STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0167

State of Minnesota,
Respondent,

vs.

Brent Lanier Lynch,
Appellant.

Filed November 25, 2013
Affirmed
Larkin, Judge

Ramsey County District Court
File No. 62-CR-12-1801

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Interim Chief Appellate Public Defender, Leslie J. Rosenberg, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Hudson, Judge; and Chutich, Judge.

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

LARKIN, Judge

Appellant challenges his conviction of intentional second-degree murder, arguing that the district court erred in denying his presentence motion to withdraw his *Alford* plea. Appellant also challenges the district court's restitution order. We affirm.

FACTS

Respondent State of Minnesota charged appellant Brent Lanier Lynch with one count each of intentional and unintentional second-degree murder. The complaint alleged that police officers found Lynch's girlfriend, C.M.L., dead after they were called to a Saint Paul residence at around 6:00 a.m. on March 3, 2012. When officers arrived, they found C.M.L.'s body in a second-floor bedroom, face up and partially clothed on a bed. There were bruises on C.M.L.'s arms, and marks and scratches on her hands. C.M.L.'s head was covered in blood that appeared to have come from her mouth, nose, and eyes. A large blood splatter about 12 inches in diameter was on the wall two feet from C.M.L.'s head. Officers also found blood at the bottom of the stairs near the back door to the residence, on the stairs to a second-floor landing, on the base of a wooden bookcase, and on the carpet in the second-floor hallway.

The complaint further alleged that the police spoke to Lynch's mother, B.L., who told them that Lynch called her at around 3:00 a.m., asking for a ride because "[C.M.L.] let somebody steal the damn car." B.L. did not provide Lynch with a ride because she could tell that he had been drinking. She told the police that Lynch "gets crazy" and "it terrifies her" when he drinks. B.L. asked G.J. to pick up Lynch and C.M.L. Around 4:00

a.m., G.J. found Lynch and C.M.L. and dropped them off at the Saint Paul residence. At 6:00 a.m., Lynch called G.J. to the residence to check on C.M.L. G.J. found C.M.L. bloody and unresponsive. P.G., a neighbor with nursing training, came over and attempted chest compressions on C.M.L. She observed that C.M.L. was cold to the touch. Lynch told P.G. that C.M.L. was intoxicated, he tried to throw her on the bed but missed, and her head hit the floor.

Another individual, P.J., came over and called 911. Lynch said, "No, don't call, don't call. I don't know what I'm going to do. Don't call the police; I have to talk to my mom first." Lynch left the house and the police apprehended him in the area a short time later after he got into a taxicab. He fought with the police who apprehended him and later said, "It wasn't supposed to go down like this. This wasn't supposed to happen. It was the alcohol." He also told jail staff, "Please be nice to me. I'm here for a long time."

The complaint alleged that the Ramsey County Medical Examiner determined that C.M.L.'s cause of death was traumatic head injury due to physical assault. The medical examiner noted that C.M.L. had contusions on the back of her head and chin, lacerations on both lips, left eye contusions, fractured nasal bones, diffuse cerebral edema, subarachnoid hemorrhages, numerous contusions of the body, and a fractured rib. The complaint also alleged that Lynch had four prior felony convictions, resulting from charges of terroristic threats against a girlfriend, third-degree assault, and criminal damage to property.

While in jail awaiting trial, Lynch wrote a letter to his brother. In the letter, Lynch attempted to convince his brother to say that C.M.L. accidently fell down the stairs. The state obtained the letter and intended to use it as evidence against Lynch at trial.

On September 10, 2012, Lynch offered a guilty plea, under a plea agreement, to the unintentional-second-degree-murder charge. The district court rejected the plea, finding that Lynch had not provided a sufficient factual basis. Four days later, Lynch entered an *Alford* plea to intentional second-degree murder under a new plea agreement. Lynch's attorney went through an on-the-record colloquy with Lynch describing an *Alford* plea, including that such a plea "allows a defendant to enter a guilty plea without admitting guilt"; "the [s]tate would recite to the [c]ourt the testimony and evidence that they would present to the jury in order to seek a conviction"; Lynch would have to agree that the state would present that evidence to the jury if the case went to trial; Lynch would have to agree "that there would be a substantial likelihood that [he] could be convicted of the charge of intentional murder in the second degree based on [the] evidence and testimony that the [s]tate would present to the jury"; and the court would have to find that evidence sufficient to support a conviction of the charge. Lynch stated that he understood the *Alford* plea process and that he did not have any questions.

Next, Lynch pleaded guilty, his attorney reviewed his plea petition with him, and Lynch stated that he understood his rights and that he was giving up his trial rights by pleading guilty. Following Lynch's waiver of rights, the prosecutor offered "a packet of information to supplement the facts," including the police reports, photographs, and final autopsy report. The district court accepted the packet without objection. The prosecutor

then described, piece by piece, the evidence the state would present to the jury at trial. After each description, Lynch acknowledged that the evidence described would be presented to the jury. After the prosecutor described all of the evidence, he asked Lynch if he agreed that "the total of that would be enough evidence to convict [him] of the charge of second-degree intentional murder" and if he agreed that "the jury would find [him] guilty beyond a reasonable doubt of the charge of second degree intentional murder in this trial." Lynch responded "yes" to both questions.

Lynch's attorney asked Lynch if he agreed that even if his prior convictions were not admitted as evidence, that there "would be a substantial likelihood that [he] would be convicted." Lynch agreed. Lynch also agreed that he was pleading guilty without admitting guilt to "take advantage of an offer from the [s]tate for a guaranteed amount of time" and to "eliminat[e] the risk that [he] could be indicted for first-degree murder and be given a sentence of life imprisonment." The prosecutor asked, "You're . . . admitting today that the jury would convict you of that charge?" Lynch responded, "Yes." Finally, the district court found that the evidence was sufficient to support a guilty verdict, that Lynch would be convicted, and that his plea was voluntary, knowing, and intelligently entered.

Before sentencing, Lynch moved, pro se, to withdraw his guilty plea, arguing that it was necessary to "correct a manifest injustice." At the sentencing hearing, Lynch argued that plea withdrawal was necessary because he had received inadequate legal representation from his public defender, that his previous private attorney withdrew from the case without a good reason, and that he felt pressured and coerced into pleading

guilty. The district court considered and denied Lynch's motion under Minnesota Rule of Criminal Procedure 15.05, subdivisions 1 and 2.

In response to a restitution request, Lynch argued that the amount should be limited because of his "financial situation" and because "he will be incarcerated for a very long period of time and will be unable to pay any large amounts of restitution." Lynch also argued that the amounts requested by "aunts and cousins as well as some other individuals not identified specifically as to their relationship status" should be denied because "they are not considered to be immediate family." But Lynch agreed that "the amounts that would be appropriate would be the amounts submitted by the mother of the victim, the sister of the victim and the brother of the victim as well as the amount paid by the crime victim's reparation board for funeral expenses." Lynch stated that the appropriate restitution amount was $10,325.97.

The district court sentenced Lynch to serve 386 months in prison and ordered $10,325.97 in restitution. The restitution included $6,531.12 to C.M.L.'s "next of kin," which the district court defined as "her mother, sister and brother," and "$3,794.85 for funeral expenses paid by the crime victim's reparation fund." The district court later reduced restitution to $9,831.70. Lynch appeals.

D E C I S I O N

I.

Lynch argues that the district court erred in denying his pro se motion to withdraw his *Alford* plea. "A defendant does not have an absolute right to withdraw a valid guilty plea." *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). Guilty pleas may be

withdrawn only if one of two standards is met. *See* Minn. R. Crim. P. 15.05 (setting forth the manifest-injustice and fair-and-just standards for plea withdrawal). Lynch makes arguments under both standards. Each standard is addressed in turn.

Manifest Injustice

The district court must allow plea withdrawal at any time "upon a timely motion and proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice." *Id*., subd. 1. A manifest injustice exists if a guilty plea is not valid. *Theis*, 742 N.W.2d at 646. To be constitutionally valid, a guilty plea must be "accurate, voluntary and intelligent." *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994).

> The accuracy requirement protects the defendant from pleading guilty to a more serious offense than he or she could be properly convicted of at trial. The voluntariness requirement insures that the guilty plea is not in response to improper pressures or inducements; and the intelligent requirement insures that the defendant understands the charges, his or her rights under the law, and the consequences of pleading guilty.

Carey v. State, 765 N.W.2d 396, 400 (Minn. App. 2009) (quotation omitted), *review denied* (Minn. Aug. 11, 2009). "A defendant bears the burden of showing his plea was invalid." *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). The validity of a plea is a question of law that we review de novo. *Id*.

Lynch argues that "a sufficient factual basis was not established" to support his *Alford* plea because "the evidence failed to overwhelmingly or significantly support a finding of guilt of intentional murder" and because he did not, "except through leading questions, admit the evidence was sufficient to prove intentional murder." "A proper

factual basis must be established for a guilty plea to be accurate." *Theis*, 742 N.W.2d at 647 (quotation omitted). An *Alford* plea is constitutionally acceptable when "the State demonstrate[s] a strong factual basis for the plea and the defendant clearly expresse[s] his desire to enter the plea based on his belief that the State's evidence would be sufficient to convict him." *Id*. (quotation omitted).

> [S]tate law also permits the acceptance of *Alford* pleas if the court, on the basis of its interrogation of the accused and its analysis of the factual basis offered in support of the plea, reasonably concludes that there is evidence which would support a jury verdict of guilty and that the plea is voluntarily, knowingly, and understandingly entered.

Id. (quotation omitted).

Lynch argues that the evidence was insufficient to prove the intent element because "no one saw the incident except [him, and he] never admitted guilt," and "the medical examiner never concluded any weapon was used or that the brain injury had to occur from acts motivated by an intent to cause death." We disagree. An *Alford* plea allows a defendant "to plead guilty without expressing the requisite intent so long as he believe[s] the state's evidence [is] sufficient to convict him." *Ecker*, 524 N.W.2d at 717. The record shows that when Lynch pleaded guilty, he believed the jury would convict him of intentional murder: he acknowledged this belief several times on the record.

"[B]ecause intent is a state of mind, it is generally proved by inferences drawn from a person's words or actions in light of all the surrounding circumstances." *State v. Thompson*, 544 N.W.2d 8, 11 (Minn. 1996). During his *Alford* plea, Lynch agreed that the evidence showed that C.M.L. was dead and that "her nose was . . . broken . . . [with]

bruises and abrasions on it, . . . her lip was cut . . . [and] that there was a hole in the flesh between her lip and her chin." Lynch agreed that C.M.L.'s "chin had three bruises and at least two cuts on it," and there were "linear cuts on her neck." Lynch agreed that C.M.L. had "cuts on her shoulder, her chest and her wrists"; "bruising on her shoulders, her biceps and her triceps"; "extensive bruising on her knees"; "bruising on her right eyebrow"; "bruising around her left eye"; "several bruises on her scalp"; "severe cuts to the temporal muscles in her head"; "a spinal cord hemorrhage"; and "a broken rib." Lynch agreed that the coroner concluded that C.M.L "had a severe brain injury" with "bleeding within her brain," and "that it was the brain injury that caused her death." Lynch agreed that C.M.L.'s face was covered with blood, and that the police found blood on the bottom of the stairs, near the door, on the steps, in the hallway, and splattered on the wall behind the bed where her body was found. Lynch further agreed that the state had evidence to show that "after 911 was called . . . [he] walked away from the scene and . . . [was] about to get in a cab when [he was] stopped by the police." On this record, there was more than enough evidence to support a jury finding of guilt on the element of intent. *See State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997) (stating that "the jury may infer that a person intends the natural and probable consequences of his actions and a defendant's statements as to his intentions are not binding on the jury if his acts demonstrated a contrary intent"); *State v. Raymond*, 440 N.W.2d 425, 426 (Minn. 1989) (stating that "[i]ntent to cause the result of . . . death could be inferred from the nature and extent of the wounds"); *State v. McTague*, 190 Minn. 449, 453, 252 N.W. 446, 448 (1934) (stating that "[f]light before apprehension . . . is a circumstance to be considered –

not as a presumption of guilt, but as something for the jury – as suggestive of a consciousness of guilt").

In his reply brief, Lynch argues for the first time that this court should analyze the sufficiency of the circumstantial evidence of intent under the standard of review used to assess the sufficiency of evidence to sustain a jury verdict based on circumstantial evidence. Lynch quotes *State v. Al-Naseer*, 788 N.W.2d 469, 474 (Minn. 2010), and argues that "[t]he conviction should be affirmed only where there are 'no other reasonable, rational inferences that are inconsistent with guilt.'" Because this argument—which appears to be one of first impression—was raised for the first time in Lynch's reply brief, we do not consider it. *See State v. Yang*, 774 N.W.2d 539, 558 (Minn. 2009) (stating that issues raised "for the first time in [an] appellant's reply brief [in a criminal case]," having not been raised in respondent's brief, are "not proper subject matter for [the] appellant's reply brief," and they may be deemed waived).

Lynch's argument that the factual basis is insufficient because it was established through the use of leading questions is also unpersuasive. To establish a factual basis for an *Alford* plea, evidence should be discussed with the defendant on the record

> through an interrogation of the defendant about the underlying conduct and the evidence that would likely be presented at trial, the introduction at the plea hearing of witness statements or other documents, or the presentation of abbreviated testimony from witnesses likely to testify at trial, or a stipulation by both parties to a factual statement in one or more documents submitted to the court at the plea hearing.

Theis, 742 N.W.2d at 649 (citations omitted). The process used to establish the factual basis in this case complied with the recommended processes set forth in *Theis*. When

establishing a factual basis for an *Alford* plea, leading questions are not prohibited because the defendant is not supplying the facts that establish his guilt. *See id*. at 647 n.2 ("In appropriate cases, the prosecutor might even consider calling some of the state's witnesses for the purpose of giving a shortened version of what their testimony would be were the case to go to trial" (quotation omitted)).

Lynch also argues that his guilty plea was not voluntary because he was "threatened with the life sentence penalty" and was therefore "coerced into taking this plea." Lynch's contention that he was coerced into pleading guilty is not supported by the record. At the plea hearing, Lynch stated that the decision to plead guilty was his alone, no one had threatened him to plead guilty, he wanted the court to accept his plea, and he was entering his plea to obtain the benefit of a guaranteed sentence and to eliminate the risk of a greater sentence. The benefit provided by a plea agreement alone is not improper pressure or inducement, provided the agreed-upon sentence is authorized by law. *Cf. Uselman v. State*, 831 N.W.2d 690, 693 (Minn. App. 2013) ("A guilty plea is involuntary when it rests in any significant degree on an unfulfilled or unfulfillable promise, including a promise of a sentence unauthorized by law." (quotations omitted)).

In sum, Lynch's guilty plea was both accurate and voluntary, and plea withdrawal is not necessary to correct a manifest injustice.

Fair-and-Just Standard

The district court has discretion to allow plea withdrawal before sentencing "if it is fair and just to do so. The court must give due consideration to the reasons advanced by the defendant in support of the motion and any prejudice the granting of the motion

would cause the prosecution by reason of actions taken in reliance upon the defendant's plea." Minn. R. Crim. P. 15.05, subd. 2. A defendant bears the burden of advancing reasons to support withdrawal. *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989). The state bears the burden of showing prejudice caused by withdrawal. *State v. Wukawitz*, 662 N.W.2d 517, 527 (Minn. 2003). Although it is a lower burden, the fair-and-just standard "does not allow a defendant to withdraw a guilty plea for simply any reason." *Theis*, 742 N.W.2d at 646 (quotation omitted). Allowing a defendant to withdraw a guilty plea "for any reason or without good reason" would "undermine the integrity of the plea-taking process." *Kim*, 434 N.W.2d at 266. We review a district court's decision to deny a motion to withdraw a guilty plea under the fair-and-just standard for an abuse of discretion, reversing only in the "rare case." *Id*.

Lynch argues that his reasons for plea withdrawal under the manifest-injustice standard—that his plea was inaccurate and involuntary—also show that it was fair and just to allow plea withdrawal, because "if a manifest injustice has occurred, then the fair and just standard has also been met." For the reasons explained above, we are not persuaded that his plea lacked a sufficient factual basis or was coerced.

Lynch also argues that "[t]he state failed to show sufficient prejudice." Lynch contends that the state's showing of prejudice—that it stopped its investigation, released its witnesses from subpoena, did not convene a grand jury, and that plea withdrawal would cause emotional hardship for the victim's family—was insufficient because the state "did not allege that it could no longer prosecute the case." But Lynch does not offer authority for his assertion that the state must allege that it can no longer prosecute the

case, and has not otherwise demonstrated an abuse of discretion. *See id*. at 266-67 (concluding that district court did not abuse its discretion where the state's prejudice was the release of "26 witnesses it had summoned by subpoena" and the interests of the victim).

In sum, the district court did not abuse its discretion by denying Lynch's request for plea withdrawal under the fair-and-just standard.

II.

Lynch makes a number of arguments challenging restitution. First, he argues that he "never agreed to pay restitution" and that his plea should be vacated because "[r]estitution was not part of the plea agreement." But Lynch did not object to the district court order for restitution at sentencing. This court has stated that "[a]bsent a specific agreement concerning restitution, a plea agreement as to charge and sentence neither precludes restitution nor limits the district court in its consideration of the amount of restitution and defendant's ability to pay" and that "failure to object to restitution either during [the] plea hearing or during sentencing constitutes a waiver" of the issue. *State v. Anderson*, 507 N.W.2d 245, 245, 247 (Minn. App. 1993), *review denied* (Minn. Dec. 22, 1993). Lynch's general challenge to the restitution order is therefore waived.

Lynch also argues that "[r]estitution to [the victim's] siblings was improper." At sentencing, Lynch's attorney objected to a restitution award for the victim's aunts, cousins, and "other individuals not identified specifically as to their relationship status," arguing that those individuals "are not considered to be immediate family." But his attorney stated that it "would be appropriate" to award restitution to "the sister of the

victim and the brother of the victim as well as the amount paid by the crime victim's reparation board for funeral expenses." The district court ordered restitution in the amount of $10,325.97, subject to additional amounts of restitution as determined by Ramsey County Probation within 90 days.

Ramsey County Probation subsequently submitted an amended restitution order seeking additional restitution, which the district court signed. Lynch challenged the amended order and filed a statutory request for a restitution hearing. *See* Minn. Stat. § 611A.045, subd. 3(b) (2010) (explaining that "[a]n offender may challenge restitution, but must do so by requesting a hearing" in writing). But Lynch once again did not object to restitution for the victim's siblings. Later, Lynch's attorney and the prosecutor reached an agreement regarding the appropriate amount of restitution, which included restitution for the victim's siblings, so no hearing was held. The district court issued a Second Amended Restitution Order, consistent with the terms of the agreement, in the amount of $9,831.70. In sum, the record shows that Lynch agreed to the restitution that was ultimately ordered to the victim's siblings. Lynch's challenge to that portion of the award therefore is waived. *See State v. Thole*, 614 N.W.2d 231, 235 (Minn. App. 2000) (explaining that plain-error review is limited to trial errors and holding that "[b]ecause appellant's written motion and affidavit only addressed the value of the vehicle, the district court correctly refused to consider any challenges to other items included in the restitution order").

Lastly, Lynch argues that the district court erred in failing to make any findings regarding his ability to pay restitution. *See* Minn. Stat. § 611A.045, subd. 1(a) (2010)

(stating that "in determining whether to order restitution and the amount of the restitution" the court "shall consider . . . the income, resources, and obligations of the defendant"). But this court has held that when a defendant is sentenced to prison, detailed findings regarding his ability to pay restitution are not necessary. *See Anderson*, 507 N.W.2d at 247 ("Few defendants have a current ability to pay restitution when they are transported to prison, and detailed findings to that effect would serve little purpose.").

In sum, Lynch has not established reversible error related to the district court's restitution order.

III.

In his pro se supplemental brief, Lynch argues that he "should have been allowed to plead guilty to the original complaint" before it was amended to add the intentional-murder charge. Lynch contends that he was prepared to enter a straight plea at a June 4, 2012 hearing, but the state falsely represented that it had filed an amended complaint, when in fact, it had not yet done so. Even if it is true that the amended complaint had not been filed, Lynch did not have a right to a guilty plea at the June 4 hearing.

> Neither the constitution nor our Rules of Criminal Procedure give to a criminal defendant an absolute right to have his plea of guilty accepted. Indeed, Rule 15.04, subd. 3(2), Rules of Criminal Procedure, relating to the acceptance of plea agreements, specifically provides that one of the several factors to be considered by a court is whether the defendant "has acknowledged his guilt and shown a willingness to assume responsibility for his conduct."

State v. Goulette, 258 N.W.2d 758, 762 (Minn. 1977).

Lynch also argues that the district court erred in allowing his original private attorney to withdraw from the case and that his original attorney was ineffective. We have considered Lynch's arguments and conclude that they are meritless. Lynch fails to establish that he was prejudiced by his first attorney's purported ineffectiveness or withdrawal. *See State v. Evans*, 756 N.W.2d 854, 869 n.18 (Minn. 2008) (stating that we "generally do not presume prejudice merely because of a defect in the proceedings," and that "the appellant has the burden of showing that he was prejudiced by the defect" (quotation omitted)); *Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987) (stating that to establish an ineffective-assistance-of-counsel claim the defendant must affirmatively prove that "but for counsel's unprofessional errors, the result of the proceeding would have been different" (quotation omitted)). In sum, Lynch's pro se brief does not establish reversible error.

Affirmed.