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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0718**

State of Minnesota,
Respondent,

vs.

Scott Bradley Knutson,
Appellant.

**Filed February 5, 2018
Affirmed
Halbrooks, Judge**

Olmsted County District Court
File No. 55-CR-16-8100

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

Mark A. Ostrem, Olmsted County Attorney, James P. Spencer, Senior Assistant County Attorney, Jennifer D. Plante, Assistant County Attorney, Rochester, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Halbrooks, Judge; and Kirk, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

In this appeal from final judgment of his conviction and sentence for third-degree assault, appellant argues that he should be permitted to withdraw his *Alford* plea on the

grounds that (1) the evidence presented did not establish a factual basis for third-degree assault because the intent and substantial-bodily-harm elements were lacking and (2) the district court failed to conduct its own independent analysis of the factual basis. We affirm.

FACTS

The state charged appellant Scott Bradley Knutson with third-degree assault (substantial bodily harm) under Minn. Stat. § 609.223, subd. 1 (2016). The elements of that crime are: “Whoever assaults another and inflicts substantial bodily harm may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.” Minn. Stat. § 609.223, subd. 1. The state alleged that, upon returning from a hospital procedure, Knutson jumped off a gurney, struck hospital employee M.A.N. in the face, and pushed her into a wall. M.A.N. gave chase, but Knutson escaped. During the investigation, police (1) learned that M.A.N. separated her shoulder, (2) interviewed employee-witness B.Y. who confirmed M.A.N.’s story, and (3) reviewed surveillance video that was consistent with statements provided by B.Y. and M.A.N.

Knutson faced a presumptive sentence of 30 months’ imprisonment, with a range of 26 to 36 months, consecutive to a sentence that he was currently serving. Knutson and the state reached a plea agreement whereby Knutson would plead guilty to third-degree assault in exchange for a “concurrent sentence of 26 months . . . , no fines or surcharges, [and] time served.”

At his sentencing hearing, after attempting a traditional guilty plea, the prosecutor suggested an *Alford* plea. The district court explained the *Alford* plea process, and Knutson responded that he understood. Knutson confirmed that the state provided him with all the

evidence that the state would introduce at trial and that he had seen the evidence. The prosecutor then questioned Knutson on the record about all the evidence the state would introduce at trial:

Q. Mr. Knutson, . . . [M.A.N.] would testify, the State expects when they called her, that she fell down as a result of being pushed and struck. Do you understand that?

A. Yup.

Q. And she was also pushed against the wall. You understand that that would be her testimony. Correct?

A. Yes.

Q. And you understand that she would testify that as a result of that, her face, neck, shoulder, and arm were injured. Do you understand that would be her testimony?

A. Yes.

Q. You understand that the State would also call [B.Y.] to testify as well. Correct? That was another lady in that area.

A. Apparently, yeah.

Q. And [B.Y.] would testify observing you push [M.A.N.]. You understand that that's what the State would present at trial.

A. Yeah.

Q. And you understand the State would also call a doctor who treated [M.A.N.] to testify regarding her injuries, including the fact that she had a separated shoulder following this incident. Do you understand that?

A. Yup.

Q. And you understand that [M.A.N.] would testify that she had her arm in a sling for a while that impaired her ability to use her arm following this incident. You're aware of that.

A. I guess I am.

Q. And I guess I should word that differently. You're aware that the State would elicit that testimony at trial.

A. Sure.

Q. And you understand that the State would also call officers to testify regarding their investigation. Is that fair?

- A. Yup.
- Q. And you understand the State would play surveillance video depicting these events. Is that fair? And I know you have a different interpretation of the surveillance video, but you understand the State would play that.
- A. I'd be more than willing to watch them tapes.
- Q. And you could play them, too, at trial. You understand that.
- A. Yeah.
- Q. Based on the State presenting that evidence, do you agree that it would be sufficient, if believed by the jury, for the jury to find you guilty beyond a reasonable doubt of the offense of third degree assault?
- A. Yup.

The district court determined that the state's evidence was "sufficient to support a jury verdict of guilty" and stated that it was satisfied that appellant understood the benefit of the plea. The district court therefore accepted Knutson's *Alford* plea, adjudicated Knutson guilty, and sentenced him to 26 months' imprisonment with 134 days' credit for time served. This appeal follows.

DECISION

Knutson argues that his *Alford* plea is invalid because it is inaccurate and that the district court did not make its own finding that the evidence was sufficient. A guilty plea is valid if it is accurate, voluntary, and intelligent. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). "Assessing the validity of a plea presents a question of law that [an appellate court] review[s] de novo." *Id.*

A defendant enters an *Alford* plea if he maintains his innocence but "reasonably believes, and the record establishes, the state has sufficient evidence to obtain a conviction." *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994) (citing *North Carolina v.*

Alford, 400 U.S. 25, 37, 91 S. Ct. 160, 167 (1970)). An *Alford* plea is accurate if (1) it is established by a proper factual basis, which exists if the plea is based on “evidence discussed with the defendant on the record at the plea hearing” and (2) the defendant “agrees that evidence the State is likely to offer at trial is sufficient to convict.” *State v. Theis*, 742 N.W.2d 643, 649 (Minn. 2007). The former can be established through “an interrogation of the defendant about the underlying conduct and the evidence that would likely be presented at trial.” *Id.* The latter can be accomplished by having the defendant “specifically acknowledge on the record at the plea hearing that the evidence the State would likely offer against him is sufficient for a jury, applying a reasonable doubt standard, to find the defendant guilty of the offense to which he is pleading guilty.” *Id.* Both requirements “provide 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, notwithstanding his claims of innocence.” *Id.* If both are satisfied, “an *Alford* plea meets the accuracy prong.” *Id.*

Here, the state was required to prove that Knutson intentionally inflicted bodily harm upon another, *see* Minn. Stat. § 609.223, subd. 1 (defining third-degree assault); Minn. Stat. § 609.02, subd. 10(2) (2016) (defining assault-harm), resulting in “a temporary but substantial loss or impairment of the function” of M.A.N.’s shoulder,” *see* Minn. Stat. § 609.02, subd. 7a (2016) (defining substantial bodily harm).

Knutson reasons that his *Alford* plea is not supported by an adequate factual basis because there is “no evidence or admission that the act of pushing was intentional” or that M.A.N. suffered substantial bodily harm. We disagree.

As required by *Theis*, 742 N.W.2d at 649, the prosecutor first stated, and Knutson agreed, that the state would introduce the following evidence: (1) M.A.N.'s testimony that she fell after Knutson hit her and pushed her into a wall and that she sustained injuries to her face, neck, shoulder, and arm; (2) B.Y.'s testimony that she saw Knutson push M.A.N.; (3) the police officer's testimony about the investigation of the assault; (4) the physician's testimony that M.A.N. suffered a separated shoulder; and (5) surveillance video. The above evidence provides a strong factual basis that would satisfy the intent and substantial-bodily-harm elements of third-degree assault.

The prosecutor then asked Knutson if, based on that evidence, he agreed that "it would be sufficient, if believed by the jury, for the jury to find [Knutson] guilty beyond a reasonable doubt of the offense of third degree assault." Knutson said, "Yup." Because the prosecutor questioned Knutson with the evidence that the state would introduce at trial and Knutson agreed that evidence was sufficient for the jury to convict him beyond a reasonable doubt, Knutson's plea is accurate. See *Theis*, 742 N.W.2d at 649.

Knutson also contends the district court failed to make its own independent findings that there is a strong probability he would be found guilty at trial. We rejected this argument in *Johnson*, although in the context of a *Norgaard* plea.¹ *State v. Johnson*, 867 N.W.2d 210, 215-17 (Minn. App. 2015), review denied (Minn. Sept. 29, 2015). "The

¹ A *Norgaard* plea is similar to an *Alford* plea but different in that in a *Norgaard* plea, the defendant's "inability to admit the allegations in the complaint is due to his lack of recollection" and not due to maintaining his innocence. *Johnson*, 867 N.W.2d at 215 n.1. *Johnson* advised that the "caselaw indicates that the same standard applies to either type of guilty plea." *Id.*

statement in *Theis* concerning what a district court must ‘independently conclude’ indicates merely that a district court must assure itself that the accuracy standard is satisfied.” *Id.* at 216 (quoting *Theis*, 742 N.W.2d at 649). Here, the district court stated on the record its assurance of the *Alford* plea’s accuracy. Therefore, Knutson’s plea is valid.

Affirmed.