STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0563

State of Minnesota,
Respondent,

vs.

Brian Joseph Andvik,
Appellant.

Filed December 24, 2012
Affirmed
Stauber, Judge

Stearns County District Court
File Nos. 73CR10486; 73CR108934

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

Janelle Kendall, Stearns County Attorney, Joshua J. Kannegieter, Assistant County Attorney, St. Cloud, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Kathryn Lockwood, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Stauber, Judge; and Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

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

STAUBER, Judge

On appeal from his conviction of felony harassment, appellant argues that his *Alford* plea was invalidly entered because he failed to acknowledge that the evidence expected to be presented at trial would be sufficient to secure a conviction, and the district court failed to independently analyze the sufficiency of the evidence before accepting the plea. We affirm.

FACTS

In October 2010, appellant Brian Joseph Andvik was charged with one count of engaging in a pattern of stalking conduct in violation of Minn. Stat. § 609.749, subd. 5(a) (2010). The complaint alleged that between February and August 2010, appellant sent a series of letters to his wife, A.A., in violation of a domestic abuse no contact order and an order for protection. Appellant pleaded not guilty, and the matter was set for trial.

On the morning of trial, appellant entered an *Alford* plea[1] to the sole count of the complaint. During the plea hearing, the district court received the letters allegedly sent by appellant to A.A., as well as the statements made by A.A. about the letters. Appellant then provided a factual basis for his plea wherein he acknowledged that he wrote the letters to A.A. Appellant also acknowledged that there was a domestic abuse no contact order and an order for protection in place; that mailing the letters was a crime; and that he

[1] *North Carolina v. Alford*, 400 U.S. 25, 38, 91 S. Ct. 160, 168 (1970) (holding that the court did not commit constitutional error by accepting a guilty plea despite the defendant's stated belief of his innocence when there was a "strong factual basis for the plea").

understood that, should the case proceed to trial, A.A. would testify that the letters caused her fear. The following exchange was then held on the record:

> COUNSEL: Now, your position is, you meant those letters as an apology?
> APPELLANT: Yes.
> COUNSEL: What were you feeling when you wrote them?
> APPELLANT: Well, I didn't—hit rock bottom, you know. I lost my family. I lost my kids. I don't know, I mean.
> COUNSEL: You wanted to say sorry?
> APPELLANT: Oh, yeah.
> COUNSEL: Okay. But you and I have talked about the law in the case, and the law would allow a jury to convict you if they think you should have known that that evidence would—would cause fear?
> APPELLANT: How do they know what I'm thinking? How do they know what I'm feeling?
> COUNSEL: Sure. But they—but they could convict you if they simply thought you should have known it was scary.
> APPELLANT: They're going to read the paper that the prosecutor gives them and tells them what to read and tells them what to believe.
> COUNSEL: Sure.
> APPELLANT: They don't know what I'm thinking, how I'm feeling.
> COUNSEL: Right. And so do you believe that if they heard the testimony of [A.A.], about how she felt when she got the letters, heard her testimony about reflecting back on your past, were made aware of all of that history between the two of you, that there's a substantial likelihood they could convict you?
> APPELLANT: I guess.
> COUNSEL: Even though that's not what you in your heart intended.
> APPELLANT: No.
> COUNSEL: Okay. And as a result of believing that that could happen, and that that evidence would be submitted at trial, along with the letters that the Court has, is that why you're entering your plea today?
> APPELLANT: Yes.

The district court then found that there was a sufficient factual basis for appellant's *Alford* plea and accepted the plea.

On December 29, 2011, appellant appeared for sentencing on three separate files, all involving the same victim. The district court imposed an executed sentence of 48 months for the pattern of stalking conduct for which appellant had entered the *Alford* plea. The court also sentenced appellant to concurrent sentences of 15 months for domestic abuse by strangulation and 33 months for first-degree burglary. This appeal followed.

D E C I S I O N

Appellant argues that his *Alford* plea was invalidly entered because he failed to acknowledge that the evidence expected to be presented at trial would be sufficient to secure a conviction. Although appellant raises this issue for the first time on appeal, "a direct appeal [from a judgment of conviction based on a guilty plea] is appropriate when the record contains factual support for the defendant's claim and when no disputes of material fact must be resolved to evaluate the claim on the merits." *State v. Anyanwu*, 681 N.W.2d 411, 413 n.1 (Minn. App. 2004). Here, the parties do not dispute that the record is sufficient to consider appellant's challenge to his guilty plea.

The validity of a guilty plea is a question of law that is reviewed de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). A guilty plea is not valid if it is not accurate, voluntary, and intelligent. *Id.* "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). "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." *State v. Theis*, 742 N.W.2d 643, 649 (Minn. 2007) (quotation omitted).

It is constitutional for a district court to accept a defendant's guilty plea, despite the defendant's proclamation of innocence, when the state demonstrated "a strong factual basis for the plea" and the defendant clearly expressed his desire to enter the plea. *Alford*, 400 U.S. at 38, 91 S. Ct. at 168. 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." *Theis*, 742 N.W.2d at 649.

Here, appellant entered an *Alford* plea to engaging in a pattern of stalking conduct in violation of Minn. Stat. § 609.749, subd. 5(a). The elements of this offense include: (1) that appellant engaged in a pattern of stalking conduct; (2) that appellant engaged in this conduct with respect to a single victim; (3) that appellant knew or had reason to know that the victim would feel terrorized or fear bodily harm as a result of the conduct; (4) that the victim felt terrorized or feared bodily harm as a result of appellant's conduct;

and (5) that the offense took place on and between February 17, 2010, and August 24, 2010. *See* 10 *Minnesota Practice*, 13.58 (2006) (outlining elements of the defense).

Appellant argues that the factual basis for his plea was not properly established, and the plea was therefore inaccurate. Specifically, appellant argues that his plea was not accurate because he failed to admit that he knew or had reason to know that his actions would cause A.A. to feel terrorized or fear bodily harm.

Appellant's argument is without merit. A review of the transcript of the plea hearing reveals that appellant admitted the elements of the crime for which he was charged. Although the record indicates that appellant was evasive with respect to the third element of the offense, appellant's evasiveness with respect to this element was essentially his claim that he did not "intend" to terrorize or cause fear to A.A. This is consistent with appellant's purpose for entering the *Alford* plea, which is reflected by appellant's counsel's statement at the beginning of the plea hearing that appellant will enter "an *Alford* plea as to intent and knowledge on his part." Upon further questioning at the plea hearing, appellant acknowledged an understanding of the relevant law and that he may be convicted if the jury found that he had reason to know that A.A. would be terrorized. This acknowledgment was made after appellant's counsel referenced the history between appellant and A.A. and appellant's conduct that led to the domestic-assault and burglary charges. Specifically, appellant's counsel asked appellant if he believed if the jury "heard the testimony of [A.A.], about how she felt when she got the letters, heard her testimony about reflecting back on your past, [was] made aware of all of that history between the two of you, that there's a substantial likelihood [it] could convict

[him]?" When pressed with this question, appellant responded: "I guess." Counsel then clarified appellant's position by asking him that as a result of believing that the jury could convict appellant, based upon the evidence of appellant's and A.A.'s history, "along with the letters that the Court has," if "that is why [he was] entering [his] plea today." Appellant responded: "Yes." This colloquy between appellant and his attorney demonstrates that, despite appellant's claim that he did not intend to terrorize A.A., appellant understood and admitted that the evidence was sufficient for a jury to find appellant guilty of the charged offense. Therefore, the record reflects that appellant provided an adequate factual basis to support the district court's finding that appellant's *Alford* plea was accurate.

Appellant further argues that "[n]o record was developed in support of his plea that would provide the court a basis upon which to make its own conclusions about the adequacy of the evidence to be presented at trial." Thus, appellant contends that the district court erroneously accepted his guilty plea because the court failed to conduct an independent analysis of the sufficiency of the evidence presented at trial.

We disagree. The record reflects that the three letters written by appellant were before the court at the time appellant entered his plea. The district court was also provided with the statements made by A.A. documenting her feelings in response to the letters. The letters and A.A.'s responses provide ample support for the district court's finding that a sufficient factual basis for appellant's plea had been provided. And although the district court stated on the record that it "will review the exhibits submitted by counsel," indicating that the court had not reviewed them at the time appellant's plea

was accepted, appellant ignores the fact that the district court was very familiar with appellant's case and the related cases. The record reflects that appellant had been charged with first-degree burglary after he broke into A.A.'s house to talk to her, as well as domestic assault after appellant strangled A.A. and pressed a gun to her forehead. Appellant was sentenced for these offenses at the same time and by the same district court judge as he was sentenced for the present offense. The district court's familiarity with the case, along with the documents submitted at the time of the plea, provide an adequate basis upon which the court could make its own conclusions about the adequacy of the evidence to be presented at trial. Therefore, the district court did not err by accepting appellant's *Alford* plea.

Affirmed.