

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0373**

State of Minnesota,
Respondent,

vs.

Ishmel Barry McReynolds,
Appellant.

**Filed February 22, 2021
Affirmed
Florey, Judge**

Hennepin County District Court
File No. 27-CR-17-25678

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Abigail H. Rankin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Florey, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

FLOREY, Judge

In this direct appeal from the judgment of conviction, appellant argues that he must be allowed to withdraw his guilty plea because it was not accurate. Because we conclude that the record establishes that appellant's plea was accurate, we affirm his conviction.

FACTS

The state charged appellant Ishmel Barry McReynolds with one count of stalking under Minn. Stat. § 609.749, subd. 5 (Supp. 2019). According to the complaint, McReynolds and the victim had previously been in a relationship and had a child together. In February 2015, an order for protection was issued that prohibited McReynolds from having contact with the victim, her home, or her workplace. The order was effective for 50 years. Another court order prevented McReynolds from being present at their child's school. The complaint alleged a series of incidents of threatening behavior from McReynolds, including McReynolds placing threatening notes on the victim's car, tracking the victim's car with a GPS device, driving past the victim's house, and making threatening statements to the victim at their child's school.

McReynolds pleaded guilty. In laying a factual basis for his plea, McReynolds admitted that there was one order for protection that prohibited him from having contact with the victim and another order that prohibited him from being within 100 feet of the victim's home. He admitted that in November 2016, he had contact with the victim at his child's school and that he told the victim "you better shut it down, you better shut it down or we'll end up on the news." He also admitted that on two days in late October 2019, he attempted to stop his child's school bus within 100 feet of the victim's home.¹ McReynolds agreed that the victim "could have felt threatened or stalked or significantly bothered" or

¹ The state orally amended the complaint during the plea hearing to incorporate these two incidents, which were not described in the complaint.

“terrorized” or “fear[ed] bodily harm” based on his conduct in the three incidents he described. The district court later sentenced McReynolds to a stay of imposition.

McReynolds appeals, arguing that he must be allowed to withdraw his guilty plea because it is not accurate.

DECISION

A defendant must be allowed to withdraw his guilty plea 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 not valid.” *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.* An appellate court reviews the validity of a plea de novo. *Id.*

“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). An adequate 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). “Still, 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.

A person is guilty of stalking if the person “engages in stalking with respect to a single victim . . . which the actor knows or has reason to know would cause the victim under the circumstances to feel terrorized or to fear bodily harm and which does cause this reaction on the part of the victim.” Minn. Stat. § 609.749, subd. 5(a). “‘Stalking’ means

two or more acts within a five-year period that violate or attempt to violate” a number of Minnesota statutes, including the violation of domestic-abuse orders for protection, harassment restraining orders, and violations of domestic-abuse no-contact orders. Minn. Stat. § 609.749, subd. 5(b). McReynolds concedes that his plea was sufficient to establish that he committed two or more acts enumerated in the stalking statute and that his acts were directed at a specific person. He contends that his plea was not accurate because it does not establish (1) that he knew or had reason to know that his conduct would terrorize the victim or cause her to fear bodily harm and (2) that the victim actually felt terrorized or feared bodily harm. We address each challenged element in turn.

I. The record establishes that McReynolds had reason to know that his conduct would terrorize the victim or cause her to fear bodily harm.

McReynolds first argues that his plea was not sufficient to establish that he knew or had reason to know that his conduct would cause the victim to feel terrorized or fear bodily harm. To “know” means that “the actor believes that the specified fact exists.” Minn. Stat. § 609.02, subd. 9(2) (2018). To determine whether an actor had “reason to know” requires a consideration of “the existing conditions and the context” of the act. *See In re Welfare of A.J.B.*, 929 N.W.2d 840, 850 (Minn. 2019).

In this context, to “terrorize” means “to cause extreme fear by use of violence or threats.” *State v. Franks*, 765 N.W.2d 68, 74 (Minn. 2009). The threat need not be express. *Id.* at 75. In contrast, “harassment”—another offense defined in Minn. Stat. § 609.749 (Supp. 2019)—requires a showing that the defendant engaged in conduct that caused a victim to “feel frightened, oppressed, persecuted, or intimidated.” *See id.*; *see also* Minn.

Stat. § 609.749, subd. 1. Thus, the supreme court has concluded that to feel terrorized means “something more than feeling ‘frightened, threatened, oppressed, persecuted, or intimidated.’” *Franks*, 765 N.W.2d at 74. When considering whether a defendant knew or had reason to know that his conduct would cause the victim this extreme fear, it is “proper to view a defendant’s words and acts in the context of the defendant’s relationship with the victim.” *Id.* at 75.

The parties disagree over whether McReynolds expressly admitted at the plea hearing that he had reason to know that his conduct would cause the victim to feel terrorized or fear bodily harm. The parties also disagree over whether we may look to allegations in the complaint regarding incidents that McReynolds did not admit to in considering the accuracy of his plea. *Cf. Lussier v. State*, 821 N.W.2d 581, 588-89 (Minn. 2012) (“[T]he plea petition and colloquy may be supplemented by other evidence to establish the factual basis for the plea.”); *State v. Trott*, 338 N.W.2d 248, 252 (Minn. 1983) (indicating that a defendant who has pleaded guilty “in effect, judicially admitted the allegations contained in the complaint”); *Rosendahl v. State*, __ N.W.2d __, __, 2021 WL 416699, at *1 (Minn. App. Feb. 8, 2021) (holding that “[i]n determining the accuracy of a guilty plea, the reviewing court does not consider allegations contained in the complaint unless the truthfulness and accuracy of the allegations have been expressly admitted to by the defendant”).² For the purposes of our analysis in this opinion, we assume that McReynolds did not expressly admit this element and do not consider allegations in the complaint about

² We note that we released *Rosendahl* after the parties submitted their briefs for our consideration.

the specific incidents that McReynolds did not testify to at the plea hearing. We still conclude that the record establishes that McReynolds had reason to know that his conduct would cause the victim to feel terrorized.

Put generally, McReynolds argues that he did not admit to conduct that was sufficiently egregious to allow an inference that he should have known that his conduct would cause the victim to feel terrorized. He asserts that “it is unreasonable to infer that [he] knew or had reason to know that attempting contact with his daughter—which was not prohibited by the OFP—would cause [the victim] to feel extreme fear resulting from violence or threats or to fear bodily harm.”

To illustrate his argument, McReynolds cites several cases involving stalking convictions with particularly egregious underlying conduct. *See, e.g., Franks*, 765 N.W.2d at 76 (underlying conduct for stalking conviction was writing vaguely threatening letters, but defendant had previously threatened to kill victim while dragging her around house looking for shotgun); *State v. Mullen*, 577 N.W.2d 505, 506 (Minn. 1998) (underlying conduct included the defendant breaking victim’s window and threatening to kill her); *State v. Stillday*, 646 N.W.2d 557, 560 (Minn. App. 2002) (underlying conduct included evidence that defendant punched victim in the face several times and caused the victim to lose consciousness); *State v. Barnslater*, 786 N.W.2d 646, 648-49 (Minn. App. 2010) (underlying conduct included multiple acts of violence against victim). But none of these cases establish that it is unreasonable to infer the requisite mental state based on less-egregious conduct.

Instead, the stalking statute requires proof that the defendant had “reason to know would cause the victim *under the circumstances* to feel terrorized.” Minn. Stat. § 609.749, subd. 5(a) (emphasis added). Thus, a complete analysis requires consideration of both the defendant’s conduct and “the existing conditions and the context” of the act, including the defendant’s relationship with the victim. See *A.J.B.*, 929 N.W.2d at 850; *Franks*, 765 N.W.2d at 75. McReynolds attempts to minimize the context of his relationship with the victim, asserting that he had no prior convictions for domestic assault against the victim and a criminal-history score of only one point. But McReynolds acknowledged that there were multiple orders preventing him from having contact with the victim and being near her home. There was also an order that prevented McReynolds from going to their child’s school, which is where one of the incidents he admitted to occurred. The orders color the context of McReynolds’s relationship with the victim, and we consider them when determining whether McReynolds should have known whether his conduct would cause the victim to feel terrorized or fear bodily harm.

We conclude that the record sufficiently establishes that McReynolds should have known that his conduct would cause the victim to feel terrorized. McReynolds was subject to multiple orders that prevented him from having contact with the victim, being near her home, or being at their child’s school.³ Nevertheless, in November 2016, McReynolds

³ While McReynolds did not acknowledge the existence of the order preventing him from being at the child’s school at the plea hearing, McReynolds himself introduced the order, issued in August 2016, to support a pretrial motion to exclude evidence. Because there is evidence in the record to support the existence of the order, which McReynolds himself submitted, we conclude that it is appropriate to consider that the order existed. Cf.

went to the school. At the school, McReynolds had contact with the victim and told her that, “You better shut it down. You better shut it down or *we will end up on the news.*” (Emphasis added.) McReynolds’s statement is a direct threat that if the victim did not “shut it down,” he would do something “newsworthy” to her. Considering the incident in the larger context of his relationship with the victim, we conclude that this record sufficiently establishes that McReynolds should have known that this conduct would cause the victim to feel extreme fear.

The record also establishes that McReynolds should have known that his conduct would cause the victim to feel terrorized as a result of the October 2019 incidents. McReynolds admitted that, pursuant to a court order, he was not permitted to be within 100 feet of the victim’s residence. Despite that order, McReynolds—twice—brazenly violated the order by attempting to stop his (and the victim’s) child’s school bus within 100 feet of the victim’s residence. This conduct, again, must be viewed in context. That context includes the November 2016 incident at the school, where McReynolds also violated multiple court orders and made a direct threat to the victim. Moreover, by 2019, the victim had obtained an extension of the order for protection that originally issued in 2015.⁴ A

Rosendahl, __ N.W.2d at __, 2021 WL 416699, at *4 (observing that a reviewing court may consider record evidence when determining the accuracy of the defendant’s plea).

⁴ We also observe that McReynolds did not expressly admit that the 2015 order for protection was extended for 50 years. Nevertheless, we conclude that *Rosendahl* does not prohibit consideration of that fact. In *Rosendahl*, we concluded that it was improper to consider allegations in the complaint regarding whether the appellant threatened the victim with a knife because the appellant never acknowledged that allegation, and in fact arguably denied it. See *Rosendahl*, __ N.W.2d at __, 2021 WL 416699, at *4; see also *Nelson v. State*, 880 N.W.2d 852, (Minn. 2016) (noting that the factual basis of a plea is inaccurate when “the defendant makes statements that negate an essential element of the charged

district court may only extend an order for protection for 50 years if it finds that “the respondent has violated a prior or existing order for protection on two or more occasions,” or “the petitioner has had two or more orders for protection against the same respondent.” Minn. Stat. § 518B.01, subd. 6a(c) (2020). We again conclude that McReynolds should have known that his threatening conduct—his repeated disdain for court orders protecting the victim—would cause the victim to feel extreme fear, and therefore terrorized.

II. The record establishes that the victim actually felt terrorized by McReynolds’s conduct.

McReynolds next argues that his plea is not accurate because the record does not establish that the victim actually felt terrorized by his conduct. We are not persuaded.

McReynolds expressly admitted at the plea hearing that the victim could have felt terrorized by his conduct. His behavior and statements, in the context of his relationship with the victim, along with his concession that his conduct could cause the victim to feel terrorized, allow us to infer that the victim felt terrorized by his conduct.

First, we again consider the existence of multiple court orders preventing McReynolds from having contact with the victim, being near the victim’s home, and being at their child’s school. One of those orders was an order for protection that was extended for 50 years. We can infer from the fact that the victim sought and obtained a 50-year

crime” (quotation omitted)). McReynolds, on the other hand, admitted that the 2015 order for protection existed. Thus, he expressly acknowledged and admitted to the order for protection referenced in the complaint. *Cf. id.* at *5. Moreover, neither McReynolds nor his attorney disputed the fact that the order for protection was extended for 50 years when, later in the plea hearing, the prosecutor discussed that fact with the district court. Under these circumstances, we conclude that it is appropriate to consider this fact in determining the accuracy of McReynolds’s plea.

extension to the order for protection that she was fearful of McReynolds based on his conduct.

McReynolds also admitted at the plea hearing that he made a direct threat to the victim—that the two would “end up on the news” if the victim did not “shut it down.” He admitted that he made the statement in person, in violation of an order for protection. Then, in 2019, after the order for protection had been extended for 50 years, McReynolds twice attempted to stop his and the victim’s child’s school bus within just 100 feet of her house. We can infer, based on the context of the relationship, McReynolds’s repeated disregard for orders protecting the victim, and McReynolds’s statements and conduct, that the victim actually felt terrorized by McReynolds’s admitted conduct.

Because we conclude that the record establishes all elements of the offense, we conclude that McReynolds’s plea is accurate, and therefore valid. Consequently, there is no basis to allow McReynolds to withdraw his guilty plea.

Affirmed.