

*This opinion is nonprecedential except as provided by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
A23-1967**

State of Minnesota,
Respondent,

vs.

Nathan Christopher Braun,
Appellant.

**Filed October 7, 2024
Affirmed
Ross, Judge**

Stearns County District Court
File No. 73-CR-23-188

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

Janelle P. Kendall, Stearns County Attorney, Michael J. Lieberg, Chief Deputy County Attorney, St. Cloud, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ede, Presiding Judge; Ross, Judge; and Schmidt, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

Nathan Braun threatened to “f---ing kill” a fellow Facebook user and pleaded guilty in a *Norgaard* plea to making threats of violence. Braun now argues on appeal that he should be allowed to withdraw his guilty plea. Because the factual basis for his plea met the elements demonstrating his guilt under the threats-of-violence statute and because he

adequately acknowledged that the state's evidence was sufficient for a jury to find him guilty, we affirm.

FACTS

The state charged Nathan Braun in January 2023 with making threats of violence after he sent voice recordings through Facebook under the alias "Ally Sorenson" to another Facebook user threatening to "f---ing kill [him]" and informing the user that Braun knew where he lived. Braun and the state reached a plea agreement. In exchange for Braun's pleading guilty to the charged offense, the parties agreed to an 18-month prison sentence.

The state questioned Braun at the plea hearing to establish a factual basis for his guilty plea. Braun admitted that he had a Facebook account with a false identity, that he used the account to comment on a newspaper article referencing a criminal matter of his, that the victim user likewise commented on the article, and that Braun eventually reached out to that user through Facebook's private-messenger feature. But when asked whether Braun remembered sending threatening voice messages to the victim using that feature, he responded, "No." The prosecutor therefore focused on the elements of a valid *Norgaard* plea.

To establish a factual basis for Braun's *Norgaard* plea, the prosecutor recounted the evidence the state would present at trial:

And you understand that if we went to trial the State would call specifically [the victim]. He would testify that he got into an argument with you over his St. Cloud Times comments on Facebook.

He would then testify that after that you had sent him some voice messages on his personal messaging on Facebook. And

he would testify specifically that you left him a message that you know where he lives and also saying that the “next time I f---ing see you, I am gonna f---ing kill you, you f---ing piece of shit.” [The victim] would testify that he believed it was you.

The State would also call the [department of corrections] agents who would testify that they went to your house and collected several electronic devices. They would testify that when they opened your device they saw the Facebook account for Ally Sorenson . . . open.

They would also testify that they played those messages in your presence and that you told them that that was you leaving those threatening messages on [the victim’s] Facebook.

The prosecutor concluded by asking, “So do you believe that if the State offered all of that evidence at trial there would be a substantial likelihood that a jury would find you guilty of threats of violence beyond a reasonable doubt?” Braun responded, “I do believe so.” The district court found that the factual basis was sufficient and accepted Braun’s guilty plea. It entered judgment of conviction of making threats of violence and imposed the parties’ agreed-to 18-month prison sentence. Braun appeals.

DECISION

Braun contends that he should be permitted to withdraw his guilty plea because it is inaccurate. Defendants have “no absolute right to withdraw a guilty plea” but may do so when necessary to avoid a manifest injustice, including when the plea is invalid because it is inaccurate. *State v. Raleigh*, 778 N.W.2d 90, 93–94 (Minn. 2010). A guilty plea is inaccurate when it lacks a sufficient factual basis. *Id.* at 94. Because Braun entered a *Norgaard* plea, which occurs when a defendant claims to lack memory about the offense’s circumstances, *State ex rel. Norgaard v. Tahash*, 110 N.W.2d 867, 872 (Minn. 1961), the

factual basis supporting his plea differs from that of a common guilty plea. While the factual basis for a common guilty plea is usually established by asking the defendant to explain the circumstances surrounding the crime, a *Norgaard* plea requires “a strong factual basis,” and the defendant must agree that the state’s evidence is likely sufficient for a jury to find him guilty beyond a reasonable doubt. *Williams v. State*, 760 N.W.2d 8, 12 (Minn. App. 2009), *rev. denied* (Minn. Apr. 20, 2009). We review a plea’s validity *de novo*. *Raleigh*, 778 N.W.2d at 94. Our *de novo* review leads us to affirm Braun’s guilty plea.

Braun offers two arguments to support his contention that his guilty plea is inaccurate. He argues first that the factual basis underlying his *Norgaard* plea fails to satisfy the elements outlined in Minnesota’s threats-of-violence statute. And he argues second that he did not adequately acknowledge that the state’s evidence was sufficient for a jury to convict him for making threats of violence. Neither argument warrants reversing.

We are unconvinced by Braun’s argument that the proffered facts do not satisfy the elements required for a threats-of-violence conviction. Braun pleaded guilty to making threats of violence under Minnesota Statutes section 609.713, subdivision 1 (2022), which makes it a crime for a person to “threaten[], directly or indirectly, to commit any crime of violence with purpose to terrorize another . . . or in a reckless disregard of the risk of causing such terror.” Braun fails to identify which element was allegedly not supported by the factual basis established at the plea hearing, but we construe his argument as implicitly contending that the factual basis failed to include evidence of the victim’s apprehension that Braun would follow through with his threat to kill him.

We reject Braun’s implied contention that the factual basis omitted evidence that the victim feared that Braun would follow through with his threat. This is because the supreme court has already held that the victim’s apprehension is not an element of the offense: “The effect of a terroristic threat on the victim is not an essential element of” section 609.713. *State v. Schweppe*, 237 N.W.2d 609, 614 (Minn. 1975); *see also State v. Marchand*, 410 N.W.2d 912, 915 (Minn. App. 1987), *rev. denied* (Minn. Oct. 21, 1987). And if Braun is challenging the remaining elements required for a threats-of-violence conviction, the challenge fails. The factual record developed at the plea hearing demonstrating that Braun threatened to kill the other user and that he knew where the user lived established that Braun engaged in threatening a crime of violence under the statute. *See* Minn. Stat. § 609.713, subd. 1 (referring to Minn. Stat. § 609.1095, subd. 1(d) (2022), listing crimes qualifying as crimes of violence); Minn. Stat. § 609.1095, subd. 1(d) (listing all of Minnesota’s murder, manslaughter, and criminal-vehicular-homicide statutes). Braun’s statement that he knew where the victim lived provides the context that he either intended to terrorize the victim or that he recklessly disregarded the risk of causing the victim terror. The factual basis supporting Braun’s plea satisfies section 609.713.

Braun argues second that he did not “adequately” acknowledge that the evidence was sufficient to convict him of threatening a crime of violence. He points to his response of “I do believe so” when the prosecutor asked whether there was a “substantial likelihood” that the jury would find him guilty of making threats of violence beyond a reasonable doubt based on the state’s evidence. The supreme court has explained that, when developing the factual basis for *Norgaard* pleas, defendants must specifically acknowledge on the record

that the state's evidence is "sufficient" for the jury to find the defendant guilty under the beyond-a-reasonable-doubt standard. *State v. Theis*, 742 N.W.2d 643, 649 (Minn. 2007); *see also State v. Ecker*, 524 N.W.2d 712, 717 (Minn. 1994). The *Theis* court applied that standard and held that a defendant's acknowledging that "there is a risk that he could be convicted" does not result in an accurate plea. 742 N.W.2d at 650. Braun relies on that holding in *Theis* as the basis of his argument that he did not adequately acknowledge that the state's evidence was sufficient for a guilty verdict.

We are not convinced by Braun's contention that the prosecutor's asking whether there is a "substantial likelihood" of a conviction was insufficient to make his plea accurate. Braun likens the prosecutor's use of "substantial likelihood" to the "risk" language from *Theis*. But we have already held that agreeing to a "substantial likelihood" of a conviction satisfies the supreme court's accuracy test. In *Williams*, the prosecutor asked the defendant, "[W]ould it be fair to say that there is a substantial likelihood that you would be found guilty . . . ?" 760 N.W.2d at 14. We held that the defendant's affirmative response demonstrated that she "pleaded guilty based on probable guilt and on her awareness of the likelihood a jury would convict her." *Id.* Braun's argument fails under *Williams*.

We are similarly unconvinced by Braun's argument that his "I do believe so" acknowledgment made his plea inaccurate. He analogizes guilty pleas with jury-bias questioning during *voir dire*, pointing out that the supreme court has found phrases like "yes, I guess," "I don't think so," and "I don't know" to be insufficient to rehabilitate a prospective juror who revealed a bias. *See State v. Fraga*, 864 N.W.2d 615, 625 (Minn. 2015). Apples and oranges; a juror's equivocation and seeming uncertainty about whether

she can be fair and impartial differs fundamentally from Braun's seemingly certain statement, "I do believe so," as to whether it was substantially likely that a jury would find him guilty. And in context, it seems apparent that he used the "believe" language because that is what the prosecutor asked, not because his answer was equivocal. The prosecutor, after recounting the evidence the state planned to introduce at trial, asked Braun, "So *do you believe* that if the State offered all of that evidence at trial there would be a substantial likelihood that a jury would find you guilty of threats of violence beyond a reasonable doubt?" To this Braun responded, "I do believe so." Braun's contention fails.

Affirmed.