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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0648**

Bradley D. Fordyce, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed January 6, 2020
Affirmed
Worke, Judge**

Crow Wing County District Court
File No. 18-CR-16-1598

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public Defender, Andrew Nelson (certified student attorney), St. Paul, Minnesota (for appellant)

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

Donald F. Ryan, Crow Wing County Attorney, Candace Prigge, Assistant County Attorney, Brainerd, Minnesota (for respondent)

Considered and decided by Cleary, Chief Judge; Worke, Judge; and Bratvold,
Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges the district court's denial of his petition for postconviction relief, arguing that he should have been allowed to withdraw his guilty plea. We affirm.

FACTS

In April 2016, M.W., appellant Bradley D. Fordyce's neighbor, called the police to report that Fordyce had taped two disturbing notes to the door inside her porch. The first note read: "Let's masterbate [sic] for each other tonight. Open your curtain and leave a light on. Don't forget to be naked. Shall we say; At Midnite [sic]." The second note read: "If you don't want to see me dance in my bikinis, then just don't watch. Otherwise – enjoy the show. Brad (smiley face)." M.W. had previously reported incidents involving Fordyce committing lewd acts.

M.W. also reported seeing a surveillance camera in a window at Fordyce's house pointed at her bedroom window. An officer spoke to Fordyce, who admitted to leaving the notes in an attempt to secure a consensual act between two adults. Fordyce also admitted that he had hours of video surveillance of M.W. watching him out of her bedroom window. Officers obtained a search warrant for Fordyce's residence. Officers located eight TV monitors connected to surveillance cameras. One of the cameras was pointed at M.W.'s bedroom window. Officers found 40 short videos of Fordyce narrating M.W.'s activity as he monitored her at her residence, and over 100 other videos of M.W. on Fordyce's computer.

Fordyce was charged with second-degree burglary; stalking—follow, monitor, pursue another; and interference with privacy—install or use surreptitious device. At an omnibus hearing, the district court received into evidence the police reports and the videos from Fordyce’s cameras.

On September 22, 2016, Fordyce pleaded guilty to second-degree burglary and stalking, and the interference-with-privacy charge was dismissed. Fordyce entered *Alford* pleas; the basis for the *Alford* pleas was that, although Fordyce “admit[ted] to all of the conduct, [he did not] believe necessarily that . . . it should be illegal.”¹ Fordyce agreed that the police reports and videos that were made part of the record at the omnibus hearing would be “part of the plea.” Fordyce also agreed that the probable-cause statement in the complaint could support the factual basis for the plea.

In establishing the factual basis, Fordyce admitted that he had videos of M.W., during which, he “narrated that [he was] watching her.” Fordyce admitted that “at some point after [he] had been watching [M.W.], [he] saw that she had left the residence and [he] went over and put two [notes] on her door.” He admitted that he “put those [notes] on a door inside the screen porch.” Fordyce admitted that he did not have M.W.’s consent to enter her residence.

¹ The basis for the *Alford* pleas—admitting to committing the acts, but believing that the acts should not be considered illegal—is unusual, and seemingly inappropriate. See *State v. Goulette*, 258 N.W.2d 758, 761 (Minn. 1977) (stating that in an *Alford* plea, a defendant, while maintaining his innocence, pleads guilty because he believes that the state has sufficient evidence to obtain a conviction at trial).

The district court accepted Fordyce's guilty pleas, and sentenced him to 28 months in prison for the burglary conviction, stayed for ten years, and one year in jail for the stalking conviction. On May 22, 2018, Fordyce requested to withdraw his guilty pleas in a postconviction-relief petition, claiming that they were not accurate. The district court denied Fordyce's request. This appeal followed.

DECISION

Fordyce argues that the district court should have granted his petition for postconviction relief and allowed him to withdraw his guilty pleas. This court reviews a district court's denial of postconviction relief for an abuse of discretion. *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012).

A defendant does not have an absolute right to withdraw a guilty plea. *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). But a district court must allow a defendant to withdraw a guilty plea when "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." *Raleigh*, 778 N.W.2d at 94. A defendant bears the burden of showing that his guilty plea is invalid. *Id.*

A valid guilty plea is "accurate, voluntary, and intelligent." *Taylor v. State*, 887 N.W.2d 821, 823 (Minn. 2016). Fordyce argues that his guilty pleas are invalid because they are not accurate. An accurate guilty plea must "be established on a proper factual basis." *Raleigh*, 778 N.W.2d at 94. A proper factual basis exists when "sufficient facts on the record . . . support a conclusion that [the] defendant's conduct falls within the charge to which he desires to plead guilty." *State v. Iverson*, 664 N.W.2d 346, 349 (Minn. 2003) (quotation omitted). Ordinarily, an adequate factual basis is established when a defendant

is questioned and explains the circumstances surrounding the crime. *Williams v. State*, 760 N.W.2d 8, 12 (Minn. App. 2009), *review denied* (Minn. Apr. 21, 2009). But when a defendant enters an *Alford* plea, and maintains his innocence, the factual basis must be established by other means. *Id.* Under these circumstances, the factual basis should be based on evidence discussed with the defendant on the record at the plea hearing, and the record must show that the defendant agreed that the evidence that the state would likely offer at trial is sufficient to secure a conviction. *State v. Theis*, 742 N.W.2d 643, 649 (Minn. 2007).

To sustain Fordyce’s guilty plea to second-degree burglary, the record must show that Fordyce agreed that the evidence that the state would have offered at trial showed that he (1) entered a building, (2) without consent, and (3) committed a crime or intended to commit a crime. *See* Minn. Stat. § 609.582, subd. 2(a) (2014).

Fordyce argues that his plea is not accurate because the record does not establish that he entered M.W.’s porch without her consent. He asserts that M.W. granted an “implicit license” to visitors, like himself, to enter the curtilage of her home—her porch. But Fordyce’s claim fails for several reasons.

First, in support of his claim, Fordyce unfittingly cites search-and-seizure cases rather than burglary cases. *See, e.g., State v. Chute*, 908 N.W.2d 578, 584-85 (Minn. 2018) (discussing a police officer’s implied license to enter property); *State v. Crea*, 233 N.W.2d 736, 739 (Minn. 1975) (stating that Fourth Amendment applies to curtilage). Second, in an unpublished opinion, this court stated that a “screened-in porch that was attached to the back of the house” is a building as the term is used in the burglary statute. *See State v.*

Hicks, No. A07-1837, 2009 WL 171794, at *3 (Minn. App. Jan. 27, 2009) (affirming burglary conviction when defendant entered screened-in porch looking for something to “wipe his butt” because he intended to defecate in the backyard), *review denied* (Minn. Mar. 31, 2009).

Finally, Fordyce improperly raises this defense in a plea-withdrawal request. He did not raise this defense when he pleaded guilty; instead, he admitted that he “went into the screen porch” and attached the notes “on a door inside the screen porch.” Fordyce also agreed that the evidence included the police reports. One report stated: “The notes were left on a door entering the residence from inside the patio, where there was another door to go through to get to that point.” The indoor porch, for purposes of the burglary statute, is a building in which Fordyce would need consent to enter. Fordyce admitted that M.W. “hadn’t given consent for [him] to come onto her property or into her residence.” Therefore, the record shows that Fordyce admitted that he entered a building without consent, satisfying two elements of second-degree burglary.

Fordyce next argues that even if he entered M.W.’s porch without consent, the factual basis still fails to establish that he committed or intended to commit a crime. *See* Minn. Stat. § 609.582, subd. 2(a). The underlying crime for the burglary charge was stalking. A person is guilty of stalking if he harasses another by following, monitoring, or pursuing, whether in person or through technological or other means. Minn. Stat. § 609.749, subd. 2(2) (2014).

Fordyce argues that the record fails to establish that he followed, monitored, or pursued M.W. before leaving the notes on her door. He claims that the unambiguous

definitions of follow, monitor, or pursue requires that he “[g]o or come after” M.W., “[o]bserve and check the progress” of M.W., or “follow or chase” M.W. Even under the definition he advances, Fordyce admitted to monitoring M.W.; he observed and checked her progress to make sure that she was absent from her residence before he went over to leave the notes. Fordyce admitted that during videos he took of M.W., he narrated that he was watching her. Fordyce admitted that in the videos he would state when M.W. was not home and when she arrived home. Fordyce further admitted that M.W. “didn’t give consent for [him] to be *monitoring* her on her property or checking when she was coming home.” (Emphasis added.) He admitted that on the date that he left the notes on M.W.’s door, he had been watching her and went over after he saw that she had left. Based on this record, the district court did not abuse its discretion in denying Fordyce’s petition for postconviction relief because his guilty pleas are accurate, and therefore valid.

Affirmed.