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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1770**

State of Minnesota,
Respondent,

vs.

Craig Kevin Lee,
Appellant.

**Filed May 27, 2014
Affirmed
Connolly, Judge**

Mower County District Court
File No. 50-CR-13-670

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

Kristen Nelsen, Mower County Attorney, Jeremy Clinefelter, Assistant County Attorney,
Austin, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Erik I. Withall, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Schellhas, Judge; and
Connolly, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges his conviction for first-degree aggravated robbery, arguing that his guilty plea, unchallenged before the district court, was neither accurate nor intelligent and that he should be allowed to withdraw it. Because appellant's guilty plea was both accurate and intelligent, we affirm his conviction.

FACTS

In March 2013, appellant Craig Lee entered a liquor store, took a bottle of whiskey, and left. Neither of the store's clerks pursued appellant because they could see the handle of a sheathed knife in his pocket and a machete handle in his backpack.

Appellant was charged with aggravated robbery in the first degree and aggravated robbery in the second degree. At his first hearing, appellant was informed that he had been charged with two felonies and that he had the right to remain silent, the right to apply for a court-appointed attorney if he could not pay for an attorney, and the right to a jury trial. He was also told that his bail study indicated that he had three prior felony convictions and several misdemeanor convictions.

Appellant was provided with an attorney, who moved for an evaluation under Minn. R. Crim. P. 20.01 to determine if appellant was competent to proceed. The report of the evaluation indicated that, although appellant had "a diagnosis of mild retardation [and] several medical conditions" and despite appellant's "efforts to look more impaired than he actually is" and his possible "decision not to cooperate," appellant "most likely

possesse[d] sufficient present ability to consult rationally with counsel, to understand the proceedings, and to participate in his defense.”

Appellant pleaded guilty to the charge of first-degree aggravated robbery and was sentenced to the presumptive sentence of 98 months in prison. He challenges his conviction, arguing that he should be permitted to withdraw his guilty plea because it was neither accurate nor intelligent.

D E C I S I O N

“To be valid, a guilty plea must be intelligent, voluntary, and accurate.” *State v. Iverson*, 664 N.W.2d 346, 349 (Minn. 2003). “Assessing the validity of a [guilty] plea presents a question of law that we review de novo.” *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010).

1. Accurate

Accuracy requires that a plea be supported by an adequate factual basis. *Iverson*, 664 N.W.2d at 349. Robbery requires the taking of personal property from another by one who “uses or threatens the imminent use of force . . . to overcome [that] person’s resistance or powers of resistance . . . or to compel acquiescence” Minn. Stat. § 609.24 (2012). Aggravated robbery requires that the robbery be committed by one who “is armed with a dangerous weapon . . . or inflicts bodily harm upon another.” Minn. Stat. § 609.245, subd. 1 (2012).

Appellant argues that, because he “merely possessed” and did not use the machete and the knife when he took the bottle of whiskey, he did not commit the crime of robbery that underlies the crime of aggravated robbery. But, when “[t]he state based the first

count of aggravated robbery on [a defendant's] possession of a dangerous weapon during the incident" and "the police found a folding knife wrapped with a plastic bag in [the defendant's] pocket . . . [t]his evidence was sufficient to sustain a conviction of aggravated robbery." *State v. Slaughter*, 691 N.W.2d 70, 75-76 (Minn. 2005); *see also State v. Moss*, 269 N.W.2d 732, 735-36 (Minn. 1978) (affirming aggravated-robbery conviction because "there was sufficient evidence from which the jury could infer that although defendant did not use the scissors during the robbery he had them on his person and intended to use them if their use became necessary.")). Here, appellant was asked if, during the theft, "the machete and the knife were visible so people could see those weapons"; if, "when [he] stole [the whiskey, he] had the weapons on [him]"; and if "as a result no one tried to stop [him] from stealing the merchandise that [he] did steal." He answered "Yeah" to all three questions. Moreover, it defies common sense to think that a criminal could avoid being charged with aggravated robbery by arguing that he "merely possessed" the dangerous weapons visible on his person rather than brandishing or using them.

Thus, an adequate factual basis was established for appellant's guilty plea to be accurate.

2. Intelligent

Appellant argues that his plea was not intelligent because "neither the court nor the attorneys discussed with [appellant] any of the rights he was waiving as a result of his plea" and "[appellant's] rights were never explained to him at any proceeding." But, at the first hearing, the district court told appellant:

You have the right to remain silent as to the charge or the incident in which you are alleged to be involved. . . .

You have a right to be represented by an attorney. If you cannot afford to hire an attorney, you can make application for a court-appointed attorney. . . .

. . . .

If the charges against you have a potential of jail if you are found guilty or plead guilty, you have the right to a trial by a jury. . . .

You do have a right, if you choose to do so, to give up your right to a jury trial. . . . [I]f you personally request a trial by a judge, the judge will hear the case and the judge will decide whether you are guilty or not guilty. Keep in mind, this is a right that you have, not your attorney. . . .

No matter which choice you make, you have the following rights at the time of trial: You may question any witnesses that testify against you. You may call witnesses on your own behalf. You can either testify or not testify. If you decide not to testify, no one can use that fact against you in any way.

You are presumed innocent of the charges against you. The burden falls on the prosecutor at the time of trial to prove you guilty beyond a reasonable doubt.

The district court then stated the two charges against appellant, with their maximum penalties, and asked him, “Do you understand the two charges?” and “Do you understand the rights I have given earlier?” Appellant answered “Yes” to both questions.

Similarly, at the plea hearing, the district court asked appellant if he had the chance to go through the petition with his attorney, if he had answered each of the questions truthfully, if he had been able to ask his attorney questions and get answers and understand the answers, if he understood the maximum penalty was up to 20 years in prison and that the sentence would probably involve prison, and if he had signed the petition to plead guilty. Appellant answered all questions in the affirmative.

Appellant's plea was intelligent as well as accurate.

Affirmed.