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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0834**

State of Minnesota,
Respondent,

vs.

Austin Dennis,
Appellant.

**Filed April 29, 2019
Affirmed
Kalitowski, Judge***

Anoka County District Court
File Nos. 02-CR-14-872, 02-CR-14-3600

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Anthony C. Palumbo, Anoka County Attorney, Kelsey R. Kelley, Assistant County Attorney, Anoka, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Amy Lawler, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Bratvold, Judge; and
Kalitowski, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant Austin Dennis (1) challenges the validity of his guilty pleas for theft and aggravated robbery, arguing the pleas are not accurate; (2) contends the district court erred in accepting his pleas; and (3) challenges his incarceration in his pro se brief. We affirm.

DECISION

“To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent. A defendant bears the burden of showing his plea was invalid. Assessing the validity of a plea presents a question of law that [appellate courts] review de novo.” *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010) (citations omitted).

Dennis argues that his guilty pleas were not accurate. “For a guilty plea to be accurate, a factual basis must be established on the record showing that the defendant’s conduct meets all elements of the charge to which he is pleading guilty.” *Barnslater v. State*, 805 N.W.2d 910, 914 (Minn. App. 2011). “[T]he typical way a district court satisfies the accuracy requirement is by asking the defendant to express in his own words what happened.” *Lussier v. State*, 821 N.W.2d 581, 589 (Minn. 2012) (quotation omitted).

But Minnesota courts “have never required that the factual basis for the plea appear in the plea hearing transcript verbatim.” *Id.* “[E]ven if a district court does not elicit proper responses [at the plea hearing], a defendant may not withdraw his plea if the record contains sufficient evidence to support the conviction.” *Id.* (quotation omitted). The record may include the complaint or the presentence investigation (PSI). *Id.* (“[T]he plea petition and colloquy may be supplemented by other evidence to establish the factual basis for a plea.”);

State v. Trott, 338 N.W.2d 248, 252 (Minn. 1983) (complaint and photos of the victim’s injuries); *Burnett v. State*, 195 N.W.2d 187, 188 (Minn. 1972) (PSI).

I. Dennis’s guilty plea on the theft count was accurate.

Dennis argues that his guilty plea on the theft count is not supported by a sufficient factual basis because, during the plea hearing, he did not admit to two elements of the offense—value of the property taken and intent. We disagree.

A. Value of the property taken

Under Minn. Stat. § 609.52, subd. 2(a)(1) (2012), whoever “intentionally and without claim of right takes, uses, transfers, conceals or retains possession of movable property of another without the other’s consent and with intent to deprive the owner permanently of possession of the property” commits theft. Minn. Stat. § 609.52, subd. 3 (2012), prescribes maximum sentences for different kinds of theft. Minn. Stat. § 609.52, subd. 3(3), provides that:

[A person who commits theft may be sentenced] to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if any of the following circumstances exist:

(a) the value of the property or services stolen is more than \$1,000 but not more than \$5,000; or

...

(d) the value of the property or services stolen is not more than \$1,000, and any of the following circumstances exist:

(i) the property is taken from the person of another or from a corpse, or grave or coffin containing a corpse[.]

The theft count implicated subdivision 3(3)(d)(i), which is commonly referred to as theft from person. Dennis argues that there is no factual basis for the conclusion that the

value of the phones he took from the victim's person were "not more than \$1,000." Minn. Stat. § 609.52, subd. 3(3)(d). While the charge description of the complaint seems to be the only place in the record where the value of the phones is discussed, we are not persuaded that Dennis's guilty plea on the theft count is inaccurate. The overarching principle of the factual-basis inquiry is to ensure "that the defendant actually committed an offense at least as serious as the crime to which he is pleading guilty." *Trott*, 338 N.W.2d at 252. Here, the value of the phones does not affect the seriousness of the offense committed because Dennis admitted that he took the phones from the victim's person. If the stolen phones were not worth more than \$1,000, then the offense constituted theft from person and the maximum sentence of a five-year imprisonment or a \$10,000 fine would apply under subdivision 3(3). *See* Minn. Stat. § 609.52, subd. 3(3)(d)(i). And if the phones were worth more than \$1,000, as Dennis would have us infer from the record, Dennis would be subject to the same maximum sentence under subdivision 3(3). *See* Minn. Stat. § 609.52, subd. 3(3)(a). Dennis committed an offense at least as serious as theft from a person, regardless of the value of the phones he stole. Thus, the lack of an admission to the value of the property taken does not make the guilty plea on the theft count inaccurate.

B. Intent

A conviction for theft requires the defendant's "intent to deprive the owner permanently of possession of the property." Minn. Stat. § 609.52, subd. 2(a)(1). Intent "means that the actor either has a purpose to do the thing or cause the result specified or believes that the act, if successful, will cause that result." Minn. Stat. § 609.02, subd. 9(4) (2012). "Intent is generally proved by inferences drawn from a person's words or actions

in light of all the surrounding circumstances.” *Nelson v. State*, 880 N.W.2d 852, 860 (Minn. 2016) (quotation omitted). In the context of theft, the fact that a defendant, without justification, did not return the stolen item to the victim can support an inference of the requisite intent. *State v. Slaughter*, 691 N.W.2d 70, 77 (Minn. 2005); see *State v. Duea*, 414 N.W.2d 513, 515 (Minn. App. 1987) (“[It] is well established that unexplained possession of stolen property within a reasonable time after a burglary or theft will in and of itself be sufficient to sustain a conviction.” (quotation omitted)).

At the plea hearing, Dennis did not specifically admit to having intended to deprive the victim permanently of her property. And he argues that he did not admit “that he walked away with the phone, or that he kept the phone, or that he refused to return it.” But the record contains other information establishing that Dennis had the requisite intent. First, as part of the plea colloquy, Dennis answered “Yes” to the question: “Did you *steal* [the victim’s] phone?” (Emphasis added). Dennis’s own description of his conduct as stealing gives rise to an inference that he had intended to deprive the victim permanently of her property, not to borrow it and restore her possession in the future. Second, according to the PSI completed in 2014, Dennis told the probation officer that he “took [the] phones . . . from the victim into his friend’s residence,” “stayed in [the] friend’s residence, and never returned to the victim[] . . . with the phones or money to pay for them.” Thus, Dennis admitted to facts that support an inference of intent. Third, the complaint confirms that Dennis took away the victim’s phones and did not return them. When the officers tracked down Dennis in an alley, after hearing the victim’s report that he “pulled out a

black handgun, and took [her phones],” Dennis had the victim’s phones on him. We conclude that Dennis’s guilty plea on the theft count was accurate.

II. Dennis’s guilty plea on the aggravated-robbery count was accurate.

Dennis argues that his guilty plea on the aggravated-robbery count was not supported by a sufficient factual basis because, during the plea colloquy, he did not admit to an element of the offense—use of a dangerous weapon.

“Whoever, while committing a robbery, is armed with a dangerous weapon . . . is guilty of aggravated robbery in the first degree . . .” Minn. Stat. § 609.245, subd. 1 (2012). And, because “[a] person is criminally liable for a crime committed by another if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime,” those who commit a robbery together can all be guilty of aggravated robbery even if only one of them is armed with a dangerous weapon. Minn. Stat. § 609.05, subd. 1 (2012).

Dennis admitted at the plea hearing that he had committed the robbery of a different victim than the theft with several accomplices. And a sufficient factual basis exists in the record to support the conclusion that Dennis or his accomplice was armed with a dangerous weapon. First, according to the complaint, the victim “was suffering from significant injury to his head and face with a lot of blood” when the responding officers arrived. He told the officers that “he was struck multiple times in the head and face with what he believed was the wood stock of a shotgun.” The shotgun was discovered the next day, and it had blood on the wood stock. Second, the record indicates that Dennis’s DNA was found on the shotgun. And Dennis acknowledged the results of the DNA testing during the plea

colloquy, stating that it was “one of the reasons why [he] want[ed] to take” the plea bargain. Third, the PSI notes that although Dennis “denied he had possession of a gun or that he assaulted the victim,” “[h]e admitted he knew his co-defendant had possession of a gun prior to going to the victim’s residence.” Thus, the record indicates that Dennis handled the shotgun and was aware of his accomplice’s use of the gun.

III. The district court did not err in accepting the pleas.

Dennis argues that the district court did not “carefully and independently scrutinize the factual basis” of his pleas. We agree that the district court’s factual-basis inquiry here was minimal. *See State v. Russell*, 236 N.W.2d 612, 613 (Minn. 1975) (holding that a district court must first be satisfied that an adequate factual basis exists for a guilty plea before the court accepts it). But, “[i]f the factual basis of a guilty plea is challenged on direct appeal, this court conducts a *de novo* review by reviewing the record” *State v. Johnson*, 867 N.W.2d 210, 216 (Minn. App. 2015), *review denied* (Minn. Sept. 29, 2015). Thus, our scope of review here is not limited to the district court’s findings. To be granted relief, Dennis has to show that a sufficient factual basis does not exist, not that the district court failed to find such a basis. Dennis has failed to show that there was not a factual basis.

Dennis also argues that “the plea consisted almost entirely of leading questions.” Although appellate courts have discouraged the use of leading questions to establish a factual basis, the courts “have never held that the use of leading questions automatically invalidates a guilty plea.” *Nelson*, 880 N.W.2d at 860. We conclude that the use of many leading questions here does not invalidate the guilty pleas.

Finally, because nothing in the record indicates that the guilty pleas were intended to be *Alford* pleas, we reject Dennis's argument that his pleas were not valid because they failed to conform to *Alford*.

IV. Dennis's pro se arguments are waived.

In his pro se brief, Dennis challenges his continued incarceration after the entry of the guilty pleas, arguing that he was promised release and that he was lied to about the plea hearing date. But, Dennis fails to support his claim of error by presenting supporting argument or authority. And it is not obvious from the record that he unintelligently or involuntarily agreed to the plea bargain because of the alleged representations made to him. Thus, Dennis's pro se arguments are deemed waived. *See State v. Bowles*, 530 N.W.2d 521, 525 n.1 (Minn. 1995) (“[W]e will not consider any claim lacking supporting argument or authority unless prejudicial error appears obvious upon inspection of the record.”).

Affirmed.