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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1882**

State of Minnesota,
Respondent,

vs.

Douglas Hiram Coleman,
Appellant.

**Filed August 19, 2013
Reversed and remanded
Rodenberg, Judge**

Anoka County District Court
File No. 02-CR-12-2054

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

Anthony C. Palumbo, Anoka County Attorney, Anoka, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Cathryn Young Middlebrook,
Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Johnson, Chief Judge;
and Connolly, Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

On appeal from his conviction of terroristic threats, appellant argues that he is entitled to withdraw his guilty plea because it lacks an adequate factual basis. We reverse and remand.

FACTS

On March 19, 2012, appellant Douglas Hiram Coleman was charged by complaint in Anoka County district court with terroristic threats in violation of Minn. Stat. § 609.713, subd. 1 (2010). He pleaded guilty to one count of gross misdemeanor terroristic threats.¹

At appellant's plea hearing, the district court attempted to elicit a factual basis for the guilty plea. During the examination, appellant admitted that he was in Columbia Heights at a tobacco store the evening of March 6, 2012, and that he had an argument with the shopkeeper while there. Appellant admitted being upset, argumentative, and possibly aggressive with the shopkeeper. But appellant denied making threats to kill the shopkeeper and denied having any intent to terrorize or create fear in the shopkeeper. Appellant testified that, to the extent he used loud language and angry words, it was so he could get out of the store. After finding that appellant was aware of his rights, had given up those rights, and had admitted facts that make him guilty of gross misdemeanor terroristic threats, the district court accepted appellant's guilty plea.

Before sentencing, appellant moved to withdraw his plea. The district court denied the motion, sentenced appellant to 210 days in jail, stayed the sentence for one year, and placed appellant on probation with conditions not relevant to this appeal. Appellant now challenges the district court's order denying his motion to withdraw his plea. The state did not file a responsive brief. On May 3, 2013, this court filed an order

¹ The district court record accompanying the appeal shows a conviction under Minn. Stat. § 609.713, subd. 1 (2012), which is a felony-level offense. By agreement, the conviction was deemed a gross misdemeanor pursuant to Minn. Stat. § 609.13 (2012).

directing this matter to proceed pursuant to Minn. R. Civ. App. P. 142.03, which provides that a case will be determined on the merits if the respondent fails to file a brief. In a letter filed with this court on May 6, 2013, the Anoka County attorney's office stated that it had "considered the arguments set forth in [a]ppellant's [b]rief and agrees with them."

D E C I S I O N

Appellant argues that his plea is invalid because it was entered without an adequate factual basis and that he is therefore entitled to withdraw the plea in order to correct a manifest injustice.

The validity of a guilty plea is a question of law, which we review de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). A guilty plea may be withdrawn at any time 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 valid." *Raleigh*, 778 N.W.2d at 94. A guilty plea is valid only if it is "accurate, voluntary and intelligent." *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). To meet the accuracy requirement of a valid guilty plea, the plea must have an adequate factual basis. *Id.* A factual basis is adequate when there are "sufficient facts on the record to support a conclusion that [the] defendant's conduct falls within the charge to which he desires to plead guilty." *State v. Iverson*, 664 N.W.2d 346, 349 (Minn. 2003) (quotation omitted). A factual basis is inadequate when the defendant makes statements that negate an essential element of the charged crime. *Id.* at 350. A plea will not be found invalid "simply because the court failed to elicit proper responses if the record contains sufficient evidence to support the conviction." *Raleigh*, 778 N.W.2d at 94.

To convict appellant of gross misdemeanor terroristic threats, the state was required to prove: (1) that appellant made direct or indirect threats to (2) commit a crime of violence (3) with reckless disregard of the risk of terrorizing another or causing a serious public inconvenience. Minn. Stat. § 609.713, subd. 1. When the district court asked appellant whether he had “threaten[ed] to commit any crime of violence intending to what they say is terrorize the other person, create some kind of fear for them,” appellant responded, “No, I didn’t” Appellant denied making violent threats toward the shopkeeper or any threat to kill him. Although appellant admitted he was angry and that he “might have been aggressive,” he denied any intent to cause fear. Instead, appellant said that he used loud language and angry words because he wanted to leave the store. The complaint indicated that appellant was holding a knife while confronting the shopkeeper, but there is no evidence in the record supporting this assertion. And possession of a knife, standing alone, is insufficient to support appellant’s conviction.

We conclude that appellant negated the elements of terroristic threats during his guilty plea examination and, to the extent he did not negate the elements, the facts stated on the record were insufficient to establish the elements. As such, appellant’s plea is not accurate and is therefore invalid. To allow this invalid guilty plea to stand would be a manifest injustice. *See Raleigh*, 778 N.W.2d at 94. Accordingly, we reverse the conviction of gross misdemeanor terroristic threats and remand to the district court for further proceedings.

Reversed and remanded.