

*This opinion is nonprecedential except as provided by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
A23-1280**

State of Minnesota,
Respondent,

vs.

Mickela Joy Vredenburg,
Appellant.

**Filed July 15, 2024
Affirmed
Halbrooks, Judge***

Olmsted County District Court
File Nos. 55-CR-22-6250, 55-CR-22-7012

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

Michael J. Spindler-Krage, Rochester City Attorney, Samuel T. Shabel, Assistant City Attorney, Rochester, Minnesota (for respondent)

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

Considered and decided by Wheelock, Presiding Judge; Ede, Judge; and Halbrooks, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

HALBROOKS, Judge

In this direct appeal from the final judgments of conviction of two counts of misdemeanor violations of a harassment restraining order (HRO), appellant seeks to withdraw her guilty pleas on the ground that the factual bases she provided fail to establish that she knew that her conduct violated the HRO. Because we conclude that appellant's pleas had accurate factual bases, we affirm.

FACTS

Respondent State of Minnesota charged appellant Mickela Joy Vredenburg with two counts of misdemeanor violation of an HRO in violation of Minn. Stat. § 609.748, subd. 6(a) (2022). The HRO prohibited Vredenburg from contacting the protected party—the father of Vredenburg's child—except for communication about their shared child's well-being and when the child would be picked up and dropped off. The HRO was issued in May 2022 and modified to include the exception in July 2022.

The charges arose from two separate text messages that Vredenburg sent to father. In September 2022, Vredenburg messaged him asking, “[D]o you happen to know where this tracking device came from that I found in the car that was given to me by you and . . . Pulver Towing?” In October 2022, Vredenburg again messaged father stating, “[Y]ou went to [our child's] school and slandered and defamed me at [two schools], even prior to any court orders being signed, making them think they cannot talk to me, as if I have no rights to [our child].”

Vredenburg pleaded guilty to both HRO-violation offenses in exchange for credit for 90 days she spent in custody and dismissal of three other HRO-violation charges. She admitted that she sent the two text messages in September and October 2022. Vredenburg also admitted that she had been served a copy of the HRO and that she was in the courtroom when the HRO was modified to permit communication about, as she described it, “pick-up times, drop-off times, and [the child’s] . . . well-being.”

In the plea colloquy regarding the September 2022 text message, Vredenburg and defense counsel had the following exchange:

Q: Would you agree with me that that text message has nothing to do with pick-ups, drop-offs, or [the child’s] well-being?

A: I’d agree to say that. At the time of the visit schedule that it did not. It was more so my well-being at that point.

Q: Okay. You would agree that was in violation of the harassment restraining order issued by [the district court]?

A: Essentially, yes.

And in the plea colloquy regarding the October 2022 text message, Vredenburg and defense counsel had the following exchange:

Q: Would you agree that was also in violation of the harassment restraining order?

A: Essentially, yes. I would say it’s more related to me than [our child].

The district court accepted the pleas, adjudicated Vredenburg guilty of two offenses of misdemeanor violation of an HRO, sentenced her to 90 days of time served, and dismissed three other HRO violation matters.

This appeal follows.

DECISION

Vredenburg now seeks to withdraw her guilty pleas because they lack adequate factual bases and are therefore inaccurate and invalid. Specifically, Vredenburg argues that, because she did not testify that she subjectively believed that her text messages violated the HRO, her pleas did not establish the mens rea element of the offense of misdemeanor violation of an HRO.

A court must allow a defendant to withdraw a 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 defendant enters an invalid guilty plea. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). For a plea to be valid, it must be accurate. *Id.* A plea is accurate if an adequate factual basis is established on the record, meaning 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, 859, 861 (Minn. 2016). But if a defendant makes statements which negate the mens rea element of the charged offense and those statements are not withdrawn or corrected, the plea is inaccurate. *State v. Mikulak*, 903 N.W.2d 600, 605 (Minn. 2017). Plea validity is a question of law that we review de novo. *Nelson*, 880 N.W.2d at 858.

The offense of misdemeanor violation of an HRO requires the state to prove that the defendant is subject to a restraining order and “knows of the order.” Minn. Stat. § 609.748, subd. 6(b) (2022). Although the statute does not explicitly include a mens rea element, we have held that “the state must prove that the defendant knew all the facts that would cause him or her to be in violation of the [HRO].” *State v. Andersen*, 946 N.W.2d 627, 636 (Minn. App. 2020). In *Andersen*, we reviewed an HRO that prohibited a defendant from

being near the protected party's address. *Id.* The HRO did not include the address and there was no evidence that the defendant knew its location. *Id.* We reversed Andersen's conviction because the state did not prove that Andersen "knew that his presence in a particular location would subject him to criminal liability." *Id.* at 637. Thus, Andersen did not know the facts that would cause him to violate the HRO. *Id.*

Here, we conclude that Vredenburg's pleas established the mens rea requirement for the offense of misdemeanor violation of an HRO. She admitted that she was served with the initial copy of the HRO and that she was present in court when the HRO was amended. She was also able to recount the terms of the HRO in her plea colloquies. Vredenburg stated that she knew she could only lawfully communicate with father about pick-ups, drop-offs, and the well-being of their shared child. Accordingly, she knew the facts that would subject her to criminal liability. *See id.* at 636. Vredenburg nevertheless sent text messages that, by her admission, were outside the scope of the exception. She stated that her text messages—about a tracking device on her car and how father "slandered and defamed" her—violated the HRO.

In support of her argument that she should be permitted to withdraw her guilty pleas, Vredenburg claims that a defendant must subjectively believe that their conduct violates an HRO at the time they engage in the violating conduct. Vredenburg contends that she only admitted that she believed the communications violated the HRO at the time of the plea hearing, but not at the time the messages were sent. As a result, she argues that her pleas did not establish the mens rea element.

We disagree. Under *Andersen*, the controlling case on this subject, an accurate guilty plea required Vredenburg to testify that she knew “all the facts that would cause [her] to be in violation” of the HRO. *Id.* Vredenburg cites no authority that establishes that the state must prove a defendant specifically intended to violate an HRO, and we could find none.¹ Even if Vredenburg did not believe that her messages violated the HRO at the time she sent them, she knew the facts necessary to determine whether they would constitute a violation. She was on notice that, if her belief was mistaken, she could be subject to criminal liability. *See id.* (emphasizing that a defendant should have “sufficient notice of the conduct that would subject him to strict criminal liability”). This is sufficient to satisfy the mens rea element for the offense of misdemeanor violation of a harassment restraining order. *See id.*

Vredenburg also contends that she made statements that negate the mens rea required for the offense. Vredenburg does not argue that she made any statements which *directly* negate the mens rea. Instead, she asks this court to draw a reasonable inference

¹ Vredenburg cites our nonprecedential opinion, *State v. Zarate*, for the proposition that there is a subjective mens rea element for violation of an HRO. No. A22-0905, 2023 WL 3443467, at *3 (Minn. App. May 15, 2023), *rev. denied* (Minn. Aug. 22, 2023). Nonprecedential opinions are not binding on this court. Minn. R. Civ. App. P. 136.01, subd. 1(c). And we disagree with Vredenburg’s reading of our nonprecedential opinion.

Zarate analyzes a defendant’s argument that subjective belief of a violation is necessary to support a conviction, but we ultimately rejected the argument. 2023 WL 3443467, at *3. And in another nonprecedential opinion, we were crystal clear: “*Andersen* does not require the state to prove a defendant subjectively believed that the specific conduct she engaged in violated the order.” *State v. Sandven*, No. A20-1532, 2021 WL 5049468, at *3 (Minn. App. Nov. 1, 2021) (quotation omitted), *rev. denied* (Minn. Jan. 26, 2022).

that she “could think [the messages] fell within the exception to the HRO.” Vredenburg contends that her text regarding the tracking device could fall within the exception because the vehicle was “presumably used” to transport the child during parenting-time exchanges, and a tracking device would track not only her child’s whereabouts, but her own as well. And both text messages concerned her own well-being, which she testified was related to her child’s well-being.

Vredenburg’s argument is unavailing. The only plea-negation case that Vredenburg cites is factually dissimilar. In *Mikulak*, the supreme court found that a defendant negated his guilty plea for violating a 24-hour predatory-offender registration requirement when he said that he assumed that he had a week to register, not 24 hours. 903 N.W.2d at 605. No similar statement appears in a transcript from Vredenburg’s plea hearing. Vredenburg’s testimony established that she was on notice of the exception to the HRO; Mikulak did not know about his registration requirement. *Id.* Because her testimony does not indicate that she was unaware of the facts which would subject her to criminal liability at the time she sent the text messages, we conclude that Vredenburg did not negate her pleas. To the contrary, the record establishes that Vredenburg provided an adequate factual basis for her guilty pleas.

Affirmed.