

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0439**

Justin Marcus Rosendahl, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed February 8, 2021
Affirmed in part, reversed in part, and remanded
Slieter, Judge**

St. Louis County District Court
File No. 69DU-CR-16-2689

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

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

Mark S. Rubin, St. Louis County Attorney, Kristen E. Swanson, Assistant County Attorney, Duluth, Minnesota (for respondent)

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

SYLLABUS

In 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.

OPINION

SLIETER, Judge

In this appeal from the district court's order denying postconviction relief, appellant Justin Marcus Rosendahl argues that the district court erred in denying his request to withdraw his guilty pleas to first-degree burglary and second-degree assault because his guilty pleas were not accurate. We conclude Rosendahl's plea colloquy established a sufficient factual basis for his guilty plea to first-degree burglary and we affirm that conviction. However, Rosendahl's plea colloquy did not establish a sufficient factual basis for his guilty plea to second-degree assault. We therefore affirm in part, reverse in part, and remand.

FACTS

The complaint alleged as follows. Duluth police officers were dispatched to a home following a reported domestic assault. The victim, C.M.A., told an officer that Rosendahl, who was her ex-boyfriend, had kicked open a locked door and entered the home. Rosendahl began hitting her in the face with the back of his hand causing her to fall to the floor. C.M.A. said Rosendahl at some point grabbed a knife and held it in a threatening manner.

C.M.A.'s son, who was hiding in his bedroom at the time, told officers he heard "slapping" sounds and Rosendahl tell his mother he was "going to shove [the] knife in [her] forehead" and "kill her."

Officers spoke with C.M.A.'s father, P.A., who told officers that Rosendahl came to his house after the incident at C.M.A.'s home and forced his way inside while holding a knife. Rosendahl then went to the kitchen, took a beer from the refrigerator, and drank it.

Based on this conduct, the state charged Rosendahl in an amended complaint with three counts of first-degree burglary, one count of second-degree assault, and one count of obstructing legal process. Rosendahl pleaded guilty to three counts:

- (1) first-degree burglary (possessing a dangerous weapon in P.A.'s home), in violation of Minn. Stat. § 609.582, subd. 1(b) (2014);
- (2) first-degree burglary (assaulting C.M.A. after entering her home), in violation of Minn. Stat. § 609.582, subd. 1(c) (2014); and
- (3) second-degree assault (intending to cause fear in C.M.A. with a dangerous weapon), in violation of Minn. Stat. § 609.222, subd. 1 (2014).

Rosendahl testified to facts in support of his pleas. The district court determined Rosendahl's testimony established a sufficient factual basis of his guilt for each count.

Rosendahl subsequently petitioned for postconviction relief to withdraw his guilty pleas to counts one and three on the ground that his testimony did not establish a factual basis for his guilt. The district court denied the petition and Rosendahl appeals.

ISSUE

Did Rosendahl provide a sufficient factual basis for his guilty pleas to first-degree burglary with a dangerous weapon and second-degree assault?

ANALYSIS

To be constitutionally valid, a guilty plea must be accurate; and whether a defendant's plea is accurate is a question appellate courts review *de novo*. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). "To be accurate, a plea must be established on a proper factual basis." *Id.* A defendant may be entitled to withdraw an inaccurate guilty plea on the ground that an inaccurate plea is a "manifest injustice." *Id.* at 93 (quotation omitted); Minn. R. Crim. P. 15.05, subd. 1.

Establishing a proper factual basis is "typically" accomplished "by asking the defendant to express in his own words what happened." *Lussier v. State*, 821 N.W.2d 581, 589 (Minn. 2012) (quoting *Raleigh*, 778 N.W.2d at 94). "The defendant's statement 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). "The main purpose of the accuracy requirement is to protect a defendant from pleading guilty to a more serious offense than he could be convicted of were he to insist on his right to trial." *Id.* "It is well established that before a plea of guilty can be accepted, the [district court] judge must make certain that facts exist from which the defendant's guilt of the crime charged can be reasonably inferred." *Nelson v. State*, 880 N.W.2d 852, 861 (Minn. 2016) (quoting *State v. Neumann*, 262 N.W.2d 426, 430 (Minn. 1978)). "It is to be hoped that the [district court] judge, in [accepting a plea], will ask the questions with respect to the factual basis for the crime so as to avoid the rather common inclination of counsel to elicit these facts by leading questions." *State v. Hoaglund*, 240 N.W.2d 4, 6 (Minn. 1976).

I. Rosendahl’s guilty plea to first-degree burglary with a dangerous weapon was accurate.

Rosendahl contends his plea colloquy did not establish the following burglary element: that he intended to or did commit a crime while in P.A.’s home. The state asserts the colloquy shows that he committed theft by taking a beer from P.A.’s refrigerator. The record demonstrates that Rosendahl’s factual basis satisfies this element.

Minnesota statutes section 609.582, subdivision 1(b) provides:

Burglary in the first degree. Whoever enters a building without consent and with intent to commit a crime, or enters a building without consent and *commits a crime* while in the building, either directly or as an accomplice, commits burglary in the first degree and may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than \$35,000, or both, if:

....
(b) the burglar possesses, when entering or at any time while in the building . . . a dangerous weapon

(Emphasis added.) Rosendahl admitted to entering P.A.’s home without consent and with a dangerous weapon. In response to questioning from the prosecutor, Rosendahl testified that “at that time [he] went in [P.A.’s] house and [he] saw the police were coming, [he] decided to go drink a beer instead of talk[ing] to police.”

“[Whoever] intentionally and without claim of right takes, uses, transfers, conceals or retains possession of movable property of another without the other’s consent and with intent to deprive the owner permanently of possession of the property” is guilty of theft. Minn. Stat. § 609.52, subd. 2(1) (2014). Rosendahl’s admission that he drank a beer belonging to P.A. while inside P.A.’s home is sufficient to infer that he intentionally took movable property without P.A.’s consent, and his drinking it demonstrated his intent to

permanently deprive him of its possession. *See State v. Thompson*, 544 N.W.2d 8, 11 (Minn. 1996) (stating intent “is generally proved by inferences drawn from a person’s words or actions in light of all the surrounding circumstances”). As the district court accurately recognized, there is no minimum property value requirement for misdemeanor theft in Minnesota. In sum, Rosendahl’s plea colloquy demonstrated a sufficient factual basis to establish his guilt of first-degree burglary.

II. Rosendahl’s guilty plea to second-degree assault with a dangerous weapon (intending to cause fear in C.M.A) is not accurate.

Rosendahl does not dispute that he possessed a dangerous weapon while inside of C.M.A.’s home. However, Rosendahl argues his plea colloquy did not establish he acted with the necessary specific intent to cause fear in C.M.A. The state appears to concede that Rosendahl’s testimony alone is insufficient to support his guilty plea but suggests that we may consider the allegations in the complaint to infer his intent and conclude the plea is accurate. Because Rosendahl’s plea colloquy did not support his guilty plea for this count and we may not consider the contents of the complaint to establish by inference a factual basis for his plea, the district court must allow Rosendahl to withdraw his plea and vacate his conviction.

Minnesota statutes section 609.222, subdivision 1 states: “Whoever assaults another with a dangerous weapon may be sentenced to imprisonment for not more than seven years or to payment of a fine of not more than \$14,000, or both.” A “dangerous weapon” is defined as “any firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or great bodily harm.” Minn. Stat. § 609.02, subd. 6

(2014). An assault is defined as “an act done with intent to cause fear in another of immediate bodily harm or death.” *Id.*, subd. 10(1) (2014). An assault-fear offense, which is what Rosendahl pleaded guilty to, is a specific-intent crime. *State v. Fleck*, 810 N.W.2d 303, 309 (Minn. 2012). As a specific-intent crime, the state was required to prove Rosendahl intended to cause the victim fear of immediate bodily harm with the knife.

During the colloquy, the prosecutor questioned Rosendahl as follows:

Q: What did you do when you -- what did you do when you got [to C.M.A.’s house]?

A: I leaned and kicked on the front door and assaulted C.M.A. in the mouth with the back of my hand.

Q: Fair to say that when you got to the house, [appellant], you weren’t invited in?

A: Correct.

....

Q: At some point when you were in the house, did you have possession of a knife?

A: Yes.

Q: Where did you get the knife from, [appellant]?

A: Near the kitchen counter.

Q: And how would you describe your demeanor at the time you had the knife?

A: Calm actually. I had the knife, I placed it in my pocket.

Q: Is it -- did you possess the knife after you slapped C.M.A.?

A: No -- after, yes.

Q: Okay. At the time that you had the knife, would you agree that it is reasonable for C.M.A. to have been fearful for her own life?

A: I imagine she was fearful not of the knife but of myself, yes.

Q: And the fact that you had a knife at the time certainly could add to that fear?

A: Sure.

Rosendahl did not admit to, and was not asked about, this element of a second-degree assault crime: whether he acted “with intent to cause fear in [C.M.A.] of immediate bodily harm or death.” Minn. Stat. § 609.02, subd. 10(1). Rosendahl explained that he hit

C.M.A. with his hand once and then picked up a knife in the kitchen and put it into his pocket after hitting her and he believed C.M.A. “was fearful not of the knife but of [him].” His statements do not establish that he intended to cause her fear by picking up the knife nor do they acknowledge the allegations in the complaint that he threatened her with the knife. As stated in *Fleck*, it matters not what C.M.A. felt, for “[t]he intent of the [defendant], as contrasted with the effect upon the victim, becomes the focal point for inquiry.” 810 N.W.2d at 308 (quotation omitted) (alterations in original). Though Rosendahl’s admission itself fails to satisfy all the crime’s elements, we consider whether the accuracy of his plea may be inferred.

Even if an element to an offense is not verbalized by the defendant, a district court may nevertheless draw inferences *from the facts admitted to by the defendant*. See *Nelson*, 880 N.W.2d at 861 (“It is well established that before a plea of guilty can be accepted, the [district court] judge must make certain that facts exist from which the defendant’s guilt of the crime charged can be reasonably inferred.”) (quotation omitted). For example, in *Nelson*, the supreme court concluded the district court properly inferred intent for first-degree premeditated murder through the defendant’s testimony that he had hurt feelings, brought a knife to work, and stabbed the victim multiple times. *Id.* at 860. We note too that the defendant explicitly acknowledged to the district court during his colloquy his intent to kill the victim. *Id.* at 857. Likewise, in *Neumann*, the supreme court determined that the defendant’s testimony that he executed a robbery with a loaded gun and fired

multiple gunshots was sufficient for the district court to infer the defendant's intent for first-degree premeditated murder.¹ 262 N.W.2d at 430-31.

In contrast to those cases, no statement made by Rosendahl during his colloquy presents an inference that he intended to cause fear in C.M.A. with the knife and there is no other evidence we may consider to establish such an inference. By testifying only to putting the knife in his pocket after slapping C.M.A., Rosendahl admitted no act from which specific intent for an assault as required by *Fleck* might be inferred. 810 N.W.2d at 309. Instead, his testimony admits solely to an act of general-intent assault. *See id.* at 309-10 (contrasting general-intent crime of assault-harm with specific-intent crime of assault-fear). This is different from those situations in which, for example, a defendant testifies to waving a knife at a victim or admits to multiple stabbings, either of which allows an inference of specific intent to be found.

The state requests us to consider the contents of the complaint to supplement Rosendahl's testimony and thereby conclude his guilty plea was accurate. The complaint states that C.M.A. told officers that Rosendahl held the knife at her "in a threatening manner" and that C.M.A.'s son told officers that he heard Rosendahl threaten to "shove" the knife into her forehead and threaten to kill her. The state believes this information would allow us to infer Rosendahl's intent.

¹ The defendant testified during the trial and, following his testimony, pleaded guilty, and it is this trial testimony that the district court considered in inferring the defendant's intent for the purposes of his guilty plea. *Neumann*, 262 N.W.2d at 430-31.

A postconviction court may consider *record* evidence, in addition to a defendant's words, in inferring intent. *Nelson*, 880 N.W.2d at 860-61. However, because Rosendahl did not expressly testify as to the truthfulness and accuracy of these allegations of the complaint during his colloquy, the allegations are not part of the record and we cannot consider them in assessing the accuracy of his plea.

In plea-withdrawal cases, *Raleigh* is often cited—and is cited by the state here—for the principle that “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.*” 778 N.W.2d at 94 (emphasis added) (citing *State v. Nelson*, 250 N.W.2d 816, 817 (Minn. 1976)).² Though this is indeed an accurate recitation of the legal proposition, for reasons explained below, it does not alone allow our court to consider the contents of the complaint because no record was made involving the allegations in the complaint in order to supplement Rosendahl's testimony.

We note that *Nelson* states that “defendants will not be permitted to plead anew simply because the court did not elicit the testimony *so long as the record contains sufficient testimony.*” 250 N.W.2d at 817 (emphasis added) (citing *State v. Nace*, 241 N.W.2d 101, 101 (Minn. 1976)). Unless such evidence is acknowledged by the defendant

² *State v. Goulette* is also often cited for this proposition, and is cited by the state here. 258 N.W.2d 758 (Minn. 1977). *Goulette* stated the factual basis for a plea is sufficient if the judge “reasonably concludes that there is evidence which would support a jury verdict of guilty.” *Id.* at 760. But *Goulette* explicitly relies on *Alford* for this principle and is therefore not helpful for assessing what a court may consider to supplement a “typical” or “non-*Alford*” plea. See *Goulette*, 258 N.W.2d at 760 (citing *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160 (1970)).

during the plea colloquy, *Nelson* and *Nace* do not support the proposition that we may refer to allegations in a complaint.

Despite this legal framework, *Raleigh* is typically misconstrued to mean that a reviewing court may look beyond the defendant's sworn testimony to supplement the factual basis for the plea. Often, as is here argued by the state, this means looking to the allegations in the complaint. See *Trott*, 338 N.W.2d at 252. However, it is important to note that *Trott* states “[t]he court should not accept the plea unless *the record* supports the conclusion that the defendant actually committed an offense at least as serious as the crime to which he is pleading guilty.” 338 N.W.2d at 252-53 (emphasis added).

Looking to “the record” is indeed mandatory in *Alford* or *Norgaard* pleas. See *Alford*, 400 U.S. at 37-38, 91 S. Ct. at 167-68 (stating defendant may plead guilty based on factual record while maintaining innocence); *State ex rel. Norgaard v. Tahash*, 110 N.W.2d 867, 871 (Minn. 1961) (stating defendant may plead guilty yet maintain innocence on account of lack of memory).³ But our review of *Raleigh*, *Nelson*, and *Nace*, together with *Ecker*, *Trott*, and *Lussier* considered below, compels our conclusion that consideration of evidence not expressly acknowledged and admitted by the defendant during the colloquy is not proper for a reviewing court to consider in a “typical” plea. See *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994).

The supreme court in *Ecker*—issued after and with multiple references to *Trott*—described three ways to obtain a guilty plea. *Ecker*, 524 N.W.2d at 716. It first described

³ We note that even in *Alford* and *Norgaard* pleas, a defendant is required to acknowledge on the record during the plea hearing the evidence that supports guilt.

a “typical” plea, in which “an adequate factual basis is usually established by questioning the defendant and asking the defendant to explain in his or her own words the circumstances surrounding the crime.” *Id.* We note below that exceptions exist that allow the consideration of other evidence in a “typical” plea if expressly acknowledged by the defendant. The supreme court contrasted this “typical” plea with two “unique situations in which a defendant may plead guilty without unequivocally admitting his or her guilt,” which are *Alford* and *Norgaard* pleas. *Id.* at 716-17. In an *Alford* or *Norgaard* plea, the supreme court recognized, a court must consider the record as support for the factual basis. *Id.* at 716. The *Ecker* directive is, therefore, that a “typical” plea “usually” involves only the defendant’s words, as contrasted with an *Alford* or *Norgaard* plea. When considering the *Ecker* decision, and the body of caselaw both before and after *Ecker* addressing the accuracy of a “typical” guilty plea, documents such as a complaint may only be considered by a reviewing court if the truthfulness and accuracy of the evidence is expressly admitted to by the defendant.

The state points to *Trott*, through its citation to *Lussier*, 821 N.W.2d at 588, as support that the court may consider the complaint to supplement Rosendahl’s plea colloquy. We disagree that *Trott* and *Lussier* support this proposition. The supreme court in *Trott* stated that the defendant “by his plea of guilty, in effect judicially admitted the allegations contained in the complaint.” 338 N.W.2d at 252. However, the supreme court recognized in that case that “the [district court] judge carefully interrogated the defendant about the acts, and the defendant freely admitted” the allegations in the complaint. *Id.* This did not happen here. Rosendahl was not “carefully interrogated” about his conduct, nor

did he admit an element necessary to establish his guilt. Therefore, Rosendahl never “judicially admitted” the allegations in the complaint.

Additionally, during the plea hearing in *Lussier*, without objection by the defendant, the court received a grand jury transcript. Hence, the district court did receive “a record” to support the guilty plea. Moreover, our court has recognized that guilt may be established through a defendant’s “specific acknowledgement of the truth and accuracy of facts constituting the essential elements of the crime.” *In re Welfare of J.R.R.*, 648 N.W.2d 739, 743 (Minn. App. 2002). Rosendahl did not expressly acknowledge the truth and accuracy of the facts of the complaint or of the essential intent element of the crime, which further compels our conclusion that we cannot consider the contents of the complaint.

DECISION

For the foregoing reasons, we conclude that, in determining the accuracy of a guilty plea, the reviewing court does not consider allegations in the complaint unless the truthfulness and accuracy of the allegations have been expressly admitted to by the defendant. We affirm the district court’s denial of Rosendahl’s petition to withdraw his guilty plea to first-degree burglary, as his plea colloquy provided a sufficient factual basis for his guilt. We reverse, however, the district court’s denial of Rosendahl’s petition to withdraw his guilty plea to second-degree assault because he did not, and was not asked, to admit the truthfulness and accuracy of the complaint. We remand for proceedings consistent with this opinion.

Affirmed in part, reversed in part, and remanded.