

*This opinion is nonprecedential except as provided by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
A20-1528**

State of Minnesota,
Respondent,

vs.

Terrell Theo Payne,
Appellant.

**Filed September 7, 2021
Affirmed
Worke, Judge**

Dakota County District Court
File No. 19HA-CR-19-1994

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

Kathryn M. Keena, Dakota County Attorney, Anna Light, Assistant County Attorney,
Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jason R. Steffen, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges the validity of his guilty plea, arguing that it was not accurate
or intelligent. We affirm.

FACTS

On July 9, 2019, Nathan McDonald killed L.T.R. by shooting him five times in a West St. Paul apartment. The apartment was leased to McDonald's sister who lived with L.T.R. until days before the shooting when she decided to take a break from the relationship.

Police obtained surveillance video of the apartment building from July 9 and saw a gray Chevrolet Malibu driving around the building around 3:45 a.m. with its headlights off. McDonald had a 2008 Malibu registered in his name. Two men wearing dark clothing, hooded sweatshirts, and gloves were seen walking toward the outside of L.T.R.'s ground-floor apartment. The police executed a search warrant on McDonald's cell phone, which showed that McDonald was texting appellant Terrell Theo Payne on July 9 between 3:51 and 4:09 a.m.

Payne pleaded guilty to aiding-and-abetting second-degree murder. At the plea hearing, Payne admitted that he agreed to go with McDonald to the apartment because they knew that L.T.R. was there. L.T.R. had been threatening their family, and Payne considered L.T.R. to be a "dangerous dude." Payne believed that things "could have been way worse if something wasn't done." Payne knew that McDonald had a gun, and he was there "to make sure things did not go south." But the plan was to "cause some form of bodily harm" to L.T.R. Payne and McDonald entered the apartment through a broken window, and McDonald shot L.T.R. five times. Payne admitted that it was foreseeable that

McDonald was going to shoot L.T.R. and that, “from a broader perspective, [he] aided and abetted an intentional murder.”

The district court sentenced Payne to 306 months in prison. This appeal followed.

DECISION

Payne argues that his guilty plea is invalid because it was not accurate or intelligent. He did not make these arguments to the district court. But an appellant may challenge the validity of his plea for the first time on appeal if the record provides a sufficient basis for meaningful review. *State v. Anyanwu*, 681 N.W.2d 411, 413 & n.1 (Minn. App. 2004), *overruled on other grounds by Wheeler v. State*, 909 N.W.2d 558 (Minn. 2018). The record here, including the transcript from the plea hearing, provides an adequate basis for appellate review.

“To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent.” *Id.* It is the appellant’s burden to show that his plea is invalid. *Id.* We review the validity of a guilty plea de novo. *Id.*

Accuracy

Payne argues that his guilty plea is not accurate because there was no evidence that he intentionally aided McDonald “in committing the act of intentionally bringing about the death of [L.T.R.]”

“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.” *Id.* A plea is accurate if it is supported by a proper factual basis. *Id.* This requirement is satisfied when the record shows that there is credible evidence that would support a jury

verdict that the defendant is guilty of at least the crime to which he pleaded guilty. *Nelson v. State*, 880 N.W.2d 852, 859 (Minn. 2016).

Payne pleaded guilty to aiding-and-abetting second-degree murder. Whoever “causes the death of a human being with intent to effect the death of that person or another, but without premeditation,” is guilty of second-degree murder. Minn. Stat. § 609.19, subd. 1(1) (2018). “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.” Minn. Stat. § 609.05, subd. 1 (2018). In other words, “the [s]tate must prove that the defendant knew his alleged accomplice was going to commit a crime and the defendant intended his presence or actions to further the commission of that crime.” *State v. Huber*, 877 N.W.2d 519, 524 (Minn. 2016) (quotation omitted). “A person liable under subdivision 1 is also liable for any other crime committed in pursuance of the intended crime if reasonably foreseeable by the person as a probable consequence of committing or attempting to commit the crime intended.” Minn. Stat. § 609.05, subd. 2 (2018).

Payne admitted that McDonald asked him to go to the apartment where L.T.R. was living. Payne knew that McDonald had a gun, and Payne went along to make sure things “did not go south.” Payne thought that the plan was to go and beat up L.T.R. He agreed that his intention was “to support in what [McDonald] was doing at that apartment.” Payne agreed that part of the plan was “to cause some form of bodily harm upon [L.T.R.]” Payne believed that L.T.R. was dangerous and a threat to the family. McDonald shot L.T.R. five times, and Payne did not attempt to intervene. Payne also admitted that the

murder was reasonably foreseeable as a result of the intended plan. And during his plea colloquy, Payne answered in the affirmative to, “Given all of that, is it true, from a broader perspective, that you aided and abetted an intentional murder?”

The factual basis Payne provided sufficiently demonstrates that he is guilty of the crime to which he pleaded guilty; thus, his guilty plea is accurate.

Intelligent

Payne next argues that his guilty plea was not intelligent because the plea colloquy included mostly leading questions, which was improper given Payne’s cognitive deficits.

“To be intelligent, a guilty plea must represent[] a knowing and intelligent choice [among] the alternative courses of action available.” *Dikken v. State*, 896 N.W.2d 873, 877 (Minn. 2017) (quotation omitted). This factor considers whether the defendant, at the time of the plea, “understood the charges against him, understood the rights he was waiving, and understood the consequences of his plea.” *Nelson*, 880 N.W.2d at 858.

Most of Payne’s argument is about the leading questions in the plea colloquy. But, as the state points out, the use of leading questions is usually contested under the accuracy requirement. District courts and attorneys frequently use leading questions when going over the waiver of legal rights and explaining the consequences of a guilty plea. *See, e.g., id.* (holding that appellant made an intelligent plea after he answered “yes” to the district court’s questions about the consequences of his plea).

Nothing in the record suggests that Payne made an unintelligent plea. Payne answered “yes” to all of the district court’s questions about understanding the charges, the plea, and the consequences of the plea. He also answered affirmatively that he went

through the guilty plea petition paragraph-by-paragraph with his attorney and initialed every page and signed the last page. In total, there are eight transcribed pages from the plea hearing covering Payne's understanding of the plea, and he answered every question without indicating any confusion.

Finally, Payne argues that his cognitive deficits prevented him from making an intelligent plea. But his attorney asked Payne whether he had any mental illness that impairs his ability to think clearly, and he responded, "No, I do not." Further, the district court had previously ordered a competency evaluation, and a psychologist found that Payne was competent to proceed with the criminal trial. The psychologist reached this conclusion despite noting two low IQ tests that Payne had in high school. The psychologist also noted that Payne demonstrated a basic understanding of the court and courtroom personnel as well as his plea options. Payne has failed to show that his plea was not intelligent.

Affirmed.