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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1569**

State of Minnesota,
Respondent,

vs.

Quintin Isaiah Bianco,
Appellant.

**Filed October 12, 2020
Reversed and remanded
Frisch, Judge**

Stevens County District Court
File No. 75-CR-19-105

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

Aaron Jordan, Stevens County Attorney, Morris, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Veronica M. Surges, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Johnson, Judge; and Reyes,
Judge.

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

FRISCH, Judge

In this direct appeal, appellant requests that we vacate his conviction of violation of
a harassment restraining order, arguing that his plea was not accurate. Because appellant
did not admit facts that substantiate his guilt, we reverse and remand.

FACTS

Appellant Quintin Isaiah Bianco was formerly in a relationship with victim's daughter, who is under victim's guardianship. Victim petitioned for a harassment restraining order (HRO) following escalating incidents of harassment by Bianco. On August 17, 2018, the district court issued an HRO prohibiting Bianco from (1) harassing victim; (2) having direct or indirect contact with victim; or (3) "mak[ing] false or defamatory statements about [victim], including to the public, to [victim's] employer, or on-line."

Between February 10, 2019, and March 25, 2019, multiple posts containing various allegations about victim originated from Bianco's Facebook account. On March 25, 2019, Bianco called social services alleging that victim abused her daughter and denied her daughter medical care.

The state charged Bianco with violation of the HRO, Minn. Stat. § 609.748, subd. 6 (2018). Bianco entered into a plea agreement, and the district court held a plea hearing. At the hearing, the state attempted to elicit sworn testimony from Bianco to establish a factual basis for the offense. When Bianco denied certain facts, the district court took over questioning of Bianco, accepted his plea, and adjudicated him guilty. Bianco now appeals and seeks reversal of his conviction, arguing that the district court should not have accepted his guilty plea because the facts to which he admitted do not establish that he violated the HRO.

DECISION

The validity of a guilty plea is a question of law that we review de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent. *Id.* A guilty plea is inaccurate if it is not supported by a proper factual basis. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994).

Typically, counsel or the district court establish a factual basis in support of a guilty plea by “asking the defendant to explain in his or her own words the circumstances surrounding the crime.” *Id.* The defendant’s explanation “usually will suggest questions to the court which then, with the assistance of counsel, can interrogate the defendant in further detail.” *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983). A district court “must be particularly attentive” when a defendant pleading guilty “is asked only leading questions.” *Ecker*, 524 N.W.2d at 716. When a defendant “makes statements that negate an essential element of the charged crime,” the plea is inadequate “because such statements are inconsistent with a plea of guilty.” *State v. Iverson*, 664 N.W.2d 346, 350 (Minn. 2003).

Bianco attempted to plead guilty to violating the HRO. The elements of this offense are that Bianco (1) knew an active HRO existed, (2) violated a term or condition of the HRO, and (3) knew that his actions violated the HRO. *See* Minn. Stat. § 609.748, subd. 6; *State v. Andersen*, 946 N.W.2d 627, 637 (Minn. App. 2020) (holding that state must prove defendant knew his actions violated HRO). At the plea hearing, Bianco admitted that he knew the HRO existed at the time of the alleged violations. Bianco now argues, however, that his testimony did not establish that he knowingly violated a term or condition of the HRO.

Report to Social Services

Bianco argues that he did not admit to knowingly making false statements or prompting third-party contact by reporting victim to social services. The state responds that Bianco's report to social services violated the HRO's prohibition against direct or indirect contact with victim and making false statements.

At the plea hearing, Bianco testified that he called social services at the request of victim's daughter to report alleged abuse. Bianco maintained that he had reason to believe the allegations were true when he made the report.

We have never held that a report of alleged illegal activity may constitute indirect contact in violation of an HRO. Rather, such a report is presumptively valid when the report is objectively reasonable and made through the proper channels. *See Peterson v. Johnson*, 755 N.W.2d 758, 765 (Minn. App. 2008) (reversing a finding that a report to law enforcement constituted harassment). To overcome the presumption, a district court must find that the defendant acted with an improper intent. *Id.* at 765-66. Here, Bianco reported domestic and child abuse, implicating public-safety and child-welfare concerns.¹ The plea colloquy does not establish that Bianco acted with improper intent, and the district court did not make such a finding. Accordingly, the testimony at the plea hearing did not

¹ The state relies on *State v. Egge*, in which we affirmed a finding of indirect contact where the defendant named the victim as a beneficiary to an insurance policy, then directed the insurance agent to call the victim. 611 N.W.2d 573, 575 (Minn. App. 2000), *review denied* (Minn. Aug. 15, 2000). Unlike the circumstance in *Egge*, Bianco did not direct a third party to contact victim.

establish that Bianco's report to social services amounted to indirect contact or a false statement in violation of the HRO.

Facebook Posts

The state next argues that Bianco admitted to posting false statements about victim on Facebook in violation of the HRO. The HRO prohibited Bianco from "mak[ing] false . . . statements about [victim], including to the public . . . or on-line." Bianco argues that, while he admitted to posting certain statements about victim on Facebook, he did not admit that he knew that any of those statements were false at the time he posted them. Bianco also references his testimony that his Facebook account was hacked and that he did not remember posting particular comments about victim.²

Although the Facebook posts themselves are not part of the record, which necessarily limits our review, we have carefully reviewed the transcript of the plea hearing. The transcript shows that—despite repeated efforts of the state and the district court to elicit a factual basis from Bianco to substantiate his guilty plea—Bianco clearly, expressly, and repeatedly denied posting statements that he knew to be false. Bianco denied authoring many of the posts. As to the posts that he admitted to writing, Bianco testified that his posts were based on what he believed to be truthful information. Although Bianco admitted that he should not have posted statements on Facebook that he did not know to be true—and he further admitted that he was unaware whether some of the information was true at

² Bianco also claims that the Facebook posts were not directed at the public. But the HRO plainly prohibited Bianco from making any false or defamatory statements online, regardless of the intended audience.

the time—such admissions do not amount to a violation of the HRO, which only prohibits Bianco from making “false or defamatory” statements.

The state argues that Bianco’s testimony shows selective memory, not failed memory.³ Although our review of the transcript shows that Bianco was evasive and equivocal, credibility determinations are beyond the scope of our review. *See Aljubailah v. James*, 903 N.W.2d 638, 643 (Minn. App. 2017) (“An appellate court will neither reconcile conflicting evidence nor decide issues of witness credibility.” (quotation omitted)).

The state alternatively argues that Bianco admitted to making defamatory statements about victim. While the HRO prohibits false *or* defamatory statements, Bianco did not admit to facts showing that he made defamatory statements. Criminal defamation requires knowledge of the false and defamatory character of the statement. *See* Minn. Stat. § 609.765, subd. 2 (2018) (“Whoever *with knowledge of its false and* defamatory character . . . communicates any false and defamatory matter to a third person . . . is guilty of criminal defamation” (emphasis added)); *see also Andersen*, 946 N.W.2d at 633 (stating common-law rule that mens rea is generally required for criminal offenses). As set forth herein, Bianco did not admit that he knew his statements were false at the time he made them.

³ Citing *State v. Winchell*, the state argues that Bianco attempted to plead “not very guilty.” 363 N.W.2d 747, 749 (Minn. 1985). But *Winchell* is not on point. There, the defendant admitted to the facts necessary to support his guilty plea, only challenging facts relevant to sentencing. *Id.*

Because Bianco did not admit the facts that establish a violation of the HRO, we reverse and remand to allow Bianco to withdraw his plea.⁴

Reversed and remanded.

⁴ Bianco raises additional arguments in a pro se supplemental brief that we need not address given our disposition.