STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0623

State of Minnesota,
Respondent,

vs.

Jerelle Anthony Ellis,
Appellant.

Filed March 13, 2023
Affirmed
Smith, Tracy M., Judge

Anoka County District Court
File No. 02-CR-21-3110

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

Brad Johnson, Anoka County Attorney, Robert I. Yount, Assistant County Attorney, Anoka, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Christopher L. Mishek, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Wheelock, Presiding Judge; Worke, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this direct appeal from a judgment of conviction for fourth-degree assault (harm), appellant Jerelle Anthony Ellis argues that his *Norgaard* guilty plea[1] was not constitutionally valid because it was not accurate or intelligent. We affirm.

FACTS

The following facts are taken from the record established in connection with Ellis's *Norgaard* plea. On June 7, 2021, police responded to a report of a male, later identified as Ellis, shoplifting from a store in Coon Rapids. When the police encountered Ellis, he complained of chest pains and shortness of breath and was transported by ambulance to a hospital.

When Ellis was informed, after receiving treatment, that he was being discharged from the hospital back into police custody, he became "non-compliant" and kicked one of the nurses in the face. The nurse "had a visible abrasion on his face and complained of head pain following the kick." While Ellis was being transported to jail, he apologized for kicking the nurse.

Two days later, respondent State of Minnesota charged Ellis with one count of fourth-degree assault (harm) against a medical professional in violation of Minnesota

[1] As further explained below, a defendant may enter a *Norgaard* plea when the defendant cannot remember the facts of the offense, the record evidence is sufficient for the state to obtain a conviction, and the defendant acknowledges that the evidence is sufficient to convict. *Williams v. State*, 760 N.W.2d 8, 12 (Minn. 2009) (citing *State ex rel. Norgaard v. Tahash*, 110 N.W.2d 867, 871 (Minn. 1961)).

Statutes section 609.2231, subdivision 2(2) (2020), and one count of giving false information to police in violation of Minnesota Statutes section 609.506, subdivision 1 (2020). That same day, pursuant to Minnesota Rule of Criminal Procedure 9.02, subdivision 1, the state requested that Ellis "inform the prosecutor in writing of any defense, other than that of not guilty, on which the defendant intends to rely at trial." There is no record that Ellis filed any notice of a defense.

On February 11, 2022, Ellis filed a signed plea petition in which he affirmed that he understood the charges against him, had spoken with his attorney about those charges, understood the effects of pleading guilty, and was not claiming to be "so drunk or under the influence of drugs or medicine that [he] did not know what [he] was doing at the time of the crime." The plea petition also explained that Ellis and the state had agreed that Ellis would plead guilty to the charge of fourth-degree assault and serve a 20-month prison sentence and the state would dismiss the charge of giving false information to police.

That same day, Ellis attended both a plea hearing and a sentencing hearing. In the plea hearing, he pleaded guilty to the assault charge. Ellis affirmed that he had reviewed the plea petition with his attorney, had read the complaint and discovery against him, had talked to his attorney about potential defenses, and had waived his right to claim the defense of voluntary intoxication. Ellis stated that he was entering the plea because, even though he did not remember what happened, he did not dispute the facts. Ellis admitted that he was "high" before he encountered the police on June 7, 2021, and that he had "administered" the intoxicant himself.

The state and the district court inquired into Ellis's familiarity with the state's evidence against him. Although Ellis initially expressed some confusion about the sufficiency of this evidence, upon explanation, he agreed that he was not disputing the facts laid out in the reports—which he had read—that he had kicked one of his treating nurses and that the nurse suffered an abrasion and head pain. Following this exchange, the district court accepted Ellis's *Norgaard* plea, finding that there was an adequate factual basis for the plea and that Ellis's guilty plea was accurate, voluntary, and intelligent.

The sentencing hearing immediately followed the plea hearing. During the hearing, Ellis stated that he was on the wrong path in life and under the influence of methamphetamine at the time of the assault. He then said that, when he arrived at the hospital, "they stuck [him] with something" and he "couldn't really remember after that." Ellis concluded by accepting responsibility for what happened, despite not remembering the incident. The district court sentenced Ellis to 20 months in prison.

This appeal follows.

DECISION

Ellis argues that his conviction must be reversed and he must be permitted to withdraw his *Norgaard* guilty plea because the plea is not constitutionally valid. A defendant does not have an absolute right to withdraw a guilty plea. *Taylor v. State*, 887 N.W.2d 821, 823 (Minn. 2016). But a court must allow withdrawal of a plea that is not constitutionally valid. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). "To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent." *Id.* Ellis

asserts that his plea was not accurate or intelligent. "Assessing the validity of a plea presents a question of law that [this court] review[s] de novo." *Id*.

A. Accuracy of the Plea

We begin with Ellis's claim that his guilty plea is invalid because it is inaccurate. For a guilty plea to be accurate, "[a] proper factual basis must be established." *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). This requirement exists to protect "the defendant from pleading guilty to a charge more serious than he or she could be convicted of were the defendant to go to trial." *Id.* Ordinarily, the defendant establishes the factual basis for the plea by responding to questioning and explaining in "his or her own words the circumstances surrounding the crime." *Williams*, 760 N.W.2d at 12.

However, when a defendant enters a *Norgaard* plea, a factual basis is established by other means. *Id.* A plea is considered a *Norgaard* plea if the defendant asserts a loss of memory regarding the circumstances of the offense "but pleads guilty because the record establishes, and the defendant reasonably believes, that the state has sufficient evidence to obtain a conviction." *Id.* Thus, a *Norgaard* plea establishes an adequate factual basis by requiring (1) a record that "clearly shows that in all likelihood the defendant committed the offense" and (2) the defendant's acknowledgment that the evidence is sufficient for a jury to convict the defendant. *Id.* at 12-13. These two components "provide the court with a basis to independently conclude that there is a *strong* probability that the defendant would be found guilty of the charge to which he pleaded guilty." *Id.* at 13.

Ellis argues that neither of these two components was satisfied and that the district court therefore lacked a basis to independently conclude that there was a strong probability

that Ellis would be found guilty by a jury. First, Ellis argues that the record does not clearly show the likelihood that he committed assault (harm) because he made statements that negated the element of the crime that requires volitional conduct and showed that he had a potential defense of involuntary intoxication. Second, Ellis argues that, given the initial "doubt" that he expressed during the plea colloquy, he did not clearly acknowledge that a jury would likely convict him of the offense. We address each argument in turn.

1. Volition and Involuntary Intoxication

As to his first argument, the offense to which Ellis pleaded guilty—assault (harm)—is a general-intent crime. Even with a general-intent crime, a defendant must still act volitionally. *See State v. Fleck*, 810 N.W.2d 303, 309 (Minn. 2012) (explaining that, for both specific-intent and general-intent crimes, "a defendant must voluntarily do an act or voluntarily fail to perform an act" (quotation omitted)). Ellis contends that his statements during the plea colloquy and at sentencing support a determination that he did not act volitionally because he was involuntarily intoxicated by an injection of an unidentified drug at the hospital. The argument is unpersuasive.

Ellis relies in part on a comment that he made during the sentencing hearing: "You know, I was doing meth, I was on a wrong path in my life and I just—when I got to the hospital, they stuck me with something. I just couldn't really remember after that." The state contends that this statement cannot be considered because it was made during the sentencing hearing and thus after the factual basis for the plea was established. We agree. The district court had already accepted the plea before Ellis made that statement. Ellis cites

no authority for the proposition that a statement made after a plea was accepted can be considered in evaluating the adequacy of the factual basis for the plea.

Ellis, however, also relies on statements that he made during the plea hearing. During the plea hearing, Ellis stated, "Once I got to the hospital, I really don't remember nothing." He also stated, in response to the state's questioning about his memory, that the hospital staff "gave [him] medications and stuff." Even when these statements are considered, Ellis's argument that his statements reveal a potential involuntary intoxication defense is unavailing.

Ellis argues that two kinds of involuntary intoxication apply to this case: coerced intoxication and unexpected intoxication. *See City of Minneapolis v. Altimus*, 238 N.W.2d 851, 856 (Minn. 1976) (recognizing four different kinds of involuntary intoxication). However, neither defense is supported by the record.

First, "coerced intoxication" is intoxication involuntarily induced by duress or coercion. *Id.* But there are no facts in the record to support that Ellis received medical treatment involuntarily.

Second, unexpected intoxication is intoxication "due to the ingestion of medically prescribed drugs." *Id.* This intoxication defense has the following requirements: (1) the defendant must not know or have reason to know that the prescribed drug will have an intoxicating effect, (2) the prescribed drug, and not some other intoxicant, must be the cause of the defendant's intoxication, and (3) the prescribed drug must render the defendant temporarily insane. *Id.* at 857. The record does not support a determination that these requirements are met. At the plea hearing, Ellis admitted to having voluntarily ingested

methamphetamine before the incident. There is nothing in the record about the type of medications Ellis was given at the hospital or whether those medications have any intoxicating effect, much less whether Ellis should have known about it. Moreover, the complaint, which was part of the record, indicates Ellis's knowledge and awareness of his actions because it states he apologized a short time after kicking the nurse, an action not consistent with "temporary insanity." *Id.* Furthermore, in his signed and filed plea petition, Ellis affirmed, "I do not make the claim that I was so drunk or so under the influence of drugs or medicine that I did not know what I was doing at the time of the crime." None of this evidence supports a determination that Ellis's will was overborne by the medical treatment he received and thus negated an element of the offense.

In sum, Ellis's argument that a potential involuntary intoxication defense undermines the factual basis of his plea fails.

2. Acknowledgement of the Sufficiency of the Evidence

Ellis next argues his *Norgaard* plea was inaccurate because he did not clearly acknowledge that a jury would likely convict him of the offense. *See Williams*, 760 N.W.2d at 12-13. He contends that, during the plea colloquy, he expressed doubt about the sufficiency of the evidence against him and that this doubt—in conjunction with the potential involuntary intoxication defense—renders his guilty plea inaccurate.

At the plea hearing, Ellis initially expressed confusion when the state asked about whether he believed that sufficient evidence existed to convict him beyond a reasonable doubt. The transcript, in relevant part, reads:

> STATE: You understand that–and you've read the reports that state that at the hospital you assaulted some medical personnel who were trying to treat you; correct?
> ELLIS: I don't remember it, but I guess that's what happened.
>
> STATE: And do you have any reason to dispute those reports?
> ELLIS: I mean, I just pled guilty to it, so I guess not, I mean–
>
> STATE: And you understand if this did go to trial, the State would call multiple witnesses who were part of the hospital staff who would all testify to your behavior and to the assault that occurred there; is that correct?
> ELLIS: I suppose, yes.
>
> STATE: Based on the evidence, you've seen and the fact that there would be multiple witnesses who would all testify that you were guilty, do you believe that a jury would find you guilty beyond a reasonable doubt?
> ELLIS: I really don't know. I mean, but–I mean, we'll never know because I pled guilty to it; so–

At this point, the district court immediately stopped the state's questioning and verified that Ellis understood the evidence against him and why he was being asked that question:

> THE DISTRICT COURT: Well sir, hold on. This is your free and voluntary choice. If you don't think the evidence is sufficient, then I'm–
> ELLIS: Well, what I'm saying is I already pled guilty it, I'm saying, yes, I–
>
> THE DISTRICT COURT: Sir–
> ELLIS: –yes, I pled guilty to it. But the question is kind of a weird question to ask. It doesn't make sense because, I mean, I'm already pleading guilty to it.
>
> THE DISTRICT COURT: Sir, it's my job to decide if there are adequate facts to support your guilty plea. Okay? That's my job. I don't have to accept the guilty plea just because you want to plead guilty.

The district court then walked through the evidence against Ellis and ensured that he understood what it showed. Ellis confirmed that he understood the evidence against him—specifically, the allegations in the complaint—and that he was not disputing the events as described in the complaint. He also agreed that the evidence revealed that he kicked a treating nurse and that the nurse thereafter had an abrasion and head pain.

On appeal, Ellis concedes that he "ultimately agreed a jury would convict him." But he contends that the district court "should not have accepted the guilty plea without further clarification about whether Ellis's actions were willful after he was provided the drugs at the hospital." We disagree. Ellis's initial confusion at the plea hearing was resolved by the district court's questioning. And, for the reasons discussed above, Ellis's brief reference at the plea hearing to receiving "medications and stuff" at the hospital did not undermine the factual basis of his *Norgaard* plea.

In sum, Ellis's plea is accurate because it is based on an adequate factual basis that establishes the volitional element of the offense and his own acknowledgement of the sufficiency of the evidence against him. *See Ecker*, 524 N.W.2d at 716.

B. Intelligence of the Plea

Ellis argues that his plea was unintelligent because he entered it without expressly waiving the defense of involuntary intoxication. Ellis argues that, once he mentioned in the plea hearing that he received medication at the hospital, he needed to "be advised on, and waive, the defense of involuntary intoxication" for his plea to be intelligent.

The intelligence of a plea depends on "what the defendant knew at the time he entered the plea." *Dikken v. State*, 896 N.W.2d 873, 877 (Minn. 2017). Specifically, a plea

is intelligent if the defendant understands "the charges against him, the rights he waived, and the consequences of the plea." *Id.* (quotation omitted).

A defendant does not need to expressly waive all potential defenses before entering a guilty plea for the plea to be intelligent. *See State v. Peters*, 143 N.W.2d 832, 837 (Minn. 1966); *see also State v. Nace*, 241 N.W.2d 101, 102 (Minn. 1976) ("[W]here the record justifies the conclusion that the defendant's plea was voluntarily and knowingly made, the defendant cannot expect to obtain relief on a claim that the trial court did not inform him of all possible defenses."). By pleading guilty, a represented defendant waives all defenses other than certain nonwaivable defenses that are not relevant here. *Peters*, 143 N.W.2d at 837.

Ellis claims that the record of the plea hearing shows that his lawyer explained to him only the defense of voluntary intoxication, not involuntary intoxication. At the plea hearing, Ellis agreed that he had talked with counsel "about potential defenses" and that, specifically, he was giving up his right to claim the defense of voluntary intoxication. But this colloquy does not establish that Ellis and his lawyer did not discuss other potential defenses. Moreover, Ellis confirmed that he reviewed the plea petition with his attorney. In the plea petition, he affirmed, "I do not make the claim that I was so drunk or so under the influence of drugs or medicine that I did not know what I was doing at the time of the crime." Finally, the state, in its rule 9.02 demand, requested that Ellis "inform the prosecutor in writing of any defense, other than that of not guilty, on which the defendant intends to rely at trial, including but not limited to the defense of . . . intoxication." Ellis did not assert any defenses in response to that request. Thus, Ellis's argument that his plea

is not intelligent because he did not knowingly waive a potential defense of involuntary intoxication fails.

In sum, Ellis's *Norgaard* plea was accurate and intelligent and thus constitutionally valid.

Affirmed.