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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1477**

State of Minnesota,
Respondent,

vs.

Abram Valdez,
Appellant.

**Filed August 31, 2020
Reversed and remanded
Cochran, Judge**

Dakota County District Court
File No. 19WS-CR-18-15725

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

Alina Schwartz, Campbell Knutson, Eagan, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant Public
Defender, Colin Colby, Certified Student Attorney, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Slieter, Judge; and
Bryan, Judge.

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

COCHRAN, Judge

In this direct appeal from the judgment of conviction, appellant seeks to withdraw
his guilty plea to domestic assault. Because we conclude that appellant's plea is inaccurate,
we reverse and remand to allow appellant to withdraw his guilty plea.

FACTS

The state filed a complaint against appellant Abram Valdez that charged him with five offenses, including one count of gross-misdemeanor domestic assault—fear against his stepsister and one count of gross-misdemeanor domestic assault—fear against his stepfather. According to the complaint, the stepsister reported that she found Valdez in her bedroom taking some of her personal property. She confronted Valdez. Valdez yelled at her and grabbed her by the throat. The stepsister did not believe that Valdez was trying to choke her, but she did believe that Valdez was going to hit her with a flashlight.

The argument woke Valdez's stepfather. The stepfather heard Valdez tell the stepsister to get out of their house and saw Valdez holding a flashlight as if he intended to hit someone with it. The stepfather told Valdez to leave the house. In response, Valdez threw furniture around the living room. Valdez's mother attempted to intervene, and Valdez unintentionally hit her. The stepfather called 911. He reported to police that he feared for the safety of himself and his family. Valdez left the house before the police arrived. When police later apprehended Valdez, he indicated that he was the one who had been assaulted, and that his family members had hit him multiple times.

Valdez entered into a plea agreement with the state. He pleaded guilty only to the charge of domestic assault against his stepfather. He did not plead guilty to the charge of domestic assault against his stepsister or any of the other charges. At the plea hearing,

Valdez and his attorney attempted to establish a factual basis for his plea with the following colloquy:

Q: Mr. Valdez, is it true that on November 10th, 2018, in the city of South St. Paul, County of Dakota, State of Minnesota, you were in the city of South St. Paul, correct?

A: Yes.

Q: And on that day, you got into a verbal argument with your sister, correct?

A: Yes.

Q: And you'd agree with me that during that verbal argument, through your words or actions, you intended to cause fear of bodily harm?

A: Yes.

Valdez also submitted a plea petition that read, in relevant part, "I got into a verbal argument with the victim and through my words or actions I intended to cause fear of bodily harm."

The district court accepted Valdez's guilty plea to domestic assault against his stepfather and sentenced him on a later date. Pursuant to the plea agreement, the other four charges were dismissed. Valdez appeals, seeking to withdraw his plea.

D E C I S I O N

Valdez argues that he must be allowed to withdraw his guilty plea because it is inaccurate, and therefore invalid. In his initial brief to this court, Valdez argued that his guilty plea was inaccurate because the record did not demonstrate that he intended to cause his stepsister fear of immediate bodily harm. In its brief, the state argued that the record

established that Valdez did intend to cause his stepsister to fear immediate bodily harm. Because Valdez pleaded guilty to, and stands convicted of, domestic assault against his stepfather, not his stepsister, we asked the parties for supplemental briefing on whether Valdez’s guilty plea to domestic assault against his stepfather—not his stepsister—was accurate. In their supplemental briefs, the parties disagree over whether the record supports a finding that Valdez assaulted his stepfather.

“To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent.” *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). “If a guilty plea fails to meet any of these three requirements, the plea is invalid.” *State v. Johnson*, 867 N.W.2d 210, 214 (Minn. App. 2015), *review denied* (Minn. Sept. 29, 2015). Whether a plea is valid is a question of law that we review de novo. *Raleigh*, 778 N.W.2d at 94.

Valdez challenges only the accuracy of his plea. “The accuracy requirement protects a defendant from pleading guilty to a more serious offense than that for which he could be convicted if he insisted on his right to trial. To be accurate, a plea must be established on a proper factual basis.” *Id.* (citations omitted). “The factual basis must establish sufficient facts on the record to support a conclusion that defendant’s conduct falls within the charge to which he desires to plead guilty.” *Munger v. State*, 749 N.W.2d 335, 338 (Minn. 2008) (quotation omitted).

Typically, the factual basis for the plea is established when the defendant describes the crime in his own words. *Lussier v. State*, 821 N.W.2d 581, 589 (Minn. 2012). But “a defendant may not withdraw his plea 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. Thus, a plea colloquy may be supplemented by other parts of the district court record, including—under appropriate circumstances—the complaint. *Lussier*, 821 N.W.2d at 589 (citing *State v. Trott*, 338 N.W.2d 248, 252 (Minn. 1983) (permitting the use of the whole record, including the complaint and photographs, to establish the factual basis for a guilty plea)).¹

Valdez was convicted of domestic assault—fear, under Minn. Stat. § 609.2242, subd. 2 (2018). A person is guilty of domestic assault—fear if he commits an act with intent to cause his family or household member to fear immediate bodily harm or death. *Id.*, subd. 1 (2018). Valdez argues that the record does not support a finding that he committed an act with the intent to cause his stepfather to fear immediate bodily harm or death. See Minn. Stat. § 609.2242, subd. 1(1) (2018) (defining domestic assault—fear). The state maintains that the record does support such a finding.

Intent is generally proved with circumstantial evidence, “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). In assessing the accuracy of a guilty plea, we may consider circumstantial evidence of the defendant’s intent. See *Nelson v. State*, 880 N.W.2d 852, 860 (Minn. 2016). A fact-finder may “infer that a

¹ While Minnesota precedent allows some information from the complaint to supplement the plea-hearing record, the *extent* to which allegations in the complaint, not acknowledged or admitted at the plea hearing, may fill gaps in an otherwise inaccurate, non-*Alford/Goulette* plea is an open question of law. We need not answer that question here because we conclude that even considering the allegations in the complaint, the record does not demonstrate that Valdez intended to cause his stepfather to fear immediate bodily harm or death.

person intends the natural and probable consequences of her actions.” *State v. Janecek*, 903 N.W.2d 426, 431 (Minn. App. 2017) (quotation omitted). That a victim actually did fear bodily harm—though not dispositive of the defendant’s intent—is circumstantial evidence of a defendant’s intent to cause fear of immediate bodily harm. *Cf. State v. Schweppe*, 237 N.W.2d 609, 614 (Minn. 1975) (concluding that “the victim’s reaction to the threat was circumstantial evidence relevant to the element of intent of the defendant in making the threat” in a terroristic threats case). And, a defendant may intend a single act to cause multiple victims to fear immediate bodily harm or death, therefore constituting multiple assaults. *See State v. Hough*, 585 N.W.2d 393, 397 (Minn. 1998) (“When an assailant fires numerous shots from a semiautomatic weapon into a home, it may be inferred that the assailant intends to cause fear of immediate bodily harm or death to those within the home.”).

Here, the plea colloquy alone is plainly insufficient to establish that Valdez committed an act with the intent to cause his stepfather to fear immediate bodily harm or death. During the plea colloquy, Valdez admitted that he got into a verbal argument with his stepsister and testified that he intended to cause fear of bodily harm through his words or actions. But Valdez did not mention his stepfather. Thus, Valdez did not admit that he intended to cause his stepfather to fear immediate bodily harm or death at the plea hearing.

Valdez’s plea petition also does not support an inference that he intended to cause his stepfather to fear immediate bodily harm. While Valdez indicated in his plea petition that he “got into a verbal argument with the victim and through [his] words or actions [he] intended to cause fear of bodily harm,” the plea petition does not identify the victim or

specify that he intended to cause fear of bodily harm to anyone other than the victim. And, as noted above, Valdez admitted that he got into a verbal argument with his stepsister, not his stepfather.

The state asserts that Valdez's plea is nonetheless accurate because the allegations in the complaint may be used to supplement the plea colloquy and plea petition.² On this basis, the state maintains that the record is sufficient to establish that Valdez's plea was accurate with regard to the charge of domestic assault against his stepfather. We are not persuaded.

The complaint alleges that Valdez got into an argument with his stepsister that woke his stepfather. When the stepfather went into the living room, he saw Valdez yelling at the stepsister and holding a flashlight as if he was going to hit someone. The stepsister told police that she believed that Valdez was going to hit her with the flashlight. She also told police that earlier in the altercation, Valdez had grabbed her by the throat. When the stepfather found the two arguing, he instructed Valdez to leave. At that point, Valdez threw furniture around the living room, but there is no allegation that Valdez directed the furniture toward his stepfather. Valdez's mother intervened, and Valdez unintentionally hit her. Valdez's stepfather ultimately called police, and later reported that he feared for the safety of himself and his family.

² In its supplemental brief, appellant contends that an appellate court may consider only "the record made when the defendant entered the plea" to determine whether the factual basis for the plea is sufficient. As discussed above, the extent to which a court may consider allegations in the complaint to supplement the plea record is an open question of law. But we need not resolve the issue in this case. *See supra* n.1.

The state argues that Valdez intended the natural consequences of these actions, and that one natural consequence is that Valdez's stepfather would fear immediate bodily harm. *See Janecek*, 903 N.W.2d at 431. We are not convinced that a natural and probable consequence of the acts described in the complaint is that a person in the stepfather's position would fear immediate bodily harm or death. It is clear that the allegations in the complaint are sufficient to establish that Valdez intended to cause his stepsister to fear immediate bodily harm or death—he put his hands on her neck, yelled at her, and held a flashlight as if he were going to hit her. And the allegations also clearly demonstrate that Valdez was disruptive. But the complaint does not allege that Valdez took any action toward his stepfather. Valdez purportedly threw furniture around the living room after his stepfather told him to leave, but there is no allegation that Valdez threw anything at his stepfather or threatened him. And though Valdez purportedly hit his mother when she tried to intervene, Valdez's mother reported to police that the strike was unintentional. Thus, while Valdez's stepfather reported that he feared for his safety, we cannot confidently infer from the allegations in the complaint that Valdez intended to cause his stepfather to fear immediate bodily harm or death. We therefore conclude that Valdez's guilty plea to domestic assault against his stepfather was inaccurate, and therefore invalid.

The state argues that we should affirm because the inaccuracy in Valdez's plea colloquy was harmless. *See* Minn. R. Crim. P. 31.01 (“Any error that does not affect substantial rights must be disregarded.”). It maintains that “[t]he confusion arising from this error did not alter the outcome for appellant or impact appellant's substantive rights in any way.” We disagree. The state's argument amounts to a contention that an inaccurate

plea is permissible so long as the plea was otherwise knowing and voluntary. But if a guilty plea is not knowing, voluntary, *and* accurate, it is invalid. *Johnson*, 867 N.W.2d at 214.

In support of its argument that the error in accepting appellant's guilty plea was harmless, the state cites an unpublished opinion that also involved a guilty plea to a count involving one victim but a plea colloquy that referenced another victim of a different count that was ultimately dismissed. *See Aron v. State*, No. A06-0389, 2007 WL 1053195 (Minn. App. Apr. 10, 2007), *review denied* (Minn. June 19, 2007). In that unpublished and non-precedential opinion, we affirmed because the plea colloquy, supplemented by the allegations in the complaint, made it clear that the defendant also assaulted the victim in the pleaded-to count. *Id.* at *3-4. Thus, we concluded that the plea was accurate and stated that "[n]o manifest injustice resulted from the confusion." *Id.* at *4. The unpublished opinion cited by the state does not support its position because, as discussed above, Valdez's plea was inaccurate. Because Valdez's guilty plea was inaccurate, it is constitutionally invalid. *See Johnson*, 867 N.W.2d at 214. We reverse and remand for the district court to allow Valdez to withdraw his plea.

Reversed and remanded.