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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1233**

State of Minnesota,
Respondent,

vs.

Theresa Angela DiMaggio,
Appellant.

**Filed May 13, 2019
Affirmed
Reyes, Judge**

Becker County District Court
File No. 03-CR-16-549

Keith Ellison, Minnesota Attorney General, St. Paul, Minnesota; and

Brian W. McDonald, Becker County Attorney, Braden F. Sczepanski, Assistant County Attorney, Detroit Lakes, Minnesota (for respondent)

Charles F. Clippert, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Hooten, Judge; and Reyes, Judge.

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

REYES, Judge

Appellant challenges her conviction of aiding and abetting third-degree possession of a controlled substance, arguing that her guilty plea was not accurate because the factual basis did not establish the weight of the controlled substance. We affirm.

FACTS

On March 8, 2016, appellant Theresa Angela DiMaggio drove a friend, Marvin Hanson, to meet with a cooperating individual (CI). Hanson planned to sell an ounce of methamphetamine to the CI, and appellant knew of the planned transaction. The CI entered the vehicle and gave money to Hanson, who in turn provided a substance police assumed to be methamphetamine to the CI. The drug transaction included a discussion over “quantity and price,” within the presence of appellant as she drove the two people around. The substance later field-tested positive for methamphetamine and weighed 26.19 grams with packaging.

The amended complaint charges appellant with aiding and abetting third-degree possession of a controlled substance, in violation of Minn. Stat. § 152.023, subd. 2(a)(1) (2014) and Minn. Stat. § 609.05, subd. 1 (2014). Appellant entered her first *Alford* plea in September 2016, which she later appealed. We reversed and remanded in November 2017 because of a discrepancy between what appellant understood the charges against her to be in her plea, and her conviction.

On February 28, 2018, after remand, the district court held another plea hearing. The parties again resolved the matter and established that appellant would enter an *Alford* plea to the amended third-degree aiding-and-abetting-possession charge.

At the hearing, appellant’s counsel outlined the state’s case, explaining that “if the case were at trial, the state would be intending to present the following case that on March 8, 2016, that the State of Minnesota Task Force had a CI that they were using to wear a wire and to attempt to purchase drugs and that they purchased those drugs on that day over

around 13— or \$1400 worth of some drugs, methamphetamine.” Appellant agreed that, “the undercover person in the car, would be testifying to several things that a drug deal took place in the car, that she gave money to [Hanson] and [Hanson] gave drugs to her.” Appellant maintained her innocence but agreed that, if the case were to go to a jury, she would be convicted on the state’s evidence.

On April 30, 2018, the district court held a sentencing hearing. The district court adjudicated appellant guilty of third-degree possession of narcotics, with reference to the aiding and abetting statute, and stayed imposition of the sentence, placing appellant on probation for ten years.

This appeal follows.

D E C I S I O N

Appellant seeks withdrawal of her guilty plea, arguing that she did not admit sufficient facts to support her conviction because there “was no evidence of the weight of the suspected controlled substance.” We disagree.

The state does not oppose appellant’s request to withdraw her guilty plea. However, this court has a responsibility “to decide cases in accordance with law, and that responsibility is not to be diluted by counsel’s oversights, lack of research, failure to specify issues or to cite relevant authorities.” *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990) (citation omitted).

A court must allow a defendant to withdraw a guilty plea at any time if the withdrawal is necessary to correct a manifest injustice. Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice exists if a guilty plea is not valid. *State v. Theis*, 742 N.W.2d 643, 646

(Minn. 2007). “To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent.” *Nelson v. State*, 880 N.W.2d 852, 858 (Minn. 2016) (quotation omitted). We review the validity of a guilty plea de novo. *Id.*

To be accurate, a guilty plea must be supported by sufficient facts. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). The district court usually establishes the factual basis by asking the defendant to describe in her own words what happened. *Id.* But “a defendant may not withdraw [her] plea simply because the [district] court failed to elicit proper responses” if the record is sufficient to support the conviction. *Id.* The factual-basis requirement is satisfied if the record contains credible evidence which would support a jury verdict that the defendant is guilty of the crime to which she pleaded guilty. *Nelson*, 880 N.W.2d at 859.

Here, appellant pleaded guilty to aiding and abetting third-degree possession of a controlled substance under Minn. Stat. § 152.023, subd. 2(a)(1) (2014), which requires that “the person unlawfully possesses one or more mixtures of a total weight of three grams or more containing cocaine, heroin, or methamphetamine.” “The weight of the mixture is an essential element of the offense charged; like every other essential element, it must be proven by the state and proven beyond a reasonable doubt.” *State v. Robinson*, 517 N.W.2d 336, 339 (Minn. 1994).

Appellant asserts that “there is no evidence to establish the weight of the suspected methamphetamine” because (1) she did not acknowledge the weight of the methamphetamine during her plea colloquy and (2) the complaint did not establish the weight of the methamphetamine.

First, it is accurate that appellant did not admit to the weight of the methamphetamine during her plea. However, given that appellant deliberately chose to submit an *Alford* plea, this is not determinative. An *Alford* plea is a guilty plea under which a defendant maintains her innocence but acknowledges that the record establishes her guilt and that she reasonably believes that the state has sufficient evidence to secure a conviction. *North Carolina v. Alford*, 400 U.S. 25, 37-38, 91 S. Ct. 160, 167-68 (1970); accord *State v. Goulette*, 258 N.W.2d 758, 761 (Minn. 1977) (adopting *Alford* pleas in Minnesota). “Ordinarily, an adequate factual basis is established by questioning the defendant and asking the defendant to explain in his or her own words the circumstances surrounding the crime.” *Williams v. State*, 760 N.W.2d 8, 13 (Minn. App. 2009) (citation omitted), review denied (Minn. Jan. 27, 2009). However, when a defendant enters an *Alford* plea, the factual basis must be established by other means. *Id.* What matters here therefore is whether the record contains sufficient evidence to support appellant’s conviction and that she agreed that it was sufficient to secure her conviction, not whether she admitted to the weight during her plea colloquy. See *Theis*, 742 N.W.2d at 649 (explaining that, in context of an *Alford* plea, factual basis should be based on evidence in record discussed at plea hearing).

This brings us to appellant’s second argument, that the complaint did not actually establish the weight of the suspected methamphetamine, only the methamphetamine with packaging. The complaint established that the substance field-tested positive for methamphetamine and weighed 26.19 grams with packaging.

However, we may consider other evidence in the record to determine the weight of the methamphetamine. The supreme court has held that circumstantial evidence can be

used to establish the weight of a controlled substance, even when the drugs were disposed of before they could be weighed. *See State v. Olhausen*, 681 N.W.2d 21, 28 (Minn. 2004) (“Despite the fact that respondent disposed of the alleged controlled substance, circumstantial evidence included numerous statements of respondent and his coconspirator about the contents and weight of the package.”). In *Olhausen*, the conversation about the price and weight, as well as the officer’s estimate of the contents and weight based on what he saw of the drug, provided sufficient evidence to sustain the conviction. *Id.*

Here, there is other evidence in the record that, combined with the complaint, establishes a strong factual basis for the weight of the methamphetamine. In his statement to police, and later during his own plea hearing, Hanson admitted that he sold an amount “a little shy of an ounce,” or 26 grams, of methamphetamine to the CI. Additionally, in his report of the arrest, Special Agent Pinoniemi stated that the “CI provided me with a plastic zip-top baggie. Inside the plastic baggies was a second plastic zip-top baggie containing a crystalline substance of purported methamphetamine.” The record also includes pictures of the methamphetamine, and it is contained in one plain plastic zip-lock baggie on the scale as it registers as 26.19 grams. Having viewed these photos, we are convinced that the plastic bag could not weigh more than 23 grams, which is what would be required here. *See Theis*, 742 N.W.2d at 649 (holding that the facts in the record, and the defendant’s agreement that the evidence is sufficient to support conviction, 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” pleaded to).

Taken together, this evidence establishes that the methamphetamine weighed at least three grams, as required to be found guilty under the statute. *See Olhausen*, 681 N.W.2d at 29 (“A conviction based on circumstantial evidence may stand where the evidence forms a complete chain which, in light of the evidence as a whole, leads so directly to the guilt of the accused as to exclude, beyond a reasonable doubt, any reasonable inference other than that of guilt.” (citation omitted)).

In sum, because the record contains sufficient evidence to support her conviction, there is a proper factual basis for appellant’s guilty plea, and it is therefore valid.

Affirmed.