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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A16-1908**

State of Minnesota,  
Respondent,

vs.

James Michael Soderbeck,  
Appellant.

**Filed September 5, 2017  
Affirmed  
Bjorkman, Judge**

Ramsey County District Court  
File No. 62-CR-16-3123

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

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney,  
St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, John Donovan, Assistant Public  
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Bjorkman, Judge; and  
Bratvold, Judge.

## UNPUBLISHED OPINION

**BJORKMAN**, Judge

On appeal from his conviction of third-degree criminal sexual conduct, appellant argues that his guilty plea is invalid because it is not supported by a sufficient factual basis. We affirm.

### FACTS

Respondent State of Minnesota charged appellant James Michael Soderbeck with one count of first-degree and one count of third-degree criminal sexual conduct for an incident that occurred on January 2, 2016. Soderbeck agreed to plead guilty to third-degree criminal sexual conduct in exchange for the state's dismissal of the more serious charge. At the plea hearing, Soderbeck testified that the victim came to his home and the two started kissing. Soderbeck began to digitally penetrate the victim's vagina, and she told him to stop. Despite her protests, Soderbeck did not stop; he used his strength to continue penetrating her for a few more minutes.

The district court accepted Soderbeck's guilty plea and imposed a 15-year prison sentence. Soderbeck appeals.

### DECISION

A defendant must be permitted to withdraw his guilty plea at any time if "withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice exists when a guilty plea is not valid. *Butala v. State*, 664 N.W.2d 333, 338-39 (Minn. 2003). To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent. *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983). 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).

Soderbeck only challenges the accuracy of his guilty plea. A plea is accurate if it is supported by an adequate factual basis. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). An adequate factual basis exists where 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*, 298 Minn. 531, 532, 214 N.W.2d 236, 237 (1974). The accuracy requirement ensures that a defendant does not plead guilty to a more serious charge than he could be convicted of at a trial. *Ecker*, 524 N.W.2d at 716.

To convict a person of third-degree criminal sexual conduct, the state must prove the person: (1) used force or coercion to (2) accomplish sexual penetration. Minn. Stat. § 609.344, subd. 1(c) (2014). Force is defined as

the infliction, attempted infliction, or threatened infliction by the actor of bodily harm or commission or threat of any other crime by the actor against the complainant or another, which (a) causes the complainant to reasonably believe that the actor has the present ability to execute the threat and (b) if the actor does not have a significant relationship to the complainant, also causes the complainant to submit.

Minn. Stat. § 609.341, subd. 3 (2014). Coercion is relevantly defined as “the use by the actor of confinement, or superior size or strength, against the complainant that causes the complainant to submit to sexual penetration or contact against the complainant’s will.” *Id.*, subd. 14 (2014).

Soderbeck argues that his guilty plea is inaccurate because the facts do not establish that he used force when he sexually penetrated the victim. The state does not challenge

this argument, but asserts that Soderbeck's plea was nonetheless accurate because the record demonstrates that he used coercion to accomplish the act of penetration. We agree with the state.

After reviewing the plea petition and establishing that Soderbeck wanted to plead guilty and understood the rights he was waiving, defense counsel had difficulty making a record of the factual basis for the plea. After several unsuccessful questioning attempts by counsel and the district court, the following colloquy ensued:

PROSECUTOR: My question is, though, sir, how did you use force to accomplish the penetration?

SODERBECK: Um, I guess by doing it after she told me to stop. I didn't have consent. And I was already—how can I say it, in her, you know. So basically holding her.

THE COURT: You were holding her there?

SODERBECK: Well, my hand was inside of her, yeah.

THE COURT: And were you pushing against her?

SODERBECK: Not so much pushing, I was, I mean, I was literally inside of her. So, you know what I mean?

....

APPELLANT'S COUNSEL: You were inside her and she revoked her consent, correct?

SODERBECK: Yes.

APPELLANT'S COUNSEL: You didn't stop when she revoked her consent, correct?

SODERBECK: Correct.

APPELLANT'S COUNSEL: You used your strength to hold her and continue what you were doing, you weren't giving her an opportunity to get away at that point, is that correct?

SODERBECK: Correct.

APPELLANT'S COUNSEL: So you continued after the consent was withdrawn and you used your force of—your strength to hold her and continue, is that correct?

SODERBECK: Yes.

This testimony, on its face, establishes “the use by the actor of . . . superior size or strength[] against the complainant that causes the complainant to submit to sexual penetration or contact against the complainant’s will.” Minn. Stat. § 609.341, subd. 14.

Soderbeck first contends that the plea colloquy does not support his guilty plea because the state and the district court focused on the element of force, and no one used the words “coerce” or “coercion.” But he cites no law to support this argument. And the statute provides that proof of either force or coercion, along with sexual penetration, establishes criminal sexual conduct in the third degree. *State v. Leake*, 699 N.W.2d 312, 321 (Minn. 2005). While there may not be a sufficient factual basis to show Soderbeck used force to accomplish sexual penetration, there is a sufficient factual basis to show that he used coercion.

Soderbeck next argues that even if the quoted testimony could establish the element of coercion, statements he made earlier in the guilty-plea hearing about the victim’s ability to leave his home at any time negate a conclusion that coercion was established. We are not persuaded. While counsel struggled to present the facts underlying the guilty plea to the district court, they were ultimately successful. Soderbeck did not make any inconsistent statements regarding the elements of the offense in the final stage of his guilty plea. In fact, he confirmed that he did not give the victim an opportunity to leave when she revoked her consent to sexual activity. Moreover, the case on which Soderbeck relies for this argument is inapposite. See *State v. Iverson*, 664 N.W.2d 346, 353-54 (Minn. 2003) (remanding for the district court to determine whether a homeless defendant could violate the sex-offender registration statute). As noted above, the purpose of the accuracy

requirement is to protect a defendant from pleading guilty to a charge more serious than he could be convicted of were he to go to trial. *Ecker*, 524 N.W.2d at 716. This purpose is met here. On this record, we conclude that Soderbeck's guilty plea is supported by a sufficient factual basis.

**Affirmed.**