STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2216

State of Minnesota,
Respondent,

vs.

Mohamed Kandeel,
Appellant.

Filed November 25, 2008
Affirmed
Harten, Judge*

Hennepin County District Court
File No. 27-CR-07-020094

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Anna Krause Crabb, Minnetonka City Attorney, 14600 Minnetonka Boulevard, Minnetonka, MN 55345 (for respondent)

Herbert A. Igbanugo, Igbanugo Partners International Law Firm, P.L.L.C., 250 Marquette Avenue, Suite 1075, Minneapolis, MN 55401 (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Halbrooks, Judge; and Harten, 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

HARTEN, Judge

Appellant challenges the denial of his motion to withdraw his guilty plea or in the alternative to vacate his conviction of fifth-degree domestic assault, arguing that the district court abused its discretion both in concluding that withdrawal of appellant's guilty plea was not necessary to correct a manifest injustice and in failing to find that appellant's wife recanted her testimony. Because we see no abuse of discretion, we affirm.

FACTS

Appellant Dr. Mohamed Kandeel, a citizen of Egypt working as a dentist in Minnesota, was arrested after his wife, a United States citizen, called 911; the police who responded to the call found her crying, upset, and with visible injury to her arm. Appellant's wife wrote a statement:

> Today my husband and I got into an argument. We started off joking at first. He slapped my right breast, I was so offended I slapped him back on his right arm. This was very degrading to me[.] It escalated somehow. He then grabbed my right arm and twisted it. It hurt so I tried getting him off by kicking him. In the chaos when I was hitting him back to get him to stop he also twisted my finger. What really upsets me is that he doesn't think that all this constitutes as abuse because he comes from a different culture. What constitutes as abuse is slapping or punching. I think he kind of views this as a joke or that somehow it was all a joke somehow. It was not a joke to me. It was degrading and humiliating to me. I called the police because I wanted all this to stop.

Appellant signed a petition to plead guilty, stating that he "grabbed the wife's arm and twisted it during a verbal altercation resulting in her eyeglasses being inadvertently knocked off her face and causing her to call the police." The petition further indicated

that appellant made "NO claim" that he was innocent of the charge; that he had fully discussed the charge, his rights, and the petition with his attorney; that he entered his plea freely and voluntarily; that the plea agreement was a stay of imposition for two years, no fine, no jail; and that he understood that, if he was not a citizen, his guilty plea to a crime could result in deportation, exclusion from the United States, or denial of naturalization. His attorney also signed the petition, stating that he had explained its contents and that, to the best of his knowledge, appellant's constitutional rights had not been violated and he had no meritorious defense to the charge.

Four months later, appellant petitioned to either withdraw his guilty plea or obtain postconviction relief by vacating his conviction because he was allegedly facing deportation. He offered in support a declaration from his attorney and affidavits from his wife and himself.

At the time of the guilty plea, appellant's attorney asserted that: (1) he "believed [appellant's] immigration status was okay and that it would not be impacted by how I handled his criminal case"; (2) the plea agreement did not demonstrate that appellant was guilty of the offense charged; (3) he (the attorney) did not discuss immigration consequences of the plea with appellant because he "was not aware of [appellant's] immigration status or that a guilty plea . . . would subject him to removal from the United States"; (4) the attorney had since learned that appellant and his wife were acting playfully or in jest during the altercation; and (5) it was the attorney's "firm and complete opinion" that, if appellant had known that the plea could result in deportation or the

attorney had known of appellant's immigration status, neither would have agreed to enter the plea.

Appellant's affidavit states that: (1) he is a conditional permanent resident of the United States; (2) his wife has filed a Form I-751 petition for him to become a lawful permanent resident; (3) that he did not know how his guilty plea would affect his immigration status; (4) in the course of a "heated and passionate" argument over gay rights, he tried to hold his wife away because she was kicking him in the groin; (5) he accidentally knocked her glasses away from her face while holding her arms; (6) when she said she would call the police if he touched her again, he touched her shoulder and she called the police; and (7) he is involved in anger management and marriage counseling.

Appellant's wife's affidavit states that: (1) she called the police "to prove a point" to appellant and perhaps have the police mediate; (2) these events should not have resulted in his deportation; (3) she does not remember who started the "physical end" of the argument; (4) appellant was "'play fighting'" and she called the police to get back at him; (5) she is involved in anger management and marriage counseling; and (6) she seeks approval of her Form I-751 petition so appellant "may remain in the United States . . . as a lawful permanent resident."

The district court denied appellant's postconviction motion to withdraw his guilty plea or in the alternative to vacate his conviction. Appellant challenges that denial.

D E C I S I O N

1. Withdrawal of Guilty Plea

This court will reverse the district court's denial of a motion to withdraw a guilty plea only if the district court abused its discretion. *Barragan v. State*, 583 N.W.2d 571, 572 (Minn. 1998). To withdraw a guilty plea, a defendant must prove to the court's satisfaction that withdrawal is necessary to correct a manifest injustice. *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). "A manifest injustice occurs when a guilty plea is not accurate, voluntary, and intelligent." *Id.*

Appellant argues that his plea was not intelligent because it was based on inadequate information from his attorney as to the possible consequence of deportation. *Alanis* rejects this argument:

> 1. For a guilty plea to be intelligent, a criminal defendant must be aware of the direct consequences of pleading guilty.
>
> 2. The direct consequences of a guilty plea are those which flow definitely, immediately, and automatically from the criminal defendant's plea of guilty, namely the maximum sentence and any fine to be imposed.
>
> 3. Because deportation does not flow definitely, immediately, and automatically from a criminal defendant's conviction arising from a guilty plea, it is a collateral, not a direct, consequence of a resident alien criminal defendant's conviction.
>
> 4. Failure to advise a criminal defendant of collateral consequences which might arise from a conviction resulting from a guilty plea, by itself, does not create a manifest injustice warranting withdrawal of the guilty plea.
>
> . . . .

> 6. As a collateral consequence of the guilty plea, a resident alien criminal defendant's defense counsel is under no obligation to advise [the] defendant of the possibility of deportation. . . .
>
> . . . .
>
> 8. We decline to exercise our supervisory authority to require district courts to advise resident alien criminal defendants that their plea of guilty may result in deportation.

Id. at 574. The district court did not abuse its discretion in relying on *Alanis* to conclude that lack of information about possible deportation did not make appellant's plea unintelligent and that appellant is not entitled to withdraw his guilty plea on that basis.

Appellant also argues that withdrawing his plea is necessary to correct a manifest injustice because he was asked leading questions during the plea hearing, thus preventing the establishment of an adequate factual basis. But the use of leading questions does not necessarily prevent the establishment of an adequate factual basis. Here, the evidence included: (1) the transcript of appellant's wife's 911 call, including the statement that she did not "really" feel safe in her home; (2) her statement to the police; and (3) the police report. At the hearing, when the prosecutor asked appellant if he "did acts that intentionally caused [his wife] fear of bodily harm"; appellant answered "Yes." The guilty plea petition, which appellant signed and indicated he fully understood, admitted that appellant "grabbed the wife's arm and twisted it during a verbal altercation resulting in her eyeglasses being inadvertently knocked off her face and causing her to call the police."

Appellant relies on dicta in *State v. Ecker*, 524 N.W.2d 712, 717 (Minn. 1994), that "[t]he defendant should be encouraged to state in his or her own words why he or she

is willing to plead guilty notwithstanding a claim of innocence. . . ." *Id.* But, as the district court noted, "merely because the factual basis was established by way of leading questions does not, on its own, invalidate the plea."[1] The record of the plea hearing provides an adequate factual basis for appellant's guilty plea.

The district court did not abuse its discretion in denying appellant's motion to withdraw his guilty plea.

2. Motion to Vacate

Appellant claims that the district court abused its discretion in denying his alternative motion to vacate his conviction because his wife, in her affidavit, recanted her accusations. A postconviction court's denial of a motion for a new trial will not be disturbed absent an abuse of discretion; this court's review is limited to whether sufficient evidence supports the postconviction court's findings. *State v. Hooper*, 620 N.W.2d 31, 40 (Minn. 2000). "Courts have traditionally looked with disfavor on motions for a new trial based on recantations unless extraordinary or unusual circumstances exist." *Daniels v. State*, 447 N.W.2d 187, 188 (Minn. 1989). The district court found that appellant's wife's affidavit was prepared for the purpose of supporting her Form I-751 petition for him to remain in the United States as a lawful permanent residence and concluded that it "cannot fairly be claimed to be a 'recantation.'"

[1] Appellant's reliance on *Shorter v. State*, 511 N.W.2d 743 (Minn. 1994) is misplaced. That case reversed the denial of a motion to withdraw a guilty plea because the police department had reopened its investigation after the guilty plea and admitted that the original investigation was incomplete and the defendant had not been given access to possibly exculpatory evidence. *Id.* at 746-47. The use of leading questions provided a third basis for the reversal. *Id*. at 747. Here, neither of the other two bases exists.

To "recant" means to "withdraw or renounce prior statements." *Black's Law Dictionary* 1274 (7th ed. 1999). In her affidavit, appellant's wife does not withdraw or renounce her statements to the police who responded to the 911 call that appellant "grabbed [her] right arm and twisted it" and "twisted [her] finger," that his acts were "not a joke to [her]," and that she found his acts "degrading and humiliating." She rather confirms that "[a]lthough he was just kidding around, [she] became very upset" and infuriated him verbally. The district court did not abuse its discretion in finding that appellant's wife's affidavit was not a recantation of her statements that led to the charge of domestic assault.

Affirmed.