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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1215**

State of Minnesota,
Respondent,

vs.

Blake Andrew Dearmond,
Appellant.

**Filed April 30, 2018
Affirmed
Rodenberg, Judge**

Stearns County District Court
File No. 73-CR-16-2386

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

Janelle P. Kendall, Stearns County Attorney, Kyle R. Triggs, Assistant County Attorney,
St. Cloud, Minnesota (for respondent)

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Public Defender, Eagan, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Bjorkman, Judge; and
Smith, John, Judge.*

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

UNPUBLISHED OPINION

RODENBERG, Judge

Appellant Blake Andrew DeArmond¹ appeals from his convictions for two counts of aiding and abetting first-degree aggravated robbery, arguing that his *Alford* guilty plea is invalid because the record does not sufficiently demonstrate his agreement that the state's evidence was sufficient for a jury to find him guilty. We affirm.

FACTS

Appellant was charged with two counts of aiding and abetting first-degree aggravated robbery using a firearm under Minn. Stat. § 609.245, subd. 1 (2014) with reference to Minn. Stat. § 609.05, subd. 1 (2014) and Minn. Stat. § 609.11, subd. 5(a) (2014).² The charges were based on the allegation that appellant and another male, B.W., approached a male and female in St. Cloud. B.W. “tased”³ the male, and appellant pointed what appeared to be a silver revolver at the female and demanded her purse. The victims relented and surrendered their belongings. Law enforcement apprehended appellant and B.W. shortly after the incident. Appellant told law enforcement that he possessed a gun,

¹ The case caption in the district court identifies this appellant as “Blake Andrew Dearmond” and that name is used in the caption on appeal. However, the appellant’s brief identifies his last name as “DeArmond.” The caption on appeal must match the caption used in the district court’s decision, *see* Minn. R. Civ. App. P. 143.01, but we use “DeArmond” in the body of this opinion.

² Appellant was also charged with aiding and abetting possession of ammunition or a firearm by a person with a prior violent-crime conviction. That count was dismissed.

³ We understand the references in the record to a “taser” to mean the use of an electric-stunning device, regardless of brand name.

and police recovered a silver pellet gun matching the witnesses' descriptions of the gun held by one of the men who had robbed them. B.W. had property on his person belonging to the victims. Both victims identified appellant and B.W. as the persons who robbed them.

Appellant pleaded guilty to both counts of aiding and abetting aggravated robbery in exchange for the state's agreement to an executed sentence of 71 months in prison, characterized to the district court as a "slight durational departure" from the sentencing guidelines.⁴ At the plea hearing, the state questioned appellant in detail regarding the factual basis for his plea. The state asked appellant if he was with B.W. on the evening of the offense. Appellant responded that he had been with B.W., but said that he was not with him at the time of the offense. The state described the factual allegations in the complaint to appellant, who responded that he understood the allegations, but maintained that he was not involved. Appellant acknowledged that he fit the description the victims gave of one robber, and admitted that the pellet gun in his possession also matched the description given by the victims. Appellant acknowledged that B.W. pleaded guilty to the same two aiding-and-abetting-robbery charges, and that B.W. would presumably testify that appellant was involved in the robbery if the case went to trial.

The state asked appellant whether, if the case went to trial and appellant presented his "version" that he was not present during the offense, and the state "presented all of the

⁴ The district court sentenced appellant to 71 months on both counts, according to the sentencing worksheets in the record on appeal. The presumptive sentence for count 1 was a prison commitment of between 67 months and 93 months, with a midrange of 78 months. The presumptive sentencing range on count 2 was from 84 months to 117 months, with a midrange of 98 months. Accordingly, the sentence on count 1 was a guidelines sentence and the sentence on count 2 was a downward durational departure.

evidence [discussed] with you, as well as any other peripheral matters in the disclosure, the jury would find you guilty of both of these charges beyond a reasonable doubt?” Appellant responded, “Yes.” The state then asked him, “[T]hat’s why you’re taking the deal. Is that what I am understanding correctly?” Appellant again responded in the affirmative.

Before asking the district court to accept the plea, the state asked some additional questions to “clarify.” The state identified the first element it had to prove for aggravated robbery, “that property was taken from both of [the victims] in their presence or from their person.” It asked if appellant understood that, and if he would agree that is what happened. Appellant replied “yes.” It then asked appellant if he and B.W. did not have permission to take the property, whether they used force to take the property, whether the way appellant used the pellet gun would constitute a dangerous weapon as it was capable of producing death or great bodily harm, and whether the male victim suffered an injury when he was tased. Appellant responded “yes” to all of these questions.

The state then asked appellant, “And you agree you’re guilty of that aspect of aiding and abetting. Both of you were acting together to take property from two victims together. Correct?” Appellant responded, “If it was brought to trial then it would end up that way. Yes.” Immediately thereafter, the state asked, “You’re saying the jury would believe it beyond a reasonable doubt?” Appellant replied, “yes.” The state later asked appellant if he understood what aiding and abetting was and whether appellant agreed that the state “could” prove appellant was acting in concert with another individual beyond a reasonable doubt at trial. Appellant said “yes” to both questions.

The district court asked appellant's counsel if he wished to question appellant further, and counsel declined. The district court took judicial notice of the state's complaint and found that there was a sufficient factual basis for appellant's guilty pleas. It convicted appellant of two counts of aiding and abetting aggravated robbery with a firearm and sentenced appellant to two concurrent 71-month executed prison sentences, in conformity with the plea agreement.

This appeal, challenging the validity of appellant's *Alford* plea, followed.

DECISION

Appellant argues that the district court erred in accepting his guilty plea under *North Carolina v. Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 167 (1970). He argues that his plea is invalid because he did not agree that the evidence was sufficient for a jury to convict him beyond a reasonable doubt, and only agreed that a jury "could" convict on this evidence.

"Assessing the validity of a plea presents a question of law that we review de novo." *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). An invalid guilty plea may be withdrawn after sentencing. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). "To be valid, a guilty plea must be intelligent, voluntary, and accurate." *State v. Iverson*, 664 N.W.2d 346, 349 (Minn. 2003). "Accuracy requires that the plea be supported by a proper factual basis, that there must be sufficient facts on the record to support a conclusion that defendant's conduct falls within the charge to which he desires to plead guilty." *Id.* (quotation omitted).

An *Alford* plea permits a defendant who maintains actual innocence to plead guilty in order to take advantage of a plea agreement when the defendant agrees that there is

sufficient evidence for a jury to find him guilty at trial. *See Alford*, 400 U.S. at 37, 91 S. Ct. at 167; *State v. Goulette*, 258 N.W.2d 758, 760 (Minn. 1977). The accuracy requirement in the context of an *Alford* guilty plea is met if the plea is based on (1) a factual basis as established by “evidence discussed with the defendant on the record at the plea hearing” and (2) the defendant’s agreement “that evidence the [s]tate is likely to offer at trial is sufficient to convict.” *Theis*, 742 N.W.2d at 649.

Concerning the first requirement, “careful scrutiny of the factual basis for the [*Alford*] plea is necessary” because of the “inherent conflict in pleading guilty while maintaining innocence.” *Id.* at 648-49. Evidence establishing a factual basis may come through questioning the defendant about the evidence likely to be presented at trial and about the defendant’s underlying conduct. *Id.* at 649. Concerning the second requirement, and in order to prevent a defendant from pleading guilty to an offense more serious than the evidence would support, the defendant must acknowledge that the state’s evidence is sufficient to convict. *Id.* The best practice is for a defendant to “specifically acknowledge on the record at the plea hearing that the evidence the [s]tate 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.*

The factual-basis requirement, coupled with a defendant’s agreement that the evidence is sufficient to convict, gives a district court the “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.* (emphasis in original). So long as a proper factual basis exists and the defendant agrees the evidence is

sufficient to convict, an *Alford* guilty plea satisfies the accuracy requirement, despite the absence of a sworn admission to the elements of the offense. *Id.* The independent conclusion the district court should reach is “merely that [it] must assure itself that the accuracy standard is satisfied.” *State v. Johnson*, 867 N.W.2d 210, 216 (Minn. App. 2015).

Here, appellant argues that his *Alford* plea is inaccurate because he did not agree that the state’s evidence was sufficient to allow a jury to find him guilty of aiding and abetting aggravated robbery beyond a reasonable doubt. Appellant supports this assertion with reference to a portion of the transcript in which the state asked him “you agree I *could* prove it beyond a reasonable doubt if you went to trial?” (Emphasis added.) Appellant claims that this single ambiguous question and answer during the lengthy plea discussion likens this case to *State v. Theis* in that appellant only acknowledged the risk that he “could” be convicted of a crime, and not that a jury *would* find him guilty of the charged crime beyond a reasonable doubt. 742 N.W.2d at 650.

In *Theis*, the Minnesota Supreme Court reasoned that, “[i]n the context of an *Alford* plea, where a defendant maintains his innocence, the defendant’s acknowledgement that there is a risk that he could be convicted does not meet the standard for accuracy.” *Id.* There, the defendant’s colloquy included only an acknowledgement there was a “risk” he would be found guilty. *Id.* This case is easily distinguishable from *Theis*. Here, in addition to the isolated ambiguous question and answer on which appellant bases his argument, concerning whether the state “could” prove his guilt, appellant acknowledged several times that the evidence was sufficient for a jury to find him guilty beyond a reasonable doubt. Appellant’s own narrative response to the question of whether he agreed that he was guilty

was, “If it was brought to trial then it would end up that way.” Appellant agreed that a jury, presented with the evidence discussed at the plea hearing, would find him “guilty of both of [the] charges beyond a reasonable doubt.”

The record supports the district court’s finding that a sufficient factual basis supports appellant’s plea. Accordingly, appellant’s *Alford* guilty plea is valid. *See Matakis v. State*, 862 N.W.2d 33, 38 (Minn. 2015) (a defendant’s acknowledgement that he “could” be found guilty of an offense was sufficient for an *Alford* plea when a reading of the transcript indicated he had “also” agreed that a jury “would” have sufficient evidence to find him guilty).

Affirmed.