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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0880**

State of Minnesota,
Respondent,

vs.

Joe Lavell Smiley,
Appellant.

**Filed June 15, 2020
Affirmed
Reyes, Judge**

Dakota County District Court
File No. 19HA-CR-18-491

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

James C. Backstrom, Dakota County Attorney, Heather Pipenhagen, Assistant County Attorney, Hastings, Minnesota (for respondent)

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

Considered and decided by Bryan, Presiding Judge; Reyes, Judge; and Bratvold, Judge.

UNPUBLISHED OPINION

REYES, Judge

In this direct appeal from his conviction, appellant argues that we must allow him to withdraw his guilty plea to threats of violence because it was inaccurate in three ways:

(1) his statement did not reference a crime of violence; (2) he negated the crime-of-violence element by clarifying that he meant the statement figuratively; and (3) he did not admit that he intended to cause extreme fear. We affirm.

FACTS

On February 15, 2018, a resident of a group home told the police that appellant Joe Lavell Smiley, who had been evicted from the group home, told another resident “about burning the group home ‘to the ground.’”

Respondent State of Minnesota charged appellant with one count of threats of violence, one count of fifth-degree possession of a controlled substance, and one count of obstructing legal process, in violation of Minn. Stat. §§ 609.713, subd. 1, 152.025, subd. 2(1), 609.50, subd. 1(1) (2016), respectively.

At his May 2018 plea hearing, appellant admitted that he made statements that “could reasonably arouse fear” in the residents and that “would have made them fear for their lives or fear for their health.” However, appellant testified that he did not mean these comments literally.

The district court then told appellant that he could not plead guilty to making threats of violence unless he admitted to having committed its constituent elements, which the district court then walked through:

Q: . . . So you intended to make that phone call; right?

A: Yes, Your Honor.

Q: Okay. And you intended to have an effect on somebody with that phone call; right?

A: Yes, Your Honor.

Q: And that effect was you intended to make them very fearful of something? Maybe not death.

A: Yes, Your Honor.
Q: But maybe substantial[] bodily harm, that they were going to be harmed at some point.
A: Yes, Your Honor.
Q: All right. And that's why you understand that you're guilty of this offense; correct?
A: Yes, Your Honor.

Appellant also submitted a rule 15 guilty-plea petition.

In exchange for appellant entering a guilty plea to the threats-of-violence count, the state agreed to support a stay of execution of the sentence and to dismiss the two remaining counts. The district court imposed a 21-month sentence and stayed its execution for five years. This appeal follows.

DECISION

Appellant argues that we must allow him to withdraw his guilty plea as having been inaccurately entered. Appellant's argument is misguided.

We review the validity of a guilty plea de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). A court must allow a defendant to withdraw a guilty plea, before or after sentencing, 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 invalid, meaning it is not "accurate, voluntary, [or] intelligent." *Raleigh*, 778 N.W.2d at 94 (citation omitted). A defendant bears the burden of demonstrating the invalidity of a plea. *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998).

"To be accurate, a plea must be established on a proper factual basis." *Raleigh*, 778 N.W.2d at 94. The district court may establish a proper factual basis by asking a defendant to recount what occurred. *Id.* Even if the district court fails to elicit the "proper responses"

from a defendant, the defendant may not withdraw the plea if the record contains sufficient evidence to support the conviction. *Id.* The factual basis of the plea may become inadequate if a defendant makes statements negating an essential element of the charged crime. *State v. Iverson*, 664 N.W.2d 346, 350 (Minn. 2003).

A defendant is guilty of threats of violence if he “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 or inconvenience.” Minn. Stat. § 609.713, subd. 1. Stated differently, a “threat” includes a statement expressing an intent to injure another or another’s property by committing a crime of violence. *State v. Schweppe*, 237 N.W.2d 609, 613 (Minn. 1975).

As an initial matter, appellant contends that we may not use the complaint to establish the accuracy of his guilty plea because the district court never explicitly incorporated or adopted the complaint as part of the factual basis for his plea. But an appellate court may review a complaint to assess whether it provides a factual basis for a defendant’s plea. *Sanchez v. State*, 868 N.W.2d 282, 289 (Minn. App. 2015), *aff’d*, 890 N.W.2d 716 (Minn. 2017); *see also State v. Hoaglund*, 240 N.W.2d 4, 6 n.9 (1976) (permitting use of whole record, including presentence investigation report). Moreover, when “[t]he record [] contains a copy of the complaint[, a] defendant, by his plea of guilty, in effect judicially admit[s] the allegations contained in the complaint.” *State v. Trott*, 338 N.W.2d 248, 252 (Minn. 1983). Nevertheless, we need not rely on the complaint because appellant’s testimony contains a sufficient factual basis for us to assess his guilty plea.

Crime of violence—arson

Appellant argues that his statement cannot be construed to involve the crime of violence of arson because he only meant the comment metaphorically, not literally. When asked whether he was “going to burn down the company, meaning the company is the home,” appellant replied, “[n]o, they got several homes. I just meant the company.” But appellant admitted to making a statement involving burning down a home, testifying that he “didn’t mean actually physically burn, *but since I did say it, you know,*” and that he intended his statement to make the recipient “very fearful” of “substantial bodily harm.” (Emphasis added.) Appellant’s comment qualifies as arson and therefore meets the crime-of-violence element. See Minn. Stat. § 609.561, subd. 1 (2016) (describing burning of a dwelling as first-degree arson); Minn. Stat. § 624.712, subd. 5 (2016) (defining “crimes of violence” to include first- and second-degree arson). His subsequent statements defeat his earlier negation.

Intent to terrorize by making very fearful

Appellant argues that his admission of intending to cause the recipient to become “very fearful” does not establish that he intended to terrorize the recipient by making him “extremely fearful.” To draw this distinction, appellant relies on caselaw defining “terrorize” as “caus[ing] extreme fear by use of violence or threats.” See *Schweppe*, 237 N.W.2d at 614.¹ But the Minnesota Supreme Court has noted that the definition of “very”

¹ *Schweppe* cites to the “terroristic threats” statute, which is the precursor to the threats-of-violence statute. *Id.* at 612. Compare Minn. Stat. § 609.713, subd. 1 (1972) with Minn. Stat. § 609.713, subd. 1 (2016).

in Black's Law Dictionary means "in high degree, exceedingly, extremely." *State v Franks*, 765 N.W.2d 68, 77 (Minn. 2009) (quoting *Black's Law Dictionary* 1562 (6th ed. 1990)). Appellant's admission that he intended to make someone "very fearful" is the equivalent of making someone "extremely fearful." *See id.* Finally, appellant admitted that his statement could reasonably make the recipient "fear for [his] li[f]e[]" or fear for [his] health" and that he intended for his statement to make the recipient "very fearful" of "substantial bodily harm." Moreover, to the extent that any qualitative distinction exists between "very fearful" and "extremely fearful," appellant made his statement in reckless disregard of causing the latter degree of fear.

In sum, appellant fails to meet his burden to demonstrate an improper factual basis for the plea, see *Alanis*, 583 N.W.2d at 577, and the record contains sufficient evidence to support his conviction, see *Raleigh*, 778 N.W.2d at 94.

Affirmed.