

*This opinion is nonprecedential except as provided by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
A21-1479**

State of Minnesota,
Respondent,

vs.

Brian Keith Jackson,
Appellant.

**Filed September 19, 2022
Affirmed
Smith, Tracy M., Judge**

Becker County District Court
File No. 03-CR-20-1079

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

Brian W. McDonald, Becker County Attorney, Detroit Lakes, Minnesota (for respondent)

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

Considered and decided by Smith, Tracy M., Presiding Judge; Larson, Judge; and
Hooten, Judge.*

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

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Appellant Brian Keith Jackson argues that he must be allowed to withdraw his *Alford* plea¹ to second-degree assault with a dangerous weapon because his plea was inaccurate. He also argues that he must be allowed to withdraw that plea and an additional *Alford* plea to criminal vehicular operation because the record fails to show that his pleas were voluntary and intelligent. Because Jackson's pleas were accurate, voluntary, and intelligent, we affirm.

FACTS

Jackson was charged with three criminal counts relating to an alleged incident on April 22, 2020: count one was second-degree assault with a dangerous weapon causing substantial bodily harm; count two was second-degree assault with a dangerous weapon; and count three was criminal vehicular operation—substantial bodily harm and leaving the scene.

Pursuant to a plea agreement, Jackson entered *Alford* pleas to counts two and three, with agreed-upon concurrent prison sentences of 34 months for count two and 21 months for count three. In exchange, respondent State of Minnesota dismissed count one and a separate criminal case. The plea petition included an *Alford* addendum, which generally discussed the *Alford* plea's requirement that Jackson agree that “the state's evidence is

¹ An *Alford* plea allows a defendant to plead guilty while maintaining innocence of the charged offense. *State v. Goulette*, 258 N.W.2d 758, 760-61 (Minn. 1977) (discussing *North Carolina v. Alford*, 400 U.S. 25, 38 (1970)).

sufficient for a jury to find [him] guilty, beyond a reasonable doubt, if [he has] a trial.” The plea petition also covered information about many of Jackson’s rights.

At a plea and sentencing hearing, the state presented the anticipated specific evidence and testimony supporting the offenses. The state said it would first call the alleged victim, Jackson’s mother-in-law D.L., who would testify as follows. On April 22, 2020, Jackson and D.L. had a verbal disagreement when Jackson came to D.L.’s house to pick up his children. Jackson was in the driver’s seat of his van with the driver’s side door open, and D.L. was standing next to the van, inside the open door. D.L. observed Jackson put the van into gear and go into reverse, and she was struck by the door “as a result of [Jackson’s] actions.” After she was struck by the vehicle, Jackson left the scene in his van. The state also explained that D.L.’s testimony, as well as medical records and photographs, would establish that “she had several hematomas as a result of this” in addition to other injuries. Jackson agreed that the evidence would establish “‘substantial bodily harm’ under Minnesota law” and that “a motor vehicle can be considered a dangerous or deadly weapon under Minnesota law.” The state also stated that it would call J.C., D.L.’s son, who was at the scene. J.C. would testify similarly to D.L.—that he saw Jackson “essentially, back over [J.C.’s] mother.” The state would also introduce J.C.’s 911 call, which would identify Jackson as the driver of the van.

Jackson then agreed that, if the evidence were presented at trial, it would be sufficient for a jury, using a reasonable-doubt standard, to find him guilty of second-degree assault and criminal vehicular operation—substantial bodily harm and leaving the scene.

Jackson also agreed that if the facts were presented to a jury of twelve persons, all twelve jurors would find him guilty by proof beyond a reasonable doubt.

The district court found that there was a “factual basis” for Jackson’s pleas based on the evidence outlined by the state and that Jackson’s pleas were made “knowingly, intelligently, and voluntarily with a full understanding and waiver of his rights.” The district court sentenced Jackson in accord with the plea agreement.

Jackson appeals.

DECISION

Jackson challenges his pleas as to both counts.

A defendant has no absolute right to withdraw a guilty plea after entering it. *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). But a court must allow withdrawal of a guilty plea if “necessary to correct a manifest injustice.” *Id.* “A manifest injustice exists if a guilty plea is not valid.” *Id.* at 94. To be valid, a plea “must be accurate, voluntary, and intelligent.” *Id.* An accurate plea is “established on a proper factual basis.” *Id.* Voluntariness deals with “what the parties reasonably understood to be the terms of the plea agreement” and “ensures a defendant is not pleading guilty due to improper pressure or coercion.” *Id.* at 96. Intelligence “ensures that a defendant understands the charges against him, the rights he is waiving, and the consequences of his plea.” *Id.* The requirement that a plea be constitutionally valid applies equally to an *Alford* plea. *See State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). We review the validity of a guilty plea de novo. *See Raleigh*, 778 N.W.2d at 94.

Accuracy

Jackson first argues that his *Alford* plea to second-degree assault with a dangerous weapon was not accurate because the record from the plea proceeding does not show that, under the circumstances of this case, he used the vehicle as a dangerous weapon, which is an essential element of the offense.

The accuracy requirement for a valid guilty plea protects a defendant “from pleading guilty to a more serious offense than he could be convicted of were he to insist on his right to trial.” *Theis*, 742 N.W.2d at 649 (quoting *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983)). In the context of an *Alford* plea, “careful scrutiny of the factual basis for the plea is necessary . . . because of the inherent conflict in pleading guilty while maintaining innocence.” *Id.* at 648-49. The “better practice” for an *Alford* plea “is for the factual basis to be based on evidence discussed with the defendant on the record at the plea hearing.” *Id.* at 649. Regardless, the defendant must acknowledge “that the State’s evidence is sufficient to convict” in order to satisfy the accuracy requirement. *Id.*

A person is guilty of second-degree assault with a dangerous weapon when the person “assaults another with a dangerous weapon.” Minn. Stat. § 609.222, subd. 1 (2018). A “dangerous weapon” includes a “device or instrumentality that, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm.” Minn. Stat. § 609.02, subd. 6 (2018). “Great bodily harm,” in turn, is “bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.” *Id.*, subd. 8 (2018).

Jackson contends that the state's evidence did not establish that the manner in which Jackson used his van was calculated or likely to produce death or great bodily harm so the record does not establish that Jackson used a dangerous weapon. He argues that the prosecutor's question—whether a motor vehicle can be considered a dangerous or deadly weapon under Minnesota law—was not sufficient to establish that “in *this* case the manner in which the vehicle was actually used . . . made it a dangerous or deadly weapon.” Jackson also points to the state's discussion of D.L.'s injuries, which Jackson agreed established “substantial bodily harm,” not “great bodily harm.”

We conclude that, based on the anticipated evidence presented during the entry of Jackson's pleas, the state sufficiently established that, if Jackson went to trial, a jury would find that (1) Jackson assaulted D.L. with his van and (2) Jackson used or intended to use the van as a dangerous weapon, likely to produce death or great bodily harm.

First, Jackson agreed that there were two witnesses and a 911 call that would establish that Jackson was sitting in the driver's seat, with D.L. inside the open driver's side door, and that he put the van in reverse and ran D.L. over. This evidence would establish that Jackson assaulted D.L. with his van.

Second, as to whether the van was a dangerous weapon, whether an object was used as a dangerous weapon is a matter of law. *See State v. Basting*, 572 N.W.2d 281, 285 (Minn. 1997). “When determining whether an object, even an inherently dangerous object, is a dangerous weapon, the court must examine not only the nature of the object itself, but also the manner in which it was used.” *Id.* Though Jackson did not explicitly agree that he used the van as a dangerous or deadly weapon in this case, Jackson agreed to anticipated

evidence that showed that he used the van in a manner likely to cause death or great bodily harm. Backing into and knocking down a person standing right next to a van in the manner that Jackson did “is calculated or likely to produce death or great bodily harm.” Minn. Stat. § 609.02, subd. 6. By comparison, when assessing whether a fist constituted a dangerous weapon, the supreme court said that “something more than a mere injury by fist, such as is likely to occur in ordinary assault and battery[,] is needed.” *Basting*, 572 N.W.2d at 285 (quotation omitted). Backing into a person with a van, unlike striking someone with a fist, goes beyond an ordinary assault and battery because the likelihood of great bodily injury is high. Furthermore, the nature or severity of the injuries actually inflicted is not determinative of whether an object is a dangerous weapon. *See id.* Thus, it is irrelevant that Jackson agreed that D.L.’s injuries constituted “substantial bodily harm” rather than “great bodily harm.”

Jackson therefore agreed to a sufficient factual basis, making his *Alford* plea to second-degree assault with a dangerous weapon accurate. *See Theis*, 742 N.W.2d at 648-49.

Voluntariness and Intelligence

Jackson next argues that both of his *Alford* pleas were invalid because they were not voluntary or intelligent. He contends that there were numerous rights that were not covered in the plea hearing or in the plea petition. Specifically, he asserts that the record lacks confirmation of Jackson’s understanding and waiver of certain rights as required by Minn. R. Crim. P. 15. He cites the following: (1) under Minn. R. Crim. P. 15.01, subd. 1(4)(c), the judge must ensure that the defendant has not been threatened by anyone to get the

defendant to plead guilty; (2) under Minn. R. Crim. P. 15.01, subd. 1(5), the judge must determine whether the defendant has a mental disability or is undergoing treatment; (3) under Minn. R. Crim. P. 15.01, subd. 1(6), a finding of guilty is not possible unless all jurors agree; and (4) under Minn. R. Crim. P. 15.01, subd. 1(6), the prosecutor would be required to have the witnesses testify in open court in the defendant's presence if the case went to trial.

Minn. R. Crim. P. 15.01, subd. 1, provides that, before the district court accepts a guilty plea, the defendant must be sworn and questioned by the district court with the assistance of counsel with respect to a list of topics. But the comments to the rule state that, “[a]lthough a failure to include all of the interrogation set forth in Rule 15.01 will not in and of itself invalidate a plea of guilty, a complete inquiry as provided for by the rule will in most cases assure and provide a record for a valid plea.” Minn. R. Crim. P. 15 cmt. And, as this court has explained, “[w]hat is important is . . . whether the record is adequate to establish that the plea was intelligently and voluntarily given.” *State v. Doughman*, 340 N.W.2d 348, 351 (Minn. App. 1983), *rev. denied* (Minn. Mar. 15, 1984).

Jackson signed a plea petition and an *Alford* addendum. The district court and the state also discussed his rights at the plea hearing. Though not every right was explicitly discussed, the record shows that Jackson extensively discussed his rights with the district court, the prosecutor, and his own defense attorney. In the plea petition, Jackson agreed that he was pleading guilty “freely and voluntarily,” and, at the hearing, he agreed that he had a “clear mind” and was not under the influence of drugs, alcohol, or prescription medications. Jackson also agreed that, if the state's evidence were presented at trial, a jury

of twelve persons would find him guilty. In his plea petition, he agreed that he was waiving his right to cross-examine witnesses and subpoena witnesses for his defense.

Thus, the record supports that Jackson's pleas were voluntary and intelligent. Though the district court did not inquire as to every topic in Minn. R. Crim. P. 15.01, Jackson acknowledged many of his rights, including, as discussed above, rights that were akin to the rights that Jackson argues were omitted. Therefore, Jackson's *Alford* pleas to both counts were valid.

Affirmed.