

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0405**

State of Minnesota,
Respondent,

vs.

Justin Andrew Bye,
Appellant.

**Filed January 14, 2013
Affirmed
Connolly, Judge**

Hennepin County District Court
File No. 27-CR-11-11823

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Elizabeth Johnston, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Ngoc Nguyen, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Connolly, Judge; and
Rodenberg, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges his second-degree assault conviction, arguing that the district court erred in accepting his guilty plea because the factual basis for the plea was insufficient. We affirm.

FACTS

According to the criminal complaint, appellant Justin Bye entered the home of A.S.C.¹ on March 27, 2011, and began choking him and screaming that he was going to kill him. Bye then threatened A.S.C. by pointing a knife at him and stabbing A.S.C.'s television. Witnesses, including Bye's son and ex-girlfriend, confirmed that Bye threatened A.S.C. with the knife. A.S.C. reported that he was afraid for his life. Respondent State of Minnesota charged Bye with second-degree assault.

On August 18, 2011, Bye pleaded guilty to second-degree assault and an added charge of terroristic threats. When questioned by his attorney at the plea hearing, Bye stated that he understood the proceedings and the negotiated agreement, that he wanted to plead guilty rather than proceed to trial, and that he understood both the rights he was waiving by pleading guilty and the consequences for failing to comply with the conditions of his release. Defense counsel then questioned Bye on the factual basis for his guilty plea:

COUNSEL: Mr. Bye, I want to bring your attention back to March 27th of this year, do you remember that day?

¹ While the complaint actually identifies the victim as S.C.A., it was confirmed at the plea hearing that his correct initials are A.S.C.

BYE: Yes, ma'am.
COUNSEL: And, you agree you were in the City of Bloomington?
BYE: Yes, ma'am.
COUNSEL: And, you agree, that's in Hennepin County, Minnesota?
BYE: Yes, ma'am.
COUNSEL: And, you agree, on that day that you had went over to a house where your son was living, is that true?
BYE: Yes, ma'am.
COUNSEL: And, there had been – a lot of back and forth went on between your son and some of the other tenants in that house, is that correct?
BYE: Yes, ma'am.
COUNSEL: And, you went there to help him move out, is that true?
BYE: Yes, ma'am.
COUNSEL: And, they had accused your son of certain things. But the point is that you went into that house that day, is that correct?
BYE: Yes, ma'am.
COUNSEL: And, you were upset about some of the things that were happening with your son?
BYE: Yes, ma'am.
COUNSEL: And, you agree that you had, it was a knife that was attached to, it was like a Leatherman, it was a tool that had a knife on it; is that true?
BYE: Yes, ma'am.
COUNSEL: And, you agree that you were angry with a certain person, and his initials are SCA, is that true?
BYE: Yes, ma'am.
COUNSEL: And, you agree you were yelling at him and you were arguing with him and, in fact, you took that knife and stabbed the TV; is that true?
BYE: Yes, ma'am.
COUNSEL: And, you did so with the intent to cause intimidation and fear of immediate bodily harm?
BYE: Yes, ma'am.
COUNSEL: Your Honor, I would offer that for both counts.
COURT: Is the State satisfied?
STATE: The State is generally satisfied.

The district court accepted Bye's plea and found him guilty of both charges.

Pursuant to the plea agreement, Bye was conditionally released and required to remain law abiding, have no contact with the victims, and return for sentencing at a later date. If Bye complied with these conditions and returned for sentencing, he would be sentenced to 36 months for terroristic threats, and the assault charge would be dismissed. But, if Bye did not comply with the conditions of his release or failed to return for sentencing, he would be sentenced to 57 months for second-degree assault, and the terroristic-threats charge would be dismissed. Sentencing was set for September 14, 2011. Bye did not return for sentencing as scheduled.

On October 25, 2011, Bye appeared for sentencing. The state asked the district court to sentence Bye to 57 months for second-degree assault and vacate the terroristic-threats charge, as provided by the plea agreement. Bye asked the district court to sentence him to 36 months for terroristic threats and vacate the assault charge, based on the circumstances surrounding his failure to appear for sentencing. The district court sentenced Bye to 57 months for second-degree assault and vacated the terroristic-threats charge. This appeal follows.

D E C I S I O N

A defendant does not have an absolute right to withdraw a guilty plea after entering it. *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). But 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 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.* The defendant challenging the validity of a guilty plea

bears the burden of showing that the plea was invalid. *Id.* Whether a plea is valid is a question of law that this court reviews de novo. *Id.*

Bye challenges the validity of his guilty plea, arguing that it is not accurate. “To be accurate, a plea must be established on a proper factual basis.” *Id.* “The 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) (quotation omitted). “The factual basis of a plea is inadequate when the defendant makes statements that negate an essential element of the charged crime because such statements are inconsistent with a plea of guilty.” *State v. Iverson*, 664 N.W.2d 346, 350 (Minn. 2003). 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.” *Raleigh*, 778 N.W.2d at 94.

Bye pleaded guilty to second-degree assault. A person is guilty of second-degree assault if he “assaults another with a dangerous weapon.” Minn. Stat. § 609.222, subd. 1 (2010). Assault is defined, in relevant part, as “an act done with intent to cause fear in another of immediate bodily harm or death.” Minn. Stat. § 609.02, subd. 10(1) (2010). Bye contends that the factual basis for his guilty plea was insufficient because he admitted to stabbing A.S.C.’s television but did not admit to assaulting A.S.C., as required by the statute. In other words, Bye contends that he did not stab A.S.C.’s television with the “intent to cause fear in [A.S.C.] of immediate bodily harm or death.” This argument is unpersuasive.

To establish a factual basis for the guilty plea, Bye's attorney posed the following two questions to him:

And, you agree you were yelling at him and you were arguing with him and, in fact, you took that knife and stabbed the TV; is that true?

And, you did so with the intent to cause intimidation and fear of immediate bodily harm?

To each question, Bye responded, "Yes, ma'am." Bye therefore admitted that he "stabbed" A.S.C.'s television with his "knife" and with the "intent to cause intimidation and fear of immediate bodily harm," fulfilling each element of second-degree assault: (1) commission of an act, (2) with a dangerous weapon, and (3) with the intent to cause intimidation and fear of immediate bodily harm.

In addition to Bye's direct admission, there are also sufficient facts in the record to establish that Bye stabbed A.S.C.'s television with the requisite intent to be liable for second-degree assault. "Intent may be proved by circumstantial evidence, including drawing inferences from the defendant's conduct, the character of the assault, and the events occurring before and after the crime." *In re Welfare of T.N.Y.*, 632 N.W.2d 765, 769 (Minn. App. 2001) (citing *Davis v. State*, 595 N.W.2d 520, 525-26 (Minn. 1999)). Bye does not dispute that he entered A.S.C.'s house upset and angry. He does not dispute that he had a knife. He does not dispute that he yelled at and argued with A.S.C. And he does not dispute that he stabbed A.S.C.'s television with his knife. Further, Bye concedes that, had he admitted that he waved the knife at A.S.C., that act might have constituted an assault with a dangerous weapon. Based on Bye's conduct and the

circumstances surrounding such conduct, a jury could likely conclude that Bye intended to cause fear of immediate bodily harm in A.S.C. by stabbing the television.

Given Bye's direct admission of each of the elements of second-degree assault, as well as the circumstances surrounding his conduct, the record provides an adequate factual basis for Bye's guilty plea. Therefore, Bye has not sustained his burden of proving that withdrawal of his guilty plea is necessary to correct a manifest injustice, and we conclude that the district court's acceptance of Bye's plea to second-degree assault was not erroneous.

Affirmed.