient?
> THE COURT: It is. I will find that states a sufficient factual basis.

The district court scheduled a disposition hearing on December 8.

On December 4, Sherburne County Court Services interviewed appellant for a predisposition report. During that interview, appellant admitted that he had exposed himself to H.A.R. and that H.A.R. touched his penis. In addition to summarizing the interview with appellant, the predisposition report submitted to the district court included a copy of the psychosexual evaluation. The disposition hearing scheduled on December 8 was continued so that appellant could begin outpatient sex-offender treatment, which appellant began on January 26, 2009. During that treatment, appellant admitted that he

had pulled down his pants and that H.A.R. had fondled his penis. The sex-offender treatment facility provided that information to the court in a progress note on May 20.

On May 26, appellant returned to court for a continued disposition hearing. The district court continued the hearing to November 9, because appellant had not yet completed sex-offender treatment.

On November 2, the sex-offender treatment facility sent the district court another progress report, indicating that appellant continued to admit to having H.A.R. touch his penis. On November 9, the court again continued the disposition hearing, this time because of appellant's lack of progress in sex-offender treatment.

On February 26, 2010, the sex-offender treatment facility sent the district court another progress report, indicating that appellant continued to admit to having H.A.R. touch his penis, among other sexual acts.

On March 1, at his seventh court appearance, based on appellant's lack of progress in sex-offender treatment, the district court adjudicated him delinquent in regard to his plea of guilty to second-degree criminal sexual conduct and dismissed the first-degree charge. On August 11, the sex-offender treatment facility sent the court another progress report, indicating that appellant continued to admit to allowing H.A.R. to touch his penis after he had removed his clothing.

On September 3, appellant moved the district court to permit him to withdraw his plea pursuant to Minn. R. Juv. Delinq. P. 8.04, subd. 2(B), asserting that withdrawal is necessary to correct a manifest injustice because his statements on the record were

insufficient to establish a factual basis for the necessary elements of sexual intent and inducement. The district court denied the motion, reasoning:

> The Juvenile in this case . . . has not asserted his innocence or disputed that he has repeatedly admitted to police officers, clinical professionals, and probation agents that he committed the offense. It can be reasonably inferred that when a fourteen-year-old pulls down his pants behind an entertainment center, exposes his penis to a five year old, and allows her to rub his penis, as the Juvenile did in this case, there was inducement and sexual intent because the Juvenile's actions lack other reasonable explanations under the circumstances.

This appeal follows.

D E C I S I O N

When a child offers a plea of guilty, the district court

> shall not accept [the] plea of guilty until first determining . . . under the totality of the circumstances, and based on the child's statements, whether on the record or contained in a written document signed by the child and the child's counsel . . . [t]hat the child understands the charges stated in the charging document, and the essential elements of each charge, and that there is a factual basis for the guilty plea.

Minn. R. Juv. Delinq. P. 8.04, subd. 1(A); *see also In re Welfare of J.J.R.*, 648 N.W.2d 739, 742 (Minn. App. 2002).

Appellant argues that the district court erred by denying his motion to withdraw his plea because his statements on the record were insufficient to establish a factual basis for the necessary elements of sexual intent and inducement. A guilty plea that is not accurate, voluntary, and intelligent is invalid, and we will reverse the district court's

refusal to allow withdrawal of an invalid plea. *In re Welfare of J.J.R.*, 648 N.W.2d 739, 742, 743 (Minn. App. 2002).

The district court is generally vested with broad discretion in deciding whether to allow a child to withdraw a guilty plea, and will not be reversed absent an abuse of that discretion. *In re Welfare of S.L.*, 663 N.W.2d 31, 34 (Minn. App. 2003). In this case, the district court denied appellant's motion to withdraw his plea after disposition on March 1, 2010. Upon a child's motion, "[t]he court may allow the child to withdraw a guilty plea . . . at any time, upon showing that withdrawal is necessary to correct a manifest injustice." Minn. R. Juv. Delinq. P. 8.04, subd. 2(B). Manifest injustice exists when a guilty plea was not accurate, voluntary, and intelligent. *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). "To be accurate, the plea must be supported by a proper factual basis." *J.J.R.*, 648 N.W.2d at 742. When determining the adequacy of a factual basis, the court may consider "the totality of the circumstances[] and . . . the child's statements." Minn. R. Juv. Delinq. P. 8.04, subd. 1.

Appellant pleaded guilty to second-degree criminal sexual conduct in violation of Minn. Stat. § 609.343, subd. 1(a). As relevant to this case, the elements of this crime are: (1) the actor coerced or induced the complainant, (2) with sexual or aggressive intent, (3) to touch the actor's genitals (4) when the complainant was under 13 years of age and (5) the actor was more than 36 months older than the complainant. Minn. Stat. §§ 609.341, subds. 5 (2006), 11(a)(ii) (Supp. 2007), .343, subd. 1(a). Appellant's testimony at the plea hearing established that H.A.R. was under 13 years of age, that

appellant was more than 36 months older than she, and that H.A.R. touched appellant's genitals.

Appellant argues that nothing in his testimony at the plea hearing establishes that he acted with sexual or aggressive intent or that he coerced or induced H.A.R. to act. The district court concluded that it could infer inducement and sexual intent because appellant's actions "lack other reasonable explanations under the circumstances." We agree. Reasonable inferences may be used to support a factual basis. *State v. Neumann*, 262 N.W.2d 426, 430 (Minn. 1978), *overruled on other grounds by State v. Moore*, 481 N.W.2d 355 (Minn. 1992); *see also Davis v. State*, 595 N.W.2d 520, 525–26 (Minn. 1999) (stating that intent may be proved by circumstantial evidence, including drawing inferences from the defendant's conduct). And the court may consider not only the child's statements on the record, but also the "totality of the circumstances." Minn. R. Juv. Delinq. P. 8.04, subd. 1. The totality of the circumstances in this case includes appellant's admission to the psychosexual evaluator to "having H.A.R. touch his penis" and a witness's statement to a detective that appellant told H.A.R. to "lick this right here" and said "that's my wiener and touch it." This information was sufficient under rule 8.04 for the district court to find that the coercion and intent elements had been satisfied, and we affirm.

Affirmed.