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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1895**

State of Minnesota,
Respondent,

vs.

Zane David Foley,
Appellant.

**Filed November 4, 2019
Affirmed
Kirk, Judge***

Meeker County District Court
File No. 47-CR-18-394

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Brandi L. Schiefelbein, Meeker County Attorney, John P. Fitzgerald, Assistant County Attorney, Litchfield, Minnesota (for respondent)

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

Considered and decided by Hooten, Presiding Judge; Worke, Judge; and Kirk,
Judge.

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

U N P U B L I S H E D O P I N I O N

KIRK, Judge

In this direct appeal from his conviction of second-degree assault, appellant challenges the validity of his guilty plea. Appellant argues that he did not admit to intending to cause fear, a key element of the offense. Because there are sufficient facts to sustain a guilty plea, we affirm.

F A C T S

On April 19, 2018, at approximately 1:00 a.m., appellant Zane David Foley returned home and began arguing with his wife. Foley told his wife that he was going to shoot and kill her whole family. At some point, Foley ran upstairs to grab his gun. Foley pointed the gun at his chest intending to harm himself. Before he pulled the trigger, he saw his wife coming up the stairs and fired into the floor instead. Foley fired two more shots into the floor of the bedroom and one into the floor of the kitchen/dining area. All five of Foley's children were home during this incident, and one of the bullets traveled within six feet of one of their bedrooms.

Foley pleaded guilty to second degree assault with a dangerous weapon, Minn. Stat. § 609.222, subd. 1 (2016), in exchange for the state dismissing two additional charges. The district court accepted Foley's guilty plea, and sentenced him to the 36 month minimum sentence. This direct appeal follows.

D E C I S I O N

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). Although a defendant does not have an

absolute right to withdraw a guilty plea, withdrawal must be permitted in order to correct a manifest injustice. *Id.* at 93. If a guilty plea is not accurate, voluntary, and intelligent, a manifest injustice exists and the plea is invalid. *Id.* at 94. The defendant bears the burden of showing that his plea was invalid. *Id.*; *Lussier v. State*, 821 N.W.2d 581, 588 (Minn. 2012).

An accurate plea must be established on a proper factual basis. *Lussier*, 821 N.W.2d at 588. “[I]f the record contains a showing that there is credible evidence available which would support a jury verdict that [a] defendant is guilty of at least as great a crime as that to which he pled guilty,” a proper factual basis exists. *Nelson v. State*, 880 N.W.2d 852, 859 (Minn. 2016) (quotation omitted). The court may consider the facts alleged in a criminal complaint when determining if there is an adequate factual basis to support the plea. *Lussier*, 821 N.W.2d at 588-89.

Foley argues that he pleaded guilty to second-degree assault without admitting to intending to cause fear, a key element of the offense. Second-degree assault, under Minn. Stat. § 609.222, subd. 1, is a specific-intent crime that requires proof that the defendant intended to cause fear in another of immediate bodily harm or death. *State v. Fleck*, 810 N.W.2d 303, 309 (Minn. 2012).

Foley argues that his plea was invalid because he did not admit to, nor did he intend to, cause fear when he fired his gun. Because intent is a state of mind, it can be proven circumstantially by drawing inferences from the defendant’s words and actions in light of the totality of the circumstances. *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997).

This can include the victim's reaction to the events. *See State v. Schweppe*, 237 N.W.2d 609, 614 (Minn. 1975).

Looking at the plea colloquy, the complaint, and the record as a whole, the record provides sufficient facts to sustain a guilty plea. Foley admitted during his plea that his wife was "for sure" in fear of being harmed when he shot his gun. He did not fire one shot as an aborted attempt at self-harm, he fired at least three more shots in the house. The complaint alleged that Foley told his wife that he was going to shoot and kill her whole family. And Foley's wife and children reported to police that they were scared. On this record, Foley has not met his burden to show that his guilty plea was inaccurate. We therefore affirm.

Affirmed.