STATE OF MINNESOTA
IN COURT OF APPEALS
A09-733

State of Minnesota,
Respondent,

vs.

Troy Nicholas Chamberlain,
Appellant.

Filed April 13, 2010
Affirmed
Stoneburner, Judge

Anoka County District Court
File No. 02CR0710275

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

Robert M.A. Johnson, Anoka County Attorney, Anoka, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Andrea Barts, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Stauber, Judge; and Randall, 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

STONEBURNER, Judge

Appellant challenges the accuracy of his guilty plea to identity theft. Because the record establishes that his plea was accurate, we affirm.

FACTS

Appellant Troy Nicholas Chamberlain was present in Tonya Bellamy's house when police executed a search warrant. During the search, the police found several soft-sided briefcases containing drivers' licenses, social-security cards, checkbooks with blank checks, and credit cards, in different names. None of the individuals named on the found items resided in or was present at Bellamy's house. One of the briefcases was traced to an individual who reported that her vehicle had been broken into, and her briefcase, which contained her camera, was stolen on the day before the search warrant was executed. In a vehicle parked in Bellamy's driveway, police found more briefcases and computer cases with identification documents. Police also found a Ziplock bag containing 44 Adavant tablets, a schedule IV controlled substance and unused bags commonly used for packaging drugs.

During the search, Bellamy told the police that Chamberlain had been staying at her house for the past couple of weeks and that, for the past few days, he had been staying in the bedroom where the police found the briefcases. When asked about the stolen briefcase found in the bedroom, Bellamy stated that Chamberlain went out the previous night and, the next morning, walked into the bedroom with the briefcase and

took pictures of Bellamy with the camera. In the bedroom, police discovered the stolen digital camera that contained pictures of Bellamy.

As a result of the search, Chamberlain was charged in a four-count complaint with (1) identity theft; (2) possession of stolen checks; (3) fifth-degree controlled-substance crime; and (4) financial transaction card fraud.

At a plea hearing, Chamberlain entered guilty pleas to seven charges contained in other pending criminal complaints, and, in this case, he pleaded guilty to identity theft in exchange for dismissal of the remaining charges. The district court asked the prosecutor to establish the factual basis for the plea to identity theft. In response to the prosecutor's leading questions, Chamberlain admitted that he was at Bellamy's house on the day that the search warrant was executed, that he was aware of the briefcases and their contents, and that he had been working or conspiring with Bellamy to commit identity theft. When asked to explain, the following discussion occurred:

> CHAMBERLAIN: . . . I knew the property was there, but I wasn't—there was no conspiracy to use the stuff, but—I mean, I knew it was there. I knew all the stuff was there in our house and I knew somebody was going to illegally use it.
> PROSECUTOR: What is your involvement with it then? What makes you guilty of possessing eight or more identities with intent to use them to commit illegal activity?
> CHAMBERLAIN: Umm—
> DEFENSE COUNSEL: Mr. Chamberlain, you just plead[ed] guilty to pretty similar offenses, right?
> CHAMBERLAIN: Right.
> DEFENSE COUNSEL: And these are people that you had other people's credit cards with? Tonya Bellamy is the person that you've done this with before, right?
> CHAMBERLAIN: Yes.
> DEFENSE COUNSEL: And you knew that she actually had gone the night before and tried to use one of these identities?

> [CHAMBERLAIN:[1]] I knew that, yes.
> DEFENSE COUNSEL: So even if you didn't have kind of a specific plan, which store and when, you were in on that the stuff was there and you knew what you were going to use it for?
> CHAMBERLAIN: Yes.
> PROSECUTOR: Do you agree that there were at least eight, if not more, identities—identification cards or other people who[se] identity was involved in this?
> CHAMBERLAIN: Yes, I agree.
> PROSECUTOR: And you agree that you were part of that whole plan, loosely termed, to use those for criminal behavior?
> CHAMBERLAIN: That's correct.
> PROSECUTOR: There was no lawful reason for you to be in possession of all of those items?
> CHAMBERLAIN: No, there wasn't.
> PROSECUTOR: And you knew that whether it was you or one of your friends, someone was going to use those IDs to try and write forged checks, or ring up other purchases?
> CHAMBERLAIN: That's correct.
> PROSECUTOR: So you agree that you're guilty of possessing at least eight identifications?
> CHAMBERLAIN: Yes.
> PROSECUTOR: And that those victims are considered direct victims. It was their identity?
> CHAMBERLAIN: Yes, it was.

The district court noted on the record that Chamberlain had entered a sufficient factual basis to support a plea of guilty to identity theft and that, by petition, Chamberlain had knowingly and voluntarily waived his rights.

Chamberlain was furloughed for several months due to a medical condition before he was sentenced to 95 months for identity theft, consecutive to other sentences. This appeal, seeking to set aside the plea, follows.

[1] The transcript identifies this response as having come from the district court, but the context plainly shows that it was Chamberlain's response.

D E C I S I O N

To be valid, a guilty plea must be accurate, voluntary, and intelligent. *Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989). Chamberlain argues that his guilty plea must be set aside because it was not accurate. When a defendant challenges the accuracy of a plea in a direct appeal from a judgment of conviction, we review the record de novo to determine whether the plea meets the requirement. *See State v. Hoaglund*, 307 Minn. 322, 326–27, 240 N.W.2d 4, 6 (1976) (evaluating validity of plea on challenge to sufficiency of factual basis).

"A proper factual basis must be established for a guilty plea to be accurate." *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). The district court is responsible for ensuring that a sufficient factual basis is established in the record. *Id*. The purpose of requiring an accurate plea is to ensure the defendant does not plead guilty to a greater charge than he could be convicted of at trial. *Id*. "The factual basis must establish sufficient facts on the record to support a conclusion that defendant's conduct falls within the charge to which he desires to plead guilty." *Munger v. State*, 749 N.W.2d 335, 338 (Minn. 2008) (quotation omitted). The factual basis is preferably "established by questioning the defendant and asking the defendant to explain in his or her own words the circumstances surrounding the crime." *Ecker*, 524 N.W.2d at 716. If the defendant's testimony at the plea hearing is insufficient to establish a factual basis, courts may look to other parts of the record, including a sworn complaint, to determine whether there is a basis for concluding that the defendant committed each element of the charged offense.

See, e.g., State v. Trott, 338 N.W.2d 248, 252 (Minn. 1983) (relying on defendant's admissions to allegations in criminal complaint to establish factual basis for plea).

Minn. Stat. § 609.527, subd. 2 (2008), provides that "[a] person who transfers, possesses, or uses an identity that is not the person's own, with the intent to commit, aid, or abet any unlawful activity is guilty of identity theft." Chamberlain contends that he did not admit to elements of any unlawful activity and that his admission of knowledge that others would use the identities unlawfully was insufficient to establish his *intent* to commit, aid or abet such activity.

"Unlawful activity" is defined by the identity-theft statute, in relevant part, as "(1) any felony violation of the laws of this state . . . ; and (2) any nonfelony violation of the laws of this state involving theft, theft by swindle, forgery, fraud, or giving false information to a public official . . . ." Minn. Stat. § 609.527, subd. (1)(g) (2008). Chamberlain agreed with the prosecutor that there was no lawful reason for him to be in possession of the stolen identity documents and that he knew that he or someone else was going to use the identity cards to try to "write forged checks, or ring up other purchases." *See* Minn. Stat. §§ 609.63, subd. 1 (criminalizing forgery), .821, subd. 2 (criminalizing financial transaction card fraud, which includes the use of a financial transaction card to obtain property) (2008). And crimes involving forgery or fraud are specifically included in the definition of "unlawful activity" under the identity-theft statute. Minn. Stat. § 609.527, subd. 1(g).

Chamberlain argues that, for his guilty plea to be accurate, he was required to admit to each element of unlawful activity involved. To support this argument,

Chamberlain cites 10 *Minnesota Practice*, CRIMJIG 16.93 (2006) (setting out the jury instruction on the elements of identity theft and stating that the jury should be instructed on the nature and elements of the unlawful activity), and *State v. Charles*, 634 N.W.2d 425, 430–31 (Minn. App. 2001) (cited in a footnote to CRIMJIG 16.93).

In *Charles*, we held that the district court committed plain error by failing to instruct the jury on the elements of second-degree assault, the crime underlying the charge of second-degree felony murder against Charles. *Id*. at 431. In that case, Charles's intent was at issue, and we concluded that failure to instruct the jury on the intent element of second-degree assault may have resulted in an unfair verdict. *Id*. We do not find these authorities on jury instructions controlling or persuasive in evaluating the accuracy of a guilty plea. The district court, unlike a jury, is not in need of instruction on the elements of an involved crime. Furthermore, Chamberlain admitted the specific elements of forgery in a guilty plea to two check forgeries entered immediately before his guilty plea to identity theft, and the prosecutor referred back to those admissions in the context of this plea. Under the circumstances of this case, there is no merit in Chamberlain's claim that he did not adequately admit his intent to commit or aid unlawful activity involving the stolen identities.

Chamberlain asserts that his admission to knowing that the documents were going to be used to commit crimes was insufficient to establish his intent. For purposes of Minnesota's criminal code, "[w]ith intent to" means that "the actor either has a purpose to do the thing or cause the result specified or believes that the act, if successful, will cause that result," whereas the term "'[k]now' requires only that the actor believes that

the specified fact exists." Minn. Stat. § 609.02, subds. 9(2) (defining "know"), (4) (defining "with intent to") (2008). Chamberlain, therefore, is correct in distinguishing between knowledge and intent. But his argument nonetheless fails because he relies on a faulty premise: that he only admitted to knowledge. The transcript of the plea hearing plainly shows that Chamberlain also admitted to his *intent* to use the articles of identification for unlawful activity. At the plea hearing, Chamberlain agreed that he knew that he or one of his friends was "going to use" the stolen identities "to write forged checks or ring up other purchases," and he agreed that he was "part of that whole plan . . . to use [the articles of identification] for criminal behavior."

Chamberlain's argument that he never admitted to aiding another person in committing a crime is meritless because having actually committed or aided another person in committing unlawful activity is not an element of the crime of identity theft: *intent* to commit or so aid is sufficient. *See* Minn. Stat. § 609.527, subd. 2. We conclude that Chamberlain's plea was accurate.

Affirmed.