STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2215

State of Minnesota,
Respondent,

vs.

Gary Lee Hanson, Jr.,
Appellant.

Filed September 9, 2013
Reversed and remanded
Bjorkman, Judge

Cottonwood County District Court
File No. 17-CR-12-404

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

Nicholas A. Anderson, Cottonwood County Attorney, Lori Buchheim, Assistant County Attorney, Windom, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Erik I. Withall, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kirk, Presiding Judge; Hudson, Judge; and Bjorkman, Judge.

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

BJORKMAN, Judge

Appellant challenges his terroristic-threats conviction, arguing that his *Alford* plea is not accurate. Because appellant did not acknowledge during his plea hearing that the likely evidence is sufficient to convict him of the charged offense, we reverse and remand.

FACTS

Appellant Gary Lee Hanson, Jr. was staying at K.N.'s house in August 2012. B.S.'s daughter obtained an eviction order requiring K.N. to vacate the premises by August 17. On August 16, K.N. called B.S. to discuss the eviction. During the conversation, B.S. told K.N. that he needed to get the "riff raff" out of the house. Hanson got on the telephone and asked B.S. who he was referring to as "riff raff." Hanson then told B.S. that he was going to walk to his house and kill him that night.

B.S. reported the threat to the police. Officer Dustin Miller took B.S.'s statement and then went to K.N.'s house. K.N. stated that he called B.S. that night and that Hanson got on the phone but that he did not pay attention to what Hanson said to B.S. Y.G. also overheard the conversation and told Officer Miller that Hanson did not threaten B.S. Hanson denied speaking to B.S. and said that K.N. made the threats.

The state charged Hanson with making terroristic threats. Hanson agreed to enter an *Alford* plea to the charge in exchange for the state's agreement to a downward sentencing departure. The district court confirmed with defense counsel that the agreement contemplated an *Alford* plea. The district court then stated that it could not

accept a plea from someone claiming to be innocent; and Hanson replied, "I guess I am guilty of it." Hanson acknowledged that he received the complaint and reviewed the witness statements, police reports, and other evidence with his attorney. The district court then elicited the following testimony from Hanson.

> THE COURT: Okay. And you understand what some of the witnesses claim was done or said on a phonecall that originated between the residence that you were living in in Storden and [B.S.]?
> HANSON: Yeah. I read all the complaints and heard all the phonecalls.
> THE COURT: Okay. And do you think that if the persons that gave the police reports and the other investigation were testified to before a Judge or a jury in that fashion, that you could be found guilty of terroristic threats?
> HANSON: Possibility.

Hanson went on to describe the events of August 16:

> I mean, [K.N] and [B.S.] have been going on like cats and dogs. We came in here on August 10 for the eviction, and we were supposed to be out by August 17. And [K.N.] and [B.S.] have been going at it for like a week straight, and I basically got tired of the sh-t. And I was on the phone, and that's basically what happened, and here I am today.

Hanson also stated, "I don't—I don't know [B.S.]. I don't even know where [B.S.] lives, you know."

The district court accepted Hanson's plea and imposed a stayed sentence of one year and one day, a downward departure from the presumptive sentence of 24 months' imprisonment. 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). After sentencing, a defendant may only withdraw a guilty plea 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. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). A valid guilty plea must be accurate, voluntary, and intelligent. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). A plea is accurate if it has adequate factual support. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). This occurs when there are "sufficient facts 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). The validity of a guilty plea is a question of law, which we review de novo. *Lussier v. State*, 821 N.W.2d 581, 588 (Minn. 2012).

An *Alford* plea allows a defendant to plead guilty while maintaining his or her innocence because the record contains sufficient evidence to support a conviction. *See State v. Goulette*, 258 N.W.2d 758, 760 (Minn. 1977). A district court must not "cavalierly accept" an *Alford* plea, however. *Id.* at 761. Rather, due to the inherent conflict in pleading guilty while maintaining innocence, a district court must carefully scrutinize the record to ensure that a strong factual basis supports the plea. *Theis*, 742 N.W.2d at 648-49. And a defendant seeking to enter an *Alford* plea must acknowledge on the record that the evidence the state is likely to present is sufficient to convict. *Id.* at 649. The combination of a "strong factual basis and the defendant's agreement that the

evidence is sufficient to support his conviction provide[s] 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.*

Hanson argues that his plea must be vacated because it is either a guilty plea that lacks a sufficient factual basis or an inaccurate *Alford* plea. Accordingly, we first consider the nature of his plea. We note the record is not entirely clear. During the plea hearing, defense counsel stated that Hanson was entering an *Alford* plea. But the district court told Hanson that it would not accept a plea from someone claiming to be innocent; Hanson responded, "I guess I am guilty of it." Although this exchange suggests a straight guilty plea, it is not a definitive admission of guilt. Moreover, the district court later referred to the plea as an *Alford* plea. And consistent with *Alford*, the district court asked Hanson whether he believed a jury could convict him, not whether he committed the offense. On this record, we conclude that Hanson entered an *Alford* plea.

Hanson contends that his plea is not accurate because he did not acknowledge that the evidence the state is likely to offer is sufficient to convict him of making terroristic threats. We agree. Because Hanson entered an *Alford* plea, his agreement that the likely evidence is sufficient to convict "is critical to the court's ability to serve the protective purpose of the accuracy requirement." *Id.* In *Theis*, the supreme court held that the defendant's acknowledgement that there was a risk he could be convicted of the charged offense did not meet this requirement. *Id.* at 650. Hanson's testimony that there is a "[p]ossibility" that he could be found guilty of making terroristic threats is comparable to Theis's agreement that there was a "risk" that he could be convicted. Both

acknowledgements fall short of meeting the accuracy standard required for an *Alford* plea. Because Hanson did not acknowledge that the evidence the state is likely to present is sufficient to support his conviction, his *Alford* plea is not accurate, and Hanson is entitled to withdraw it.[1]

Reversed and remanded.

[1] Because Hanson's plea is not accurate due to his failure to acknowledge that the likely evidence is sufficient to convict, we need not analyze whether the district court had a basis to independently conclude that there is a strong probability that Hanson would be found guilty of the offense.