STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1412

State of Minnesota,
Respondent,

vs.

Tejash Thapa,
Appellant.

Filed June 24, 2013
Affirmed
Cleary, Judge

Lyon County District Court
File No. 42-CR-11-1107

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

Richard R. Maes, Lyon County Attorney, Tricia Zimmer, Assistant County Attorney, Marshall, Minnesota (for respondent)

Bradford Colbert, Assistant State Public Defender, Cassie Benson (certified student attorney), St. Paul, Minnesota (for appellant)

Considered and decided by Cleary, Presiding Judge; Hooten, Judge; and Klaphake, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

CLEARY, Judge

Appellant argues that his guilty plea for aiding and abetting first-degree burglary must be vacated and his conviction reversed because the plea was not supported by a sufficient factual basis. We affirm.

FACTS

Early in the morning on September 9, 2011, appellant Tejash Thapa went to a bar with his friends K.K., G.T., and R.T. While at the bar, appellant's friends were involved in an argument and physical altercation with three men, including V.D. All of the men then left the bar, and appellant and G.T. went to the apartment that they shared. K.K. and R.T. later came to the apartment, and the four friends decided to walk to V.D.'s apartment. Upon arriving, K.K. knocked on the door of the apartment. When V.D. answered the door, a fight immediately broke out just inside the apartment between the four friends and V.D. V.D. sustained a serious injury to one of his eyes during the fight. Appellant was later charged with first-degree burglary, aiding and abetting first-degree burglary, aiding and abetting first-degree assault, and aiding and abetting third-degree assault.

On March 6, 2012, appellant pleaded guilty to the charge of aiding and abetting first-degree burglary, and the remaining charges were dismissed. After pleading guilty, appellant described the incidents that had occurred on the morning of September 9, 2011. He stated that he was not upset after the altercation at the bar, but that his three friends were very angry. Appellant stated that G.T. said "let's go and [] get them" and that R.T.

said "let's see what they have got [] to tell us" and "let's go and [] sort it out." Appellant said that the four friends decided together to go to V.D.'s apartment. When asked what he thought was going to happen at V.D.'s apartment, appellant stated that he thought that there would be "[s]ome kind of argument" and that he was "pretty much sure that there was going to be a fight there." According to appellant, the fight began as soon as V.D. opened the apartment door and was over in a matter of seconds. Appellant stated that, when the fight broke out, he went inside the apartment, was hit on the head and kicked in the chest, fell to the floor, got up, and was then pulled out of the apartment. Appellant acknowledged that the four friends did not have permission to enter V.D.'s apartment and that V.D. was injured as a result of the fight. The district court found that there was a factual basis for the plea.

Pending sentencing, appellant filed a motion to withdraw his guilty plea, claiming that his attorney had pressured him into accepting the state's plea offer and had not adequately informed him of the possible sentences that he was facing. The district court denied appellant's motion. Appellant was subsequently sentenced to a 41-month commitment. This appeal follows.

D E C I S I O N

On appeal, appellant argues that his guilty plea must be vacated and his conviction reversed because his plea was not supported by a sufficient factual basis. Appellant moved to withdraw his plea in district court, but did not raise this argument there. An appellate court generally will not decide issues that were not raised before the district court. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). "At the court's discretion, it

may deviate from this rule when the interests of justice require consideration of such issues and doing so would not unfairly surprise a party to the appeal." *Id.*; *see also* Minn. R. Crim. P. 28.02, subd. 11 (stating that an appellate court may review any matter "as the interests of justice may require"). Because "[a] manifest injustice exists if a guilty plea is not valid," we will review the validity of appellant's plea in this case. *See 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.* "A proper factual basis must be established for a guilty plea to be accurate," and it is the responsibility of the district court judge to ensure that an adequate factual basis has been established. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). "The court should not accept the plea unless the record supports the conclusion that the defendant actually committed an offense at least as serious as the crime to which he is pleading guilty." *State v. Trott*, 338 N.W.2d 248, 251–52 (Minn. 1983). A guilty plea will be set aside if a factual basis is lacking. *State v. Warren*, 419 N.W.2d 795, 798 (Minn. 1988).

Appellant pleaded guilty to aiding and abetting first-degree burglary under Minn. Stat. § 609.582, subd. 1(c) (2010).

> Whoever enters a building without consent and with intent to commit a crime, or enters a building without consent and commits a crime while in the building, either directly or as an accomplice, commits burglary in the first degree . . . if:
>
> . . . .
>
> (c) the burglar assaults a person within the building or on the building's appurtenant property.

Minn. Stat. § 609.582, subd. 1 (2010). "A person is criminally liable for a crime committed by another if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime." Minn. Stat. § 609.05, subd. 1 (2010). To impose liability for aiding and abetting, it must be shown that the defendant played "some knowing role in the commission of the crime," which may be inferred from the defendant's "presence, companionship, and conduct before and after" its commission. *State v. Ostrem*, 535 N.W.2d 916, 924 (Minn. 1995) (quotation omitted). Mere presence at the scene, inaction, knowledge, or passive acquiescence is insufficient to rise to the level of criminal liability, but "active participation in the overt act which constitutes the substantive offense is not required." *Id.*

The factual basis articulated by appellant during the plea hearing was sufficient to establish the elements of aiding and abetting first-degree burglary. Appellant stated that he and his friends entered V.D.'s apartment without consent, that the fight took place inside the apartment, and that V.D. was assaulted. Appellant did not admit to committing the assault himself, but the factual basis establishes that appellant aided and conspired with his friends to procure the commission of the assault on V.D. Appellant stated that his friends were angry after the altercation at the bar and were saying things such as "let's go and [] get them" and "let's go and [] sort it out." He further stated that he and his friends decided together that they should go to V.D.'s apartment, that they did go to the apartment, and that he was "pretty much sure that there was going to be a fight there." The fight began inside V.D.'s apartment as soon as V.D. opened the door, and appellant went inside the apartment when the fight broke out. These facts establish that appellant

played a knowing role in the commission of first-degree burglary rather than merely being present at the scene of the crime.

Affirmed.