STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1998

State of Minnesota,
Respondent,

vs.

Daniel Scott Hodge,
Appellant.

Filed August 19, 2013
Reversed and remanded
Hudson, Judge

Faribault County District Court
File No. 22-CR-11-125

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

Troy Timmerman, Faribault County Attorney, Lamar Piper, Assistant County Attorney, Blue Earth, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, F. Richard Gallo, Jr., Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hudson, Presiding Judge; Stoneburner, Judge; and Schellhas, Judge.

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

HUDSON, Judge

Appellant challenges his *Alford* plea to misdemeanor assault, arguing that the plea was not accurately made because the record fails to establish that the district court, on

independent review, verified a strong factual basis for the plea and the defendant's agreement that the likely evidence would be sufficient to convict. Because the district court failed to sufficiently articulate its review of the factual basis for appellant's plea, and appellant's statements were inadequate to support the plea, we reverse and remand for proceedings consistent with this opinion.

FACTS

The state charged appellant Daniel Hodge with one count of felony domestic assault, one count of second-degree assault, and one count of gross-misdemeanor domestic assault, as a result of a 2011 incident at appellant's residence in Wells in Faribault County. The state alleged that when a police officer responded to a domestic call, appellant's wife, S.H., told the officer that, during an argument, appellant had grabbed her by the hair, brought a knife to her throat, and threatened to kill her.

The matter was initially scheduled for jury trial in November 2011, but was continued twice at the state's request. At a rescheduled hearing, the state offered to permit a plea to a misdemeanor-level offense. Appellant indicated displeasure with his attorney and the prosecution's handling of the case. He also asked the district court judge to recuse, based on past contact with the judge. The district court told appellant that he could discharge his attorney and represent himself, but no other public defender would be appointed, and he would treat appellant's concern as a motion to remove him for cause. Another judge issued an order denying the pro se motion to remove.

Appellant then sent an e-mail to the judge seeking to exclude certain evidence and alleging that Faribault police were harassing him and engaging in misconduct. Later the

same day, he appeared at a hearing with his attorney, who informed the district court that appellant was willing to enter an *Alford* plea to a charge of misdemeanor assault-fear in violation of Minn. Stat. § 609.224, subd. 1(1) (2010), with no executed jail time, fine, or probation.

On the record, the prosecutor asked appellant whether he was entering the plea based on his belief that the state's evidence would be sufficient to convict him if a trial were held. Appellant replied, "Well, that's some of the things I don't agree with, but yes." The district court also asked appellant whether he understood that the state would introduce certain evidence at trial; appellant stated that he understood that the responding officer would "test-i-lie, or whatever you call it." Appellant agreed that, if the jury believed that testimony, the state's evidence would be sufficient to convict him.

The prosecutor questioned appellant:

> PROSECUTOR: [D]o you understand that if the case progressed to trial the state would call witnesses . . . and that they could testify that on February 25, 2011 within the city limits of Wells you committed an act that caused [S.H.] to be fearful that you could inflict bodily harm upon her, specifically they might testify that you and [S.H.] were having an argument over I think the fact that there was some chocolate in the ice that came out of the icemaker?
>
> APPELLANT: That's—
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> PROSECUTOR: And that as that argument progressed it became physical and—
>
> APPELLANT: It did not become physical.
>
> PROSECUTOR: And you made some threats to her?

> APPELLANT: Perceived. She perceived threats that weren't made.
>
> PROSECUTOR: Okay. Well, it's up to you. You have the option here. You can agree that the jury could agree with that evidence and convict you or you could argue your case. . . . If you want the benefit of the plea bargain today then you will have to agree that the jury could—
>
> APPELLANT: Could convict me.
>
> PROSECUTOR: Could convict you, and are you agreeable that a jury could convict you?
>
> APPELLANT: Yes.

The district court then questioned appellant:

> THE COURT: Mr. Hodge, with the *Alford* plea I have to ask you these questions. Do you believe that based upon the evidence that [the prosecutor] would present to a jury, that applying the presumption of innocence and the requirement of proof beyond a reasonable doubt that a jury would find you guilty of the amended charge of committing an act with intent to cause fear?
>
> APPELLANT: Yes.
>
> THE COURT: Based upon that the District Court finds there is sufficient evidence to support a jury verdict of guilty and that the plea is voluntarily, knowingly and intelligently entered.

The district court accepted the plea to misdemeanor assault, dismissed the other charges, and sentenced appellant to three days in jail, with credit for three days served. Appellant, who did not seek to withdraw his plea in district court, challenges the sufficiency of the factual basis for the plea on appeal.

D E C I S I O N

A defendant does not have an absolute right to withdraw a guilty plea. *State v. Farnsworth*, 738 N.W.2d 364, 371 (Minn. 2007). But a defendant may withdraw a guilty plea at any time, even after sentencing, if "withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. Manifest injustice exists when a guilty plea is invalid, which occurs when a guilty plea is not accurate, voluntary, and intelligent. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). A plea is accurate if a proper factual basis has been established. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). This occurs when sufficient facts exist on the record to support a conclusion that the defendant's conduct satisfies the charge to which he is pleading guilty. *State v. Iverson*, 664 N.W.2d 346, 349 (Minn. 2003). We review the validity of a plea de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010).

Appellant argues that his *Alford* plea was not intelligently made because the record does not establish a sufficient factual basis for the plea. The state initially maintains that this issue is not ripe for review because appellant did not move for plea withdrawal in district court. But the Minnesota Supreme Court has stated that, "by pleading guilty, a defendant does not waive the argument that the factual basis of his guilt was not established." *Iverson*, 664 N.W.2d at 350. A defendant "is free to simply appeal directly from a judgment of conviction and contend that the record made at the time the plea was entered is inadequate" to establish the requirements of a valid plea. *Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989). Therefore, we may consider the merits of appellant's

challenge to the factual basis of his plea even though he did not seek to withdraw his plea in district court. *See Iverson*, 664 N.W.2d at 350.

An *Alford* plea is a guilty plea under which a defendant maintains his innocence but acknowledges that the record establishes his guilt and that he reasonably believes that the state has sufficient evidence to secure a conviction. *North Carolina v. Alford*, 400 U.S. 25, 37–38, 91 S. Ct. 160, 167–68 (1970); *see also State v. Goulette*, 258 N.W.2d 758, 761 (Minn. 1977) (adopting *Alford* pleas in Minnesota). An *Alford* plea therefore allows a defendant to plead guilty without expressly admitting the factual basis for his guilt. *Alford*, 400 U.S. at 37, 91 S. Ct. at 167; *Goulette*, 258 N.W.2d at 761.

"[B]ecause of the inherent conflict in pleading guilty while maintaining innocence," district courts must carefully scrutinize the factual basis of an *Alford* plea. *Theis*, 742 N.W.2d at 648–49. "[I]t is absolutely crucial that when an *Alford*-type plea is offered the trial court should not cavalierly accept the plea but should assume its responsibility to determine whether the plea is voluntarily, knowingly, and understandingly made, and whether there is a sufficient factual basis to support it." *Goulette*, 258 N.W.2d at 761; *see also Ecker*, 524 N.W.2d at 716 (stating the district court's responsibility to ensure that the record establishes an adequate factual basis for the plea).

The supreme court has expressed its preference for the district court to review the factual basis of an *Alford* plea based on discussing the evidence on the record with the defendant at the plea hearing. *Theis*, 742 N.W.2d at 649.

> This discussion may occur through an interrogation of the defendant about the underlying conduct and the evidence that would likely be presented at trial; the introduction . . . of witness statements or other documents, or the presentation of abbreviated testimony from witnesses likely to testify at trial; or a stipulation . . . to a factual statement in . . . documents submitted to the court.

Id. (citations omitted).

When the district court accepts an *Alford* plea, "[t]he strong factual basis and the defendant's agreement that the evidence is sufficient to support his conviction provide the court with a basis to independently conclude that there is a *strong* probability that the defendant would be found guilty of the charge to which he pleaded guilty . . . ." *Id*. The factual basis of an *Alford* plea is adequate when the record contains sufficient facts "to support a conclusion that a defendant's conduct falls within the charge to which he desires to plead guilty." *Iverson*, 664 N.W.2d at 349 (quotation omitted). Therefore, because appellant entered an *Alford* plea to the offense of misdemeanor assault-fear, the district court was required to independently conclude, based on his statements and the record before the court, that a strong probability existed that a jury would find that he had committed an act with intent to cause fear in S.H. of death or immediate bodily harm. Minn. Stat. § 609.224, subd. 1(1); *Theis*, 742 N.W.2d at 649. But the record does not show that the district court conducted a particularized review of evidence that would support a factual basis for the plea. *See Goulette*, 258 N.W.2d at 761 (stating that the district court "should assume its responsibility to determine . . . whether there is a sufficient factual basis to support [an *Alford* plea]"). Although the record contains the complaint, a police report, and a transcript of a police interview with S.H., the attorneys

did not refer to these documents when examining appellant, nor did the district court state that it had reviewed this evidence in reaching its conclusion to accept the plea. The district court and the parties also failed to use other recommended methods of presenting and confirming a factual basis for the plea, such as abbreviated witness testimony or stipulated facts. *See Theis*, 742 N.W.2d at 649.

In addition, the district court's review of an *Alford* plea must encompass the defendant's acknowledgment that the likely evidence would be sufficient to support a finding of guilt. *Id*. Here, although appellant made a bare admission that, based on the proffered evidence, the jury would find him guilty, he also denied that his argument with S.H. became physical and stated that no threats had been made, but that S.H. only perceived threats. Taken as a whole, appellant's equivocal statements, which acknowledged the probability of a conviction but also denied the existence of facts required to prove that conviction, do not support the adequacy of an *Alford* plea. Under these circumstances, appellant's *Alford* plea was fatally deficient, the district court accepted the plea in error, and appellant is entitled to withdraw his guilty plea.

Reversed and remanded.