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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1324**

State of Minnesota,
Respondent,

vs.

Dean Nathaniel Benedict,
Appellant.

**Filed June 30, 2014
Affirmed
Halbrooks, Judge**

Cass County District Court
File No. 11-CR-11-2502

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

Christopher J. Strandlie, Cass County Attorney, Benjamin T. Lindstrom, Assistant County Attorney, Walker, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Hudson, Judge; and Smith, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant seeks to withdraw his guilty plea to two counts of third-degree burglary under Minn. Stat. § 609.582, subd. 3 (2010), arguing that because he was intoxicated and

cannot remember committing either burglary, the record does not provide a sufficient factual basis as to the element of intent, and his plea is therefore not accurate. We affirm.

FACTS

In December 2011, a man called police to his home after finding three large piles of personal items covered with blue tarps in his field. Under the tarps were a number of items, including a Remington 30-06 carbine rifle and a Hi-lift handyman jack. Similar items had previously been reported stolen to police. The man told police that the items belonged to his stepson, appellant Dean Nathaniel Benedict. Police went to appellant's home to question him. There they saw another Hi-lift handyman jack in plain view and placed appellant under arrest.

Appellant was charged in Cass County with (1) being an ineligible person in possession of a firearm; (2) receiving stolen property-firearm; (3) receiving stolen property-more than \$1,000, and not more than \$5,000; (4) fifth-degree possession of a controlled substance; (5) third-degree burglary of one victim's property; and (6) third-degree burglary of a second victim's property. Appellant pleaded guilty to counts 3, 4, 5, and 6.

At his guilty-plea hearing, appellant stated that he did not remember burglarizing the victims' properties. He attributed his inability to remember to the fact that he "was using a lot of drugs then," specifically, methamphetamine. Although appellant could not remember the burglaries, he acknowledged that he had discussed the evidence with his attorney. This evidence included: an iced-tea bottle found in a victim's yard that had appellant's DNA on it; footprints that were found on both victims' properties that had a

distinctive arrow-shaped symbol on the tread that matched shoes found in appellant's home; and items that were found under the blue tarps and at appellant's residence that were reported missing and later identified by both victims.

During his plea colloquy, appellant agreed that the evidence placed him at the scenes of the burglaries and that he "took stuff" from both properties. He agreed that a jury would find him guilty of third-degree burglary beyond a reasonable doubt and that, in all probability, he likely committed the burglaries, despite his inability to remember his actions.

The district court accepted appellant's guilty plea. This appeal follows.

D E C I S I O N

Appellant argues that his guilty plea was not accurate because the factual basis entered on the record failed to establish the element of intent required to convict him of burglary under Minn. Stat. § 609.582, subd. 3.

A defendant does not have an absolute right to withdraw a guilty plea. *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). But a defendant must be permitted to withdraw a guilty plea if it is "necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. A "manifest injustice" exists if the plea is invalid. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). The defendant bears the burden of showing that his plea was invalid. *Raleigh*, 778 N.W.2d at 94.

"Assessing the validity of a plea presents a question of law that we review de novo." *Id.* "To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent." *Id.* "An accurate plea protects 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.” *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). Accuracy requires that the plea be supported by a proper factual basis, which means “that there must be sufficient facts on the record to support a conclusion that defendant’s conduct falls within the charge to which he desires to plead guilty.” *State v. Iverson*, 664 N.W.2d 346, 349 (Minn. 2003) (quotation omitted).

Here, although not specifically identified as such, counsel and the district court formatted appellant’s plea colloquy to establish a *Norgaard* plea. Unlike an *Alford* plea, where a defendant maintains his innocence but pleads guilty to avoid the possibility of a harsher penalty after trial, in a *Norgaard* plea, the defendant does not claim that he is innocent, but instead contends that he does not remember the circumstances that gave rise to the crime. *Ecker*, 524 N.W.2d at 716. When accepting a *Norgaard* plea, the district court “must be certain the defendant understands his or her rights . . . [and it] must affirmatively ensure an adequate factual basis has been established in the record.” *Id.* at 717. Additionally, “the record must establish that the evidence against the defendant is sufficient to persuade the defendant and his or her counsel that the defendant is guilty or likely to be convicted of the crime charged.” *Id.* at 716.

Appellant does not dispute that he was adequately informed of and understood his constitutional rights. That understanding is clear from the transcript of the guilty-plea hearing.

In analyzing appellant’s claim that the factual basis for the burglary convictions lacks support on the element of his intent, we first look to the statute. “Whoever enters a

building without consent and with intent to steal or commit any felony or gross misdemeanor while in the building, *or* enters a building without consent and steals . . . while in the building . . . commits burglary in the third degree” Minn. Stat. § 609.582, subd. 3 (emphasis added). Under the plain language of the statute, a defendant is guilty of third-degree burglary if he enters a building without consent, and while in the building, either (1) intends to steal or (2) steals. *Id.* During his plea colloquy, appellant admitted that a jury would find beyond a reasonable doubt that he took items from both victims’ properties. He admitted that items owned by the victims were found in his home. And despite his inability to remember committing the crime due to his intoxication, appellant did not deny that he stole the items.

Appellant’s admissions satisfy the plain language of Minn. Stat. § 609.582, subd. 3. The statute provides for alternative means of committing third-degree burglary. If one “steals” property, the element of intent need not be established. Because the facts demonstrate guilt of a form of third-degree burglary that does not require proof of intent, the lack of facts as to appellant’s intent is immaterial. Based on the plain language of the statute, we conclude that appellant’s guilty plea to third-degree burglary was valid.

Moreover, appellant fails to consider “that *Alford*, *Goulette* and *Norgaard*, and the cases that have followed, allow [a defendant] to plead guilty without expressing the requisite intent so long as [the defendant] believed the state’s evidence was sufficient to convict him.” *Ecker*, 524 N.W.2d at 717 (determining that defendant’s plea was valid because he agreed that the state’s evidence against him was sufficient, even though the state failed to address the element of intent and the defendant stated that he could not

remember shooting the victim); *see also State v. Klug*, 839 N.W.2d 723, 728 (Minn. App. 2013) (concluding that defendant's *Alford* plea was valid even without an admission of intent because defendant believed that the state's evidence was sufficient to convict him). During his plea colloquy, appellant repeatedly agreed that the evidence against him would convince a jury to convict him. He agreed that the state's evidence against him was overwhelming and that, in all likelihood, he burglarized both properties.

Because the admissions that appellant made during his plea colloquy satisfy the requirements of the third-degree burglary statute and appellant conceded that the state's evidence was sufficient to convict him of that crime, we conclude that his guilty plea is valid.

Affirmed.