STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1589

State of Minnesota,
Respondent,

vs.

Jeffery Allen Brooks,
Appellant.

Filed May 13, 2013
Affirmed
Stoneburner, Judge

Todd County District Court
File No. 77CR11472

Lori Swanson, Attorney General, Karen B. Andrews, Assistant Attorney General, St. Paul, Minnesota; and

Charles Rasmussen, Todd County Attorney, Long Prairie, Minnesota (for respondent)

John M. Stuart, Minnesota State Public Defender, F. Richard Gallo, Jr., Assistant State Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kirk, Presiding Judge; Johnson, Chief Judge; and

Stoneburner, Judge.

U N P U B L I S H E D O P I N I O N

STONEBURNER, Judge

Appellant challenges his conviction of second-degree intentional murder, arguing that his statement during the plea that he did not intend to kill his victim rendered the plea

inaccurate such that his conviction constitutes a manifest injustice. Because appellant has failed to establish that acceptance of his plea constituted a manifest injustice, we affirm.

FACTS

In May 2011, appellant Jeffrey Allen Brooks burglarized a residence. One of the owners of the residence returned home while Brooks was in the lower level. Brooks, rather than escaping through a lower-level exit, rushed upstairs and confronted D.F., a petite woman, who was entering her home. Brooks struck D.F., knocking her to the ground, and then kicked her in the head at least twice while she remained helpless on the ground. He grabbed her purse, fled the scene, and got rid of the items he had stolen and the clothing he had worn during the attack. Hours later, D.F. was discovered by her son. An autopsy confirmed that D.F. died of blunt force injuries to her head.

Brooks was arrested and charged with intentional murder in the second degree in violation of Minn. Stat. § 609.19, subd. 1 (2010). A grand jury was to convene on November 21, 2011, to consider additional charges, including first-degree murder, but on November 18, 2011, Brooks entered a plea of guilty to the second-degree murder charge. It is undisputed that, prior to the plea hearing, there was an off-the-record discussion among counsel and the district court in which the district court was informed that Brooks would plead guilty to the charge, thereby avoiding an indictment for first-degree murder, in exchange for a prison sentence in the range of 346 to 480 months, contingent on confirmation of his criminal history score of five. The parties agreed that the district court could rely on the probable-cause portion of the complaint as well as Brooks's plea. The discussion included an agreement that if Brooks was unable to provide an adequate

factual basis for the intent element of second-degree murder, he would, alternatively, offer an *Alford* plea.

Brooks validly waived his trial rights at the plea hearing. He was then questioned extensively by his attorney, the prosecutor, and the district court about his decision to plead guilty to second-degree intentional murder. Brooks confirmed that he had discussed with counsel the meaning of "premeditation" and "intent to kill," what instructions on premeditation and intent to kill the district court would most likely give to a jury, "and that determining somebody's intent is something that's difficult for a jury to do unless somebody gets up and says I intended this result." In relevant part, the following colloquies took place at the plea hearing:

> **Counsel:** Now you've maintained that [intent to kill] wasn't what was going through your mind at the time, but you do want to plead to this charge; is that correct?
>
> **Brooks:** Yes.
>
> **Counsel:** And we talked about that the jury is going to look at facts surrounding circumstances to determine what your intent would have been, and you – we talked about that a lot and regardless of the level of charges, Mr. Brooks, that there was a substantial likelihood that a jury would convict you of more serious charges including the charge you're pleading guilty to which is intent to kill; is that right?
>
> **Brooks:** Yeah. Yes.
>
> **Counsel:** Okay. Now, you also agree that given what you're going to be saying and discuss what happened on May 20 that there would be enough evidence to convict, that because there were multiple blows that a jury – that there is enough evidence to convict on that; is that right?
>
> **Brooks:** Yeah.

. . .

Counsel: Now, most important on this issue: You're not making a claim of innocence in this case? You are agreeing that you caused the death of [D.F.]?

Brooks: Yes.

. . .

Prosecutor: [D]o you acknowledge that if you were to face a jury trial on a first degree murder charge, that there is a good chance a jury might convict you of first degree murder?

Brooks: Yes.

Prosecutor: And rather than go forward with a jury trial on first degree murder, you would prefer to plead guilty here today to the second degree murder charge?

Brooks: Yeah.

. . .

Counsel: [W]e talked a lot about the time in this case and what we would do at trial as far as presenting a defense and unintentional homicide which is also a second degree murder, while it is in a different box, carries the same statutory maximum sentence; do you remember when we looked at that?

Brooks: Yes.

. . .

Counsel: We also talked about the different types of first degree murder. . . . And we did spend a lot of time talking about that, . . . part of the decision in this case -- the plea bargaining, has to do with preventing certain other potential consequences; is that right?

Brooks: Yeah.

> **Counsel:** And . . . you've never said that you didn't cause the death of [D.F.]; it was just a question of how. Is that right?
>
> **Brooks:** Yes.

The district court also questioned Brooks and ascertained that Brooks was satisfied with his representation and had no questions of the district court or counsel. The district court asked: "Are you making any claim that you're innocent of the charge that you are going to enter a plea to?" Brooks responded: "No, sir." Brooks then entered the plea and stated in his own words what he recalled about circumstances that led to D.F.'s death.

Brooks stated that his confrontation with D.F. "happened so fast and she fell and I kicked her a couple of times . . . in the head." Brooks agreed that D.F. had been standing when he first struck her but was on the ground when he kicked her. He then grabbed her purse and fled. Brooks also described how he got rid of what he had stolen from D.F.'s home and the clothes he had been wearing. Brooks stated that he learned from the news that D.F. had died. He said he then just waited to be picked up. He said: "There was no thought in my mind of leaving . . . I was just going to face it if it happened because I didn't want her to die. I didn't think she would die. I didn't want her to die. It wasn't my intention. I just wanted to get out of there." After that statement, the following exchange occurred:

> **Counsel:** Now, Mr. Brooks, you have wanted to plead guilty and we spent a lot of time talking about what an intent to kill was, and you didn't want her to die is what you're saying, but given the facts as you described them and striking her at least three times, twice on the ground, again, you agree that . . . there is a substantial likelihood a jury would find . . . you guilty correct? Do you agree?

Brooks: Yeah, I – yeah.

Based on the plea and the probable-cause portion of the complaint, the district court accepted the plea, finding that there was a sufficient factual basis to support the plea; the plea was freely and voluntarily entered; and that Brooks knowingly and intelligently waived his rights and intelligently entered his plea.

Prior to sentencing, Brooks moved to withdraw his plea on several grounds, including "serious questions with respect to intent," citing his statements denying intent to cause D.F.'s death. After briefing and a hearing, the district court denied the motion. The district court's order incorporated by reference a 15-page memorandum of law. The district court concluded that intent was established by Brooks's plea and that even if Brooks's factual basis was insufficient to ensure the accuracy of a straight plea, his plea "would be sufficient as an *Alford* plea."

Brooks was sentenced. Brooks now appeals, asserting that his conviction is based on an inaccurate plea and is, therefore, a manifest injustice, requiring reversal and remand with instructions that his plea be withdrawn.

D E C I S I O N

We first note that Brooks's appeal does not challenge the order denying his pre-sentence motion, brought under Minn. R. Crim. P. 15.05, subd. 2, asking the district court to exercise its discretion to allow him to withdraw his plea of guilty under a "fair and just" standard. Brooks did not move the district court to allow plea-withdrawal under rule 15.05, subd. 1, to correct a manifest injustice. Instead, Brooks directly appeals his

conviction, asserting that the conviction must be reversed to correct a manifest injustice because it is based on an inaccurate plea. *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997) ("Manifest injustice occurs if a guilty plea is not accurate, voluntary, and intelligent, and thus the plea may be withdrawn.").

The state has not challenged the procedural posture of this appeal. Lacking any argument or authority to the contrary, and because the grounds for the appeal do not go outside of the record, we conclude that Brooks was not required to seek relief in the district court before appealing his conviction as a manifest injustice under rule 15.05, subd. 1. *See State v. Newcombe*, 412 N.W.2d 427, 430 (Minn. App. 1987) (rejecting the argument that a defendant cannot directly appeal acceptance of a sentence and noting that the supreme court has held a direct appeal an inappropriate means of challenging acceptance of a guilty plea only where the grounds for the challenge go outside the record of appeal), *review denied* (Minn. Nov. 13, 1987).

The state has briefed this case as if Brooks's appeal is from the district court's order, arguing that the review in this case is under the "fair-and-just" standard for abuse of discretion. *See* Minn. R. Crim. P. 15.05, subd. 2 ("In its discretion the court may allow the defendant to withdraw a plea at any time before sentence if is fair and just to do so."); *State v. Raleigh*, 778 N.W.2d 90, 97 (Minn. 2010) ("We review a district court's decision to deny a withdrawal motion for abuse of discretion, reversing only in the 'rare case'.") (citation omitted). But "[a]ssessing the validity of a plea presents a question of law that we review de novo." *Id.* at 94.

Brooks does not argue that his plea was not intelligent and voluntary. His sole challenge to the validity of the plea is that it is not accurate because his statements at the plea hearing specifically negated the element of intent. Brooks, relying solely on *Chapman v. State*, 282 Minn. 13, 162 N.W.2d 698 (Minn. 1968), argues that even an *Alford* plea cannot be accepted when a defendant, in a plea, specifically negates an element of the offense for which the plea is offered.

Chapman, in entering a plea to second-degree intentional murder, stated that he did not intend to kill the man he shot and stabbed. *Id.* at 21-22, 162 N.W.2d at 703-04. The supreme court, applying an abuse of discretion standard, affirmed a postconviction court's grant of Chapman's petition to vacate the conviction of second-degree murder. *Id.* The supreme court, after quoting the portion of the plea transcript in which Chapman denied intent to kill, stated:

> Other answers by defendant suggest, though they do not establish, that, if his statements are trustworthy, his actions in so far as they caused the victim's death were the product of fear or revulsion, or both.
>
> In light of this testimony of the defendant in which he specifically denied an intent to kill the decedent, it is our belief, particularly in view of the extraordinary circumstances under which this homicide occurred, that the trial court's discretion in vacating the plea was properly exercised unless it will result in serious prejudice to the state.

Id. at 22, 162 N.W.2d at 704. After concluding that the state would not be prejudiced by plea withdrawal, the supreme court affirmed the order allowing Chapman to withdraw his plea. *Id.* at 24, 162 N.W.2d at 705.

Although Brooks, like Chapman, made statements during his plea colloquy that negated the element of intent, we conclude that *Chapman*, affirming an exercise of judicial discretion, does not compel a conclusion that acceptance of Brooks's plea as a matter of law constituted a manifest injustice. *See In re Estate of Rutt*, 824 N.W.2d 641, 647 (Minn. App. 2012) ("Minnesota courts have recognized that judicial discretion includes that part of the judicial power which depends, not upon the application of rules of law or the determination of questions of strict right, but upon personal judgment to be exercised in view of the circumstances of each case." (quotations omitted)).

After Chapman was decided, the United States Supreme Court decided *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160 (1970). And seven years later, relying on *Alford*, the Minnesota Supreme Court held that:

> [A] trial court may accept a plea of guilty by an accused even though the accused claims he is innocent if the court, on the basis of its interrogation of the accused and its analysis of the factual basis offered in support of the plea, reasonably concludes that there is evidence which would support a jury verdict of guilty and that the plea is voluntarily, knowingly, and understandingly entered.

State v. Goulette, 258 N.W.2d 758, 760 (Minn. 1977).

Brooks argues that, although an *Alford* plea was discussed with the district court, his plea was ultimately entered as a straight plea and was accepted by the court as a straight plea, not an *Alford* plea. But Brooks acknowledges that, in denying his pre-sentence motion to withdraw the plea, the district court specifically stated that the plea was a valid *Alford* plea. And we conclude that the holdings in *Alford* and *Goulette* bear

on our de novo analysis of whether acceptance of Brooks's plea results in a manifest injustice.

Manifest injustice exists when a guilty plea is invalid; and a guilty plea is valid only if it is accurate, voluntary, and intelligent. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). "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). "A proper factual basis must be established for a plea to be accurate." *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994) (citation omitted). A factual basis can be established by a showing of the state's proposed evidence. *See, e.g.*, *Holscher v. State*, 282 N.W.2d 866, 867 (Minn. 1979); *Kochevar v. State*, 281 N.W.2d 680, 686 (Minn. 1979); *Goulette*, 258 N.W.2d at 761.

Intent "is generally proved by inferences drawn from a person's words or actions in light of all the surrounding circumstances." *State v. Thompson*, 544 N.W.2d 8, 11 (Minn. 1996) (citing *State v. Andrews*, 388 N.W.2d 723, 728 (Minn. 1986)); *see Smith v. State*, 596 N.W.2d 661, 665 (Minn. App. 1999) (holding that facts elicited during plea colloquy may suffice to infer guilt), *review denied* (Minn. Aug. 27, 1999). An inference may be made that a person "intends the natural and probable consequences of his actions." *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997) (citing *State v. Lundstrom*, 285 Minn. 130, 140, 171 N.W.2d 718, 724-25 (1969)). Intent to cause death may be "inferred from the nature and extent of the wounds" and a failure to render aid to a victim left in critical condition. *State v. Raymond*, 440 N.W.2d 425, 426 (Minn. 1989); *see State v. Siverhus*, 355 N.W.2d 398, 401 (Minn. 1984) (holding that intent could be inferred

after defendant repeatedly stabbed a man, cut the telephone cord, and fled, leaving the man unattended and in critical condition).

The record in this case establishes that Brooks and his attorney thoroughly discussed the element of intent in the context of the charge to which Brooks pleaded guilty as well as other charges that might have been brought in this case. Brooks acknowledged that his intent would be determined by a jury based on all of the circumstances and that his subjective statements would not be determinative of the issue. He was questioned at length about his desire to enter a plea to second-degree intentional murder and his conduct, as he acknowledged in his plea, was likely to result in a jury's determination that he intended to kill D.F.

Brooks makes no argument that the nature of his acts would not support a finding of the required intent: he relies only on *Chapman*, for the proposition that his statements negating intent make his plea inaccurate even under *Alford*. However, this case is similar to *Ecker*, where the supreme court rejected Ecker's claim that his plea to first-degree felony murder lacked a sufficient factual basis to establish intent to kill his victim, stating that "the primary problem with Ecker's argument is that *Alford*, *Goulette* and *Norgaard*, and the cases that have followed, allow Ecker to plead guilty without expressing the requisite intent so long as he believed the state's evidence was sufficient to convict him." 524 N.W.2d at 717. Although the court expressed concerns about other aspects of Ecker's plea, including that the record did not indicate that an *Alford* plea was being entered, the supreme court concluded that an adequate factual basis was established because the record showed that Ecker pleaded guilty based on his probable guilt and the

likelihood that a jury would have convicted him, and that no manifest injustice occurred. *Id.*

Under the circumstances of this case, in which Brooks never claimed to be innocent of killing D.F., acknowledged several times that a jury was likely to convict him of second-degree intentional murder or a more serious charge based on his admitted conduct, and expressed the tactical reasons for wanting to plead to the charge against him, we conclude that Brooks has failed to establish that acceptance of his plea constituted a manifest injustice entitling him to reversal of his conviction and withdrawal of his plea.

Affirmed.