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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1920**

State of Minnesota,
Respondent,

vs.

Dustin Alexander Depiano,
Appellant.

**Filed August 10, 2020
Affirmed
Jesson, Judge**

Clay County District Court
File No. 14-CR-19-742

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

Brian J. Melton, Clay County Attorney, Pamela L. Foss, Chief Assistant County Attorney,
Moorhead, Minnesota (for respondent)

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

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

UNPUBLISHED OPINION

JESSON, Judge

After stealing a vehicle and leading police on a high-speed chase, appellant Dustin
Alexander Depiano pleaded guilty to second-degree assault with a dangerous weapon and

fleeing a police officer. Because we conclude that Depiano's guilty plea was accurate, we affirm.

FACTS

In February 2019, just after midnight, a man stole a vehicle from a home in West Fargo, North Dakota.¹ The man, later identified as appellant Dustin Alexander Depiano, evaded police in Cass County and Moorhead. A few hours later, police in Clay County located Depiano, who was driving the stolen vehicle. A police chase ensued, with speeds exceeding 100 miles per hour.

Eventually, an officer observed Depiano pull into the parking lot of an apartment complex. The officer approached Depiano in his squad car. But Depiano accelerated toward the officer in reverse, at a high rate of speed. The officer swerved to avoid a collision. Depiano stopped, drove toward the officer, and hit his rear passenger door.

After striking the police car, Depiano continued driving. He encountered another police vehicle, containing two officers, driving in the opposite direction. Depiano drove straight toward the police vehicle, causing the officer to brake in an attempt to avoid a head-on collision. Then, Depiano turned the stolen vehicle in front of the police vehicle, causing a collision. The impact caused the airbags to deploy in the police vehicle, and one officer was taken to the hospital to be evaluated for injuries. Depiano and the stolen vehicle became stuck in a snow bank.

¹ This description of what occurred is based on the facts alleged in the amended complaint.

Police arrested Depiano. Based on his actions, the state charged him with seven criminal offenses.² In lieu of going to trial, Depiano agreed to plead guilty, pursuant to a plea agreement, to one count of second-degree assault involving the collision with the officer in the apartment complex parking lot and the felony charge of fleeing a police officer.³

At the plea hearing, Depiano expressed that he understood the rights he was waiving by pleading guilty and that he had enough time to consult with his attorney about the plea. To form the factual basis of his plea, Depiano testified that he drove to Clay County from Fargo. He acknowledged that law enforcement wanted him to stop because he was speeding and driving a stolen vehicle. Depiano explained that he saw police lights and heard the sirens but continued driving anyway. The state then asked Depiano “[w]hat did you do that makes you guilty of a second-degree assault against [the officer]?” Depiano responded that he “[p]ut fear in his life” by “not stopping.” Seeking to clarify Depiano’s actions, the state again asked him what he did to make him guilty of second-degree assault, and Depiano explained that he “wouldn’t stop in the chase.”

The state then expressed concern that Depiano’s testimony did not establish an adequate factual basis for his guilty plea to second-degree assault. To remedy this

² The state charged Depiano with three counts of second-degree assault with a dangerous weapon (one count for each officer involved), one count of receiving stolen property, one felony count of fleeing a police officer, and two counts of first-degree damage to property based on the damage to the police vehicles.

³ In exchange for his plea, the state agreed to dismiss the rest of the charges and recommend a bottom-of-the-box sentence for second-degree assault, to be served concurrently with his sentence for fleeing a police officer. Depiano also agreed to pay restitution.

apprehension, Depiano's counsel asked him additional questions. Depiano agreed that when the officer's vehicle was behind him, he put the stolen vehicle in reverse, causing the officer to veer to avoid a collision. His counsel then asked him "when you say you put 'fear' of immediate bodily harm or death in him, is that what you did?" And Depiano answered "[y]es." The state then asked Depiano if he intentionally attempted to strike the officer's vehicle in order to "get away," and Depiano testified that he did.

In accordance with the plea agreement, the district court sentenced Depiano to 52 months in prison for second-degree assault and 22 months for fleeing a police officer, to be served concurrently. Depiano appeals.

D E C I S I O N

Depiano argues that he is entitled to withdraw his guilty plea to second-degree assault because it was inaccurate. Specifically, Depiano contends that his plea did not establish that he harmed the officer or specifically intended to cause the officer to fear harm. We review the validity of a guilty plea de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010).

After entering a guilty plea, a defendant does not have an absolute right to withdraw it. *Id.* at 93. A court must allow a defendant to withdraw a guilty plea after sentencing only if "withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. And a "manifest injustice" occurs when a guilty plea is not valid. *Raleigh*, 778 N.W.2d at 94. To be valid, a guilty plea must be "accurate, voluntary, and intelligent." *Id.* Depiano bears the burden of demonstrating facts that establish that his plea was invalid. *State v. Mikulak*, 903 N.W.2d 600, 603 (Minn. 2017).

Here, Depiano contends that his guilty plea to second-degree assault was not accurate. “The accuracy requirement protects the defendant from pleading guilty to a charge more serious than he could have been convicted of at trial.” *Id.* To be accurate, the record must contain a factual basis “showing that the defendant’s conduct meets all elements of the charge to which he is pleading guilty.” *Barnslater v. State*, 805 N.W.2d 910, 914 (Minn. App. 2011). Typically, a district court satisfies the accuracy requirement “by asking the defendant to express in his own words what happened.” *Lussier v. State*, 821 N.W.2d 581, 589 (Minn. 2012) (quotation omitted). But we may also evaluate the entire record, beyond the defendant’s testimony, when assessing the factual basis for a guilty plea. *See State v. Trott*, 338 N.W.2d 248, 251-52 (Minn. 1983).

To determine whether Depiano’s guilty plea was supported by a sufficient factual basis, we first examine the elements of second-degree assault with a dangerous weapon. That offense requires that a person “assault[] another with a dangerous weapon.”⁴ Minn. Stat. § 609.222, subd. 1 (2018). And the statute defines “assault” as either “an act done with intent to cause fear in another of immediate bodily harm or death” or “the intentional infliction of or attempt to inflict bodily harm upon another.” Minn. Stat. § 609.02, subd. 10(1)-(2) (2018). Based on this definition, there are two forms of assault: assault-harm and assault-fear. *See State v. Fleck*, 810 N.W.2d 303, 308 (Minn. 2012). The supreme court has determined that assault-harm is a general intent crime, while assault-fear requires specific intent. *Id.* at 309.

⁴ Depiano does not challenge the dangerous-weapon element of his plea.

With these elements in mind, we evaluate the factual basis of Depiano's plea. During the plea hearing, Depiano testified that he ignored police lights and sirens signaling he should stop, and continued driving. Depiano agreed with his counsel's statement that he put the stolen vehicle in reverse while the officer's vehicle was behind him, causing the officer to veer to avoid a collision. And Depiano acknowledged that he intentionally attempted to strike the officer's vehicle to "get away." Depiano explained that he "wouldn't stop the chase" and that he "[p]ut fear in [the officer's] life" by "not stopping." Finally, Depiano responded affirmatively when his counsel questioned him "when you say you put 'fear' of immediate bodily harm or death in him, is that what you did?" These admissions created a sufficient factual basis for Depiano's guilty plea.

Still, Depiano argues that his guilty plea did not establish that he acted with specific intent, a necessary element of assault-fear. Rather, Depiano urges this court to conclude that his intent was simply to "get away" instead of causing the officer to fear imminent harm.

Because assault-fear is a specific intent crime, a person must engage "in an act with the intent to cause fear in another of immediate bodily harm or death." *Fleck*, 810 N.W.2d at 308 (quotation omitted). And "[i]n an assault-fear crime, the intent of the [defendant], as contrasted with the effect upon the victim, becomes the focal point for inquiry." *Id.* (quotation omitted). At the plea hearing, Depiano did not explicitly testify that he drove toward or struck the officer's vehicle with the intent to cause him to fear immediate bodily harm or death.

But intent is generally “proved by inferences drawn from a person’s words or actions in light of all the surrounding circumstances.” *Nelson v. State*, 880 N.W.2d 852, 860 (Minn. 2016) (quotation omitted). And here, Depiano’s intent can be inferred from the record. Depiano admitted that, after ignoring police signals to stop, he put his vehicle in reverse and drove toward the police car behind him. He testified that he *intentionally* attempted to strike the officer’s vehicle to get away and that he “put fear in his life.” These statements support the inference that Depiano acted with the required intent. See *State v. Gillam*, 629 N.W.2d 440, 454 (Minn. 2001) (permitting a jury to “infer that a person intends the natural and probable consequences of his actions” (quotation omitted)); see also *Nelson*, 880 N.W.2d at 861 (stating that “before a plea of guilty can be accepted, the trial judge must make certain that facts exist from which the defendant’s guilt of the crime charged *can be reasonably inferred*” (emphasis added) (quotation omitted)). Even if Depiano did intend to “get away,” the record supports the inference that he also intended to cause the officer to fear imminent harm or death while doing so. Because Depiano’s plea was accurate, he is not entitled to withdraw it.⁵

Affirmed.

⁵ Because we conclude that a sufficient factual basis supports Depiano’s guilty plea to the offense of assault-fear, we do not address his arguments related to other types of assault.