

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1386**

State of Minnesota,
Respondent,

vs.

Todd Allan Wenner,
Appellant.

**Filed August 6, 2018
Affirmed; motion dismissed as moot
Reyes, Judge**

Rice County District Court
File No. 66-CR-17-265

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

John L. Fossum, Rice County Attorney, Terence Swihart, Assistant County Attorney,
Faribault, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Worke, Judge; and Reyes,
Judge.

UNPUBLISHED OPINION

REYES, Judge

Appellant argues on appeal that his guilty plea was inaccurate and therefore invalid
because the plea lacked a proper factual basis. We affirm.

FACTS

On January 29, 2017, appellant Todd Allan Wenner became upset with D.B. and hit him in the head five or six times with a flashlight. When D.B. collapsed to the floor, appellant kicked him repeatedly in his head and stomach while wearing steel-toed boots. As a result, D.B. sustained a brain hemorrhage and a laceration behind his ear.

Respondent State of Minnesota charged appellant with first-degree assault resulting in great bodily harm under Minn. Stat. § 609.221, subd. 1 (2016), second-degree assault with a dangerous weapon under Minn. Stat. § 609.222, subd. 1 (2016), second-degree assault with a dangerous weapon resulting in substantial bodily harm under Minn. Stat. § 609.222, subd. 2 (2016), and third-degree assault resulting in substantial bodily harm under Minn. Stat. § 609.223, subd. 1 (2016).

In April 2017, appellant pleaded guilty to first-degree assault and second-degree assault with a dangerous weapon, and the state dismissed the other counts. The state further agreed to dismiss the first-degree-assault count at sentencing if appellant cooperated with the pre-sentence investigation, abided by conditions of release, and returned for sentencing. Appellant and the state agreed that if he failed to comply with these conditions, he would be sentenced for first-degree assault instead of second-degree assault.

At the plea hearing, appellant admitted that D.B. suffered a brain hemorrhage due to appellant kicking him in the head with steel-toed boots, causing very serious harm. Appellant also admitted that he could have killed D.B. by kicking him in the head with the steel-toed boots. Based on these admissions, the district court found that there was a sufficient factual basis to find appellant guilty beyond a reasonable doubt of both first-

degree assault and second-degree assault with a dangerous weapon. The court deferred acceptance of the plea.

In May 2017, appellant failed to appear at sentencing. The district court convicted appellant of first-degree assault pursuant to the plea agreement and sentenced appellant to 146 months in prison. This appeal follows.

D E C I S I O N

Appellant argues that his guilty plea was not accurate and was therefore invalid because the record does not provide a proper factual basis to establish that he inflicted “great bodily harm” upon D.B. We are not persuaded.

The validity of a guilty plea is a question of law that we review de novo. *Lussier v. State*, 821 N.W.2d 581, 588 (Minn. 2012). In order to be valid, a guilty plea must be accurate. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). An accurate plea must be established on a proper factual basis. *Lussier*, 821 N.W.2d at 588. “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.” *Nelson v. State*, 880 N.W.2d 852, 859 (Minn. 2016) (quotation omitted). If the defendant’s guilt of the crime charged can be reasonably inferred from the facts, the district court can accept his plea. *Id.* at 861. One way of satisfying the factual-basis requirement is to ask the defendant to express in his own words what happened. *Raleigh*, 778 N.W.2d at 94; *State v. Trott*, 338 N.W.2d 248, 252 (Minn. 1983).

Under Minn. Stat. § 609.221, subd. 1, “[w]hoever assaults another and inflicts great bodily harm” can be convicted of first-degree assault. “Great bodily harm” is defined as “bodily injury which creates a *high probability of death*, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.” Minn. Stat. § 609.02, subd. 8 (2016) (emphasis added).

Minnesota caselaw is replete with instances in which an individual suffers a brain hemorrhage and dies as a result. In *State v. Humphrey*, the defendant hit a high-school student in the head, and the student died from a brain hemorrhage. 173 Minn. 410, 411-12, 217 N.W. 373, 373-74 (1928). In *State v. Smith*, the defendant hit his wife, who then fell down a staircase and died from a brain hemorrhage. 295 Minn. 65, 65-66, 203 N.W.2d 348, 349 (1972). In *State v. Goblirsch*, 309 Minn. 401, 403-04, 246 N.W.2d 12, 13-14 (1976) an infant died from a brain hemorrhage as a result of his father’s assault.

Here, appellant admitted that he kicked D.B. in the head with steel-toed boots and caused a serious brain hemorrhage. In addition, he admitted he could have killed D.B. by kicking him in the head with steel-toed boots. These facts are sufficient for a jury to reasonably infer that appellant’s actions created a high probability of death. Therefore, appellant’s guilty plea was established on a proper factual basis and was valid.¹

Affirmed; motion dismissed as moot.

¹ Appellant filed a motion to strike portions of the state’s brief and addendum as outside the appellate record. Because we reach the merits of this case without considering the pertinent portions of the state’s brief and addendum, we need not rule on appellant’s motion.