STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0736

State of Minnesota,
Respondent,

vs.

Cohen James Curfman,
Appellant.

Filed June 2, 2014
Affirmed
Larkin, Judge

Polk County District Court
File Nos. 60-CR-12-2074; 60-CR-12-2351;
60-CR-12-2523; 60-CR-13-238; 60-VB-12-2407

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

Gregory A. Widseth, Polk County Attorney, Andrew W. Johnson, Assistant County Attorney, Crookston, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, F. Richard Gallo, Jr., Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Cleary, Chief Judge; and Larkin, Judge.

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

LARKIN, Judge

Appellant challenges his conviction of providing a minor with alcohol, arguing that the evidence presented at his jury trial is insufficient to sustain the conviction. Appellant also argues that he is entitled to withdraw his guilty pleas to four other offenses: fleeing a peace officer, underage consumption of alcohol, and two counts of contempt of court. Because the trial evidence is sufficient to sustain appellant's conviction, we affirm. But we decline to decide the merits of appellant's argument for plea withdrawal.

FACTS

Respondent State of Minnesota charged appellant Cohen James Curfman with two counts of providing alcohol to a minor based on an incident involving minors E.R.B. and B.M.F. The case was tried to a jury on February 27-28, 2013. Curfman represented himself at trial. The jury found Curfman guilty of both offenses, and the district court scheduled a sentencing hearing for a later date.

On March 22, Curfman appeared before the district court, pro se, for "calendar call" on five additional cases. Curfman agreed to resolve those cases under a plea agreement instead of keeping the cases on the trial calendar. Under the agreement, one of the cases was dismissed and Curfman pleaded guilty, under *North Carolina v. Alford*, 400 U.S. 25, 37-38, 91 S. Ct. 160, 167-68 (1970) to the following offenses: underage liquor

consumption, fleeing a peace officer, and two counts of contempt of court.[1] Curfman also agreed that the district court would sentence him on his providing-alcohol-to-a-minor offenses at that time.

The district court sentenced Curfman to one year in jail for each count of providing alcohol to a minor and stayed all but 180 days of each sentence, to be served concurrently. Next, the district court accepted Curfman's *Alford* pleas to the four other offenses and sentenced Curfman to serve 90 days in jail for each offense, concurrently with his sentences for providing alcohol to a minor. This appeal follows.

D E C I S I O N

I.

Curfman argues that the trial evidence is insufficient to sustain his conviction of providing alcohol to minor E.R.B.[2] When reviewing the sufficiency of the evidence in a criminal case, we are limited to a careful analysis of the record "to determine whether the evidence, when viewed in a light most favorable to the conviction," is sufficient to allow the jury to reach the verdict that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). This court will not disturb the verdict if the jury, "acting with due regard for the presumption of innocence and for the necessity of overcoming it by proof beyond a reasonable doubt, could reasonably conclude that [the appellant] was proven guilty of the

[1] *Alford* held that it was constitutional for a court to accept a defendant's guilty plea, even though the defendant maintained his innocence, where the state demonstrated a strong factual basis for the plea and the defendant clearly expressed his desire to enter the plea based on his belief that the state's evidence would be sufficient to convict him. 400 U.S. at 37-38, 91 S. Ct. at 167-68.

[2] Curfman does not challenge his conviction of providing alcohol to minor B.M.F.

offense charged." *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004) (quotation omitted). In making this determination, we view the evidence in a manner most favorable to the verdict and assume that the jury disbelieved contradictory testimony. *State v. Cox*, 278 N.W.2d 62, 65 (Minn. 1979).

Appellate courts apply heightened scrutiny when reviewing verdicts based on circumstantial evidence. *State v. Pratt*, 813 N.W.2d 868, 874 (Minn. 2012). This heightened scrutiny requires that courts "consider whether the reasonable inferences that can be drawn from the circumstances proved support a rational hypothesis other than guilt." *Id.* (quotation omitted). "The circumstances proved must be consistent with a hypothesis that the defendant is guilty and must be inconsistent with any other rational hypothesis." *Id.* We will not overturn a conviction based on circumstantial evidence on the basis of mere conjecture; the state does not have the burden of removing all doubt, but of removing all reasonable doubt. *State v. Hanson*, 800 N.W.2d 618, 622 (Minn. 2011).

Curfman was convicted under Minn. Stat. § 340A.503, subd. 2(1) (2012), which makes it unlawful for any person "to sell, barter, furnish, or give alcoholic beverages to a person under 21 years of age." At trial, E.R.B. testified that on September 15, 2012, he "was at [Curfman's] house and drank." He testified that he drank "[f]our shots" of "brandy" out of a "shot glass," and that three other people were there drinking, including Curfman and B.M.F. He testified that the bottle "was sitting on the table," and that he "just grabbed it and poured [himself] a shot." He testified that he told police that he was "at [Curfman's] house and it must have been [Curfman's] bottle," and that he had

permission from Curfman to drink the "alcohol." E.R.B. testified that he was 15 years old at that time.

B.M.F. also testified at trial. He testified that on September 15 he went to Curfman's house and drank. He testified that Curfman pulled a bottle of "E&J Brandy" from the refrigerator and that B.M.F. drank it from a shot glass and from the bottle. He testified that he drank "heavily," but he remembered bringing E.R.B. over to the house at some point. B.M.F. testified that he told police that he asked Curfman "Do you mind if I take a shot?" and that Curfman said, "Go ahead, fine."

Curfman argues that the state did not submit evidence to prove that the substance that E.R.B. consumed was an alcoholic beverage. "Alcoholic beverage" is statutorily defined as "any beverage containing more than one-half of one percent alcohol by volume." Minn. Stat. § 340A.101, subd. 2 (2012). Although the state's case did not specifically address the statutory definition of an alcoholic beverage, we conclude that the circumstances proved are only consistent with the hypothesis that the "brandy" that E.R.B. consumed was an alcoholic beverage and that Curfman is guilty. When asked at trial, both E.R.B. and B.M.F. confirmed that they drank "alcohol" at Curfman's house and the only beverage they described was "brandy." B.M.F. testified that he became so intoxicated that he blacked out, and E.R.B. testified that they were all "drinking." These circumstances are inconsistent with any theory other than guilt. *See Pratt*, 813 N.W.2d at 874. Because the jury, "acting with due regard for the presumption of innocence and for the necessity of overcoming it by proof beyond a reasonable doubt, could reasonably

conclude that [Curfman] was proven guilty of the offense charged," we do not disturb the verdict. *See Bernhardt*, 684 N.W.2d at 476-77 (quotation omitted).

II.

Curfman next argues that he is "entitled" to withdraw his guilty pleas because he "did not admit a jury hearing the evidence would likely convict him, the district court failed to give careful scrutiny of the factual basis for the conviction, and the district court failed to independently conclude there was a strong probability a jury hearing the evidence would convict [him] of the charge." Curfman "respectfully requests plea withdrawal" on appeal.

A court must allow a defendant to withdraw a guilty plea, even after sentencing, if "withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. Manifest injustice exists where a guilty plea is invalid because it is not accurate, voluntary, and intelligent. *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). "A proper factual basis must be established for a guilty plea to be accurate." *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). A defendant bears the burden of showing his or her plea was invalid. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). "Assessing the validity of a plea presents a question of law that [appellate courts] review de novo." *Id*.

"[A] defendant may plead guilty to an offense, even though the defendant maintains his or her innocence, if the defendant reasonably believes, and the record establishes, the state has sufficient evidence to obtain a conviction." *Ecker*, 524 N.W.2d at 716 (citing *Alford*, 400 U.S. at 37, 91 S. Ct. at 167). "[C]areful scrutiny of the factual basis for the plea is necessary within the context of an *Alford* plea because of the inherent

conflict in pleading guilty while maintaining innocence." *State v. Theis*, 742 N.W.2d 643, 648-49 (Minn. 2007). An *Alford* plea is constitutionally acceptable when "the State demonstrate[s] a strong factual basis for the plea and the defendant clearly expresse[s] his desire to enter the plea based on his belief that the State's evidence would be sufficient to convict him." *Id.* at 647 (quotation omitted). A district court may accept an *Alford* plea "if the court, on the basis of its interrogation of the accused and its analysis of the factual basis offered in support of the plea, reasonably concludes that there is evidence which would support a jury verdict of guilty and that the plea is voluntarily, knowingly, and understandingly entered." *Id.* (quotation omitted).

At the plea hearing, the district court asked Curfman if he understood that "subject to an *Alford* plea, you're pleading guilty and you're not admitting any specific facts?" The district court also asked Curfman, "Do you understand that, however, by pleading guilty, you're admitting that if this matter proceeded to trial there's a substantial likelihood you would be convicted?" And the court explained

> I will be asking you to acknowledge that if this matter proceeded to trial, the state would be introducing certain evidence and if that evidence was believed by the jury you could be convicted. I'm not asking you to say that evidence was true . . . I'm just asking you to admit that if that evidence was believed, you would be convicted.

The district court then addressed each of the offenses to which Curfman pleaded guilty. The factual bases for the pleas were minimal. As to the charge of fleeing a peace officer, the district court asked: "[W]ould you acknowledge that . . . the state would be introducing evidence that on or about October 16 of 2012, in Polk County, while an

officer was trying to arrest you, you ran away?" As to the charge of underage consumption of alcohol, the district court asked: "[Y]ou understand that the state would be introducing evidence that on or about October 6th, 2012, in Polk County, you were consuming alcohol?" The district court also asked Curfman how old he was at the time, to which he replied: "I was twenty years old, I believe." As to the two contempt charges, the district court asked: "[W]ould you admit that if this matter proceeded to trial the state would be introducing evidence that on or about November 9th, 2012, in Polk County, you behaved in a manner such that it was contradictory to a court order?" and "[Y]ou would admit that, subject to an *Alford* plea, that the state would be introducing evidence that on February 3rd, 2013, you behaved in such a manner that was in direct contradiction to court order?"

In *Theis*, the supreme court emphasized that

> the main purpose of the accuracy requirement of a valid plea is to protect a defendant from pleading guilty to a more serious offense than he could be convicted of were he to insist on his right to trial. Within the context of an *Alford* plea, where the defendant is maintaining his innocence, the defendant's acknowledgement that the State's evidence is sufficient to convict is critical to the court's ability to serve the protective purpose of the accuracy requirement. The *best practice* for ensuring this protection is to have the defendant specifically acknowledge on the record at the plea hearing that the evidence the State 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. at 649 (emphasis added) (quotation omitted).

In this case, although the district court's inquiry generally addressed the basic elements of each offense, the record does not specifically describe the evidence that the state would offer to prove the elements. And even though the district court invited the state to submit discovery in support of the pleas, the record contains only citations and a probable-cause statement for one of the two contempt charges. Moreover, the district court never mentioned the reasonable doubt standard or that the state was required to provide evidence sufficient to meet that standard.[3] The plea-process in this case hardly complies with the "best practice" described by the supreme court in *Theis*. Rather,

> the better practice is for the factual basis to be based on evidence discussed with the defendant on the record at the plea hearing . . . . 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 at the plea hearing of witness statements or other documents, or the presentation of abbreviated testimony from witnesses likely to testify at trial, or a stipulation by both parties to a factual statement in one or more documents submitted to the court at the plea hearing.

Id. (citations omitted).

Although we have significant doubts regarding the validity of Curfman's *Alford* pleas, he did not move to withdraw his pleas in district court, and his appellate attorney has informed this court that "other than for a single phone call in May 2013, and in spite of repeated attempts by appellate counsel to contact him by mail and social media, appellant has provided no cooperation or response to appellate counsel." Appellate

[3] Also of concern, the plea hearing transcript does not indicate that the district court obtained a waiver of Curfman's right to a trial on the offenses. *See* Minn. R. Crim. P. 15.02, subd. 1 (setting forth the inquiry and waivers that are necessary before the district court accepts a plea of guilty to any misdemeanor offense punishable by incarceration).

counsel also states "his belief that proceeding with an appeal could be opposite appellant's better interests." *See Brown v. State*, 449 N.W.2d 180, 183 n.1 (Minn. 1989) (explaining that "it is not always in a defendant's best interest to seek to withdraw his guilty plea even if he believes that grounds exist for withdrawal [because] he would face trial on the reinstated original charges and, if convicted, would face the possibility of [a longer sentence]").

A defendant who challenges a judgment of conviction based on an invalid guilty plea may seek a postconviction hearing from the district court or may appeal directly. *Id.* at 182-83; *see State v. Anyanwu*, 681 N.W.2d 411, 413 n.1 (Minn. App. 2004) (describing the circumstances in which postconviction proceedings and direct appeal are appropriate). Because Curfman did not request plea withdrawal in district court and we are not certain that Curfman actually wants to withdraw his pleas, we do not decide the plea-withdrawal issue in this appeal. Instead, we preserve Curfman's right to pursue plea withdrawal in a petition for postconviction relief, subject to applicable laws.

Affirmed.