STATE OF MINNESOTA
IN COURT OF APPEALS
A11-0447

State of Minnesota,
Respondent,

vs.

Bryan Robert August Thul,
Appellant.

Filed November 26, 2012
Affirmed
Hooten, Judge

Mahnomen County District Court
File No. 44-K1-03-461

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

Darlene Rivera, Mahnomen County Attorney, Mahnomen, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Sean Michael McGuire, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Peterson, Judge; and Worke, Judge.

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

HOOTEN, Judge

In this appeal from the district court's denial of appellant's petition for postconviction relief, appellant argues that his guilty plea was invalid and inaccurate

because the district court did not establish a sufficient factual basis for his negligence in the operation of his motor vehicle. We affirm.

FACTS

On July 26, 2003, at about 3:00 a.m., in Mahnomen County, appellant, who had been drinking and was not a licensed driver, was involved in a motor vehicle accident. Appellant was driving south on Clearwater County Highway 7, which ends at Minnesota Highway 200 in a "T" intersection. As the vehicle approached the intersection at about 45 miles per hour, appellant failed to stop at the stop sign located on County Highway 7, leaving skid marks on the road south of the stop sign. According to a responding police officer, the motor vehicle then "launched off the roadway into the ditch," landed on a grassy area and then impacted a tree so that the front of the vehicle was "wrapped onto [the] tree." Both female passengers in the car were injured as a result of the accident.

Appellant was charged with criminal vehicular operation (CVO) causing substantial bodily harm, CVO causing bodily harm, fourth-degree driving while intoxicated, and driving without a driver's license. Appellant failed to appear for an October 16, 2003 hearing and a warrant was issued for his arrest. On May 15, 2010, appellant was arrested in South Dakota and subsequently extradited to Minnesota. Prior to a hearing, appellant signed an *Alford* plea agreement, in which he pleaded guilty to one count of CVO causing bodily harm, while maintaining his innocence. The plea agreement document, which was signed by appellant, stated the following:

> I am satisfied that if the State, at trial, were to present the evidence and witnesses as set forth in the discovery that there is a substantial likelihood if the jury believed the

> evidence, that I would be convicted of the most serious charge set forth in the complaint which is a felony. It is my wish to take advantage of the plea offer made by the State allowing me to plead guilty to the lesser gross misdemeanor charge.
>
> I understand that the State has 3 witnesses who will testify that I was the driver of a motor vehicle on July 26, 2003. Further, that they would testify that I was driving southbound on Clearwater Co. Road 7 and that I traveled into Mahnomen County, Minnesota at the junction of Co. Rd. 7 and Hwy. 200, crossing Hwy. 200 and hitting a tre[e] at that "T" intersection and that the tree is located in Mahnomen County, Minnesota. I understand that 2 of the witnesses will testify that they were injured in the accident. I further understand that the 3 witnesses will testify that I had been drinking alcohol prior to the accident and from their statements they would testify that they believed I was so under the influence of that alcohol that it affected my ability to control the motor vehicle when I missed the stop sign at the "T" intersection thereby causing the motor vehicle to crash against the tree and thereby causing their injuries. Further, I understand that a blood test was taken and that it showed an alcohol content which was over the legal limit.
>
> Given these facts, as proposed by the State, I believe it is in my best interest to take advantage of the plea offer as set forth below.

At the plea hearing, appellant "[a]bsolutely" agreed with his counsel that he was satisfied that if those witnesses testified to the facts that were in the police reports and the facts that were included in the guilty plea petition, there was "a substantial likelihood that [he] would be convicted of the more serious charge in this complaint," which was CVO causing substantial bodily harm, a felony. The district court accepted his *Alford* plea to the gross misdemeanor CVO causing bodily harm and sentenced appellant to one year in jail, but conditionally stayed the execution of his sentence for two years. After several

pro se filings in this court and the Minnesota Supreme Court, appellant filed a petition for postconviction relief to withdraw his guilty plea, which was denied by the district court. This appeal follows.

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, 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).

Appellant argues that his guilty plea was inaccurate and thus invalid because it lacked a sufficient factual basis. A guilty plea is accurate when it is established on the record that the defendant's conduct met all elements of the charge to which he is pleading guilty. *Barnslater v. State*, 805 N.W.2d 910, 914 (Minn. App. 2011). An adequate factual basis exists when sufficient facts are "on the record to support a conclusion that defendant's conduct falls within the charge to which he desires to plead guilty." *State v. Iverson*, 664 N.W.2d 346, 349 (Minn. 2003) (quotation omitted).

An *Alford* plea allows a defendant to plead guilty even if he maintains he is innocent. *Theis*, 742 N.W.2d at 647 (citing *North Carolina v. Alford*, 400 U.S. 25, 37–38, 91 S. Ct. 160, 167–68 (1970)). Courts must carefully scrutinize the factual basis of an "*Alford* plea because of the inherent conflict in pleading guilty while maintaining innocence." *Id.* at 648–49; *see State v. Goulette*, 258 N.W.2d 758, 761 (Minn. 1977)

(emphasizing district court's responsibility to determine whether a sufficient factual basis exists to support an *Alford* plea). In addition to a sufficient factual basis, "the [district] 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." *Theis*, 742 N.W.2d at 649.

In this case, appellant pled guilty to CVO causing bodily harm under Minn. Stat. § 609.21, subd. 2b(2)(i) (2002), which provides in relevant part:

> A person is guilty of criminal vehicular operation resulting in bodily harm . . . if the person causes bodily harm to another, as a result of operating a motor vehicle:
>
> . . . .
>
> (2) in a negligent manner while under the influence of:
>
> (i) alcohol[.]

Appellant concedes that there was ample evidence as part of his *Alford* plea that he was under the influence of alcohol and that his passengers were injured as a result of the accident. But he argues that his plea was nonetheless invalid because the facts as presented were insufficient for a jury to conclude that he drove in a "negligent manner," and he failed to specifically acknowledge as part of his plea that such facts were sufficient for a jury to make such finding.

It is well settled that, for an *Alford* plea to be accepted, the court must be satisfied that "the record contains a showing that there is evidence which would support a jury verdict that the defendant is guilty of at least as great a crime as that to which he is pleading guilty." *Goulette*, 258 N.W.2d at 762. In the instant case, then, since appellant pleaded guilty to a gross misdemeanor CVO, the evidence had to be sufficient to support

a jury verdict that appellant was operating his vehicle in a negligent manner while under the influence of alcohol at the time of the accident. "'Operating a motor vehicle in a negligent manner' means to operate without using ordinary or reasonable care." 10 *Minnesota Practice*, CRIMJIG 11.75 (2006). "Negligence means 'the doing of something which an ordinarily prudent person would not do or the failure to do something which an ordinarily prudent person would do under like or similar circumstances.'" *In re Welfare of J.G.B.*, 473 N.W.2d 342, 345 (Minn. App. 1991) (quoting *State v. Munnell*, 344 N.W.2d 883, 886 (Minn. App. 1984)).

Based upon the evidence submitted to the court at the time of appellant's *Alford* plea, there was more than sufficient evidence to support a finding by a jury that appellant operated his vehicle in a "negligent" manner while under the influence of alcohol. Ordinary or reasonable care would require that a driver observe all traffic laws. Driving through a stop sign is a violation of the law. Minn. Stat. § 169.06, subd. 4(a) (2010). Failing to comply with a traffic law can indicate negligence, particularly when the failure to observe that traffic law causes a vehicle to leave the pavement and strike a tree. The diagram of the accident drawn by police on the scene indicates that the skid marks made by the car did not start until after the car had gone through the stop sign. This evidence indicates that appellant did not even attempt to stop the vehicle until it had already gone through the stop sign. The fact that appellant's car actually "launched off the roadway into the ditch" and then impacted into a tree with such force that it "wrapped" onto the tree is also evidence that appellant was driving at a speed greater than what was "reasonable and prudent under the conditions," which also is a violation of the law.

Minn. Stat. § 169.14, subd. 1 (2010) ("No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions."). There is no evidence that appellant signaled his turn at the intersection as required by Minn. Stat. § 169.19, subd. 5 (2010), or that appellant turned at the intersection in compliance with Minn. Stat. § 169.19, subd. 4 (2010) (requiring that the turn be "made with reasonable safety after giving an appropriate signal").

Further, comparison to analogous cases supports this conclusion. This court has upheld a jury's guilty verdict for CVO on evidence that the defendant was driving in the wrong lane, possibly falling asleep while driving, and possibly drinking while driving. *State v. Rasinski*, 464 N.W.2d 517, 522–23 (Minn. App. 1990), *aff'd in part, rev'd on other grounds in part*, 472 N.W.2d 645 (Minn. 1991). On an appeal on various evidentiary issues, the supreme court stated that "evidence that defendant was driving in the wrong lane of traffic with a blood alcohol concentration of .13 provided ample basis for his convictions of alcohol-related CVO, irrespective of subsequent admissions that he fell asleep at the wheel." *Rasinski*, 472 N.W.2d at 649 (footnote omitted). In another case, evidence that the defendant intentionally drove through a stop sign that was visible from half a mile away at 50 miles per hour sufficiently supported finding the defendant guilty of gross negligence, which is a heightened standard. *State v. Boldra*, 292 Minn. 491, 492, 195 N.W.2d 578, 579 (1972).

At the time of his *Alford* plea, appellant acknowledged that he understood the state would present three witnesses who would testify that he was the driver of the vehicle, that those witnesses would testify that he was so under the influence of alcohol that it affected

his ability to control the motor vehicle, causing him to miss a stop sign and crash into a tree, causing them injury. Because he believed that he could be convicted of the more serious felony charge of CVO causing substantial bodily harm, he agreed to plead to the gross misdemeanor charge of CVO causing bodily harm, which required that the state show that he was operating his vehicle in a "negligent manner while under the influence of alcohol." Appellant acknowledged that he had "sufficient time to review all of the discovery, as currently provided by the State." Appellant further indicated that "if the State, at trial, were to present the evidence and witnesses as set forth in the discovery that there is a substantial likelihood if the jury believed the evidence," he would be "convicted of the most serious charge set forth in the complaint which is a felony." The most serious charge in the complaint, CVO under Minn. Stat. § 609.21, subd. 2a (2002), causing substantial bodily harm, provided that "[a] person is guilty of criminal vehicular operation . . . if the person causes substantial bodily harm to another, as a result of operating a motor vehicle; (1) in a grossly negligent manner[.]"

In reviewing the evidence and the acknowledgments of such evidence made by appellant, we conclude that there is no merit to appellant's claim that his *Alford* plea was invalid. Rather, there was sufficient evidence presented that appellant, while under the influence of alcohol, failed to use reasonable care in the operation of his vehicle and that such failure caused the vehicle to leave the road, strike an immobile object, and injure his passengers. Further, appellant acknowledged that after reviewing the police reports and the facts as set forth in the plea petition, he was satisfied that the facts were sufficient for a jury to find that he was guilty of even a felony CVO causing substantial bodily injury.

Under these circumstances, we are satisfied that appellant's guilty plea is valid, accurate and based on an adequate factual basis to support his conviction of the gross misdemeanor charge of CVO causing bodily injury.

Affirmed.