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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-650**

State of Minnesota,
Respondent,

vs.

Michael Peter Lemon,
Appellant.

**Filed January 9, 2012
Affirmed
Connolly, Judge**

Cass County District Court
File No. 11-CR-10-1422

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

Christopher J. Strandlie, Cass County Attorney, Barbara J. Harrington, Assistant County Attorney, Walker, Minnesota (for respondent)

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

Considered and decided by Johnson, Chief Judge; Peterson, Judge; and Connolly,
Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges the validity of his guilty plea on charges of domestic assault and terroristic threats, claiming the plea was not accurate because he did not admit to a

sufficient factual basis for either charge. Because appellant admitted sufficient facts to support the guilty plea, we affirm.

FACTS

On July 4, 2010, C.L.R. reported to police that appellant Michael Peter Lemon, her boyfriend, had beaten her up and threatened to kill her. She said appellant: (1) began to assault her at a friend's house; (2) hit her several times while he was driving after they left the friend's house; (3) stopped the car and told her that he was going to drag her into the woods and kill her; and (4) got out of the car and climbed onto the hood when she attempted to drive away.

As a result of this incident, appellant was charged with one count of felony domestic assault and one count of terroristic threats. Acting pro se, he petitioned to plead guilty to these charges.

At the plea hearing, the prosecutor questioned appellant concerning the assault.

[PROSECUTOR]: What did you do that would make you guilty of assaulting her?

[APPELLANT]: (No Response).

[PROSECUTOR]: Did you hit her, did you push her?

[APPELLANT]: Pushed her.

[PROSECUTOR]: And you did that because you wanted to either hurt her or make her think that you might hurt her; is that correct?

[APPELLANT]: No.

[PROSECUTOR]: Why did you do that?

[APPELLANT]: I was angry with her.

....

[PROSECUTOR]: So, you were angry with her, and you pushed her; is that correct?

[APPELLANT]: Yes.

[PROSECUTOR]: Did you do anything else that makes you guilty of assaulting her?

[APPELLANT]: No.

....

[PROSECUTOR]: Did you threaten to kill her?

[APPELLANT]: Yes.

[PROSECUTOR]: Did you threaten to beat her up?

[APPELLANT]: No.

The district court told appellant:

[O]ne thing I really want to make sure that you understand, and that is that I will not accept a plea of guilty to any offense if I have any doubt in my mind whatsoever that you may be, in fact, believing that you're innocent of these charges. And I don't want you to feel coerced in any way, . . . but I want you to understand that I won't accept a plea of guilt, I will not adjudicate you guilty unless I believe that you've provided a factual basis that I believe is an admission of the elements of these crimes.

The district court then questioned appellant on the assault charge.

[THE COURT]: . . . Do you admit back on July 4th of 2010, that you inflicted some kind of bodily harm on C.L.R.?

[APPELLANT]: Yes.

....

[THE COURT]: Did you hit on July 4th, 2010, with your hands or fists, either one, C.L.R.?

[APPELLANT]: Yes.

[THE COURT]: Did you hit her in the face or head with your hand?

[APPELLANT]: No.

[THE COURT]: No?

[APPELLANT]: Pushed her down.

[THE COURT]: Okay, you say you pushed her. I got that before. But, did you ever strike her?

[APPELLANT]: Maybe I struck her on the shoulder or something.

[THE COURT]: You believe you struck her on the shoulder with your fist?

[APPELLANT]: Yeah, when I pushed her down. No, with my hand.

[THE COURT]: And you pushed her what?

[APPELLANT]: Pushed her away.

[THE COURT]: So, with regard to assault, you're admitting that you pushed her, and you may have hit her on the shoulder; is that correct?

. . . .

[APPELLANT]: Yes.

The prosecutor also questioned appellant in regard to the terroristic threats charge.

[PROSECUTOR]: [D]id you also make some threats to hurt C.L.R.?

[APPELLANT]: No.

[PROSECUTOR]: Well, you're pleading guilty to terroristic threats. Do you understand what that is?

[APPELLANT]: Yes.

[PROSECUTOR]: And the terroristic threats means that you did threaten, directly or indirectly, to commit a crime of violence against another person with the purpose to make them feel terror or in reckless disregard of the risk that they would feel such terror. So, is it true that you did threaten to hurt C.L.R. further?

[APPELLANT]: No.

[PROSECUTOR]: So, you are not pleading guilty to terroristic threats?

[APPELLANT]: Yes, I'm pleading guilty. . . .

[PROSECUTOR]: . . . [Y]ou understand that in order to get this deal, you have to admit your guilt in this offense?

[APPELLANT]: I admit. I admit.

[PROSECUTOR]: And you have to admit enough facts so that [the district court] believes that you are saying you are guilty of committing terroristic threats against C.L.R.

[APPELLANT]: Yeah.
[PROSECUTOR]: So, did you threaten to - -
[APPELLANT]: -- Yes, I did.
[PROSECUTOR]: Did you threaten [to] kill her?
[APPELLANT]: Yes.
. . . .
[PROSECUTOR]: And you did that so that she would be afraid that you would kill her?
[APPELLANT]: Nope.
[PROSECUTOR]: Or you didn't care whether she was afraid or not?
[APPELLANT]: No
[PROSECUTOR]: So, are you admitting that you made these threats to kill C.L.R., and you wanted to make her feel terror, or you didn't care whether she was scare[d] or not?
[APPELLANT]: I didn't want to make--yes.

The district court then told appellant, "With regard to the charge of terroristic threats I think you answered the questions, but I was a little troubled that I didn't want you to feel [led] or pressured into saying something that you didn't want to say."

The district court went on to question him:

[THE COURT]: Would you agree that somewhere along the line you were with C.L.R. on July 4th, that you made certain types of threats, either directly or indirectly, to commit any kind of violence against her?
[APPELLANT]: Yes, Your Honor.
[THE COURT]: I think you mentioned that you said something about threatening to beat her up?
[APPELLANT]: Yes, Your Honor.
[THE COURT]: And when you did that, did you have a purpose of making her feel some terror about the prospect of being beat up?
[APPELLANT]: Yes.

The district court accepted appellant's guilty plea on both counts and sentenced him in accordance with the plea agreement. Appellant challenges his conviction, arguing that he did not admit to a sufficient factual basis for a valid guilty plea.

D E C I S I O N

The validity of a guilty plea is a question of law which this court reviews de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). A valid guilty plea must be accurate, voluntary, and intelligent. *Id.* "To be accurate, a plea must be established on a proper factual basis." *Id.*

Accuracy requires that the plea be supported by a proper factual basis, that there 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. The factual basis of a plea is inadequate when the defendant makes statements that negate an essential element of the charged crime because such statements are inconsistent with a plea of guilty.

State v. Iverson, 664 N.W.2d 346, 349-50 (Minn. 2003) (quotation and citation omitted).

"Although there are various ways to present the factual basis for a guilty plea, all of them contemplate the disclosure on the record of the specific facts that would establish the elements of the crime to which the defendant is pleading guilty." *State v. Misquadace*, 629 N.W.2d 487, 491-92 (Minn. App. 2001), *aff'd* 644 N.W.2d 65 (Minn. 2002). "The district court typically satisfies the factual basis requirement by asking the defendant to express in his own words what happened." *Raleigh*, 778 N.W.2d at 94. But the plea petition and colloquy may be supplemented by other evidence, such as the complaint, to establish the factual basis for a plea. *State v. Trott*, 338 N.W.2d 248, 252

(Minn. 1983); *see also Williams v. State*, 760 N.W.2d 8, 13-14 (Minn. App. 2009) (concluding that a sworn complaint that was referred to at the plea hearing, combined with other evidence, provided a sufficient factual basis for a plea), *review denied* (Minn. Apr. 21, 2009).

Appellant argues that neither the domestic-assault conviction nor the terroristic-threats conviction has an adequate factual basis.

I. The Domestic-Assault Conviction

Whoever “intentionally inflicts or attempts to inflict bodily harm” on a family or household member commits domestic assault. Minn. Stat. § 609.2242, subd. 1(2) (2008). Criminal intent is established when “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.” Minn. Stat. § 609.02, subd. 9(4) (2008). Appellant argues that the facts he admitted in support of his plea are insufficient to establish assault because he consistently denied on the record that he intended to harm the victim.

But appellant testified that he pushed C.L.R. and hit her with his hand on her shoulder. Appellant’s acts establish his intent to inflict bodily harm on C.L.R., and his testimony that he hit her because he was angry with her rather than because he wanted to hurt her does not defeat that showing. Appellant provided an adequate basis for a guilty plea to a charge of domestic assault.¹

¹ Because we see an adequate basis for appellant’s guilty plea to the intentional infliction of bodily harm on a family or household member in violation of Minn. Stat. § 609.2242, subd. 1(2), we do not address whether there was also an adequate

II. The Terroristic-Threats Conviction

“Whoever threatens, directly or indirectly, to commit any crime of violence with purpose to terrorize another . . . or in a reckless disregard of the risk of causing such terror” is guilty of terroristic threats. Minn. Stat. § 609.713, subd. 1 (2008). Appellant argues that there is no factual basis to support the purpose element of a terroristic-threats conviction because, although he admitted that he threatened to kill C.L.R., he denied that he threatened to kill her with the purpose of causing her fear.

But, after he denied this, the district court told him that it would not accept his guilty plea unless he provided a factual basis that was “an admission of the elements of these crimes” and asked him whether, when he threatened to beat up C.L.R., he “ha[d] a purpose of making [C.L.R.] feel some terror about the prospect of being beat up.” Appellant answered, “Yes.”

Appellant argues that, because he had previously denied threatening to beat up C.L.R., the district court’s question was inaccurate, and because he gave an affirmative answer, the district court’s question coerced him to plead guilty. But appellant could have told the district court, as he had earlier told the prosecutor, that he had not threatened to beat up C.L.R., rather than agreeing that he had made the threat and that he had the purpose of terrorizing her when he did so.

basis for a guilty plea to committing an act with intent to cause fear of immediate bodily harm or death in violation of Minn. Stat. § 609.2242, subd. 1(1) (2008).

Appellant established an adequate factual basis for his guilty pleas to domestic assault and terroristic threats.

Affirmed.