STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0335

State of Minnesota,
Respondent,

vs.

James Earl Bailey,
Appellant.

Filed February 14, 2022
Reversed and remanded
Smith, Tracy M., Judge

Olmsted County District Court
File Nos. 55-CR-20-2473, 55-CR-20-4030

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

Mark A. Ostrem, Olmsted County Attorney, James E. Haase, Senior Assistant County Attorney, Rochester, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Erik I. Withall, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Smith, Tracy M., Judge; and Gaïtas, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this direct appeal from final judgments of conviction for felony domestic assault and violating a domestic abuse no contact order (DANCO), appellant James Earl Bailey

argues that he must be permitted to withdraw his *Alford* plea[1] to domestic assault because (1) he did not acknowledge that there was sufficient evidence to convict him beyond a reasonable doubt and (2) the plea-hearing record failed to establish his relationship to the victim as a family or household member, which is an element of the crime. Because Bailey did not adequately acknowledge that there was sufficient evidence to find him guilty beyond a reasonable doubt, we reverse and remand.

FACTS

In January 2020, K.J. accused Bailey of physically and sexually assaulting her. K.J. also accused Bailey of contacting her in violation of a DANCO. The state filed a complaint charging Bailey with first-degree criminal sexual conduct, felony domestic assault, and felony violation of a DANCO.

Bailey pleaded guilty, via an *Alford* plea, to felony domestic assault.[2] In exchange for Bailey's guilty plea to domestic assault, the state agreed that it would dismiss the more serious charge of first-degree criminal sexual conduct.

At the start of the plea hearing, during the district court's advisory of Bailey's rights, the district court explained to Bailey what an *Alford* plea means, stating, "[W]hat it means is that you are admitting that there is a substantial likelihood that the jury would find you guilty of the crimes you are accused of." The district court asked Bailey if he "[understood]

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[1] An *Alford* plea allows a defendant to plead guilty while maintaining innocence of the charged offense because there is sufficient evidence for a jury to find the defendant guilty at trial. *State v. Goulette*, 258 N.W.2d 758, 760-61 (Minn. 1977) (discussing *North Carolina v. Alford*, 400 U.S. 25, 38 (1970)).

[2] Bailey pleaded guilty to a DANCO violation but did so via a "typical plea" rather than an *Alford* plea. Bailey's conviction for that offense is not at issue on this appeal.

that," and Bailey responded, "Yes." Bailey's counsel then examined Bailey to establish a factual basis for the plea. Defense counsel asked Bailey whether he was acknowledging that there was a "substantial likelihood that [he] could be found guilty." Bailey responded, "There would be a chance; yes." The prosecutor then examined Bailey and asked him whether, based on the evidence that would be presented, Bailey agreed that "a jury could convict [him] of the crime of domestic assault." Bailey responded, "Yes, it's a possibility."

The district court accepted Bailey's *Alford* plea. It later convicted Bailey of both domestic assault and violating a DANCO and sentenced him to consecutive prison sentences of 39 months for domestic assault and 12 months and one day for violating the DANCO, in accordance with the plea agreement.

This appeal follows.

DECISION

Bailey argues that he is entitled to withdraw his plea because it is invalid. Appellate courts review the validity of a plea de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010).

A defendant does not have an absolute right to withdraw a guilty plea. *Id.* at 93. But a court must allow withdrawal if it is necessary to correct a manifest injustice. *Id.* A manifest injustice exists when a guilty plea is constitutionally invalid. *Id.* at 94. The requirement that a plea be constitutionally valid applies equally to an *Alford* plea. *See State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007).

To be valid, a plea must be accurate, intelligent, and voluntary. *Raleigh*, 778 N.W.2d at 94 (citing *Alford*, 400 U.S. at 31). The accuracy requirement of a valid guilty plea

protects 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." *Theis*, 742 N.W.2d at 649 (quoting *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983)). This requirement is particularly important in the context of an *Alford* plea because of the "inherent conflict" in pleading guilty while maintaining innocence. *Id.* For an *Alford* plea to be accurate, an adequate factual basis must be established. *Id.*

An adequate factual basis for an *Alford* plea requires "two related components: a strong factual basis and the defendant's acknowledgement that the evidence would be sufficient for a jury to find the defendant guilty beyond a reasonable doubt." *Williams v. State*, 760 N.W.2d 8, 12-13 (Minn. App. 2009), *rev. denied* (Minn. Apr. 21, 2009). These two components "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." *Theis*, 742 N.W.2d at 649.

Bailey argues that neither component is satisfied. We begin with his argument regarding the second component—that he did not acknowledge that the evidence would be sufficient to prove guilt beyond a reasonable doubt. Bailey contends that his acknowledgement that there was a "chance" or "possibility" that he could be convicted is insufficient to establish an accurate plea. Bailey argues that his case is like *Theis*, where the supreme court concluded that the defendant's *Alford* plea was inaccurate when he answered "Yes" when asked whether he agreed that "there is a risk" that he would be found guilty. *See id.* at 650.

The state contends that *Theis* is distinguishable because in *Theis* the defendant was asked whether he agreed that there was a "risk" that he would be found guilty whereas here Bailey was asked by defense counsel whether he agreed that there was a "substantial likelihood" that he would be found guilty. *See id.* It is true that the questions posed in the two cases were different. But Bailey did not simply respond "yes" when asked whether he agreed that there was a substantial likelihood of a guilty finding; rather, he responded, "There would be a chance; yes." Similarly, when asked by the prosecutor whether he agreed that, based on the likely evidence, "a jury could convict [him] of the crime of domestic assault," he answered, "Yes, it's a possibility." In both instances, Bailey qualified his "yes" answer by agreeing that there was a "chance" or a "possibility" of conviction. Acknowledging a "chance" or a "possibility" of conviction is not so different from acknowledging a "risk" of conviction.[3] *See id.*

The state relies on *Matakis v. State* to argue that particular language is not required as long as the defendant acknowledges, as Matakis did, that the state "*would* have sufficient evidence to find you guilty if the matter went to trial." 862 N.W.2d 33, 38 (Minn. 2015) (alteration in original). But Bailey did not ever provide an unqualified affirmative response to the question of whether a jury would have sufficient evidence to find him guilty. He qualified his answers by saying that there was "a chance" or "a possibility" that he would be found guilty. In *Matakis*, the supreme court observed that asking a defendant whether he agreed that he "*could* be found guilty" based on the evidence "might be comparable to

[3] We also note that neither question posed to Bailey described the state's burden of proof, although the district court had described the state's burden of proof earlier in the hearing.

the 'risk' language from *Theis.*" *Id.* (emphasis added). We conclude that the "chance" or "possibility" language used here is comparable to the "risk" language from *Theis* and is insufficient to establish an accurate plea. *See Theis*, 742 N.W.2d at 650.

Nor does Bailey's exchange with the district court judge during the district court's advisory of Bailey's rights constitute sufficient acknowledgement. The district court said:

> [W]hat [an *Alford* plea] means is that you are admitting that there is a substantial likelihood that the jury would find you guilty of the crimes you are accused of. But you instead would prefer to plead guilty, take advantage of the benefit of a plea, instead of going to trial and risking that substantial likelihood that the jury would find you guilty. Do you understand that?

Bailey responded, "Yes."

While Bailey's answer was unequivocal, it was not in response to a question about the evidence against him for the crime to which he was pleading guilty. Rather, it was an acknowledgement, at the start of the hearing, that he understood the concept of an *Alford* plea. Because the exchange between Bailey and the district court did not produce an acknowledgement by Bailey that the evidence in this case would be sufficient for a jury to find him guilty, it does not satisfy the accuracy requirement of Bailey's *Alford* plea. *See id.* at 649 (explaining that the preferred practice in an *Alford* plea is "for the factual basis to be based on evidence discussed with the defendant on the record at the plea hearing" and for the defendant to "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").

Finally, the state also attempts to distinguish *Theis* on the ground that, unlike here, the factual basis in *Theis* was lacking. *See id.* at 649-50. But this argument conflates the two components of an accurate *Alford* plea. It is true that there must be a "strong factual basis" to support the defendant's plea. *Id.* at 649. But an accurate *Alford* plea also requires the defendant's acknowledgment that the evidence likely to be produced is sufficient to prove guilt. *Id.* ("*In addition*, the court must be able to determine that the defendant, despite maintaining his innocence, agrees that evidence the State is likely to offer at trial is sufficient to convict." (emphasis added)). Here, Bailey did not sufficiently make that acknowledgement.

Because Bailey did not sufficiently acknowledge that the likely evidence was sufficient for a jury to find him guilty beyond a reasonable doubt, his *Alford* plea was not accurate and thus was invalid. *See id.* at 646. Bailey must therefore be permitted to withdraw his guilty plea.[4]

Reversed and remanded.

[4] Bailey also argues that the first component of an accurate *Alford* plea was not met—specifically, that there was not a "strong factual basis" to prove that K.J. was a family or household member, as required to establish domestic assault. *See* Minn. Stat. § 609.2242, subd. 1 (2018) (establishing elements of domestic assault). Bailey did not admit on the record that he and K.J. were in "a significant romantic or sexual relationship," which is the relevant definition of "family or household member" in this case. *See* Minn. Stat. § 518B.01, subd. 2(b)(7) (2018). Nor were there witness statements or other documents introduced to that effect at the plea hearing. The district court stated that it would "have the record supplemented with a copy of the police reports" following the hearing. We need not decide whether this record establishes a strong factual basis in light of our other ruling in this case. But we reiterate that *Theis* outlines the practice that should be followed for establishing the factual basis for an *Alford* plea, and that practice includes discussion at the plea hearing of the likely evidence to prove the elements of a charge. 742 N.W.2d at 649.