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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1820**

Wayne Charles Armstrong-Morrow, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed June 29, 2010
Affirmed
Shumaker, Judge**

Hennepin County District Court
File No. 27-CR-07-002214

David W. Merchant, Chief Appellate Public Defender, St. Paul, Minnesota, Melissa Sheridan, Assistant Public Defender, Eagan, Minnesota (for appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Shumaker, Presiding Judge; Larkin, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

SHUMAKER, Judge

Appellant contends that his pleas of guilty to aiding and abetting both second-degree murder and attempted first-degree murder lacked a sufficient factual basis because the facts did not show that the crimes were a foreseeable consequence of the illicit drug sale in which appellant participated. He argues, therefore, that the district court abused its discretion when it denied his postconviction petition to be allowed to withdraw his pleas. We affirm.

FACTS

Victor Cole, a drug dealer, shot two young men who had arranged to buy marijuana from him. One man died, and the other lived, despite being shot in the head three times. Cole's companion, appellant Wayne Charles Armstrong-Morrow, was present when Cole shot the men, and the state filed an indictment against Armstrong-Morrow charging him with aiding and abetting first-degree murder and attempted first-degree murder.

Armstrong-Morrow reached a plea agreement with the state under which he pleaded guilty to the amended charges of aiding and abetting both second-degree murder and attempted first-degree felony murder. Several months after the district court accepted the pleas and imposed sentence, Armstrong-Morrow petitioned for postconviction relief, arguing that he should be allowed to withdraw his pleas because they lacked a sufficient factual basis to show that homicide or attempted homicide were reasonably foreseeable consequences of the illicit drug transaction in which he and Cole

had engaged. The district court denied the petition, and Armstrong-Morrow brought this appeal, framing the sole issue as whether the district court failed to “establish a sufficient factual basis for the element of foreseeability with respect to the allegation that Armstrong-Morrow was guilty as an aider and abettor[.]”

During the plea hearing, Armstrong-Morrow testified that on November 22, 2006, he was at the home of Marcus Gamble with Gamble, Kendrick Ross, and Victor Cole. Armstrong-Morrow and Cole had sold drugs together on previous occasions.

The four men left the home in Gamble’s car and drove around. They smoked regular cigarettes and marijuana. As they drove, Cole received a phone call from a man known as “Moe,” and Cole told the others who the caller was and that Moe wanted to buy marijuana. Cole and Moe arranged a place to meet for the sale.

Located inside a pouch behind the front seat of Gamble’s car were two handguns that belonged to Cole. One was a 9-mm Glock and the other a .45-caliber pistol. Armstrong-Morrow had seen those guns many times before this day. He testified that he had seen the .45 “a thousand times” and that “it was always in the car.” He also stated that he was interested in buying the .45.

When they arrived at the meeting place, Cole and Armstrong-Morrow got into the car in which Moe was seated as the passenger. Another man was in the driver’s seat. Armstrong-Morrow testified that he did not take a gun with him to the other car and did not see Cole do so either. He did admit, however, that he had reason to believe that Cole was armed with the Glock because Cole always carried a weapon when he sold drugs.

After acknowledging that he had previously sold drugs with Cole, Armstrong-Morrow testified as follows:

- Q. And on those occasions he would carry a weapon with him. Correct?
- A. Correct.
- Q. Okay. So, based on your experience with him, when he . . . sells drugs he usually is armed. Is that a fair statement?
- A. Yeah.

While inside the car in which Moe was riding, Armstrong-Morrow lit a cigarette. The driver asked him not to smoke in his car, and Armstrong-Morrow stepped outside and stood at the side of the car near the taillight. Cole remained inside the car. Next, Armstrong-Morrow heard several shots and he ran to Gamble's car. As he ran, he glanced back and saw both men "leaned over in the passenger seat." When Cole returned to Gamble's car, Armstrong-Morrow saw him put the Glock into his pocket.

Although Armstrong-Morrow denied that he took a gun into the other car, he acknowledged that a witness testified before the grand jury that he saw Armstrong-Morrow "walk to the car that Marcus Gamble was driving holding a .45 caliber gun in [his] hand." Armstrong-Morrow admitted that he got into the other car to assist Cole with the drug sale and that, by being present, he was providing support to Cole in the transaction. Finally, Armstrong-Morrow admitted that, from the time he first met Cole, he had seen Cole carry a gun "around the neighborhood and stuff."

DECISION

Minn. R. Crim. P. 15.05, subd. 1, provides a defendant, upon a timely motion, with the right to withdraw a guilty plea at any time, before or after sentencing, if he can

prove “to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice.” “Manifest injustice occurs if a guilty plea is not accurate, voluntary, and intelligent.” *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). To be “accurate,” a plea must be supported by “sufficient facts on the record to support a conclusion that defendant’s conduct falls within the charge to which he desires to plead guilty.” *Kelsey v. State*, 298 Minn. 531, 532, 214 N.W.2d 236, 237 (1974). “The accuracy requirement protects the defendant from pleading guilty to a more serious offense than he or she could be properly convicted of at trial.” *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998).

It is the district court’s responsibility to ensure that an adequate factual basis has been established on the record. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). If a factual basis is found to be lacking, the defendant is entitled to have the plea of guilty set aside. *State v. Warren*, 419 N.W.2d 795, 798 (Minn. 1988).

This court reviews a district court’s decision to deny postconviction relief for an abuse of discretion. *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004) (reviewing a petition for postconviction relief seeking to withdraw a plea of guilty). The scope of review is confined to determining whether there is sufficient evidence to support the findings of the postconviction court. *Ecker*, 524 N.W.2d at 716.

Armstrong-Morrow admits that he aided and abetted Cole in an illegal drug sale but he denies that the homicide and attempted homicide were foreseeable consequences of that sale. A person who aids another in the commission of a crime is himself guilty of that crime, and is guilty of “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 (2008). “Under Minnesota law, a defendant charged as an accomplice to . . . murder is not required to have predicted that a companion would murder the victim.” *State v. Richardson*, 670 N.W.2d 267, 281 (Minn. 2003). “Rather, the question is whether the murder was reasonably foreseeable as a probable consequence of the intended crime” *Id.* Whether homicide is a reasonably foreseeable consequence of another crime is a fact issue. *State v. Atkins*, 543 N.W.2d 642, 646 (Minn. 1996). The facts here support a reasonable inference that Cole might fire a gun during a drug transaction, and that the shot might kill or injure someone. Armstrong-Morrow admitted that he knew that Cole was usually armed when he engaged in a drug sale, and he admitted that he knew that Cole’s guns were in Gamble’s car and accessible to Cole when the men drove to the location of the prospective drug sale. The district court could reasonably infer that the reasons Cole brought a gun to a drug sale were to facilitate the sale, or to protect himself against the theft of his contraband, or perhaps even to rob the prospective buyer. Surely Armstrong-Morrow could reasonably expect that Cole would use the gun if necessary.

Other cases have held that homicide is a reasonably foreseeable consequence of another crime when the perpetrator is armed with a firearm. *See, e.g., State v. Valtierra*, 718 N.W.2d 425, 438-39 (Minn. 2006); *Atkins*, 543 N.W.2d at 647; *State v. Russell*, 503 N.W.2d 110, 114 (Minn. 1993) (all holding that homicide was a reasonably foreseeable consequence of aggravated robbery).

Armstrong-Morrow's admissions, together with reasonable inferences drawn from them, provided a sufficient factual basis for his pleas, and he has failed to demonstrate that the district court abused its discretion in denying his petition for postconviction relief.

Affirmed.