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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A18-1502**

State of Minnesota,  
Respondent,

vs.

Shawn Douglas Ratcliff,  
Appellant.

**Filed July 1, 2019  
Affirmed in part and remanded  
Rodenberg, Judge**

Dakota County District Court  
File Nos. 19HA-CR-17-3300, 19HA-CR-17-3299,  
19HA-CR-17-3298, 19HA-CR-17-3296, 19HA-CR-17-3132

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

James C. Backstrom, Dakota County Attorney, Torrie J. Schneider, Assistant County Attorney, Hastings, Minnesota (for respondent)

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

Considered and decided by Bjorkman, Presiding Judge; Rodenberg, Judge; and  
Reyes, Judge.

**UNPUBLISHED OPINION**

**RODENBERG, Judge**

In this direct appeal from his convictions and sentences, appellant Shawn Ratcliff challenges the validity of his guilty plea to possession of ammunition by an ineligible

person because his answers to his attorney's questions did not establish a sufficient factual basis for the plea. He also challenges the district court's imposition of separate sentences for four (4) violations of a domestic-abuse no-contact order (DANCO). We affirm in part and remand.

## **FACTS**

At 10:23 p.m., on July 29, 2017, Burnsville police received a call from a woman who was concerned about her daughter, T.K., because of problems with appellant, who is T.K.'s ex-boyfriend. Officers contacted T.K., who reported that she had been dating appellant, but recently ended their relationship and was staying with appellant's ex-wife, P.B. T.K. reported that appellant had punched her in the head, accused T.K. of cheating on him, threatened to cut his own throat with a pocket knife, and broke T.K.'s phone by stabbing it with a knife.

Police then went to appellant's home to arrest him, but appellant had barricaded himself in his apartment and refused to exit. The officers obtained warrants, and, when they entered the apartment, appellant claimed that he was standing in a bucket of water and holding electrical cords. Appellant told the officers that he would electrocute himself and stated that officers would have to shoot him, so the officers left and turned off the power to the apartment. Police continued to watch the apartment and arrested appellant the next morning as he left the apartment.

On August 1, 2017, officers returned to appellant's apartment and, during a warranted search, found 16 .45-caliber cartridges in a hole that had been punched in the wall and a ripped-up .45-caliber ammunition box in the trash.

Appellant had multiple convictions that made him ineligible to possess ammunition. The state charged appellant with one count of felony possession of ammunition by an ineligible person under Minn. Stat. § 624.713, subd. 1(2) (2016), and one count of felony domestic assault under Minn. Stat. § 609.2242, subd. 4 (2016).

When appellant appeared in district court for the ammunition-possession and domestic-assault offenses, the district court issued a DANCO which prohibited appellant from having contact with T.K., including contact by phone.

After the district court issued the DANCO, appellant made four phone calls from the jail to the telephone of his ex-wife, P.B. At some point during each of those calls, appellant also spoke with T.K. The calls were made at 4:57 p.m., 7:03 p.m., 7:24 p.m., and 7:47 p.m. The state charged appellant with four separate DANCO violations under Minn. Stat. § 629.75, subd. 2(d)(1) (2016).

In April 2018, appellant entered straight guilty pleas to the ammunition-possession, domestic-assault, and DANCO-violation offenses, with no sentencing agreement. During the plea colloquy, appellant admitted that law enforcement had found ammunition in his apartment. Appellant's counsel asked, "You don't deny that the ammunition was yours, correct?" Appellant responded, "Yes." Appellant also admitted that he was ineligible to possess ammunition and that he threatened T.K. with a beer bottle.

Appellant admitted during the plea colloquy that he was aware of the DANCO that prohibited him from having contact with T.K. He acknowledged that the DANCO included no phone contact and admitted that, after he appeared in court for the ammunition-

possession and assault charges, he made calls to P.B.'s phone so that he could talk with T.K. He agreed that his conduct violated the DANCO.

The district court accepted appellant's guilty pleas. Appellant's attorney asked for a downward dispositional departure to probation, arguing that appellant's need for treatment, his participation in jail programming during the pendency of the case, and diagnosis of leukemia warranted a dispositional departure. The district court declined to depart and sentenced appellant to concurrent prison sentences of 21 months for the domestic-assault offense and 60 months for the ammunition-possession offense. It also imposed 30-month sentences for each of the DANCO-violations, all to run concurrent to the other sentences.

This appeal followed.

## **D E C I S I O N**

### **I. Appellant's guilty plea to the ammunition-possession offense was valid.**

Appellant argues that he should be permitted to withdraw his guilty plea to the ammunition-possession offense because his testimony during the plea hearing did not establish a factual basis adequate to support his guilty plea. The state argues that we should not review appellant's guilty-plea challenge because the issue should have been raised in a postconviction petition.

Appellant did not move the district court to withdraw his guilty plea. But because a defendant may appeal directly from a judgment of conviction contending that the record made at the time the plea was entered is inadequate, appellant need not first have raised the issue in a postconviction petition. *Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989);

*State v. Johnson*, 867 N.W.2d 210, 214 (Minn. App. 2015), *review denied* (Minn. Sept. 29, 2015).

Appellate courts review the validity of a guilty plea de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). There is no absolute right to withdraw a guilty plea after it has been entered. *Perkins v. State*, 559 N.W.2d 678, 685 (Minn. 1997). However, a court must allow withdrawal of a guilty plea if “withdrawal is necessary to correct a ‘manifest injustice.’” *Raleigh*, 778 N.W.2d at 94 (quoting Minn. R. Crim. P. 15.05, subd. 1). A manifest injustice occurs if a plea is invalid. *Id.* at 94. A constitutionally valid plea must be voluntary, intelligent, and accurate. *Id.*; *see also Perkins*, 559 N.W.2d at 688. A defendant bears the burden of showing that his plea was invalid. *Lussier v. State*, 821 N.W.2d 581, 588 (Minn. 2012).

A plea must be accurate to ensure that a defendant is not pleading guilty to a more serious crime than that for which he could be convicted at trial. *Id.* An accurate plea must be established on a proper factual basis. *State v. Theis*, 742 N.W.2d 643, 647 (Minn. 2007). A proper factual basis exists “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).

“Ordinarily, an adequate factual basis is established by questioning the defendant and asking the defendant to explain in his or her own words the circumstances surrounding the crime.” *Williams v. State*, 760 N.W.2d 8, 12 (Minn. App. 2009) (quotation omitted), *review denied* (Minn. Apr. 21, 2009). The supreme court has cautioned against the use of

exclusively leading questions to establish a proper factual basis for a guilty plea. *Lussier*, 821 N.W.2d at 589. But a defendant may not withdraw his guilty plea as inaccurate if the record contains sufficient evidence to support the conviction. *Id.*

The state charged appellant with possession of ammunition by an ineligible person under Minn. Stat. § 624.713, subd. 1(2). That statute provides that “a person who has been convicted of, or adjudicated delinquent or convicted as an extended jurisdiction juvenile for committing . . . a crime of violence” is ineligible to possess “ammunition or a pistol or semiautomatic military-style assault weapon.” Minn. Stat. § 624.713, subd. 1 (2016). The state was required to prove that (1) appellant knowingly possessed ammunition or consciously exercised dominion and control over it; (2) appellant had been convicted of, or adjudicated delinquent or had convictions for, committing a crime of violence; and (3) that appellant possessed the ammunition on August 1, 2017, in Dakota County. 10A *Minnesota Practice*, CRIMJIG 32.21 (Supp. 2018).

At the time of appellant’s guilty-plea hearing, the state did not contend that appellant had actual possession of the ammunition on August 1, 2017. The only question was whether appellant constructively possessed the ammunition. To establish constructive possession, the state needed to show either that the prohibited item was found in a place under appellant’s exclusive control to which other people did not normally have access, or if the prohibited item was found in a place to which others had access, there was a strong probability that appellant was consciously exercising dominion and control over it. See *State v. Florine*, 226 N.W.2d 609, 611 (Minn. 1975).

Appellant argues that his plea was inaccurate because he did not admit during the plea colloquy that he possessed the ammunition. He asserts that his answer to his lawyer's question only conceded that he did not deny possessing the ammunition and that he never affirmatively admitted possessing it.

During the plea colloquy, appellant testified that law enforcement entered his home and found ammunition. Appellant's counsel asked appellant, "And, you don't deny that the ammunition was yours, correct?" Appellant answered, "Yes." Appellant then admitted that he was ineligible to possess the ammunition. Neither the district court, appellant's counsel, nor the prosecution asked any further questions as to the possession element. Despite defense counsel's question concerning whether appellant "do[es] not deny" that the ammunition was his, the plea colloquy was, in context, sufficient to amount to an admission to possession. Just moments before that question and answer, appellant was asked how he wished to plead to the unlawful-possession charge. He replied "guilty." The lawyers and the court discussed the charge related to unlawful possession of ammunition, and it was after that exchange that the challenged "non-denial" answer was given.

We are satisfied that appellant's testimony sufficiently admitted his having possessed the ammunition, and the transcript contains nothing to indicate that appellant was disputing that element of the offense or that he was uncertain of the effect of his answers. *Cf. State v. Iverson*, 664 N.W.2d 346, 350 (Minn. 2003) (stating that if a defendant's plea colloquy negates an essential element of the charged crime, the factual basis is inadequate). Although the questioning was not robust, and the district court should have required more than a non-denial, in the context of the guilty plea, appellant's

testimony in the overall context of the plea hearing provided a sufficient factual basis to establish that he consciously exercised dominion and control over the ammunition within the meaning of Minn. Stat. § 624.713, subd. 1(2). His testimony satisfied the possession element.

**II. On this record, we are unable to discern whether the district court erred by sentencing appellant for each separate DANCO violation, and we therefore remand to the district court to make findings concerning whether the DANCO violations are part of the same behavioral incident.**

Appellant argues that the district court erred by imposing sentences for each DANCO-violation offense, because the offenses “shared a unity of time, place, and criminal objective.” Appellant asks us to vacate three of the DANCO-violation convictions and sentences.

The state argues in reply that we should remand for additional findings because the record does not contain sufficient information to review the district court’s sentence. Although appellant did not raise this issue at sentencing, an appellate court is not necessarily precluded from reviewing the issue despite appellant not having raised it to the district court. *See Spann v. State*, 740 N.W.2d 570, 573 (Minn. 2007) (stating that an appellant does not waive his right to challenge an unauthorized sentence on appeal by failing to raise the issue at sentencing).

Even if a defendant is convicted of multiple offenses, a district court may only impose a single sentence if the offenses arose out of a single behavioral incident. Minn. Stat. § 609.035, subd. 1 (2016); *State v. Williams*, 608 N.W.2d 837, 841 (Minn. 2000). Appellate courts apply a clear-error standard of review to a district court’s factual findings

underlying the determination of whether multiple offenses constituted a single behavioral incident, *State v. O'Meara*, 755 N.W.2d 29, 37 (Minn. App. 2008), and a de novo standard of review to the ultimate determination, *State v. Bauer*, 776 N.W.2d 462, 477 (Minn. App. 2009), *aff'd*, 792 N.W.2d 825 (Minn. 2011); *State v. Marchbanks*, 632 N.W.2d 725, 731 (Minn. App. 2001).

The district court convicted and sentenced appellant for four separate DANCO violations under Minn. Stat. § 629.75, subd. 2(d)(1). To be convicted of a felony DANCO violation, the defendant “must have intentionally engaged in prohibited conduct, knowing that such contact was prohibited.” *State v. Watkins*, 820 N.W.2d 264, 265 (Minn. App. 2012), *aff'd on other grounds*, 840 N.W.2d 21 (Minn. 2013). In determining whether intentional crimes are part of a single behavioral incident, appellate courts focus on the factors of time and place and consider whether the segments of conduct were motivated by a desire to obtain a single criminal objective. *Bauer*, 776 N.W.2d at 478.

At sentencing, it is the state’s burden to prove by a preponderance of the evidence that the conduct underlying the offenses did not occur as part of one behavioral incident. *Williams*, 608 N.W.2d at 841-42. But, on appeal, it is appellant’s burden to show that the district court erred. *See Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944) (“[O]n appeal error is never presumed. It must be made to appear affirmatively before there can be reversal. . . . [And] the burden of showing error rests upon the one who relies upon it.”).

Although the district court implicitly determined that the four DANCO violations did not arise from one behavioral incident, the absence of express findings on that issue precludes our effective review of it. The district court provided no explanation for its

decision. We agree with the state that the record is insufficient to review whether the district court erred in imposing separate sentences for each offense.

The district court's reasoning is necessary for review in this case, because the phone calls occurred at separate times, and the record reveals nothing about appellant's motivation, intent, or purpose for each of the calls. The record is insufficiently developed about the content of each of the calls between appellant and T.K. Because appellant did not raise this issue to the district court, the state had no occasion to prove that the multiple phone calls were not part of one behavioral incident. *See State v. Outlaw*, 748 N.W.2d 349, 356 (Minn. App. 2008) (remanding the issue of whether out-of-state convictions were felonies for sentencing purposes, and permitting the state on remand "to further develop the sentencing record"), *review denied* (Minn. July 15, 2008).

Because we are unable, on this record, to determine whether the district court erred in imposing multiple sentences, we remand to the district court to make findings concerning whether the DANCO violations were part of one behavioral incident.<sup>1</sup>

**Affirmed in part and remanded.**

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<sup>1</sup> On remand, the district court may, in its discretion, reopen the record.