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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0507**

State of Minnesota,
Respondent,

vs.

Douglas Hiram Coleman,
Appellant.

**Filed June 2, 2009
Reversed and remanded
Lansing, Judge**

St. Louis County District Court
File No. 69DU-CR-07-2495

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Melanie S. Ford, St. Louis County Attorney, James T. Nephew, Assistant County Attorney, 100 North Fifth Avenue West, Duluth, MN 55802 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Ngoc L. Nguyen, Assistant Public Defender, Suite 300, 540 Fairview Avenue North, St. Paul, MN 55104 (for appellant)

Considered and decided by Schellhas, Presiding Judge; Lansing, Judge; and Poritsky, Judge.*

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

U N P U B L I S H E D O P I N I O N

LANSING, Judge

D. Hiram Coleman pleaded guilty to a felony charge of terroristic threats and now directly appeals from the judgment of conviction, arguing that he should be allowed to withdraw his guilty plea. Because the plea does not satisfy the accuracy requirement and is therefore invalid, we reverse and remand.

F A C T S

The state charged D. Hiram Coleman with second-degree assault and terroristic threats arising from a series of events at a Duluth bar and a Duluth liquor store. The complaint alleged that Coleman entered the bar and the liquor store on May 2, 2007, wielding an aluminum bat and that outside, while holding the bat over his head, chased a security guard.

Coleman pleaded not guilty and filed a written demand for a speedy trial in September 2007. On the day his trial was scheduled to begin, Coleman dismissed his public defender and waived his right to a speedy trial. The trial was rescheduled for December 11, 2007. Coleman represented himself throughout the remainder of the district court proceedings.

At a pretrial hearing in November 2007, the prosecutor told the district court that the state and Coleman had reached a plea agreement. The terms provided that Coleman would plead guilty to the terroristic-threats charge and the state would then dismiss the charge of second-degree assault. Coleman submitted his plea orally on the record and acknowledged that he understood and agreed to the terms of the plea negotiation.

The district court asked Coleman questions relating to his capacity and the voluntariness of his plea, and requested that the prosecutor establish the factual basis for the plea. The prosecutor asked Coleman questions about the events of May 2, most of which Coleman could not fully answer because he could not remember. After the prosecutor concluded his questioning, the district court asked Coleman if he had threatened anyone in any of the Duluth bars he was in on May 2. Coleman denied threatening anyone and said he could not recall saying anything to anyone. The district court stayed the acceptance of the plea pending the presentence investigation and asked Coleman to complete and submit a plea petition.

Coleman submitted the plea petition as directed, and the district court held a sentencing hearing in December 2007. The hearing related solely to sentencing; the district court did not revisit the factual basis for the plea. Based on Coleman's criminal history score of one, the prosecutor said the presumptive, guidelines sentence for terroristic threats was "fifteen months stayed." The district court sentenced Coleman to the presumptive sentence; stayed execution; and imposed two years of probation and eleven months in county jail, with 234 days' credit.

Ten days after the sentencing hearing, Coleman filed a pro se appeal from the judgment of conviction. In March 2008 the office of the state public defender filed a separate appeal, and we dismissed the duplicate pro se appeal. The state did not file a brief, and this appeal proceeds on the merits under Minn. R. Civ. App. P. 142.03.

DECISION

A valid guilty plea has three basic prerequisites: the plea must be accurate, voluntary, and intelligent. *Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989). Coleman argues that he must be permitted to withdraw his plea because it does not satisfy the accuracy requirement. When a defendant challenges the accuracy of a plea in a direct appeal from a judgment of conviction, we review the record de novo to determine whether the plea meets the requirement. *See State v. Hoaglund*, 307 Minn. 322, 326-27, 240 N.W.2d 4, 6 (1976) (evaluating validity of plea on challenge to sufficiency of factual basis).

Coleman, ostensibly, entered a standard plea—rather than an *Alford/Goulette* or *Norgaard* plea—to the terroristic-threats charge. *See North Carolina v. Alford*, 400 U.S. 25, 38, 91 S. Ct. 160, 168 (1970) (upholding acceptance of plea even though defendant maintained innocence); *State v. Goulette*, 258 N.W.2d 758, 760-61 (Minn. 1977) (following *Alford* in accepting plea without admission of guilt); *State ex rel. Norgaard v. Tahash*, 261 Minn. 106, 113-14, 110 N.W.2d 867, 872 (1961) (allowing defendant to plead guilty even though unable to remember circumstances of offense). Coleman’s plea was, however, not standard because he denied having made any threatening statements and he was unable to remember significant parts of the May 2 events. To evaluate the accuracy of his plea, it is necessary to review the principles underlying the accuracy requirement.

Minnesota caselaw establishes that the accuracy requirement has two components. The first component relates to the factual basis for the plea and is intended to protect “the

defendant from pleading guilty to a charge more serious than he or she could be convicted of were the defendant to go to trial.” *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). The second accuracy component relates to whether the defendant has a rational, subjective basis for entering the plea. *See Goulette*, 258 N.W.2d at 760-61 (emphasizing that rationality of defendant’s decision is key consideration). This component, although part of the accuracy requirement, also assists the court in determining whether defendant knows and understands the choice he is making. *Brown*, 449 N.W.2d at 182, *see also State v. Theis*, 742 N.W.2d 643, 647-49 (Minn. 2007) (discussing defendant’s rational assessment of state’s case in context of accuracy requirement).

The factual basis—which provides the court with the information to measure the conduct against the crime—is ordinarily “established by questioning the defendant and asking the defendant to explain in his or her own words the circumstances surrounding the crime.” *Ecker*, 524 N.W.2d at 716. If the defendant’s testimony at the plea hearing is insufficient to establish a factual basis, courts may look to other parts of the record, including a sworn complaint, to determine whether there is a basis for concluding that the defendant committed each element of the charged offense. *See State v. Trott*, 338 N.W.2d 248, 252 (Minn. 1983) (relying on allegations in criminal complaint to establish factual basis for plea); *Williams v. State*, 760 N.W.2d 8, 13 (Minn. App. 2009) (relying in part on complaint to establish factual-basis component).

Thus, when a defendant enters a standard plea and does not make statements inconsistent with guilt, courts may assume that the plea has a rational basis: a defendant

who acknowledges guilt has a rational, subjective basis for pleading guilty. *Goulette*, 258 N.W.2d at 760-61. But when a defendant maintains innocence or is unable to remember committing an element of the charged crime, “the rationality of the defendant’s decision is immediately called into question,” *id.* at 761, and the plea does not meet the accuracy requirement unless the record affirmatively establishes the defendant’s reasoning in entering the plea. *See Theis*, 742 N.W.2d at 647-48 (examining how record affirmatively established rational, subjective basis in *Goulette*).

The record can affirmatively establish a rational, subjective basis—despite an assertion of innocence or inability to remember—if it shows that the defendant is pleading guilty because he believes “evidence the [s]tate is likely to offer at trial is sufficient to convict.” *Theis*, 742 N.W.2d at 649. The best practice for establishing that a defendant believes the evidence is sufficient for a conviction “is to have the defendant specifically acknowledge on the record at the plea hearing that the evidence the [s]tate would likely offer against him is sufficient for a jury, applying a reasonable doubt standard, to find the defendant guilty of the offense to which he is pleading guilty.” *Id.* Allegations in a complaint are generally unhelpful in establishing this subjective component of the accuracy requirement—as opposed to the factual-basis component—because they do not reflect the defendant’s beliefs about the evidence. *See id.* at 650 (declining to rely on allegations in complaint).

Coleman argues that the record does not satisfy the subjective component of the accuracy requirement. We, therefore, first consider whether Coleman’s testimony calls into question the rationality of his plea. And, if the rationality is called into question, we

must determine whether the record affirmatively establishes the necessary rational, subjective basis for the plea.

We turn first to the elements of the offense to which Coleman pleaded guilty. A person commits terroristic threats when he “threatens, directly or indirectly, to commit any crime of violence with purpose to terrorize another or to cause evacuation of a building, place of assembly, vehicle or facility of public transportation or otherwise to cause serious public inconvenience” or makes the threat “in a reckless disregard of the risk of causing such terror or inconvenience.” Minn. Stat. § 609.713, subd. 1 (2006). Coleman’s initial response to the prosecutor’s questions indicated that he was recounting actions that were elements of the charged crime. He stated,

I remember going into Loisel’s Liquors, and I had the bat on my shoulder and I remember coming out with the bat still on my shoulder when the clerk refused to serve me.

But when the prosecutor tried to elicit additional facts, Coleman stated that he did not remember raising his bat at anyone or chasing anyone with it:

Q. And do you remember . . . that you were chasing somebody with a bat[?] Do you recall that?

A. I remember coming out the door with the bat . . .

Q. But do you understand what other witnesses would say is that you had the bat over your head and you chased somebody with it?

A. That’s what the officer said.

Q. Okay. Are you saying that didn’t happen or you just don’t remember?

A. I don’t remember.

Q. And that's because you've got some problems with memory or some mental illness, is that right?

A. Yes.

Q. But do you think that it might have happened that way, that you might have raised the bat?

A. I had the bat up, yes, I did.

Q. You did have the bat up.

A. I did have the bat up.

The prosecutor then went on to establish that, *if* Coleman raised his bat at a person, the person “might get scared and think they’re going to get hurt.”

When the prosecutor concluded his questions, the district court briefly asked Coleman supplemental questions about his conduct on May 2. During these questions, Coleman indicated that he was innocent and that he “didn’t threaten anybody”:

Q. Do you remember going into any other bars that day, Mr. Coleman?

A. Yes, I do.

Q. Do you remember threatening to swing the bat at that time?

A. I didn’t threaten to swing the bat . . . I went in those—I went into several. I was in Gilbert, I went in Twins, I went in Roundup. I didn’t threaten anybody in all—

Q. Did you say anything to anybody in those bars?

A. I don’t recall saying anything to anyone. I didn’t see anyone I knew.

This exchange, when read in its entirety, calls into question the rationality of Coleman’s decision to plead guilty because it indicates that Coleman denied or did not remember committing essential elements of the crime of terroristic threats. Coleman

admitted that he took a bat into Loisel's Liquors, that he "had the bat on [his] shoulder," and that he "had the bat up." But, even when he was prompted by the prosecutor, Coleman did not admit that he raised his bat at a person or chased anyone. At most, Coleman agreed that, *if* he did raise his bat at a person, the person would more than likely be afraid he would get hurt. More importantly, Coleman stated that he did not remember chasing anyone with a bat, that he "didn't threaten anybody," and that he could not "recall saying anything to anyone."

Because these comments call into question the rationality of Coleman's guilty plea, we must analyze whether the record affirmatively establishes a rational, subjective basis for the plea. We conclude for two reasons that the record does not. First, Coleman did not state any belief about the evidence in his case. He acknowledged only that the state would be required to prove his guilt beyond a reasonable doubt and that witnesses reported he "had the bat over [his] head and [he] chased somebody with it." This acknowledgment falls far short of other acknowledgments that courts have determined to be adequate. *See, e.g., Ecker*, 524 N.W.2d at 717 (holding that plea was accurate when record showed that defendant believed state's evidence was overwhelming and jury would probably convict him). Second, Coleman was a pro se defendant and therefore did not have counsel to help him decide whether to enter his plea; guidance from counsel has been considered a significant factor when the record calls into question the rationality of the defendant's plea. *See Norgaard*, 261 Minn. at 110-14, 110 N.W.2d at 870-72 (emphasizing that defendant was well advised by counsel).

Because the record in this case does not establish a rational, subjective basis for the plea, the plea does not satisfy the accuracy requirement and Coleman is entitled to withdraw it. *See State v. Warren*, 419 N.W.2d 795, 798 (Minn. 1988) (stating that guilty plea without factual basis will be set aside). Consequently, we reverse the judgment of conviction and remand for withdrawal of the plea.

Reversed and remanded.