STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1713

State of Minnesota,
Respondent,

vs.

Sylvester Jones,
Appellant.

Filed January 9, 2023
Affirmed
Bryan, Judge
Dissenting, Ross, Judge

Hennepin County District Court
File No. 27-CR-19-31853

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

Mary F. Moriarty, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Michael Kinane, Certified Student Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Ross, Presiding Judge; Larkin, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this direct appeal from the judgment of conviction for third-degree criminal sexual conduct, appellant challenges the accuracy of his guilty plea for two reasons: (1) his

plea counsel used leading questions to establish the factual basis; and (2) he uttered a statement during the rights advisory that rendered the plea inaccurate. We affirm.

FACTS

In December 2019, respondent State of Minnesota charged appellant Sylvester Jones with third-degree criminal sexual conduct, attempted third-degree criminal sexual conduct, and felony domestic assault. The state later amended the complaint to add one count of first-degree criminal sexual conduct. Jones agreed to plead guilty to third-degree criminal sexual conduct, and the state agreed to dismiss the remaining charges. Prior to the plea hearing, Jones submitted a letter to the district court requesting to disqualify the prosecutor, but the district court did not grant the request.

At the plea hearing, Jones confirmed that his attorney went through the written agreement with him "line per line." Jones declared that he understood the written plea agreement and entered a waiver of his trial rights. At one point during the waiver of trial rights, the prosecutor, rather than Jones's attorney, asked Jones to acknowledge that as a result of pleading guilty, the severity of a future charge could be enhanced. In response, Jones exclaimed "I never raped my baby momma, so it will never happen again." Jones's attorney responded by asking specific questions regarding the elements of the offense:

> Q: Mr. Jones, back around October 31, 2019, you were in the city of Minneapolis, Hennepin County, Minnesota; is that correct?
> JONES: Yes.
> Q: And at some point that day you were with your significant other with the initials A.L.K.; is that correct?
> JONES: Yes.

> Q: And the two of you at some point that day had gotten into an argument, correct?
> JONES: Yes.
> Q: And that that argument turned physical, correct?
> JONES: Yes.
> Q: And part of that argument you used force such as punching and hitting, correct?
> JONES: Yes.
> Q: And because you were using that force, you were able to have sexual intercourse with A.L.K. despite her not consenting to that, correct?
> JONES: Yes.
> Q: And when I say sexual intercourse, you agree that your penis penetrated her vagina; is that correct?
> JONES: Yeah.

At the sentencing hearing, Jones expressed frustration with his counsel and claimed innocence. The district court continued the sentencing to give Jones time to meet with his counsel and decide whether to request plea withdrawal. At the continued hearing eight days later, Jones opted not to request withdrawal and instead proceeded with sentencing. The district court sentenced Jones to a prison term of 153 months. Jones appeals.[1]

DECISION

Jones argues that his guilty plea was inaccurate and therefore invalid because his attorney established the factual basis through leading questions and because his statement in response to the prosecutor's enhanceability inquiry conflicted with the subsequent factual admissions Jones made. We are not convinced by either argument.

[1] Jones requested a stay so he could pursue postconviction relief, but he decided that a postconviction hearing was unnecessary and filed a motion requesting reinstatement of his appeal. This court granted the reinstatement request.

Jones pleaded guilty to third-degree criminal sexual conduct, which has the following essential elements: (1) the defendant engaged in sexual penetration of the victim; (2) the sexual penetration occurred without the consent of the victim; and (3) the defendant used force to accomplish the penetration. Minn. Stat. § 609.344, subd. 1(c) (Supp. 2019); *see also* Minn. Stat. § 609.341, subd. 12 (Supp. 2019) (defining "[s]exual penetration" as one of several "acts committed without the complainant's consent, except in those cases where consent is not a defense"). "To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent." *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010).

Jones challenges only the accuracy of his plea. To be accurate, a plea must have an adequate factual basis. *Munger v. State*, 749 N.W.2d 335, 337-38 (Minn. 2008). The factual basis must "support a conclusion that [the] defendant's conduct falls within the charge to which he desires to plead guilty." *Id.* at 338 (quotation omitted). This requirement "ensures that a defendant does not plead guilty to a crime more serious than that of which he could be convicted if he elected to go to trial." *Raleigh*, 778 N.W.2d at 95. Jones bears the burden of showing inaccuracy, and we review the accuracy of the guilty plea de novo. *See id.* at 94.

Jones first argues that he entered an inaccurate guilty plea because his attorney established the factual basis using leading questions. While the use of leading questions to establish the factual basis is disfavored, a guilty plea is accurate so long as the defendant admitted each essential element of the offense. *E.g.*, *Raleigh*, 778 N.W.2d at 94-96 (concluding that the guilty plea was accurate and explaining that "the factual basis for [the] plea [was] sufficient, despite its disfavored format"); *see also Nelson v. State*, 880 N.W.2d

852, 860 (Minn. 2016) (collecting cases and observing that "we have never held that the use of leading questions automatically invalidates a guilty plea"); *State v. Ecker*, 524 N.W.2d 712, 716-17 (Minn. 1994) (concluding that the guilty plea was accurate despite use of leading questions to establish the factual basis and the failure of the parties to explicitly note that the defendant was entering a guilty plea while maintaining innocence pursuant to *North Carolina v. Alford*, 400 U.S. 25, 37 (1970)). Jones admitted to engaging in sexual penetration of the victim, A.L.K. He also admitted that he did so without her consent and that he was able to do this because he exerted force against A.L.K., including punching and kicking her. We conclude that the plea colloquy contains sufficient factual admissions to support the conviction despite the form of the attorney's questions.

Jones also argues that his plea is inaccurate because he uttered a statement of innocence during the prosecutor's enhanceability inquiry.[2] When a defendant denies an essential element of an offense or states a fact that is inconsistent with the facts necessary to establish an essential element of the offense during the plea colloquy, the factual basis is inadequate, *State v. Iverson*, 664 N.W.2d 346, 350 (Minn. 2003), unless the defendant subsequently corrects the statement and admits the necessary facts or the record otherwise establishes guilt. *See State v. Mikulak*, 903 N.W.2d 600, 605 (Minn. 2017) (reversing a conviction after a guilty plea where during the plea colloquy, the defendant stated he did not knowingly violate the predatory offender registration statute and this statement was not

[2] Portions of Jones's brief appear to argue that his statement at the sentencing hearing indicates the inaccuracy of his plea. We review the accuracy of the plea, however, based on the plea record, not the subsequent sentencing hearing.

corrected or contradicted during the colloquy); *see also, e.g.*, *State v. Waldron*, 139 N.W.2d 785, 794 (Minn. 1966) (affirming denial of a motion to withdraw a guilty plea where the record did not support the defendant's claim of innocence); *State v. Harding*, 110 N.W.2d 463, 468-69 (Minn. 1961) (affirming denial of a motion to withdraw a guilty plea where "[a] careful reading of the entire transcript indicates nothing upon which defendant might base support for his claim of innocence"); *State v. Robinson*, 388 N.W.2d 43, 46 (Minn. App. 1986) *rev. denied* (Minn. July 31, 1986) (affirming denial of a motion to withdraw a guilty plea despite the defendant's representation of innocence where there was "nothing in the record that would arouse any doubt concerning his guilt").

We are not convinced by Jones's argument for three reasons. First, the accuracy requirement ensures that a defendant not plead guilty to a charge more serious than what could be established at trial. *Raleigh*, 778 N.W.2d at 95. Here, the state charged Jones with first-degree criminal sexual conduct and agreed to a guilty plea to the lesser charge of third-degree criminal sexual conduct. Jones admitted to sexual penetration of A.L.K. without her consent. Given these admissions, we are satisfied with the accuracy of the plea to third-degree criminal sexual conduct. Jones did not plead guilty to a charge that was more serious than the first-degree offense that might have been established at trial. *See id.*; *see also Lundin v. State*, 430 N.W.2d 675, 679 (Minn. App. 1988) (noting that we do not reverse if "the record supports the conclusion that the defendant committed an offense at least as serious as the crime to which he is pleading guilty"), *rev. denied* (Minn. Dec. 21, 1988).

Second, to the extent Jones's statement that he "never raped A.L.K." could be construed as a statement of innocence,[3] his attorney responded by asking specific questions about the specific criminal sexual conduct alleged. As noted above, Jones admitted that he sexually penetrated A.L.K. without her consent and that he used force, including punching and hitting. These specific admissions, made right after uttering the statement in question, correct any equivocation regarding guilt.

Finally, to the extent Jones argues that the district court erred as a matter of law when it failed to stop the proceedings to interject in response to Jones's statement during the enhanceability inquiry, we do not agree. Jones points to no authority requiring an affirmative duty to "stop and clarify" upon utterance of any statements consistent with innocence. Moreover, as noted above, Jones's attorney immediately asked specific questions regarding the elements of the offense, and Jones admitted each element. As a matter of law, the district court had no duty to ask these same questions again or inquire further.

Affirmed.

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[3] The record contains no facts regarding what Jones meant when he stated "I never raped [A.L.K.]" Absent such facts, we are not able to determine if this statement is necessarily inconsistent with the subsequent factual admissions to the elements of third-degree criminal sexual conduct. *See Raleigh*, 778 N.W.2d at 94 (requiring the defendant to bear the burden of showing that his guilty plea was inaccurate); *see also State v. Heithecker*, 395 N.W.2d 382, 383 (Minn. App. 1986) (noting that it is appellant's burden to provide an adequate record on appeal). Additionally, Jones's statement was made in response to the interjection of the prosecutor and could simply indicate an unwillingness to agree with the prosecutor, whom Jones previously asked to be disqualified from the case.

ROSS, Judge (dissenting)

Here we face a new circumstance: a defendant expressly testified at his guilty-plea hearing that he did not commit the charged crime, followed immediately by the district court and attorneys ignoring that express declaration and allowing the factual basis for the defendant's guilty plea to rest on a short series of purely leading questions. I would invalidate Jones's guilty plea. I therefore respectfully dissent.

We should hold a guilty plea invalid if the defendant "made statements that were not withdrawn or corrected and that negated [any] element of the charged offense." *State v. Mikulak*, 903 N.W.2d 600, 605 (Minn. 2017). The majority is willing to affirm Jones's uncomfortably thin admission of guilt partly on its premise that "The record contains no facts regarding what Jones meant when he stated 'I never raped [A.L.K.].'" Two problems leap from that premise. The first is, doesn't the fact that the district court accepted Jones's guilty plea without asking what Jones meant by "I never raped [A.L.K.]" call into obvious doubt whether Jones was genuinely admitting that he was guilty of raping A.L.K.? The second is, do we really need "the record" to inform us what Jones meant by "I never raped [A.L.K.]" when we can, and I think must, presume that he meant *that he never raped A.L.K.*? The majority speculates instead that when Jones said, "I never raped A.L.K.," maybe he was "simply indicat[ing] an unwillingness to agree with the prosecutor." But Jones spoke in plain terms that everyone understands. He was accused of criminal sexual conduct by forcing himself sexually on A.L.K., which is behavior colloquially and universally called, simply, "rape." *See, e.g.*, *State v. Marsyla*, 269 N.W.2d 2, 7 (Minn. 1978) ("Defendant argues that proof that he 'raped' Gail was not clear and convincing

because there was no testimony as to penetration, an essential element of criminal sexual conduct in the first degree."); *American Heritage Dictionary* 1458 (5th ed. 2011) (defining "rape" primarily as "the crime of using force or the threat of force to compel a person to submit to sexual intercourse"). If he was "simply indicat[ing] an unwillingness to agree with the prosecutor," he was indicating that he was unwilling to agree with the complaint's charge that he raped A.L.K.

The majority is willing to leave Jones's guilty plea intact even if Jones was in fact asserting his innocence. This is because the majority concludes that Jones immediately withdrew or corrected his exculpatory statement by saying "yes" to the seven leading questions that followed. Twelve years ago, the supreme court recounted 20 years of its admonishing district courts not to establish a guilty plea's factual basis only through leading questions. *State v. Raleigh*, 778 N.W.2d 90, 95 (Minn. 2010). At that time, the court repeated, "Here, we discourage that practice yet again and encourage district courts to take an active role in asking direct questions of defendants during plea hearings." *Id.* While recognizing that the use of leading questions had never "automatically" invalidated a guilty plea, in 2016 the supreme court reminded trial courts, "[W]e have repeatedly discouraged the use of leading questions to establish a factual basis." *Nelson v. State*, 880 N.W.2d 852, 860 (Minn. 2016). And in affirming, the *Nelson* court emphasized that multiple questions had been open rather than leading, and that "only a few of the questions were leading." *Id.* at 860–61. The supreme court likewise affirmed a guilty verdict when the plea rested in part on leading questions only after observing that "the plea petition and colloquy may be supplemented by other evidence to establish the factual basis for a plea,"

and looking additionally to the grand jury transcript to establish the predicate facts. *Lussier v. State*, 821 N.W.2d 581, 589 (Minn. 2012). This case includes none of those circumstances that lend credibility to the plea, and in fact includes the opposite in Jones's blunt denial.

In sum, although the supreme court has been willing to validate guilty pleas despite the disfavored use of leading questions, it has never done so when the leading questions immediately followed the defendant's unambiguous and ignored statement that he never committed the charged crime. I believe we should invalidate the guilty plea, reverse the conviction, and remand the case to the district court for prosecution.