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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-2034**

State of Minnesota,  
Respondent,

vs.

Shawn Michael Gibbons,  
Appellant.

**Filed November 10, 2009  
Affirmed  
Klaphake, Judge**

Carver County District Court  
File No. 10-CR-07-655

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Peter A.C. Ivy, Carver County Justice Center, 604 E. Fourth Street, Chaska, MN 55318 (for respondent)

Marie L. Wolf, Interim Chief Appellate Public Defender, Richard A. Schmitz, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Klaphake, Presiding Judge; Kalitowski, Judge; and Huspeni, Judge.\*

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

## UNPUBLISHED OPINION

**KLAPHAKE**, Judge

Appellant Shawn Michael Gibbons challenges the district court's denial of his motion to withdraw his guilty plea to gross-misdemeanor fifth-degree assault. Appellant argues that his plea was inaccurate because he did not admit that he intended to cause his live-in girlfriend, C.S., fear of bodily harm. Because the record contains a sufficient factual basis to support appellant's plea, we affirm.

### DECISION

"The decision to allow a defendant to withdraw his or her guilty plea is left to the discretion of the district court," and this court will reverse that decision only if the district court abused its discretion. *State v. Farnsworth*, 738 N.W.2d 364, 372 (Minn. 2007).

The district court may permit a defendant to withdraw a guilty plea, either before or after sentencing, if withdrawal is "necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice exists if a guilty plea is not accurate, voluntary, and intelligent. *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). Accuracy requires "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, 337-38 (Minn. 2008) (quotation omitted).

A conviction of fifth-degree assault requires proof that the defendant either intended to cause fear in another of immediate bodily harm or intentionally inflicted or attempted to inflict bodily harm upon another. Minn. Stat. § 609.224, subd. 1

(2006); *see also* Minn. Stat. § 609.02, subd. 7 (2006) (defining “bodily harm” as “physical pain or injury, illness, or any impairment of physical condition”).

Appellant seeks to challenge his guilty plea by asserting that he did not admit that he intended to cause C.S. fear of bodily harm. However, the record demonstrates that appellant intentionally struck and bruised C.S. Because intentional infliction of bodily harm upon another constitutes fifth-degree assault, there is an adequate factual basis for appellant’s plea; intent to cause fear of bodily harm is merely an alternative basis for the offense. The district court did not abuse its discretion in denying appellant’s request to withdraw his guilty plea.

**Affirmed.**