STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0841

State of Minnesota,
Respondent,

vs.

Stacy Lee Sanders,
Appellant.

Filed April 24, 2023
Affirmed
Worke, Judge

Lyon County District Court
File No. 42-CR-21-883

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

Abby Wikelius, Lyon County Attorney, Marshall, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Amy Lawler, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Worke, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant seeks to withdraw his *Alford* pleas, arguing that they lack strong factual bases. Alternatively, appellant argues that the district court erred by imposing multiple sentences for a single behavioral incident. We affirm.

FACTS

Respondent State of Minnesota charged appellant Stacy Lee Sanders with soliciting a child to engage in sexual conduct, interfering with the privacy of a minor with sexual intent, and six counts of using a minor in a pornographic work. Sanders agreed to enter *Alford* pleas of guilty[1] to solicitation under Minn. Stat. § 609.352, subd. 2 (2020), and two counts of using a minor in a pornographic work under Minn. Stat. § 617.246, subd. 2(a) (2020). The state agreed to dismiss the remaining charges. For the solicitation offense, Sanders would receive a 15-month sentence stayed for four years. He would receive concurrent 36- and 48-month sentences for the two other offenses, both stayed for ten years.

At the plea hearing, the state described the evidence that it would present at trial. "Victim one" would testify that when she was 15 years old, she lived with her mother and her mother's boyfriend, Sanders. On September 4, 2021, Sanders told victim one that she "should prepare her body for her . . . boyfriend's later visit." She understood Sanders as "telling her to masturbate" before her boyfriend come over that evening.

The next evening, Sanders and victim one were at the residence while victim one's mother was away. Sanders asked victim one "to come to his bedroom." Sanders told victim one that on September 2, 2021, he had placed a camera in her bedroom that recorded

[1] "A plea constitutes an *Alford/Goulette* plea if the defendant maintains innocence but pleads guilty because the record establishes, and the defendant reasonably believes, that the state has sufficient evidence to obtain a conviction." *Williams v. State*, 760 N.W.2d 8, 12 (Minn. App. 2009), *rev. denied* (Minn. Apr. 21, 2009); *see North Carolina v. Alford*, 400 U.S. 25, 37 (1970); *State v. Goulette*, 258 N.W.2d 758, 761 (Minn. 1977).

her and her boyfriend (victim two) getting "hot and heavy" on September 4. Victim one's boyfriend was under 16 years old at the time. Sanders threatened to send the recording to victim one's family members if she did not "give [Sanders] some of that p-ssy." Sanders also told victim one that he "edited" the recording into "video files" on his phone, claiming that "security on [his] phone" would erase the phone's contents "if law enforcement attempted to get into his phone and entered incorrect passcodes."

Other prosecution evidence discussed at the plea hearing was expected testimony from law enforcement about finding a camera "in a garbage bag" at Sanders's residence. Law enforcement also found "video clips" saved on Sanders's phone. Each clip was "cut to include only" victim one "masturbating or . . . engaged in sexual contact . . . with" victim two—victim one's boyfriend. The state indicated that it would offer two of these video clips as exhibits.

Based on this evidence, Sanders agreed that "a jury applying the presumption of innocence and the requirement of proof beyond a reasonable doubt would likely find [him] guilty of the[] offenses." The district court accepted Sanders's guilty plea and imposed sentences according to the plea agreement. This appeal followed.

DECISION

Factual bases for Alford *pleas*

Sanders seeks to withdraw his *Alford* pleas, claiming that they are inaccurate. "[A] court must allow withdrawal of a guilty plea if . . . necessary to correct a manifest injustice." *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010) (quotation omitted). "A manifest

injustice exists if a guilty plea is not valid." *Id.* at 94. The validity of a guilty plea is a question of law reviewed de novo. *Id.*

To be valid, a guilty plea must be accurate. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). An accurate *Alford* plea requires "a strong factual basis" supporting the elements of the offense, and the defendant's agreement "that evidence the [s]tate is likely to offer at trial is sufficient to convict." *Id.* at 647, 649; *see State v. Ecker*, 524 N.W.2d 712, 717 (Minn. 1994) (concluding that factual basis established intent element "based on [defendant's] probable guilt and the likelihood a jury would convict him"). A strong factual basis may be established by discussing the evidence that the state would likely offer at trial "with the defendant on the record at the plea hearing." *Theis*, 742 N.W.2d at 649. Because Sanders agreed that a jury would likely find him guilty of the offenses based on the evidence that the state would likely present at trial, we consider only whether that prospective evidence provides strong factual bases for Sanders's *Alford* pleas.

Use of minor in pornographic work

Sanders argues that his *Alford* pleas to using a minor in a pornographic work under section 617.246, subdivision 2(a), lack strong factual bases because the statute "is designed largely to ensure that employers are careful to hire only adults when hiring sexual performers." His argument requires us to interpret the statute, which we do de novo. *See State v. Defatte*, 928 N.W.2d 338, 340 (Minn. 2019). "The first step in statutory interpretation is to determine whether the statute's language, on its face, is ambiguous." *Id.* (quotations omitted). "A statute is ambiguous only when [its] language is subject to

more than one reasonable interpretation." *Id.* (quotation omitted). Absent ambiguity, we "apply the statute's plain meaning." *Id.* (quotation omitted).

Under Minn. Stat. § 617.246, subd. 2(a), "[i]t is unlawful for a person to . . . use or permit a minor to engage in . . . modeling alone or with others in any . . . pornographic work if the person knows or has reason to know that the conduct intended is . . . a pornographic work." "'Minor' means any person under the age of 18." Minn. Stat. § 617.246, subd. 1(b) (2020). A "[p]ornographic work" includes any "video" that "uses a minor to depict . . . sexual conduct." *Id.*, subd. 1(f)(2)(i) (2020). "Sexual conduct" includes "masturbation" and "physical contact with the clothed or unclothed pubic areas . . . of a human . . . female . . . whether alone or between members of the same or opposite sex" for "apparent sexual stimulation or gratification." *Id.*, subd. 1(e)(3), (5) (2020). This language unambiguously applies to using a minor in non-commercial pornography. We therefore reject Sanders's apparently contrary argument. Moreover, caselaw on possessing child pornography suggests, and Sanders does not dispute, that the state may charge a defendant with a separate count of using a minor in a pornographic work for "each individual pornographic work" given the statutory reference to a singular "work." *State v. Bakken*, 883 N.W.2d 264, 267-69 (Minn. 2016). We proceed on this understanding.

Here, the state would have offered evidence that Sanders placed a camera in victim one's bedroom that recorded victim one "rubbing her vaginal area over her clothing" in one video clip and victim two "rubbing [victim one's] vaginal area" in the other. The state also would have offered evidence that both victims were under 18 years old. This evidence

provides a strong factual basis that Sanders used or permitted one or both victims to depict sexual conduct constituting a pornographic work as to both child-pornography counts.

Regarding mens rea, victim one would have testified that Sanders told her to "prepare her body for her boyfriend's later visit." Victim one understood this as an invitation "to masturbate." Victim one would have recounted how Sanders told her the next day that he had recorded her and victim two getting "hot and heavy." Based on Sanders's statements to victim one and the evidence discovered through law enforcement's search of Sanders's residence and phone, a strong factual basis supports that Sanders edited the video clips manually to show only the sexual conduct depicted thereon. Thus, a strong factual basis supports that Sanders knew or had reason to know that the conduct intended constituted a pornographic work as to both child-pornography counts.

Sanders suggests that under section 617.246, subdivision 2(a), the victim must know or have reason to know that they are "modeling" in a pornographic work. We disagree. The statute's knowledge requirement unambiguously applies only to "the person"—that is, the defendant—who uses a minor in a pornographic work. *See* Minn. Stat. § 617.246, subd. 2(a). And we need not determine whether the intent requirement applies to the defendant, the victim, or both. Here, a strong factual basis supports that Sanders intended for both victims to engage in sexual conduct, that victim one and victim two intended to engage in sexual conduct, and that Sanders knew or had reason to know that the conduct intended in the video clips constituted pornographic works. Neither victim one nor victim two needed to know or have reason to know that they were modeling in a pornographic work. We

therefore conclude that a strong factual basis supports Sanders's *Alford* pleas to using a minor in a pornographic work, and we reject Sanders's request to withdraw those pleas.

Solicitation of child to engage in sexual conduct

We next address Sanders's request to withdraw his *Alford* plea to soliciting a child to engage in sexual conduct. "A person 18 years of age or older who solicits a child . . . to engage in sexual conduct with intent to engage in sexual conduct" violates Minn. Stat. § 609.352, subd. 2. "'[C]hild' means a person 15 years of age or younger." Minn. Stat. § 609.352, subd. 1(a) (2020). "[S]exual conduct" includes "sexual contact of the individual's primary genital area." *Id.*, subd. 1(b) (2020). To "solicit" includes "attempting to persuade a specific person in person." *Id.*, subd. 1(c) (2020).

Here, a strong factual basis supports that victim one was 15 years old during the relevant events. She would have testified that Sanders told her "to come to his bedroom" while her mother was away from the residence. Victim one would have explained how Sanders attempted to "blackmail" her into giving him "some of that p-ssy." Victim one also would have described Sanders claiming to her that security on his phone would delete the video clips if law enforcement tried accessing his phone and entered incorrect passcodes. This evidence provides a strong factual basis that Sanders attempted to persuade victim one to engage in sexual conduct. And given the evidence that Sanders tried coercing victim one into engaging in sexual conduct with him specifically in his bedroom, a strong factual basis supports that he did so with intent to actually engage in sexual conduct with victim one. As such, we conclude that a strong factual basis supports

Sanders's *Alford* plea to soliciting a child to engage in sexual conduct. We reject Sanders's request to withdraw that plea.

Multiple sentences

Alternatively, Sanders contends that the district court violated Minn. Stat. § 609.035, subd. 1 (2020), by imposing multiple sentences. Under that statute, "if a person's conduct constitutes more than one offense . . . the person may be punished for only one of the offenses." Minn. Stat. § 609.035, subd. 1. "'[C]onduct' refers to a 'single behavioral incident'"—that is, "acts committed at substantially the same time and place" with "a single criminal objective." *Munt v. State*, 920 N.W.2d 410, 416-17 (Minn. 2018) (quoting *State v. Johnson*, 141 N.W.2d 517, 524 (Minn. 1966)).

Whether offenses arose from a single behavioral incident is a mixed question of fact and law. *State v. Barthman*, 938 N.W.2d 257, 265 (Minn. 2020). Appellate courts review factual findings for clear error and application of law to the facts de novo. *Id.* The state bears the burden of proving by a preponderance of the evidence that the offenses did not arise from a single behavioral incident. *Id.* at 266.

The district court here made no express findings or conclusion regarding section 609.035, but the district court imposed a sentence for each offense according to the terms of the plea agreement. We therefore review whether the record supports the implicit conclusion that the offenses arose from separate behavioral incidents. *See State v. Bertsch*, 707 N.W.2d 660, 664, 666 (Minn. 2006) (reviewing "district court's implicit determination that . . . offenses were not a single behavioral incident" as required for exception from Minn. Stat. § 609.04, which is "analogous" to the single-behavioral-incident determination

under section 609.035). We review this conclusion under both the plea transcript and "the facts alleged in the amended complaint" because "the entry of a guilty plea has the legal effect of establishing" such facts "by judicial admission." *See Rickert v. State*, 795 N.W.2d 236, 243 n.3 (Minn. 2011) (explaining that "a defect in" the "factual basis" for the guilty plea "might [have] affect[ed] the [plea's] validity" but "d[id] not raise" issue of whether more fact-finding to support sentence was necessary).

Regarding whether the offenses occurred at substantially the same time, we focus our inquiry on when Sanders "complete[d]" the offenses. *See Bakken*, 883 N.W.2d at 270. According to the amended complaint, Sanders completed the solicitation offense when he attempted to blackmail victim one "[a]t approximately 10:30 p.m." on September 5, 2021.

As to the child-pornography offenses, the record supports a finding that Sanders committed the offense elements between September 2, 2021—when he placed the camera in victim one's bedroom—and the night of September 4, 2021. The amended complaint establishes that during the "afternoon" of September 4, 2021, Sanders removed a "cup from the vent" in victim one's bedroom containing the camera that recorded the sexual conduct. The record therefore supports that Sanders used or permitted one or both victims to model in the pornographic works sometime between September 2, 2021, and when Sanders retrieved the camera during the afternoon of September 4, 2021.

The amended complaint also establishes that the camera in victim one's bedroom had been recording "a direct view of her bed." Further, the plea transcript supports that during the "night" of September 4, 2021, Sanders told victim one to "prepare her body for her boyfriend's later visit," which victim one understood as an invitation "to masturbate."

The record therefore supports that Sanders knew or had reason to know that the conduct intended in the video constituted pornographic works no later than the night of September 4, 2021, and that he completed the child-pornography offenses no later than that time. This is not substantially close in time to when Sanders solicited victim one the following night. *State v. Degroot*, 946 N.W.2d 354, 366 (Minn. 2020) (concluding that offenses occurred at substantially different times when one occurred in the morning and the other occurred in the afternoon the same day).

The record also supports that the child-pornography offenses occurred at substantially different times from each other. Supporting this conclusion is that victim one was apparently alone in one video clip but with victim two in the second clip. Sanders's comment to victim one about preparing for her boyfriend's visit by masturbating—suggesting that Sanders had previously seen this occur on video—further supports that the video clips depicted "separate incidents." *See Barthman*, 938 N.W.2d at 266-67 (concluding that victim's descriptions of separate instances sufficiently proved that offenses occurred at substantially different times even though victim could not identify exact dates and times).

"[A]cts that lack a unity of time . . . do not constitute a single behavioral incident." *Munt*, 920 N.W.2d at 416-17. Because the record supports that the offenses here occurred at substantially different times, we conclude that the state proved by a preponderance of the evidence that the offenses did not arise from a single behavioral incident. The district court did not err by imposing a sentence for each offense.

Affirmed.