

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-2011**

State of Minnesota,
Respondent,

vs.

Jordan Lee Wachter,
Appellant.

**Filed February 1, 2021
Affirmed
Cochran, Judge**

Big Stone County District Court
File No. 06-CR-19-137

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

Joseph P. Glasrud, Big Stone County Attorney, Ortonville, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Erik I. Withall, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Jesson, Judge; and
Slieter, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellant seeks to withdraw his guilty plea to felony domestic assault, arguing that his plea was not constitutionally valid. Because appellant's plea was accurate, intelligent, and voluntary, we conclude that the plea was valid. We, therefore, affirm.

FACTS

The complaint in this matter alleges that in early July 2019, a police officer responded to a 911 call from a home in Ortonville. When the officer arrived, the homeowner told him that the emergency involved a friend who was inside the home. The homeowner's friend (the victim) was a woman who had been living with appellant Jordan Lee Wachter. She told the officer that, earlier that day, Wachter had struck her repeatedly on the left side of her face. The victim explained that the incident occurred in the entry of Wachter's home. The responding officer then went to Wachter's home to speak with him. When the officer arrived, Wachter was "very belligerent" and "obviously intoxicated." After speaking with Wachter, the officer arrested Wachter and cited him for misdemeanor fifth-degree assault. Wachter initially denied hitting the victim, but admitted doing so after receiving the citation.

At the July 5 arraignment hearing, the state orally amended the charge to misdemeanor domestic assault. A little less than two weeks later, the state filed a formal complaint. The complaint further amended the charge to felony domestic assault. The state amended the charge to a felony because Wachter had two prior domestic-assault-related convictions. *See* Minn. Stat. § 609.2242, subd. 4 (2018) (enhancing a misdemeanor domestic-assault charge to a felony domestic-assault charge if the charge occurs within ten years of two "previous qualified domestic violence-related offense convictions").

On July 17, Wachter appeared for arraignment on the amended charge, represented by counsel. At the July 17 hearing, Wachter's counsel informed the court that the parties

had reached an agreement to settle the case. The agreement was a guilty plea with a presumptive stayed sentence. The district court expressed reservations about accepting a guilty plea so early in a felony proceeding. In response, Wachter's counsel summarized the advice that he offered Wachter. He stated, "we have talked about . . . Mr. Wachter's trial rights, any defenses that we may have had, we've talked about intoxication, we talked about self[-]defense as possible defenses in this case, [and] we talked about the length of probation." Wachter's counsel concluded by saying, "I don't know what else I would say to him if the case was delayed for a couple of weeks. I don't know what additional advice I would give to him."

After hearing from defense counsel, the district court advised Wachter of the rights that he would be waiving by entering a guilty plea. The district court specifically advised Wachter of his right to be presumed innocent, to review and challenge the evidence against him, to cross-examine the state's witnesses, to call witnesses on his own behalf, and to remain silent. The district court also asked Wachter if he understood that the charge against him was an enhanceable offense. Wachter responded that he understood his rights and the consequences of his plea. And he agreed that he still wished to enter a guilty plea.

Wachter's counsel then reviewed the signed plea petition on the record with Wachter and inquired as to his reasons for pleading guilty. Defense counsel noted that the plea petition indicated that Wachter had a history of mental illness, had been treated in a mental hospital in 2006, and was currently receiving psychiatric treatment. Defense counsel then asked Wachter, "[D]o you feel like you're making a rational decision today," to which Wachter responded, "Yes, I do." This colloquy is the only time that Wachter's

mental illness was addressed during the July 17 hearing. Wachter also indicated that he did not remember hitting the victim on the face, as alleged in the complaint, but did remember “doing something else that was an assault to her.”

After accepting the plea petition, the district court conducted further inquiry to develop the factual basis for Wachter’s guilty plea. In response to the district court’s questions, Wachter admitted to “trying to pull [the victim] out the door by her hair” and telling her to leave. In response to the next question, he reiterated that he “pulled her hair” and “asked her to leave the house” but then, somewhat inconsistently, testified that he did not “remember any of this.” He later clarified that he did not remember striking the victim repeatedly as alleged in the complaint. He stated that he “might have clocked her in the head once.” He was not sure. But he did remember that the victim resisted leaving his house. And he specifically remembered “pulling her and dragging her out the door . . . [d]own the stairs and telling her to get lost.” Wachter also admitted to two previous assault convictions. And, in response to a question from the prosecutor, Wachter testified that the victim had been living with him “on and off,” and that he considered her to be his girlfriend. Based on Wachter’s testimony, the district court found a “sufficient factual basis” to support a conviction of felony domestic assault and accepted Wachter’s guilty plea.

During the presentence investigation, Wachter explained that he was diagnosed with schizophrenia and sees his mental health provider bi-weekly. He receives a twice-monthly intramuscular injection to stabilize his schizophrenia. At sentencing, the district court

adjudicated Wachter guilty of felony domestic assault and placed him on probation for five years under a stay of execution. Wachter now appeals.

DECISION

Wachter argues that his conviction should be reversed and he should be permitted to withdraw his plea because his plea was not accurate, intelligent, or voluntary. The state argues that Wachter's plea was valid in all respects. We agree with the state.

"To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent." *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). "If a guilty plea fails to meet any of these three requirements, the plea is invalid." *State v. Johnson*, 867 N.W.2d 210, 214 (Minn. App. 2015), *review denied* (Minn. Sept. 29, 2015). The validity of a guilty plea presents a question of law that this court reviews de novo. *Nelson v. State*, 880 N.W.2d 852, 858 (Minn. 2016). The appellant "bears the burden of showing his plea was invalid." *Id.* (quotation omitted).

I. Wachter's guilty plea was accurate.

Wachter first argues that his plea was invalid because it was not accurate. "The accuracy requirement protects a defendant from pleading guilty to a more serious offense than that for which he could be convicted if he insisted on his right to trial." *Raleigh*, 778 N.W.2d at 94. "To be accurate, a plea must be established on a proper factual basis." *Id.* "The factual basis must establish sufficient facts on the record to support a conclusion that defendant's conduct falls within the charge to which he desires to plead guilty." *Munger v. State*, 749 N.W.2d 335, 338 (Minn. 2008) (quotation omitted).

Wachter pleaded guilty to the offense of domestic assault under Minn. Stat. § 609.2242, subd. 4. That statute sets forth two types of domestic assault: domestic assault-fear and domestic assault-harm. *Id.*, subd. 1 (2018). Wachter argues that his plea was inaccurate because the factual basis for his plea was insufficient to support a conviction for either type of domestic assault. The state contends that Wachter admitted to a sufficient factual basis to support a conviction for either form of domestic assault. We conclude that Wachter admitted to sufficient facts to support a conviction of domestic assault-harm.

A person is guilty of domestic assault-harm if the person “intentionally inflicts or attempts to inflict bodily harm upon” a family or household member. *Id.*, subd. 1(2). Bodily harm means “physical pain or injury, illness, or any impairment of physical condition.” Minn. Stat. § 609.02, subd. 7 (2018). A “family or household member” includes “persons who are presently residing together or who have resided together in the past.” Minn. Stat. § 518B.01, subd. 2(b)(4) (2018). Domestic assault-harm is a general-intent crime, meaning that the evidence need only show that the defendant intended to do the prohibited physical act, not that the defendant intended to violate the law or cause a particular result. *State v. Fleck*, 810 N.W.2d 303, 309-10 (Minn. 2012).

The record includes sufficient evidence to conclude that Wachter’s conduct could support a jury verdict of domestic assault-harm. Wachter admitted that the victim had been living with him “on and off,” satisfying Minn. Stat. § 518B.01, subd. 2(b)(4). He further admitted grabbing and pulling the victim down the stairs. And he admitted to doing so by pulling her hair.

Wachter contends, however, that his admission was not sufficient to establish that the victim actually suffered bodily harm. Wachter argues that the record fails to establish that the victim suffered any pain or injury when he pulled her hair and dragged her out of the house. He notes that there is no direct testimony that the victim experienced pain or any evidence of an injury. But case law establishes that the facts admitted to during the plea hearing need only be sufficient to “reasonably infer[]” that the defendant is guilty of the crime charged. *Nelson*, 880 N.W.2d at 861 (“Our standard is clear: ‘It is well established that before a plea of guilty can be accepted, the trial judge must make certain that facts exist from which the defendant’s guilt of the crime charged can be *reasonably inferred*.’” (emphasis added) (quoting *State v. Neumann*, 262 N.W.2d 426, 430 (Minn. 1978))). Direct testimony or evidence is not required if the defendant’s guilt can be reasonably inferred from testimony at the plea hearing. *See id.*

Here, Wachter’s testimony is more than sufficient to reasonably infer that the victim experienced pain as a result of his intentional conduct. Wachter admitted that he “pulled her hair,” that he “was trying to pull her out the door by her hair,” and that he did so because “[s]he was resisting” leaving his house. He further testified that he eventually “pull[ed] her and dragg[ed] her out the door . . . and [d]own the stairs.” Based on this testimony, it is reasonable to infer that Wachter caused the victim to experience pain, probably severe pain. And “[p]ain alone will suffice” to satisfy the definition of bodily harm. *State v. Blegen*, 387 N.W.2d 459, 464 (Minn. App. 1986), *review denied* (Minn. July 31, 1986).

In sum, Wachter's guilty plea established an adequate factual basis for the offense of domestic assault-harm.¹ The record supports the district court's determination that "there is a sufficient factual basis" to support a conviction of domestic assault.

II. Wachter intelligently and voluntarily entered his guilty plea.

Wachter next argues that, due to his history of mental illness, the record is insufficient for this court to conclude that his plea was intelligent or voluntary. The state contends that the record reflects that Wachter intelligently and voluntarily entered his plea. We agree with the state.

An intelligent guilty plea is a plea that is "knowingly and understandingly made." *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983). A defendant pleads guilty intelligently if he does so "after [he] has been informed of and understands the charges and direct consequences of a plea." *State v. Byron*, 683 N.W.2d 317, 322 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004). A guilty plea is voluntary if the defendant's decision to plead is not based on "improper pressure or coercion." *Nelson*, 880 N.W.2d at 861 (quotation omitted).

¹ Wachter argues alternatively that his plea should have been evaluated as a *Norgaard* plea by the district court because he testified to not remembering details of the offense. A defendant enters a *Norgaard* plea where he testifies to not remembering the underlying incident, but admits that the record contains sufficient evidence for conviction. *Johnson*, 867 N.W.2d at 215; *see also State ex rel. Norgaard v. Tahash*, 110 N.W.2d 867, 871-72 (Minn. 1961). We need not consider this argument because we conclude that his plea was accurate and otherwise constitutionally valid. Further, the record reveals that neither party considered Wachter's plea to be a *Norgaard* plea at the time it was made, and Wachter never signed a *Norgaard* plea addendum.

In a felony case, the district court must make specific factual findings to ensure that the defendant understands the consequences of pleading guilty before accepting a plea. Minn. R. Crim. P. 15.01, subd. 1. And a district court must not accept a guilty plea from a defendant who is incompetent. Minn. R. Crim. P. 20.01, subd. 2. A defendant is incompetent if, due to mental illness, the defendant lacks the ability to rationally consult with counsel or understand the proceedings. *Id.* The district court must order a competency evaluation if it determines, on its own initiative or upon motion of either party, that there are reasons to question the defendant's competence. *Id.*, subd. 3. "[A] defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial are all relevant in determining whether further inquiry is required." *Bonga v. State*, 797 N.W.2d 712, 719 (Minn. 2011) (quoting *Drope v. Missouri*, 420 U.S. 162, 180, 95 S. Ct. 896, 908 (1975)). "There are, of course, no fixed or immutable signs which invariably indicate the need for further inquiry to determine fitness to proceed; the question is often a difficult one in which a wide range of manifestations and subtle nuances are implicated." *Drope*, 420 U.S. at 180, 95 S. Ct. at 908. A district court violates due process when, having reason to doubt the defendant's competence, it does not "observe procedures adequate to ensure the defendant's competency." *State v. Bauer*, 245 N.W.2d 848, 854 (Minn. 1976).

Wachter does not argue that he was not informed of the charges against him or the consequences of entering a guilty plea. Nor does he argue that he was improperly pressured or otherwise coerced into pleading guilty. Instead, he argues that his guilty plea could not have been intelligent or voluntary if he was not competent, and that his history of mental

illness along with his behavior at the July 17 hearing “triggered the district court’s responsibility” to inquire into his competency before accepting his plea.

Wachter relies heavily on *Bonga* to support his argument that the district court had a duty to inquire into his competence on its own initiative. 797 N.W.2d 712 (Minn. 2011). In *Bonga*, the defendant attempted to kill himself in his jail cell about an hour after confessing to committing a murder. *Id.* at 714. The defendant appeared in court the next day and pleaded guilty to first-degree murder. *Id.* The defendant’s standby counsel, who had been working with him for about a year, opined that: “Mr. Bonga has an understanding of what is going on, understands the seriousness of the charges, has made an intelligent, knowingly [sic], voluntary decision from his perspective to enter a Plea of Guilty.” *Id.* at 715. The district court then examined Bonga’s motivations for both the suicide attempt and his guilty plea, and concluded that Bonga was competent to proceed. *Id.* at 716-17.

On review from the denial of Bonga’s petition for postconviction relief, the issue before the supreme court was “whether the district court gave sufficient weight to evidence suggesting incompetence when it concluded that there was no reason to doubt Bonga’s competency to plead guilty.” *Id.* at 713. The supreme court concluded that the district court had done so. *Id.* at 721. The supreme court recognized that Bonga’s suicide attempt was “an act which suggests a rather substantial degree of mental instability.” *Id.* at 720 (quotation omitted). But the supreme court found that counsel and the court were able to observe Bonga at the plea hearing after the suicide attempt, and Bonga “demonstrated that he was capable of understanding the proceedings and participating in his defense when he informed the court” before pleading guilty that he understood the penalty he faced by

pleading. *Id.* at 720. The supreme court also noted that the district court inquired into both Bonga's history of mental illness as well as his decisions to attempt suicide and to plead guilty. *Id.* at 720-21.

Wachter contends that *Bonga* demonstrates that an inquiry into Wachter's competence by the district court was necessary to determine if his guilty plea was both intelligent and voluntary. Wachter notes that, in *Bonga*, the district court engaged in a colloquy to determine if Bonga was competent to plead guilty after Bonga attempted suicide. Wachter maintains that his history of mental illness and his somewhat inconsistent answers to questions about the assault at the July 17 hearing required further inquiry.

Bonga is distinguishable from this case. Unlike the defendant in *Bonga*, Wachter did not give the district court any objective indication of a "substantial degree of mental instability." He did not attempt self-harm or evince irrational behavior. He acknowledged on the record that he understood the consequences of pleading guilty, and that he wanted to do so notwithstanding his history of mental illness. The district court heard the following colloquy when Wachter's attorney questioned him about the plea petition, as well as his mental health and his desire to plead guilty:

Q: And then after you decided to plead guilty, we went through a form together, four pages long, I have the original, you have a copy?

A: Yep.

Q: And first thing on the bottom of the fourth page there's a signature; is that your signature?

A: Yes, it is.

Q: Signed it after we had gone through it together?

A: Yep.

Q: Okay. Now there's a number of places where we answer questions about your mental health and

medications. So you have been a patient in a mental hospital, correct?

A: Yep.

Q: And you're currently seeing a psychiatrist or counseling correct?

A: Ah, I see – yeah. Yeah, I do see a psychiatrist.

Q: Okay, and you're taking some – some pills that or some medications?

A: I get a – I get a[n] inner muscular injection every two weeks and I also take other pills.

Q: Okay. Now there's a question behind those bunch of questions and that's this: With the counseling and medication, do you feel like you're making a rational decision today?

A: Yes, I do.

Q: Feel like you know what your alternatives are?

A: Yep.

The district court then received the plea petition into the record. On the plea petition, Wachter indicated that he had been in a mental hospital in 2006. He also indicated that he was currently being treated by “a psychiatrist or other person for a nervous or mental condition” but he had “not been ill recently.”

Wachter's testimony, taken together with the plea petition, demonstrates that he was capable of understanding the proceedings and participating in his defense when he informed the court that he was pleading guilty. Wachter gave intelligent answers to the questions posed. He acknowledged his history of mental illness but indicated that he had not been ill recently. He told the court that he was receiving treatment for that illness and was able to make the rational decision to plead guilty. He also stated that he understood the consequences of pleading guilty and that he desired to do so, supporting a conclusion that his plea was voluntary. And Wachter's attorney never gave any indication that he had a concern as to Wachter's competency. Nor did his attorney request that the district court

order a competency evaluation. In sum, Wachter presented the district court with every indication that he understood the consequences of pleading guilty and that he desired to do so.

At the end of his brief, Wachter seems to suggest that his history of mental illness alone required the district court to inquire into his competence. We disagree. We are not aware of any case law that requires a district court to conduct such an inquiry solely on the basis of a mental health diagnosis. As the United States Supreme Court recognized in *Drope*, “[t]here are . . . no fixed or immutable signs which invariably indicate the need for further inquiry to determine fitness to proceed.” 420 U.S. at 180, 95 S. Ct. at 908. Rather, the determination of whether it is necessary to conduct such an inquiry is made on a case-by-case basis. *See id.*; *see also State v. Pietraszewski*, 283 N.W.2d 887, 890 (Minn. 1979) (“A commitment because of mental illness is not a determination that a defendant is legally incompetent.”). Accordingly, we conclude that, under the circumstances presented by this case, the district court was not required to inquire further into Wachter’s competence.

Because the record demonstrates that Wachter’s guilty plea to felony domestic assault was accurate, intelligent, and voluntary, we conclude that the district court did not err when it accepted his plea.

Affirmed.