STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1816

State of Minnesota,
Respondent,

vs.

Morris Gaye Kayee,
Appellant.

Filed August 24, 2010
Affirmed
Worke, Judge

Hennepin County District Court
File No. 27-CR-09-194

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Wright, Presiding Judge; Worke, Judge; and Bjorkman, Judge.

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

WORKE, Judge

Appellant challenges his first-degree attempted-murder conviction, arguing that the district court erred in accepting his guilty plea because the factual basis was

insufficient and the location of the crime was not established. Appellant also raises issues in a pro se supplemental brief. We affirm.

FACTS

On December 30, 2008, Brooklyn Center Police responded to a call from appellant Morris Gaye Kayee that he "killed his girlfriend." Officers found appellant's girlfriend, L.S., lying in a pool of blood near two broken knives, unresponsive and badly beaten.

Police interviewed M.K., appellant's niece, who had been staying with L.S. She reported that appellant assaulted L.S. a couple of days earlier. The police were called, but appellant pressured L.S. to recant her original complaint. M.K. reported that appellant was not at the apartment the night of the current incident, but that he called repeatedly. During one call, appellant told M.K. that when he returned to the apartment he was "going to kill L.S." M.K. was awakened that night by appellant and L.S. fighting. M.K. witnessed appellant push L.S. and kick her in the neck. Appellant placed both hands around L.S.'s neck and pushed her head into items on the floor and punched her. M.K. told appellant to stop, but he pointed a knife at her and told her to get out of his way. As M.K. left, she saw appellant stabbing L.S. Appellant admitted that he assaulted L.S. He was charged with first-degree attempted murder and second-degree assault. Appellant has two domestic-assault convictions involving L.S., and two pending felony domestic-assault charges for assaults against her.

On June 8, 2009, appellant pleaded guilty to first-degree attempted murder. Appellant's attorney questioned appellant regarding his signed guilty-plea petition. Appellant agreed that he and his attorney had spent "countless hours talking about th[e]

case," including discussions regarding the state's evidence, defenses, and plea negotiations. Appellant stated that he was not pressured to accept the plea agreement, he was doing it of his own free will, his mind was clear, and he understood the consequences of his plea. A notation on appellant's petition indicated that it is a "*Norgaard* plea." Appellant claimed to have been "so drunk or so under the influence of drugs or medicine that [he] did not know what [he] was doing at the time of the crime(s)." Appellant faced a 301-month prison sentence, but with his guilty plea, he would receive 180 months in prison, and the state agreed to dismiss the second-degree assault charge and the pending domestic-assault charges.

The following exchange occurred between appellant and his attorney:

> Q. [W]e talked about the facts of the case to be able to figure out how you could tell this [c]ourt that you are guilty of the offense as charged and what you have told me was that at the time of this particular incident, prior to that, you had consumed a lot of alcohol, isn't that correct?
> A. Yes.
> Q. You were drinking with a relative of yours?
> A. Yes.
> Q. And in going through the reports and your statement and some of the evidence the [s]tate has, you remember some of it clearly but other parts of it you don't remember, isn't that true?
> A. Yes.
> Q. However, you agree after looking at those that the witnesses who made those statements . . . would come in and . . . you don't have a reason to dispute what they say, you believe it's true, you just don't remember it, right?
> A. Yes.
> . . . .
>
> Q. And what you don't remember but what we went over at length is that your niece, [M.K.] had heard you, she had

> spoken with you at some point while you had been drinking, on the phone, you know that, right?
> A. I don't remember –
> Q. Right. And that's the part I'm getting at. You don't remember speaking with her but we talked about it, we reviewed her statement, and you believe that what you had said to her is true and that is that you wanted to kill [L.S.] You don't remember it, but you don't dispute that she'd come in and say that and that she would be believed, right?
> A. I don't remember making premeditated statements.
> Q. But [] we went over this. I know you don't remember it. I'm agreeing with you. But you understand that if she came in here and said that, [] that would be believed?
> A. Yeah, it would be true because I don't remember it –
> Q. Right. And you don't remember everything because you had been drinking, right?
> A. Yes.

Appellant admitted that he "intentionally stabbed [L.S.] multiple times," and that he intended to kill her. Appellant's attorney asked: "So the multiple stab wounds . . . in addition to the statements with [M.K.] and your escalating anger with [L.S.], you would agree that you're guilty of attempting a premeditated murder of [L.S.]?" Appellant responded: "I didn't premeditate it—what they say happened, I would say yes." Appellant's attorney clarified, "So, you agree all that evidence together, what you remember and what you don't, together make a case of attempted first degree premeditated murder, you agree with that absolutely?" Appellant replied, "Yes."

The prosecutor asked appellant whether he made the statement to M.K. or if he just did not remember making the statement. Appellant stated that he did not remember. The prosecutor asked, "If [M.K.] came in and testified, would you agree that she's telling the truth that you did make that statement but you don't remember?" Appellant replied that he could not dispute her testimony. The district court accepted the factual basis and

incorporated the complaint into the factual basis. The court sentenced appellant to 180 months in prison. This appeal follows.

D E C I S I O N

Guilty Plea

Appellant requests to withdraw his guilty plea, arguing that it is not accurate. When a defendant challenges the accuracy of a guilty plea in a direct appeal from a judgment of conviction, we review the record de novo to determine whether the plea meets the accuracy requirement. *State v. Hoaglund*, 307 Minn. 322, 326-27, 240 N.W.2d 4, 6 (1976) (evaluating validity of plea on challenge to sufficiency of factual basis); *see also State v. Newcombe*, 412 N.W.2d 427, 430 (Minn. App. 1987) (stating that direct appeal is appropriate means to challenge the validity of a guilty plea when the grounds for the challenge do not go outside the record on appeal), *review denied* (Minn. Nov. 13, 1987).

Appellant argues that the district court erred in finding that the factual basis was "sufficient to support the plea." A proper factual basis must be established for a guilty plea to be accurate. *Beaman v. State*, 301 Minn. 180, 183, 221 N.W.2d 698, 700 (1974). An accurate plea is supported by "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." *Kelsey v. State*, 298 Minn. 531, 532, 214 N.W.2d 236, 237 (1974). "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." *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998).

Appellant claims that the factual basis was insufficient because he denied any premeditation—a necessary element of the offense. *See* Minn. Stat. § 609.185(a)(1) (2008). Appellant contends that he negated any intent because he denied remembering making statements to M.K. that he was going to kill L.S. A defendant may plead guilty despite claiming memory loss of the circumstances surrounding the offense due to intoxication. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). This type of plea is referred to as a *Norgaard* plea. *Id.* at 717; *State ex rel. Norgaard v. Tahash*, 261 Minn. 106, 113-14, 110 N.W.2d 867, 872 (1961) (stating that a defendant may plead guilty even though he is not able to recall the circumstances of the offense). "In such cases, the record must establish that the evidence against the defendant is sufficient to persuade the defendant . . . that [he] is guilty or likely to be convicted of the crime charged." *Ecker*, 524 N.W.2d at 716.

Here, the complaint was incorporated into the factual basis. *See State v. Trott*, 338 N.W.2d 248, 252 (Minn. 1983) (relying on defendant's admissions to allegations in complaint to establish factual basis for plea). The complaint combined with the statements on the record show that the evidence sufficiently persuaded appellant that he is guilty or likely to be convicted of the charged offense. Appellant stated that he attempted to kill L.S. Appellant reported to the police that he killed his girlfriend. M.K. reported that appellant told her that he was going to kill L.S. Appellant claims that he does not remember making that statement to M.K., but he stated that he cannot dispute the statement. He stated that if M.K. testified regarding that statement, she would be

believed. He also stated that he could not remember making the statement, but he did not claim that he did not make the statement. The factual basis is sufficient.

Appellant also claims that the district court failed to follow the appropriate process in accepting the *Norgaard* plea because the district court failed to conduct any direct questioning. When accepting a *Norgaard* plea, the district court "must be certain [that] the defendant understands his . . . rights. . . . [and] must affirmatively ensure an adequate factual basis has been established in the record." *Ecker*, 524 N.W.2d at 717. A district court should encourage the defendant to state in his own words why he is pleading guilty notwithstanding his claimed loss of memory. *Id.* Additionally, it is important for counsel *or* the district court "to indicate explicitly on the record that the defendant is entering" a *Norgaard* plea. *Id.* Finally, the district court "should personally interrogate the defendant regarding why [he] is willing to plead guilty, *unless* the court is reasonably satisfied defense counsel and the prosecution have established an adequate factual basis." *Id.* (emphasis added); *see also State v. Nelson*, 311 Minn. 109, 110, 250 N.W.2d 816, 817 (1976) (stating that a district court is not required to personally interrogate the defendant prior to accepting a guilty plea if counsel have established an adequate factual basis).

The district court did not personally question appellant regarding his guilty plea, apparently because it was satisfied with the factual basis established by counsel. *Ecker* states that the court must be certain that the defendant understands his rights. 524 N.W.2d at 717. But *Ecker* does not set forth specific questions to be asked and, instead, states that "[t]he defendant should be questioned directly regarding whether he . . . understands the legal implications of such a plea." *Id.* The record shows that appellant

was questioned directly and understood the consequences of his plea at the time he entered it. Further, while the guilty plea is never referred to as a "*Norgaard* plea" during the plea hearing, it is noted on appellant's guilty-plea petition. And it is obvious from the type of questions that appellant was asked that this is the type of guilty plea that was contemplated. *Ecker* also states that the district court "should personally interrogate the defendant regarding why the defendant is willing to plead guilty, *unless* the court is reasonably satisfied defense counsel and the prosecution have established an adequate factual basis." *Id.* (emphasis added). The district court did not err in accepting appellant's guilty plea after finding that the factual basis established by counsel was sufficient.

Appellant also argues that the state failed to establish the location of the crime—an essential element of the offense. This argument has no merit. The complaint was incorporated into the factual basis and states that "Brooklyn Center Police were called to an apartment in Brooklyn Center, Hennepin County, Minnesota." The complaint includes the date and county under each count. Further, the district court asked: "[appellant], to the charge of attempted murder in the first degree from on or about December 30, 2008, in the City of Brooklyn Center, Hennepin County, how do you plead [] guilty or not guilty?" Appellant pleaded guilty. The location of the offense was established.

Pro Se Arguments

Appellant raises several issues in a pro se supplemental brief. First, appellant claims that he did not premeditate the attempted murder and that M.K. was not truthful.

Second, he claims that the previous domestic-assault charges were based on false claims. Third, appellant argues that he has no memory of "the on-going situation," and should receive chemical-dependency treatment instead of serving a prison sentence. Fourth, he argues that his plea was coerced and misleading because he assumed that he was going to be sentenced on the assault charge because of his intoxication. Fifth, he claims that his attorney was ineffective because she called him "dangerous," and that the district court should not have forced him to keep his "rejected" attorney. Finally, appellant claims that his attorney intimidated him by suggesting that he should not have a jury trial because juries are made up of white people who are under the influence of the prosecutor and have coffee with the prosecutor; he asserts that this type of jury would find him guilty despite his intoxication during the commission of the offense.

Appellant provides no factual support, makes no legal argument, and fails to cite any legal authority. *See State v. Bartylla*, 755 N.W.2d 8, 22-23 (Minn. 2008) (noting that an appellate court does not consider pro se claims that are not supported by argument or legal authority); *Louden v. Louden*, 221 Minn. 338, 339, 22 N.W.2d 164, 166 (1946) ("An assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection."). Therefore, appellant's arguments in his pro se supplemental brief are deemed waived.

Affirmed.