

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2014).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A15-1664**

State of Minnesota,
Respondent,

vs.

Nathaniel Jon Fritz,
Appellant.

**Filed September 16, 2016
Reversed and remanded
Peterson, Judge**

Washington County District Court
File No. 82-CR-14-5307

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

Peter Orput, Washington County Attorney, Nicholas A. Hydukovich, Assistant County Attorney, Stillwater, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Veronica M. Surges, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Peterson, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from a conviction of fourth-degree assault following his guilty plea, appellant argues that his guilty plea is invalid because the factual basis presented at the

plea hearing failed to establish that appellant possessed the required criminal intent and that he inflicted demonstrable bodily harm. We reverse and remand.

FACTS

While an inmate at the Washington County jail, appellant Nathaniel Jon Fritz attended an administrative disciplinary hearing at which Correctional Officers Hoffman and Hartmann and Sergeant Kleinendorst were present. When Hoffman attempted to advise Fritz about his violations, Fritz became argumentative, and, when Kleinendorst instructed Fritz to listen to Hoffman, Fritz stood up and attempted to lunge at Kleinendorst. While attempting to gain control of Fritz, Hoffman was injured, and Hartmann sustained a strain to her left bicep. Fritz spit at Sergeant Frantsi, who came to assist in securing Fritz.

Fritz was charged with committing one count of fourth-degree assault (transfer of bodily fluids) against Frantsi, one count of fourth-degree assault (infliction of demonstrable harm) against Hoffman, and one count of fourth-degree assault (infliction of demonstrable bodily harm) against Hartmann. Fritz pleaded guilty to assaulting Frantsi and Hartmann, and the charge of assaulting Hoffman was dismissed.

At the plea hearing, Fritz admitted that he was not following the correctional officers' directions as to what he was supposed to be doing. Then, the following exchange occurred:

Q Is it also true that they were trying to get you under control and seated? Would you agree with that?

A Yes.

Q Would you also agree that you obstructed that process or tried to fight against that and that resulted in some of you falling over and Correctional Officer Hartmann getting hurt?

- A Yes.
- Q And your actions were intentional? I mean, you knew what they wanted you to do and you didn't do it, correct?
- A It was a disagreement and things escalated and yah.
- Q So you do acknowledge it was intentional, your actions? Because in order to be guilty of this you have to acknowledge and agree.
- A Okay. Yah.
- Q And you're not contesting that and you agree with that, correct? You are indicating that your actions were intentional, correct?
- A Yes.
- Q Okay. And as a result of that, your intentional actions, you also agree and acknowledge that Correctional Officer Hartmann sustained a strain to her left bicep, correct?
- A Yes.
- Q She hurt her arm?
- A Yes.
- Q And you acknowledge and agree that that's demonstrable bodily harm, meaning she can demonstrate it because she can tell you what it is, correct?
- A Yes.

On this factual basis, Fritz was convicted of assaulting Hartmann. This appeal followed.

DECISION

Fritz argues that the factual basis for his guilty plea is insufficient because it does not establish that he possessed the required criminal intent and that he inflicted demonstrable bodily harm. A defendant may appeal directly from a judgment of conviction and contend that the record made at the time the plea was entered is inadequate. *Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989). A claim that the factual basis for a plea is insufficient is a challenge to the validity of the plea. *State v. Iverson*, 664 N.W.2d 346,

350 (Minn. 2003). Whether a guilty plea is valid is a question of law, which we review de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). The defendant has the burden to show that a plea is invalid. *Lussier v. State*, 821 N.W.2d 581, 588 (Minn. 2012).

To be valid, a guilty plea must be accurate, voluntary, and intelligent. *Brown*, 449 N.W.2d at 182. “The accuracy requirement protects a defendant from pleading guilty to a more serious offense than that for which he could be convicted if he insisted on his right to trial. To be accurate, a plea must be established on a proper factual basis.” *Raleigh*, 778 N.W.2d at 94 (citations omitted). “[T]here must be sufficient facts on the record to support a conclusion that defendant’s conduct falls within the charge to which he desires to plead guilty.” *Iverson*, 664 N.W.2d at 349 (quotation omitted).

Fourth-degree assault of a correctional officer is committed when a defendant “assaults the employee and inflicts demonstrable bodily harm.” Minn. Stat. § 609.2231, subd. 3(1) (2014). “Assault” is defined as “the intentional infliction of or attempt to inflict bodily harm upon another.” Minn. Stat. 609.02, subd. 10(2) (2014).

Fritz argues that he did not assault Hartmann because her “injury was incident to her attempt to restrain [Fritz] and not an injury he purposely inflicted.” But, “assault-harm, as defined by Minn. Stat. § 609.02, subd. 10(2), is a general-intent crime.” *State v. Fleck*, 810 N.W.2d 303, 309-10 (Minn. 2012). A general-intent crime does not require proof that the defendant intended to cause a particular result; the state must prove that “the defendant engaged intentionally in specific, prohibited conduct.” *State v. Pederson*, 840 N.W.2d 433, 436 (Minn. App. 2013) (quotation omitted). In other words, “[t]he defendant must have engaged in a volitional act and not merely acted accidentally.” *Id.*

For assault-harm, the forbidden conduct is the physical act that results in bodily harm to another. *Fleck*, 810 N.W.2d at 309. Fritz admitted during his plea hearing that he intentionally fought against the officers' efforts to get him under control and that his intentional conduct resulted in Hartmann's injury. This admission is sufficient to prove that Fritz acted with the required criminal intent.

Fritz also argues that the factual basis was insufficient to show that Hartmann suffered demonstrable bodily harm because the record contains no evidence that the bicep strain was capable of being perceived by a person other than the victim. "Demonstrable bodily harm" is not defined by statute. But this court has held that, although words of common usage need not be defined by the court, "demonstrable" was adequately defined as "capable of being perceived by a person other than the victim." *State v. Backus*, 358 N.W.2d 93, 95 (Minn. App. 1984).

When addressing Hartmann's injury at the plea hearing, Fritz did not testify that he perceived any bodily harm; he simply acknowledged that Hartmann could tell him what harm she suffered. And there was no evidence that anyone other than Hartmann could perceive her bodily harm. Evidence that Hartmann could tell Fritz what harm she suffered is not sufficient to prove that the harm was capable of being perceived by a person other than Hartmann. We, therefore, conclude that the factual basis for Fritz's guilty plea with respect to the assault on Hartmann is insufficient, and the guilty plea is invalid. Because the guilty plea is invalid, we reverse the conviction for the assault on Hartmann and remand to permit Fritz to withdraw his guilty plea.

Reversed and remanded.