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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-494**

State of Minnesota,
Respondent,

vs.

Curtis B. Baugh,
Appellant.

**Filed January 17, 2012
Affirmed
Stauber, Judge**

Ramsey County District Court
File No. 62CR108187

David W. Merchant, Chief Appellate Public Defender, Jennifer L. Laueremann, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

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

John Choi, Ramsey County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Kalitowski, Presiding Judge; Ross, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

On appeal from his conviction of interference with a 911 call, appellant argues that
his *Alford* plea was invalidly entered because the district court failed to meet its

obligation of ensuring that an adequate factual basis existed that was sufficient to support a guilty verdict by a jury. We affirm.

FACTS

On September 15, 2010, at approximately 1:00 a.m., appellant Curtis B. Baugh went to the home of his ex-girlfriend T.M.O., where he repeatedly banged on the windows and asked to enter the home. Fearing that appellant would wake the neighbors, T.M.O. went outside to inform him that she would call the police if he did not leave. Appellant then took T.M.O.'s phone and began walking to his car. When T.M.O. attempted to recover her phone, appellant punched her in the jaw twice, causing her to fall backwards. Appellant then left the scene with the phone.

Appellant was charged with one count of gross-misdemeanor interference with a 911 call, one count of misdemeanor domestic assault in the fifth degree, and one count of misdemeanor theft. Appellant requested a jury trial, but later waived this right and instead pleaded guilty to interference with a 911 call pursuant to a plea agreement. The district court initially declined to accept the guilty plea due to appellant's equivocal answers and proclamation of innocence. But, when allowed to inquire further, the prosecutor established the basis for an *Alford* plea:

THE PROSECUTOR: Sir, based on the evidence that has been explained to you by your attorney, do you feel that there is a strong likelihood that you would be convicted at trial and as a result of that, you really wish to accept the plea agreement that's been offered to you?

APPELLANT: Yes.

After confirming that appellant wished to plead guilty despite maintaining his innocence, the district court accepted appellant's *Alford* plea as follows:

THE COURT: Do you acknowledge that the evidence at trial that would be presented would support your conviction through the witnesses that the state would call, and specifically they would call—are these officers, Officer Beard?

THE PROSECUTOR: Officer Beard and [T.M.O.], Your Honor.

THE COURT: Those are your two witnesses?

THE PROSECUTOR: Yes, Your Honor.

THE COURT: So, they would testify, and I understand that there's also some photographs; is that correct?

THE PROSECUTOR: There's photographs of [T.M.O.'s] injuries as well as her 911 call, Your Honor.

THE COURT: Given these documents, photographs, the witness testimony, do you acknowledge that the evidence is sufficient for a jury to find you guilty beyond a reasonable doubt of this offense?

APPELLANT: I guess so.

THE COURT: I need a yes or no.

APPELLANT: Yes, with my record, yes.

THE COURT: Well, and tell me why—is it true that you wish to plead guilty while denying your guilt in order to take advantage of the plea agreement?

APPELLANT: Yes.

Appellant was then sentenced to 120 days executed, with 56 days credit for time served.

This appeal follows.

DECISION

Appellant argues that the district court erred by accepting his *Alford* plea because the factual basis for the plea was insufficient. The validity of a plea is a question of law that is reviewed 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 once it has been entered, *Shorter v. State*, 511 N.W.2d 743, 746 (Minn. 1994), but may withdraw the plea if “necessary to correct a manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. A guilty plea must be accurate, voluntary, and intelligent. *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983). This court may look to the whole record when considering whether the facts support a guilty plea. *See id.* at 252 (noting that the complaint and photographs in the record, in addition to statements of the defendant, were sufficient to form an adequate factual basis for a guilty plea). The burden is on the defendant to show that his plea was invalid. *Raleigh*, 778 N.W.2d at 94.

It is constitutional for a district court to accept a defendant’s guilty plea, despite the defendant’s proclamation of innocence, where the state demonstrated “a strong factual basis for the plea” and the defendant clearly expressed his desire to enter the plea. *North Carolina v. Alford*, 400 U.S. 25, 38, 91 S. Ct. 160, 168 (1970). With an *Alford* plea, the factual basis requirement is essential to the determination of whether the plea “represents a knowing and intelligent choice of the alternative courses of action available.” *State v. Goulette*, 258 N.W.2d 758, 761 (Minn. 1977). An adequate factual basis for an *Alford* plea may consist of “a recitation . . . in summary form, of some of the key evidence which the prosecutor would have offered . . . if the case had gone to trial.” *Id.* at 760. “Within the context of an *Alford* plea . . . the defendant’s acknowledgment 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.” *State v. Theis*, 742 N.W.2d 643, 649 (Minn. 2007).

Appellant contends that the district court erred by relying on his belief of what the evidence at trial would be and also his belief that this evidence would be sufficient for a jury verdict of guilty rather than conducting an independent analysis of the evidence. Appellant also contends that the factual basis for his *Alford* plea was insufficient because the state failed to demonstrate the content of the witness testimony to be introduced at trial, or how the photographs and 911 call to be offered would establish guilt in the eyes of the jury.

We disagree. The district court did not rely upon appellant's belief of what the evidence would be, but instead on the state's confirmation that testimony of two witnesses, photographs of the complainant's injuries, and her 911 call, would be presented at trial. In addition, the record was sufficient to supplement this summary recitation of the evidence and thus establish an adequate factual basis. Appellant's guilty plea represented a fully informed choice among the courses of action available to him. Appellant acknowledged that he was pleading guilty to take advantage of the plea agreement. He was informed that if found guilty by a jury, he would be facing a potential sentence of 545 days. With the 120-day plea agreement and 56 days of custody credit, he would likely serve a maximum of 24 days with good behavior. Moreover, appellant twice acknowledged that the evidence on record was sufficient to support a jury verdict of guilty and appellant's counsel noted that appellant "is in the position of looking at all of his options, and . . . our plea agreement is a fair resolution in the case." Therefore, we

conclude that an adequate factual basis exists sufficient to support a guilty verdict by a jury, and the district court therefore did not err by accepting appellant's *Alford* plea.

Affirmed.