STATE OF MINNESOTA

IN SUPREME COURT

A22-0084

St. Louis County — Thissen, J.

Deshon Israel Bonnell,

Appellant,

vs.

Filed: December 28, 2022
Office of Appellate Courts

State of Minnesota,

Respondent.

Cathryn Middlebrook, Chief Appellate Public Defender, Sean Michael McGuire, Assistant Public Defender, Saint Paul, Minnesota, for appellant.

Keith M. Ellison, Attorney General, Saint Paul, Minnesota; and

Kimberly J. Maki, St. Louis County Attorney, Duluth, Minnesota; and

Tyler J. Kenefick, Assistant St. Louis County Attorney, Hibbing, Minnesota, for respondent.

S Y L L A B U S

The defendant is entitled, under Minn. R. Crim. P. 15.05, subd. 1, to withdraw his guilty plea to correct a manifest injustice because the guilty-plea record did not show that the defendant killed the victim while the defendant was committing the predicate crime of

aggravated robbery and, accordingly, the factual basis of defendant's guilty plea to felony murder was inaccurate.

Reversed.

O P I N I O N

THISSEN, Justice.

On January 6, 2019, Joshua Lavalley was fatally shot in the head two times near the Mesabi Trail in St. Louis County. The State charged appellant Deshon Bonnell with one count of second-degree intentional murder in violation of Minn. Stat. § 609.19, subd. 1(1) (2022), under an aiding and abetting theory of criminal liability; one count of kidnapping in violation of Minn. Stat. § 609.25, subd. 1(3) (2022), and one count of aggravated robbery in violation of Minn. Stat. § 609.245, subd. 1 (2022). Bonnell was later indicted on charges of premeditated first-degree murder in violation of Minn. Stat. § 609.185(a)(1) (2022), and first-degree intentional felony murder while committing a kidnapping in violation of Minn. Stat. § 609.185(a)(3) (2022). The mandatory penalty for a conviction of either premeditated murder or intentional felony murder while committing a kidnapping is life in prison without the possibility of release. Minn. Stat. § 609.106, subd. 2 (2022).

On September 25, 2019, Bonnell pleaded guilty to one count of first-degree felony murder during the commission of an aggravated robbery in violation of Minn. Stat. § 609.185(a)(3). The penalty for a conviction of first-degree felony murder while committing aggravated robbery is life in prison with the possibility of release after 30 years. Minn. Stat. §§ 609.185(a)(3), 244.05 (2022). On October 25, 2019, the district court sentenced Bonnell to life imprisonment with the possibility of release after 30 years.

Bonnell subsequently filed a petition to withdraw his guilty plea under Minn. R. Crim. P. 15.05, subd. 1. The district court denied the petition. Bonnell's appeal of that decision is before us now.

We reverse. Rule 15.05, subdivision 1, provides that "the court must allow a defendant to withdraw a guilty plea upon a timely motion and proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice." We conclude that Bonnell has demonstrated that withdrawal is necessary to correct a manifest injustice because the plea record does not show that Bonnell admitted to adequate facts to find him guilty of murder while committing an aggravated robbery.

FACTS

Bonnell, Lavalley, and two others were together on January 6, 2019, in Hibbing, Minnesota. At some point, Lavalley was robbed. The parties dispute whether Bonnell participated in the robbery. Sometime later, Bonnell, Lavalley, and one other unnamed person ended up along the Mesabi Trail where, Bonnell admitted, he shot Lavalley two times in the head, killing him.

After an investigation, the State charged Bonnell with second-degree intentional murder, kidnapping, and aggravated robbery. A grand jury subsequently indicted Bonnell on charges of first-degree premeditated murder and first-degree felony murder while committing a kidnapping.

Bonnell and the State reached a plea agreement under which Bonnell would plead guilty to one count of first-degree felony murder during the commission of an aggravated robbery, a crime that carries a minimum life sentence with the possibility of release after

30 years. Minn. Stat. §§ 609.185(a)(3), 244.05. In exchange for Bonnell's plea, the State dismissed all remaining charges, including the more serious charges. The plea agreement allowed Bonnell to avoid a possible conviction for an offense carrying a mandatory penalty of life without the possibility of release. *See* Minn. Stat. § 609.106, subd. 2.

The district court held a hearing where Bonnell testified to the facts set forth above. The district court accepted his plea. In conformity with the agreement, the district court sentenced Bonnell to a life sentence with the possibility of release after 30 years.

Bonnell filed a timely postconviction petition. He alleged that the plea colloquy did not establish an adequate factual basis for felony murder during the commission of an aggravated robbery. The postconviction court denied Bonnell's petition, determining that plea withdrawal was not necessary to correct a manifest injustice. Bonnell now appeals.

ANALYSIS

The question before us is whether Bonnell must be allowed to withdraw his guilty plea because of a manifest injustice. The validity of a guilty plea is a question of law we review de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010).

Minnesota Rule of Criminal Procedure 15.05, subdivision 1, provides: "At any time the court must allow a defendant to withdraw a guilty plea upon a timely motion and proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice." A manifest injustice exists when a guilty plea is not valid. *Raleigh*, 778 N.W.2d at 94. "To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent." *State v. Fugalli*, 967 N.W.2d 74, 77 (Minn. 2021).

The manifest injustice claimed here is that the guilty plea was inaccurate. "To be accurate, a plea must be established on a proper factual basis." *Raleigh*, 778 N.W.2d at 94. A proper factual basis requires evidence that the defendant's conduct meets all elements of the offense to which he is pleading guilty. *State v. Iverson*, 664 N.W.2d 346, 349–50 (Minn. 2003); *see also State v. Mikulak*, 903 N.W.2d 600, 605 (Minn. 2017) (holding that a guilty plea was inadequate when the defendant's plea indicated that he did not "know" about the predatory registration requirement, thus negating the "knowingly" element of the crime). The district court judge must ensure there are "sufficient facts on the record to support a conclusion that defendant's conduct falls within the charge to which he desires to plead guilty." *Kelsey v. State*, 214 N.W.2d 236, 237 (Minn. 1974); *see Nelson v. State*, 880 N.W.2d 852, 861 (Minn. 2016) (stating that the district court judge "must make certain that facts exist from which the defendant's guilt of the crime" to which he is pleading guilty can be reasonably inferred). We do not require that a defendant expressly admit each essential element of the crime; all that is required is that the defendant admit facts that are adequate to allow the district court to reasonably infer an essential element of the crime from the record. *See Nelson*, 880 N.W.2d at 861. Guilty pleas lacking a sufficient factual basis must be set aside. *State v. Warren*, 419 N.W.2d 795, 798 (Minn. 1988).

To properly assess whether Bonnell's guilty plea to felony murder is accurate, we must first understand what the State must show to prove felony murder. A person commits first-degree felony murder if he intentionally causes the death of another person "while committing or attempting to commit" one of several enumerated felony crimes, including

aggravated robbery. Minn. Stat. § 609.185(a)(3).[1] The critical question in this case, then, is whether there is adequate evidence that the killing occurred "while" Bonnell was committing aggravated robbery. *See Bellcourt v. State*, 390 N.W.2d 269, 274 (Minn. 1986) (holding that killing was felony murder because there was "no real question that defendant killed [the victim] while committing the crime of aggravated robbery").

The clearest cases of felony murder are those when the killing occurs during the commission of the predicate felony. *See id.* at 271–72, 274 (holding that felony murder applied when the defendant was robbing a liquor store and killed the victim during the course of the robbery); *State v. Peou*, 579 N.W.2d 471, 478 (Minn. 1998) (upholding felony murder conviction when defendant entered a store with the intent to commit robbery and then committed murders during that robbery). But we have also recognized that "[t]he felony murder rule encompasses a killing by one trying to escape or conceal a felony as long as there was no break in the chain of events between the felony and the killing." *State v. Russell*, 503 N.W.2d 110, 113 (Minn. 1993) (citation omitted) (internal quotation marks omitted). To capture this concept, we have stated that a killing occurs while a defendant

[1] Bonnell made three primary arguments in his postconviction petition. First, he asserted that the plea hearing record did not establish his intent to kill Lavalley. Second, he argued that the record at the plea hearing did not establish that he was guilty of the predicate crime of aggravated robbery. Third, he asserted that, even if he was guilty of aggravated robbery, he did not kill Lavalley "while committing . . . aggravated robbery." *See* Minn. Stat. § 609.185(a)(3). The postconviction court rejected each of those arguments. On appeal, Bonnell did not challenge the postconviction court's decision that the plea colloquy record was adequate to show an intent to kill. He did challenge the postconviction court's decision that the record was adequate to show that he committed aggravated robbery. Based on our resolution of the case, however, we do not need to reach the question of whether Bonnell's plea colloquy was adequate to establish that Bonnell committed aggravated robbery.

is committing a predicate felony if the predicate felony and the killing are part of "one continuous transaction." *Kochevar v. State*, 281 N.W.2d 680, 686 (Minn. 1979) (upholding a conviction for felony murder based on a predicate offense of aggravated assault when the defendant admitted he fired one shot to scare the victim and "[w]ithin seconds" a struggle ensued, and the fatal shot was fired).

We have analyzed whether a predicate felony and a killing are part of "one continuous transaction" by considering whether the " 'fatal wound' was inflicted during the 'chain of events' so that the requisite time, distance, and causal relationship between the felony and killing are established." *Russell*, 503 N.W.2d at 113 (quoting 2 Wayne R. LaFave & Austin W. Scott, Jr., *Substantive Criminal Law* § 7.5(f), at 223 n.88 (1986)). The three factors—"time, distance, and causal relationship"—are lenses through which to analyze the dispositive question of whether the killing occurred "while" the defendant was committing the predicate felony. In some cases, each of the factors will shed light on that question; in others, some factors may be useful while others are not. Further, we have held that even if the predicate felony and the killing occurred at the same time and place, if the killing did not share a causal relationship with the predicate felony, no felony murder occurred. *State v. Darris*, 648 N.W.2d 232, 239 (Minn. 2002); *see also State v. Webster*, 894 N.W.2d 782, 785–86 (Minn. 2017) (noting that this court only needed to analyze "causal relationship" because "the requisite time and distance between the attempted aggravated robbery and the killing" were not at issue).

The plea colloquy record here does not provide an adequate factual basis to show that Bonnell "cause[d] the death" of Lavalley "while committing . . . aggravated robbery."

Minn. Stat. § 609.185(a)(3).[2] In the simplest terms, it stretches the ordinary meaning of the statutory language to conclude that the murder of Lavalley on the Mesabi Trail happened "while" Bonnell was committing aggravated robbery in Hibbing. *While*, *Webster's Third New International Dictionary* 2604 (2002) (defining "while" as "during the time that"); *New Oxford American Dictionary* 1969 (3d ed. 2010) (defining "while" as "during the time that; at the same time as"); *The American Heritage Dictionary of the English Language* 2033 (3d ed. 1992) (defining "while" as "as long as; during the time that"). The predicate felony of aggravated robbery was complete when Lavalley's cash was taken. *See State v. Townsend*, 941 N.W.2d 108, 112 (Minn. 2020) ("A robbery is complete the moment all of the elements have been satisfied . . . ."). There is no evidence—nor even a suggestion—that Lavalley was killed during an escape from the aggravated robbery, or to cover up the aggravated robbery, or, indeed, for any reason related to the aggravated robbery. *See Russell*, 503 N.W.2d at 113 (noting that "the fatal wound was inflicted during the course of the robbery even though [the victim] may not have died until later"); *see also State v. Murphy*, 380 N.W.2d 766, 771–72 (Minn. 1986) (stating that felony murder applied when the defendant killed the victim immediately following the rape—the predicate felony—to conceal his crime); *see generally Darris*,

[2] On appeal, the State relies (with one exception) on the statements made by Bonnell in his plea colloquy—and not on sources outside Bonnell's plea hearing testimony—to support its argument. The one exception is the parties' reference to the approximately 4-mile distance between the location of the aggravated robbery someplace in Hibbing and the location of the killing along the Mesabi Trail near the "Kerr" location, which the plea colloquy does not describe. As discussed below, even if we consider that the distance between the predicate robbery and the killing was approximately 4 miles, it would not make a difference in our resolution of this case.

648 N.W.2d at 238 (explaining that the "historical purpose" behind felony murder is "to punish an unintentional killing that results from a felony more severely than other unintentional killings in order to deter killings that might occur during the commission of a felony").

Causal relationship is the central factor in the analysis in assessing whether a killing occurred while the defendant was committing the predicate felony. *See Darris*, 648 N.W.2d at 239–40 (holding that the state failed to prove felony murder when it did not establish a causal relationship between the predicate felony and the killing even though the predicate robbery felony and the killing occurred at the same time and place). As the LaFave treatise states, "[T]he homicide must have some causal connection with the felony in order to qualify for felony murder; more than a mere coincidence of time and place is necessary." Wayne R. LaFave, *Substantive Criminal Law* 465 (2nd ed. 2003) (hereinafter "LaFave"); *see Russell*, 503 N.W.2d at 113 (holding that "the robbery [predicate crime] and the gagging, strangulation, and positioning of [the victim] . . . were parts of a single, continuous transaction or chain of events because the activities occurred . . . as part of the act of *robbing* [the victim]") (emphasis added)).

"[W]hether there is a sufficient causal connection between the felony and the homicide depends on whether the defendant's felony dictated his conduct which led to the homicide." LaFave, at 466. In this case, nothing in the record suggests that Bonnell's decision to kill Lavalley (at a different time and in a different place) had any connection to the aggravated robbery. The absence of any evidence from which to draw an inference

establishing a causal connection supports the conclusion that the plea colloquy record was inadequate to show that Bonnell killed Lavalley while he committed aggravated robbery.[3]

Moreover, in this case, the spatial connection between the aggravated robbery and the killing does not tell us much to convince us that the killing occurred while Bonnell was committing aggravated robbery. The record shows that the aggravated robbery occurred in the city of Hibbing and Lavalley was shot on the Mesabi Trail. We do not know the actual distance between the location of the aggravated robbery and the location of the killing, however, because the record does not disclose where in Hibbing the aggravated robbery occurred and where along the Mesabi Trail the killing occurred. If anything, the fact that two events happened in two distinct places suggests that the killing did not occur while Bonnell was committing aggravated robbery. That analysis is true on these facts

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[3] In a few cases, we have hinted that a shared motivation for the predicate felony and the killing is relevant to the analysis of whether the killing occurred while the defendant was committing the predicate felony. *State v. Heden*, 719 N.W.2d 689, 697–98 (Minn. 2006) (affirming a conviction for felony murder where the defendant tried to quiet a baby with a bottle, a pacifier and "digital penetration" (criminal sexual conduct) before losing his temper and shaking her to death); *State v. McBride*, 666 N.W.2d 351, 365–66 (Minn. 2003) (holding that the state proved felony murder because the beating that caused death and the acts of criminal sexual conduct occurred as part of the defendant's broader plan to torture the victim). It is not clear from our opinions whether the shared motivation is an independent factor or merely an indication that the killing took place at a time and place sufficiently proximate to the predicate felony.

In this case, in contrast, there is absolutely no evidence in the plea colloquy record about the motivation for the aggravated robbery or the killing. The State urges us to conclude that a shared motivation connected the aggravated robbery and the killing based on the fact that the aggravated robbery and the killing involved the same victim, the same weapon, and some of the same people. We conclude that to do so would be impermissible speculation. Notably, in both *Heden* and *McBride*, the killing and the predicate felony also occurred in the same place and at the same time; facts that (as we discuss more below) are not evident from the plea colloquy record in this case.

even if we assume that the distance between the two events was relatively short—a matter of a few miles. Notably, we have never affirmed a felony murder conviction when aggravated robbery is the predicate offense and the aggravated robbery and the killing occurred in distinct locations. *See Bellcourt*, 390 N.W.2d at 273; *Russell*, 503 N.W.2d at 113; *Peou*, 579 N.W.2d at 478; *State v. Harris*, 589 N.W.2d 782, 793 (Minn. 1999); *Darris*, 648 N.W.2d at 239; *State v. Fox*, 868 N.W.2d 206, 223–24 (Minn. 2015); *Webster*, 894 N.W.2d at 784; *State v. Jones*, 977 N.W.2d 177, 188 (Minn. 2022).[4]

The State's argument on the spatial connection between the two events focuses not on location or distance, but rather on the evidence in the record that the two locations are connected because Bonnell and his accomplices transported Lavalley from Hibbing to the Mesabi Trail. However, because the underlying crime is aggravated robbery—a crime that was complete when the property was taken from Lavalley in Hibbing—the mere fact that Lavalley and Bonnell travelled together from Hibbing to the Mesabi Trail does not provide compelling insight into whether the killing occurred while Lavalley was being robbed.

Similarly, the evidence in the plea colloquy testimony about the temporal relation between the predicate felony and the killing does not shed much light on whether the killing occurred while Bonnell was committing the aggravated robbery. At best, there is a

[4] On this point, we emphasize that the offense of aggravated robbery is complete when the defendant takes the victim's property (having done so using or threatening the use of force). *See Townsend*, 941 N.W.2d at 112. Cases involving a predicate offense, like kidnapping, where transport of the victim may be part of the predicate offense, may present different considerations. In addition, no evidence suggests that Bonnell killed Lavalley in the course of an escape or to cover up his aggravated robbery, *see Murphy*, 380 N.W.2d at 771–72, or to prevent the victim-witness from testifying.

sequential element in Bonnell's plea hearing testimony: Bonnell stated that he was present when others took cash from Lavalley and that he later caused Lavalley's death while on the Mesabi Trail.[5] But there is no evidence about either the time the aggravated robbery took place or the time that Bonnell caused Lavalley's death. In the absence of such facts, the district court had nothing from which to draw a reasonable inference that the killing occurred while Bonnell was committing the aggravated robbery.

It is true that we do not require precision on the time of the predicate felony and the killing. *State v. McBride*, 666 N.W.2d 351, 366 (Minn. 2003). In *McBride*, for example, McBride was convicted of felony murder after a trial for killing his victim while committing criminal sexual conduct. *Id.* McBride argued on appeal that the state failed to establish that the killing occurred while McBride was committing criminal sexual conduct because the evidence "d[id] not prove precisely when the criminal sexual conduct occurred or when the fatal blows were inflicted." *Id.* We rejected that argument because McBride testified about the specific and limited period of time that he was with the victim (9:30 p.m. to 2:30 a.m.) and other evidence showed that the criminal sexual conduct injuries occurred within a certain period before the victim's death. *Id.* In contrast, as noted above, the plea

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[5] The only testimony that Bonnell gave in the guilty plea colloquy about the temporal connection between the robbery and killing is:

> Q. After this money was taken from the person of [Lavalley], did you cause the death of [Lavalley]?
> A. Yes, ma'am.

colloquy record here includes no information about the time of the aggravated robbery or the killing.[6]

In short, the temporal evidence provides little help in determining whether Bonnell killed Lavalley while he was committing aggravated robbery. And, as noted, even if the evidence in the plea colloquy record weakly shows that the aggravated robbery and the killing occurred in the same time period, that in and of itself is not dispositive of the question of whether the killing occurred while Bonnell committed aggravated robbery. *See Darris*, 648 N.W.2d at 239 (holding that even if the predicate felony and the killing occurred at the same time and place, no felony murder occurred because the killing did not share a causal relationship with the predicate felony).

In conclusion, the evidence in the plea colloquy record is inadequate to show that Bonnell "cause[d] the death" of Lavalley "while committing . . . aggravated robbery." *See* Minn. Stat. § 609.185(a)(3). The record simply does not contain sufficient facts to support a conclusion that Bonnell's conduct falls within the charge to which he pleaded guilty. Accordingly, Bonnell's plea is inaccurate, and he must be allowed to withdraw his plea to avoid a manifest injustice under Rule 15.05, subd. 1.[7]

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[6] In addition, it was central to our decision in *McBride* that the evidence at trial showed that the defendant "tortured [the victim] to death" and that the predicate criminal sexual misconduct felony was part of that torture and occurred in the same location. *McBride*, 666 N.W.2d at 366. In contrast, the evidence from the plea colloquy in this case showed that the aggravated robbery occurred and ended in Hibbing while the killing occurred on the Mesabi Trail.

[7] The State argues that no manifest injustice exists because the plea colloquy showed that Bonnell admitted facts proving first-degree premeditated murder, a crime at least as serious as first-degree felony murder. However, the State forfeited this issue by not raising

CONCLUSION

For the foregoing reasons, we reverse the decision of the postconviction court. We remand the case to the district court for trial on the charges pending when Bonnell pleaded guilty (premeditated first-degree murder in violation of Minn. Stat. § 609.185(a)(1); first-degree intentional felony murder while committing a kidnapping in violation of Minn. Stat. § 609.185(a)(3); second-degree intentional murder in violation of Minn. Stat. § 609.19, subd. 1(1), under an aiding and abetting theory of criminal liability; kidnapping in violation of Minn. Stat. § 609.25, subd. 1(3); and aggravated robbery in violation of Minn. Stat. § 609.245, subd. 1), subject to amendment of those charges as allowed by law.

Reversed.

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it in the district court. *See State v. Brown*, 932 N.W.2d 283, 296 n. 14 (Minn. 2019). Accordingly, we decline to consider the issue of whether adequate evidence in the plea colloquy record demonstrates that Bonnell committed premeditated murder.