IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 27844-1-III**
Respondent,	)	
	)	**Division Three**
v.	)	
	)	
WILLIAM KURRLE III,	)	**UNPUBLISHED OPINION**
	)	
Appellant.	)	
	)	

Kulik, A.C.J.—William Kurrle entered an *Alford*[1] plea to one count of harassment—threats to kill. Mr. Kurrle appeals asserting that his plea was not knowing and voluntary. Although Mr. Kurrle made some equivocal statements at the plea hearing, the statements did not render his plea unknowing or involuntary. We affirm his conviction.

FACTS

On October 11, 2008, Jon Croy was hunting with his friends, Benjamin and Emily Davenport, and his two sons. Mr. Croy heard two gunshots and yelling. He went toward

[1] *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

the yelling where he met William Kurrle, who screamed profanities at Mr. Croy and his sons. Mr. Croy asked Mr. Kurrle if he had shot at his friends. Mr. Kurrle gave a noncommittal response. Mr. Croy told Mr. Kurrle he was going to call the police and Mr. Kurrle said, "'fuck you I'll shoot you and your kids.'" Clerk's Papers (CP) at 6. Throughout the exchange, Mr. Kurrle had his thumb on the hammer of his rifle.

Benjamin Davenport reported to the police that he and his wife, Emily, were hunting when Mr. Kurrle shot two bullets that nearly missed hitting them. Mr. Kurrle then walked toward Mr. and Ms. Davenport, with his gun pointing at Ms. Davenport, and screamed at them to leave and get off his mountain.

Mr. Kurrle reported to the police that he shot twice at a deer and then spoke with Mr. and Ms. Davenport. Mr. Kurrle mentioned to the Davenports that someone could get shot because Mr. and Ms. Davenport were in the same area as the deer he had been shooting. Mr. Kurrle stated he then spoke with some other people, but denied threatening anyone.

The State charged Mr. Kurrle with two counts of assault in the second degree with a deadly weapon and one count of harassment—threats to kill. Pursuant to a plea agreement, the State proposed charging only harassment—threats to kill, if Mr. Kurrle pleaded guilty. Mr. Kurrle, represented by counsel, agreed to enter an *Alford* plea on the

harassment charge.

At the hearing on January 29, 2009, the State presented the agreement to the court. The court asked Mr. Kurrle if the State had accurately stated the agreement and Mr. Kurrle responded, "Partially. I hope we can extend an invite again to those people for another set of circumstances and in different life affairs." Report of Proceedings (RP) at 3. The court asked Mr. Kurrle again if the State's agreement was what he understood it to be, and Mr. Kurrle replied, "It will be tolerable." RP at 4.

The court explained to Mr. Kurrle that pleading guilty meant giving up some of his constitutional rights and asked Mr. Kurrle if he was prepared to do so. Mr. Kurrle replied, "Due to circumstances out of my control and out of the jurisdiction I think of this institution in there, I have to do that." RP at 5-6.

The court asked Mr. Kurrle if he wanted to take advantage of the plea bargain offer, and Mr. Kurrle stated, "For sure, sir." RP at 7. The court then asked Mr. Kurrle if he had been threatened, forced, or coerced to enter the plea, and Mr. Kurrle stated, "For the expediency of the matter, Your Honor, I've had to accept the terms and conditions as set forth." RP at 7. The court clarified and asked if anyone had pressured him to plead, to which Mr. Kurrle responded, "No, sir." RP at 8.

Mr. Kurrle pleaded guilty to harassment—threats to kill.

Mr. Kurrle appeals, asserting that his guilty plea was not knowing and voluntary.

ANALYSIS

Alford Plea. "Due process requires that a defendant's guilty plea be knowing, voluntary, and intelligent." *In re Pers. Restraint of Isadore*, 151 Wn.2d 294, 297, 88 P.3d 390 (2004). Withdrawal of a guilty plea is allowed to "correct a manifest injustice." CrR 4.2(f). A manifest injustice is an injustice that is "obvious, directly observable, overt, not obscure." *State v. Taylor*, 83 Wn.2d 594, 596, 521 P.2d 699 (1974).

An *Alford* plea allows a defendant to plead guilty, even if he is unwilling to admit he engaged in any criminal activity. *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970). When a defendant enters an *Alford* plea, the court must exercise extreme care to assure that the plea is knowing, voluntary, and intelligent. *In re Pers. Restraint of Montoya*, 109 Wn.2d 270, 277-78, 744 P.2d 340 (1987).

Equivocal pleas can signal that the defendant does not understand the plea and the court must be assured that the guilty plea is voluntary. *State v. Hubbard*, 106 Wn. App. 149, 156, 22 P.3d 296 (2001). However, when an equivocal statement is part of an *Alford* plea, and there is an independent factual basis supporting the defendant's guilt, there is no reason for a court to refuse the plea. *Id*. at 155. *Alford* pleas are inherently

equivocal. *Id.*

Mr. Kurrle argues his plea was invalid because he made equivocal statements during the plea hearing. Although Mr. Kurrle made some equivocal statements, the trial court carefully ensured that the plea was knowing, intelligent, and voluntary.

First, Mr. Kurrle assured the court that he reviewed the plea agreement with his attorney and that he understood it. In the plea agreement, Mr. Kurrle stated: "I wish to accept the Prosecutor's recommendation and resolve this matter by entering an 'Alford Plea[.]' I understand this has the same consequences as a 'Guilty Plea[.]'" CP at 44. The probable cause statement establishes an independent factual basis for the charge of harassment—threats to kill: Mr. Kurrle threatened to shoot Mr. Croy and his sons while Mr. Kurrle held his thumb on the hammer of his rifle.

Second, the court asked Mr. Kurrle if he wanted to take advantage of the plea agreement. Mr. Kurrle definitively answered, "For sure, sir." RP at 7.

Third, the court asked Mr. Kurrle if he had been coerced, forced, or threatened to enter the plea. Mr. Kurrle gave an equivocal response, which the court then explored. Mr. Kurrle said he had a certain amount of apprehension about pleading guilty but that he had no pressure beyond that apprehension to enter a plea.

Mr. Kurrle cannot withdraw his guilty plea merely because he made some

equivocal statements during the plea hearing. Mr. Kurrle's statements, coupled with his own words in the plea agreement, satisfy the voluntary requirement. And the affidavit of probable cause provides an independent factual basis that Mr. Kurrle committed a crime. There was no manifest injustice here. We affirm Mr. Kurrle's conviction for harassment—threats to kill.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Kulik, A.C.J.

WE CONCUR:

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Sweeney, J. Korsmo, J.