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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0867**

State of Minnesota,
Respondent,

vs.

David Laurence Cal,
Appellant.

**Filed March 16, 2020
Affirmed
Bryan, Judge**

Anoka County District Court
File No. 02-CR-18-2190

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

Anthony C. Palumbo, Anoka County Attorney, Kelsey R. Kelley, Assistant County Attorney, Anoka, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sharon E. Jacks, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Bratvold, Judge; and Bryan, Judge.

UNPUBLISHED OPINION

BRYAN, Judge

In this direct appeal, appellant challenges the validity of his guilty plea for the following two reasons: (1) the district court did not sufficiently inform him of the intent

element of the offense; and (2) no accurate factual basis supported the plea. We affirm and conclude that appellant entered a valid plea.

FACTS

Respondent Stat of Minnesota charged appellant David Laurence Cal with one count of first-degree criminal sexual conduct and two counts of second-degree criminal sexual conduct for sexual contact with a child under 13. Cal pleaded guilty to the first-degree charge and the state agreed to dismiss the other two charges. The state also agreed to a downward departure from the otherwise applicable 144-month sentence to a sentence of 120 months. At the plea hearing, Cal maintained his innocence, but entered an *Alford* plea¹ to first-degree criminal sexual conduct.

In support of the *Alford* plea, the district court and the attorneys questioned Cal regarding his rights and the evidence of the facts in the case. Cal agreed that he had sufficient opportunity to discuss the case with his attorney, that he understood the law and the charges, and that he understood the information included in the complaint and the police reports. Cal also acknowledged and waived any potential defenses that he might have had at trial. Specifically, Cal's attorney asked him, "Mr. Cal, you and I talked about, as well, some of the possible defenses. Do you understand that by pleading guilty we're waiving any potential defenses in your case, true?" Cal replied, "Yes, ma'am." The state then submitted its offer of proof, which included a description of anticipated testimony if the

¹ An *Alford* plea allows the defendant to enter a guilty plea, while maintaining a claim of innocence. *State v. Goulette*, 258 N.W.2d 758, 761 (Minn. 1977) (adopting *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160 (1970)).

matter were to proceed to trial. The state described how its witnesses would testify that Cal and J.A.M. lived in the same home and were alone together at times. In addition, the state explained that J.A.M. would testify that beginning when she was about six years old, Cal was her mother's boyfriend. She would also testify that Cal engaged in sexual conduct with her a number of times. She would testify that the sexual conduct included both anal and vaginal penetration. She would further testify that the conduct was not an isolated incident, but instead took place over a period of eight months. Specifically, the victim would describe that Cal's "private was involved with her private" and that it "hurt her butt when that happened." The state also discussed presenting Cal's statement to the police in which Cal stated that J.A.M. would have been in his physical space and presence with him without clothing on, and he could have engaged in sexual contact with J.A.M. believing that it was with J.A.M.'s mother.

After the state described the anticipated evidence, the district court asked Cal, "Would you agree that if the testimony came in as [the state] just outlined, that there would be sufficient evidence for a jury to find you guilty of this charge beyond a reasonable doubt? Would you agree with that, sir?" Cal answered, "Yes, sir." The district court accepted the plea based on the state's offer of proof and Cal's belief that a jury would find him guilty of first-degree criminal sexual conduct. At sentencing, the district court sentenced Cal to the agreed-upon 120-month term of imprisonment. This appeal followed.

DECISION

Cal challenges the validity of his *Alford* plea on two, related grounds. First, Cal argues that he entered an invalid plea because he was not adequately informed as to the

meaning of the “sexual or aggressive intent” element of first-degree criminal sexual conduct. Second, Cal argues that he entered an invalid plea because the “sexual or aggressive intent” element is not accurately supported by a sufficient factual basis.

A party may seek direct appeal of an *Alford* plea. *State v. Newcombe*, 412 N.W.2d 427, 430 (Minn. App. 1987), *review denied* (Minn. Nov. 13, 1987). To be valid, a guilty plea must be intelligent, voluntary, and accurate. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994); *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983). “[C]areful scrutiny of the factual basis for the plea is necessary within the context of an *Alford* plea because of the inherent conflict in pleading guilty while maintaining innocence.” *State v. Theis*, 742 N.W.2d 643, 648-49 (Minn. 2007). “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). The burden of proof is on the appellant to show invalidity. *Id.*

I. Cal entered an intelligent guilty plea.

Cal argues that the *Alford* plea is invalid because the district court never informed him of the nature of the intent element. We conclude that Cal had sufficient understanding of the intent element of the offense to enter an intelligent guilty plea.

“The record must show that the defendant understood the elements of the offense and any available defenses, and the possible consequences of conviction.” *State v. Lyle*, 409 N.W.2d 549, 551-52 (Minn. App. 1987). Appellate courts may safely presume that counsel has adequately informed the defendant on the nature and elements of the offense. *State v. Russell*, 236 N.W.2d 612, 613 (Minn. 1975).

The offense of conviction requires proof of “sexual or aggressive intent.” See Minn. Stat. § 609.341, subd. 11(c) (2016) (defining “[s]exual contact with a person under 13” as requiring “sexual or aggressive intent”).² Here, neither the attorneys nor the district court expressly defined the intent element on the record at the time of the *Alford* plea. However, the district court confirmed on the record that Cal had a chance to speak with his attorney³ so that he understood the elements of the charged offenses. Pursuant to *Russell*, 236 N.W.2d at 613, a district court is not required to explain in detail the nature of the elements of charged offenses. We presume that Cal’s counsel had informed him of nature of the “sexual or aggressive intent” element of the offense. Cal entered an intelligent guilty plea.

II. Cal entered an accurate guilty plea.

Cal argues that the *Alford* plea is inaccurate because the factual basis does not establish that he acted with “sexual or aggressive intent.” More precisely, Cal challenges the factual basis in light of his statement to police. Because we find that the state established a proper factual basis, we conclude that Cal entered an accurate guilty plea.

Accuracy requires that the plea be supported by a proper factual basis and 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.” *State v. Iverson*, 664 N.W.2d 346, 349 (Minn. 2003) (quotation omitted). In a conventional guilty plea, “an adequate factual basis is usually established by questioning the defendant and asking the defendant

² The legislature added this language in 1994. 1994 Minn. Laws ch. 636, art. 2, §§ 32 at 2205, 34 at 2206.

³ Cal does not challenge the effectiveness of his plea counsel. Instead, he argues that the district court failed to inform him of the nature of the intent element.

to explain in his or her own words the circumstances surrounding the crime.” *Ecker*, 524 N.W.2d at 716. Unlike in a conventional guilty plea however, “[a]n *Alford* plea is not supported by the defendant’s admission of guilt, and is actually contradicted by his claim of innocence.” *Theis*, 742 N.W.2d at 649. To establish a strong factual basis in an *Alford* plea, the defendant acknowledges that after hearing the state’s anticipated evidence, a jury would find the defendant guilty. *Id.*

In support of the *Alford* plea, the state submitted an offer of proof, describing the anticipated trial testimony. The state explained that its witnesses would testify that Cal and J.A.M. lived in the same home and were alone together at times. In addition, the state described how J.A.M. would testify that beginning sometime in the spring of 2017, Cal was her mother’s boyfriend. She would also testify that Cal engaged in sexual conduct with her a number of times. She would testify that the conduct included anal and vaginal penetration, describing that Cal’s “private was involved with her private” and that it “hurt her butt” when that happened. Cal’s conduct is overtly sexual in nature, and therefore sexual intent can be inferred from the nature of the conduct itself. *See State v. Austin*, 788 N.W.2d 788, 792 (Minn. App. 2010) (“[a] subjective sexual intent typically must be inferred from the nature of the conduct itself”), *review denied* (Minn. Dec. 14, 2010). We conclude that these facts are sufficient to support the *Alford* plea.

Cal challenges the sufficiency of this factual basis and directs this court to his statement to the police.⁴ Cal told police officers that he might have engaged in sexual

⁴ Cal does not assert an unwaived defense on appeal. *See State v. Cox*, No. A04-30, 2004 WL 2796190, at *4 (Minn. App. Dec. 7, 2004) (concluding that “[a]lthough sleep-related

contact with J.A.M. believing that J.A.M. was her mother. On appeal, Cal argues that this statement is exculpatory, negating the sufficiency of the state's description of its anticipated evidence. We disagree for two reasons. First, Cal agreed that the jury would find him guilty, despite his statement to the police. In its description of evidence, the state explicitly paraphrased the statement to police, and noted that Cal might have engaged in sexual contact with J.A.M. believing that J.A.M. was her mother. After hearing this part of the factual basis, Cal agreed that the jury would find him guilty. Cal cannot successfully appeal the *Alford* plea merely because he now has a different belief regarding the weight and inferences that a jury might give to his statement than he did at the time of his guilty plea.

Second, the statement to police could be interpreted by a jury as inculpatory rather than exculpatory. It seems unlikely that the jury would believe that Cal had mistaken the six-year-old J.A.M. for her mother long enough to engage in both vaginal and anal penetration with her even once, let alone on multiple occasions over the course of eight months. Moreover, the statement includes an admission that Cal engaged in sexual conduct, making the factual basis stronger than it would be in the absence of such a statement.

automatism is not listed in rule 9.02, it is sufficiently analogous to intoxication and differs sufficiently from a not-guilty defense such that notice of the defense is required under rule 9.02"). Cal did not raise or notice a sleep-related automatism defense in this case. Moreover, even if Cal had raised such a defense, Cal expressly waived all potential defenses during the *Alford* plea. He does not now challenge the validity of the plea on this basis. Instead, he only challenges the factual basis provided in support of the plea. We analyze the factual basis to determine whether the anticipated evidence is sufficient to convict, despite Cal's decision to maintain his innocence. *Theis*, 742 N.W.2d at 649.

Under careful scrutiny, the factual basis provided in this case is sufficient to conclude that there is a strong probability that jury would find Cal guilty, notwithstanding his claims of innocence. Cal entered an accurate guilty plea, supported by a proper factual basis.

Affirmed.