

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1319**

Jalisa Yvette Crosby, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed May 10, 2021
Affirmed
Frisch, Judge**

Polk County District Court
File No. 60-CR-16-1091

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

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

Greg Widseth, Polk County Attorney, Scott A. Buhler, Assistant County Attorney, Crookston, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Cochran, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant challenges the district court's denial of her petition for postconviction relief, arguing that she must be permitted to withdraw her *Alford* pleas as inaccurate and that her conviction for aiding an offender must be vacated. We affirm.

FACTS

The Complaint

The state charged appellant Jalisa Yvette Crosby with aiding and abetting second-degree possession of a controlled substance in violation of Minn. Stat. §§ 152.022, subd. 2(a)(1), 609.05, subd. 1 (2014), and felony aiding an offender as an accomplice after the fact in violation of Minn. Stat. § 609.495, subd. 3 (2014). We summarize the relevant allegations set forth in the complaint as follows.

In June 2016, a confidential informant told officers with the Crookston Police Department that a man nicknamed “JoJo” with a specific cell phone number offered the informant cocaine then left in a gold Chrysler van. Officers verified that the cell phone number was registered to Crosby, who had recently been cited for a traffic offense while driving a gold Chrysler van. Officers went to Crosby’s registered address and saw the van parked outside. Separately, officers learned that Crosby had children with Chad Johnson, whom the informant identified as the man who had offered cocaine to the informant.

On June 7, 2016, officers conducted a controlled buy. Johnson arrived at a Walmart in a gold Chrysler van and sold cocaine to the informant. Officers conducted a second controlled buy the next day, on June 8. Johnson again arrived at the Walmart in the gold Chrysler van, but this time he was accompanied by a passenger—a woman the informant inferred was Johnson’s girlfriend. On June 14, officers conducted a third controlled buy, stopped the van after the buy, arrested Johnson, and located cocaine and cash in the van. Johnson later claimed he was couch-surfing in the Crookston area and that he had

approximately \$5,000 in drug proceeds hidden, but he would not say where. He denied storing drugs at his girlfriend's home.

Later on June 14, police officers executed a search warrant for Crosby's apartment and found her inside. Officers spoke with Crosby, who claimed: (1) she had \$4,000 to \$5,000 in the apartment from a tax refund or a settlement, (2) she did not use or sell cocaine, (3) she did not know Johnson was selling cocaine, and (4) Johnson was not staying regularly at her apartment but merely slept there sometimes. Crosby submitted to an onsite urine test, the results of which indicated cocaine use. Crosby admitted to using cocaine two days prior. Officers searching the apartment discovered approximately 18.3 grams of a substance containing cocaine hidden inside of a child's sock in a bedroom. Officers also found \$6,259 in cash hidden in a kitchen cupboard and underneath a bathroom sink, which included cash traceable to the June 7 controlled buy.

The Guilty Pleas, Convictions & Sentencing

Crosby and the state reached a plea agreement in which Crosby would enter *Alford*¹ guilty pleas to aiding and abetting second-degree possession of a controlled substance and felony aiding an offender. In exchange for her guilty pleas, the state agreed to dismiss other charges, and Crosby would receive a stay of imposition on both counts with a ten-year probationary period.

Regarding the second-degree controlled-substance charge, at the plea hearing, the prosecutor set forth the theory of the case and summarized the evidence against Crosby as

¹ See *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160 (1970).

follows: (1) “officers executed a search warrant at [Crosby’s] residence [and] found approximately 17 grams of cocaine that was in a baggie that was stuffed into a child’s sock that was hidden in one of the bedrooms”; (2) Crosby was “the only adult that was in the residence”; (3) “[t]he officers also discovered . . . \$6,259.00 in cash in the apartment[, which] included \$400.00 of buy money from a controlled buy that occurred on June 7 of 2016”; (4) Crosby “gave inconsistent statements to law enforcement about where that money came from”; (5) Crosby “initially denied using any cocaine, but in fact . . . provided a urine sample [which tested] positive for the presence of cocaine”; (6) in “each of those controlled buys [Johnson] was driving a gold Chrysler van . . . registered to” Crosby; (7) Johnson “was using a cell phone listed to” Crosby; (8) “on June 8th, 2016, when the informant called to set up the controlled buy that day, [Crosby] actually answered the telephone and the informant indicated that he wanted . . . [her] to pass on a message to Mr. Johnson that they were going to meet at Walmart”; (9) Crosby and Johnson then “left the apartment building . . . and proceeded to Walmart”; (10) Crosby was “actually in that van when Mr. Johnson sold cocaine to this informant just on the other side of the van”; (11) Johnson admitted that he had been selling drugs and had hidden drugs and cash; and (12) Johnson admitted he had been staying with Crosby. When asked whether Crosby believed that a fact-finder would find her guilty of the offense, Crosby responded, “Of course they would.”

The prosecutor then examined Crosby regarding the basis for her plea to aiding an offender as an after-the-fact accomplice, summarizing the evidence and the theory of the case as follows:

And again, the same evidence that we've just outlined here. Some of these inconsistent statements that you provided. The fact that at least \$400.00 of the buy money is found intermingled with this cash that's in your residence. Your being present at the location of one of the controlled buys. You're in fact on the telephone. It's your telephone that's being used to set up these controlled buys. It's your van that's being used to sell the cocaine in these controlled buys.

When asked whether she believed that a fact-finder would find her guilty of the offense, Crosby responded, "Yes."

Crosby confirmed that she had reviewed the complaint and the various materials produced during discovery. Her attorney asked the district court to accept the probable-cause portion of the state's complaint as part of the factual basis in support of Crosby's pleas. The district court incorporated the probable-cause portion of the complaint and the prior record of the case. It also took judicial notice of Johnson's criminal case.

The district court determined that "there is sufficient evidence in those items to support either a jury verdict of guilty or a court acting in a bench trial of that same jury verdict of guilty." It found that Crosby offered valid pleas. The district court adjudicated both convictions, referring to the first count as "a violation of [Minn. Stat. § 152.022, subd. 2(a)(1)] with a reference to [Minn. Stat. § 609.05, subd. 1], which relates to Aiding and Abetting a Crime." The warrant of commitment recorded: (1) a conviction for a violation of Minn. Stat. § 152.022, subd. 2(a)(1), with reference to Minn. Stat. § 609.05, subd. 1; and (2) a conviction for a violation of Minn. Stat. § 609.495, subd. 3. The district court stayed imposition of sentence with probationary terms consistent with the plea agreement.

Petition for Postconviction Relief and Order Denying Petition

In April 2020, Crosby filed a petition for postconviction relief, seeking to withdraw her *Alford* pleas on the basis of manifest injustice. Crosby argued that the factual bases for her pleas were inaccurate because the record failed to establish a substantial likelihood that she would have been found guilty of the charges at trial. Crosby argued alternatively that her conviction for aiding an offender should be vacated because she could not be convicted of *both* second-degree possession on an aiding-and-abetting theory *and* aiding an offender. The state urged the district court to deny the petition, arguing that Crosby mischaracterized the nature of her plea to the controlled-substance offense, that the pleas were accurate, and that the conviction for aiding an offender was proper.

The district court adopted the state's memorandum as its findings and conclusions. It emphasized portions of the record and concluded that there was a "sufficient factual basis and sufficient legal basis for the [district court] to accept, on an *Alford* basis, [Crosby's] guilty pleas to Count 1 and Count 3" and that there remained a strong probability that Crosby would be found guilty of those offenses by a fact-finder. The district court denied the petition for postconviction relief.

This appeal follows.

DECISION

Crosby seeks reversal of the district court's order denying postconviction relief, arguing that plea withdrawal is appropriate because her pleas were inaccurate and alternatively that her conviction for aiding an offender as an accomplice after the fact is legally impermissible and must be vacated. The state argues that Crosby misstates the

factual-basis requirement governing *Alford* pleas, that her pleas were accurate, and that her second conviction was proper. We review the district court’s denial of a petition for postconviction relief for an abuse of discretion. *Barrow v. State*, 862 N.W.2d 686, 689 (Minn. 2015). “We review legal issues de novo, and our review of factual matters is limited to whether there is sufficient evidence in the record to sustain the postconviction court’s findings.” *Id.*

I. Crosby’s *Alford* pleas were accurate, and plea withdrawal is therefore not necessary to correct a manifest injustice.

The district court “must allow a defendant to withdraw a guilty plea, even after sentencing, if ‘withdrawal is necessary to correct a manifest injustice.’” *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007) (quoting Minn. R. Crim. P. 15.05, subd. 1). “A manifest injustice exists if a guilty plea is not valid.” *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). A valid guilty plea “must be accurate, voluntary, and intelligent.” *Id.* “The accuracy requirement protects a defendant from pleading guilty to a more serious offense than that for which he could be convicted if he insisted on his right to trial.” *Id.* An accurate plea requires a proper factual basis. *Id.* “Assessing the validity of a plea presents a question of law that we review de novo.”² *Id.*

“[A] judgment of conviction based on a guilty plea is normally justified by the defendant’s admission of guilt and by the defendant’s knowing and voluntary waiver of a

² The state suggests that we should review Crosby’s pleas under a plain-error standard because she did not preserve a challenge to the accuracy of her plea and invited the error by pleading guilty. The state cites no controlling precedent applying plain-error review to assess the validity of a guilty plea.

trial.” *State v. Goulette*, 258 N.W.2d 758, 760 (Minn. 1977). But in *North Carolina v. Alford*, the United States Supreme Court concluded that accepting a guilty plea from a defendant who maintains her innocence is constitutional, provided that the state provides a “strong factual basis for the plea” and the defendant expresses a desire to plead guilty while acknowledging the sufficiency of the state’s evidence to secure a conviction. 400 U.S. at 38, 91 S. Ct. at 167-68. In *Goulette*, the Minnesota Supreme Court adopted the approach set forth in *Alford*, holding:

[A] trial court may accept a plea of guilty by an accused even though the accused protests that he is innocent if the court, on the basis of its interrogatories of the accused and its analysis of the factual basis offered in support of the plea, concludes that the evidence would support a jury verdict of guilty, and that the plea is voluntarily, knowingly, and understandingly entered.

258 N.W.2d at 761. Accordingly, a valid *Alford* plea requires: (1) “a strong factual basis,” 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. “The strong factual basis and the defendant’s agreement . . . 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” *Id.* (emphasis added).

The parties disagree as to how we should evaluate the strength of the factual basis supporting the two pleas. Crosby contends that an *Alford* plea is accurate only if the factual basis would be sufficient to prove her guilt beyond a reasonable doubt. The state contends that “the standard for reviewing the sufficiency of the factual basis for a guilty plea . . . is substantially less than that required for reviewing a conviction after a trial, which is proof

beyond a reasonable doubt.” We need not resolve this dispute because even assuming that an *Alford* plea requires an evidentiary basis rising to the level of proof beyond a reasonable doubt, Crosby’s arguments fail. We examine the factual bases offered in support of the two pleas in turn.

A. Crosby’s plea to aiding and abetting second-degree possession of a controlled substance was accurate.

Crosby challenges the accuracy of her plea to aiding and abetting second-degree possession of a controlled substance, arguing that the factual basis fails to establish that she played a knowing role in aiding and abetting Johnson’s possession of cocaine. The state contends that Crosby did not plead guilty on an aiding-and-abetting theory of liability and that, regardless, the factual basis is sufficient. The characterization of Crosby’s plea presents a threshold issue.

At the time of Crosby’s offense, Minn. Stat. § 152.022, subd. 2(a)(1), required proof of a defendant’s knowing possession of a substance weighing six grams or more and containing cocaine. A defendant may actually or constructively possess illicit drugs either by herself or jointly with another. *See State v. Barnes*, 618 N.W.2d 805, 812 (Minn. App. 2000), *review denied* (Minn. Jan. 16, 2001). But a defendant may be held “criminally liable for a crime committed by another if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime.” Minn. Stat. § 609.05, subd. 1 (emphasis added). “[A]iding and abetting is not a separate substantive offense,” but it is a theory of liability by which an accomplice is treated as the principal. *State v. Ezeka*, 946 N.W.2d 393, 407 (Minn. 2020) (quotation omitted).

We reject the state's contention that Crosby did not plead guilty to an aiding-and-abetting theory of liability. The state charged Crosby with a violation of Minn. Stat. § 152.022, subd. 2(a)(1), with reference to the aiding-and-abetting statute, Minn. Stat. § 609.05, subd. 1. At the plea hearing, Crosby indicated her intent to plead guilty to an offense "with reference to the Aiding and Abetting statute." And although the prosecutor explained a theory of the case suggesting Crosby's sole or joint possession of cocaine, he also explained the state could prove Crosby's guilt on an aiding-and-abetting theory. Following the factual basis for the plea, the district court then adjudicated the conviction with specific reference to the aiding-and-abetting theory. The warrant of commitment also referenced Minn. Stat. § 609.05, subd. 1. Although Crosby acknowledged evidence that could have supported her personal possession of cocaine, she entered a plea to aiding and abetting Johnson's possession crime.

The state emphasizes that aiding and abetting is not a separate substantive offense. But Crosby's *own* possession of cocaine is a separate offense from her aiding and abetting Johnson's possession of cocaine. *See id.* at 407-08 ("There is no need to rely on section 609.05 when the criminal act is committed by the accused because a person is directly liable for his or her actions as a principal."). Because Crosby pleaded guilty to aiding and abetting the crime of second-degree possession of a controlled substance, her *Alford* plea required a factual basis demonstrating that (1) Johnson committed the crime of second-degree possession of a controlled substance, (2) Crosby knew Johnson was committing or would commit the crime, and (3) Crosby intended her presence or actions to aid the

commission of Johnson's drug possession. *See State v. Huber*, 877 N.W.2d 519, 524-25 (Minn. 2016) (explaining accomplice liability).

Having clarified that Crosby pleaded guilty to aiding and abetting the second-degree possession of a controlled substance, we turn to the accuracy of her plea. Crosby argues that she did not admit any intent to aid Johnson's possession of cocaine and that the factual basis is insufficient to support an inference of that fact. But the exhaustive record developed before the district court contradicts her argument.

"[I]ntent is a state of mind that is usually proved with circumstantial evidence." *State v. Balandin*, 944 N.W.2d 204, 217 (Minn. 2020). Intent to aid the commission of a crime may be inferred by various circumstances, including a defendant's presence at the scene of the crime, a close association with the principal, and a lack of objection or surprise. *State v. Swanson*, 707 N.W.2d 645, 659 (Minn. 2006).

Here, the colloquy and record outlined sufficient evidence that Crosby intentionally aided and abetted Johnson's crime. Officers found drugs in Crosby's apartment and cash traceable to an earlier controlled buy; Crosby gave inconsistent statements regarding the source of those funds; Johnson was using Crosby's van and cell phone number to conduct drug sales; Johnson was staying with Crosby at her residence "off and on"; Crosby accompanied Johnson to one controlled buy; and Crosby tested positive for cocaine use. We are satisfied that the evidence offered in support of the *Alford* plea would be "sufficient for a [fact-finder], applying a reasonable doubt standard, to find [Crosby] guilty of the offense to which" she pleaded guilty. *Theis*, 742 N.W.2d at 649. And Crosby admitted

that fact when asked whether she believed whether a jury or the district court would find her guilty at a trial by stating, “Of course they would.”

Given the strong factual basis supporting the plea and Crosby’s acknowledgment that she would likely be found guilty at trial, the district court had a sufficient basis to conclude that there was “a *strong* probability that [Crosby] would be found guilty of the charge to which [s]he pleaded guilty.” *Id.* Accordingly, Crosby’s *Alford* plea to aiding and abetting second-degree possession of a controlled substance was accurate, and the district court properly denied her postconviction petition to withdraw her guilty plea to the charge.

B. Crosby’s plea to aiding an offender was accurate.

Crosby argues that her *Alford* plea to aiding an offender as an accomplice after the fact was not accurate because she did not admit to acting with intent to aid Johnson and the factual basis supporting her plea does not establish that fact. The state contends that Crosby’s actions demonstrate her intent to aid Johnson.

Pursuant to Minn. Stat. § 609.495, subd. 3:

Whoever intentionally aids another person whom the actor knows or has reason to know has committed a criminal act, by destroying or concealing evidence of that crime, providing false or misleading information about that crime, receiving the proceeds of that crime, or otherwise obstructing the investigation or prosecution of that crime is an accomplice after the fact

Contrary to Crosby’s contention, the prosecutor’s summary of the evidence and the complaint sufficiently demonstrated that Crosby acted with intent to aid Johnson by concealing evidence, providing false information, and receiving proceeds of the crime. In

relevant part, the state outlined evidence that officers found over \$6,000 of cash hidden in Crosby's apartment, including funds traceable to the June 7 controlled buy; Crosby initially claimed the money came from a tax refund, but later claimed it was money from a settlement; Crosby initially lied about her cocaine use; Johnson used Crosby's van and cell phone number to conduct drug deals; Crosby accompanied Johnson to a drug deal; and Crosby and Johnson were romantically involved. This evidence demonstrates beyond any reasonable doubt that Crosby intentionally aided Johnson by receiving the proceeds of his drug sales and by providing false or misleading information to the police. This evidence offered in support of the plea would be sufficient for a jury or the district court to find Crosby guilty. *See Theis*, 742 N.W.2d at 649. And as with her plea to aiding and abetting the controlled-substance crime, Crosby conceded that the evidence would be sufficient to support a guilty verdict.³

Because a strong factual basis supported the guilty plea and because Crosby acknowledged that she would likely be found guilty, Crosby's *Alford* plea to aiding an offender was accurate. Accordingly, the district court properly denied her postconviction petition to withdraw her plea.

³ Crosby emphasizes that she never admitted to making false statements with intent to aid Johnson, distinguishing her case from *State v. Skipin the day*, in which the appellant admitted to hiding evidence and giving police false statements. 704 N.W.2d 177, 179-80 (Minn. App. 2005), *aff'd*, 717 N.W.2d 423 (Minn. 2006). But the requisite factual basis need not contain a direct admission of hiding evidence and giving false statements.

II. Crosby’s conviction for aiding and abetting second-degree possession of a controlled substance does not preclude her conviction for aiding an offender as an accomplice after the fact.

Crosby argues that even if her guilty pleas were accurate, she cannot be guilty of both aiding and abetting a crime and aiding an offender as an accomplice after the fact. We review questions of law de novo. *State v. Murphy*, 545 N.W.2d 909, 914 (Minn. 1996).

Crosby argues that her conviction for aiding an offender as an accomplice after the fact is legally impermissible given our holding in *State v. Leja*. 660 N.W.2d 459 (Minn. App. 2003), *aff’d as modified on other grounds*, 684 N.W.2d 442 (Minn. 2004). In that case, Leja allegedly lured a victim to her apartment, at which point her boyfriend and his brother killed the victim and dismembered his body. *Id.* at 461-62. The victim’s torso was found on Leja’s father’s property. *Id.* at 460. Leja was charged with and convicted of both aiding and abetting second-degree murder and aiding an offender as an accomplice after the fact. *Id.* at 462. We concluded that Leja’s aiding-an-offender conviction was legally impermissible given her conviction for aiding and abetting the murder. *Id.* at 465-66. We explained that an accomplice defendant is treated as a principal actor under an aiding-and-abetting theory of liability and that “it is not possible, as a matter of law, for a principal to be guilty of being an accomplice-after-the-fact.” *Id.* at 466.

But *Leja* is inapplicable here. In *Leja*, the two convictions were premised on *the same crime*—the victim’s murder—and our analysis emphasized that Leja could not be treated as both a principal and an accessory to *the same crime*. *See id.* Here, Crosby’s two convictions were not premised on the same crime and she was not treated as both a principal and an accessory to the same crime. Contrary to Crosby’s claim that her two convictions

related to the same underlying “drug crime” of second-degree possession of a controlled substance, the state presented a factual basis that also described Johnson’s drug *sales*.

As to the first conviction, the state presented evidence that on June 14, Crosby aided and abetted Johnson’s drug possession. As to the second conviction, the state presented evidence that Crosby acted as an accomplice after the fact to Johnson’s *previous* drug-sale crimes during the controlled buys on June 7, June 8, and June 14, any of which are crimes other than the June 14 drug possession. Importantly, the state asserted that on June 14, Crosby possessed funds traceable to the June 7 controlled buy and that Crosby provided misleading information about that crime or the proceeds from that crime. The plea was therefore supported by evidence that Crosby “conceal[ed] evidence *of that crime*” or “receiv[ed] the proceeds *of that crime*.” Minn. Stat. § 609.495, subd. 3 (emphasis added). Simply put, the factual bases supporting the two pleas described at least two distinct underlying crimes: (1) Johnson’s possession of the cocaine in the sock on June 14, 2016; and (2) Johnson’s sale of cocaine a week earlier on June 7, 2016.

Accordingly, *Leja* does not apply and the district court properly denied Crosby’s alternative request to vacate her conviction for aiding an offender. Crosby offered no other argument in support of her request to vacate the conviction, and we therefore affirm.⁴

Affirmed.

⁴ We need not address the state’s forfeiture argument.