STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0879

State of Minnesota,
Respondent,

vs.

Michael Allen Andersen,
Appellant.

Filed June 9, 2014
Reversed and remanded
Chutich, Judge

Blue Earth County District Court
File No. 07-CR-12-3513

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Ross E. Arneson, Blue Earth County Attorney, Mankato, Minnesota (for respondent)

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

Considered and decided by Johnson, Presiding Judge; Rodenberg, Judge; and Chutich, Judge.

U N P U B L I S H E D O P I N I O N

CHUTICH, Judge

Andersen seeks to withdraw his *Alford* pleas to fourth-degree assault of a peace officer and pattern-of-stalking conduct, contending that the factual bases for the guilty

pleas were deficient. Because the factual basis was insufficient to establish a pattern-of-stalking conduct, we reverse Andersen's convictions and remand for further proceedings.

FACTS

According to the complaint, appellant Michael Andersen and N.B. were romantically involved and lived together for approximately four years. N.B. and Andersen had a fight on September 13, 2012, and N.B. told Andersen that she was thinking about breaking up with him. N.B. left and went to a local bar and restaurant. Andersen followed her there, screamed at her, pulled her by the arm, and was told to leave. Andersen eventually left, and N.B. went to stay with her parents.

Three days later, Andersen went to N.B.'s parents' home to talk to her about money that N.B. allegedly owed him and about how to divide their property. N.B.'s father asked Andersen to leave and called the police. Police officers arrested Andersen, and, on September 18, he was served with a domestic-abuse-no-contact order and an order for protection for N.B. Andersen's conceal-to-carry permit was also revoked, and he was ordered to turn in his handgun.

N.B. returned to her home on September 20, 2012. Andersen went to her home at approximately 8:30 p.m. that day and knocked on the door. N.B. looked out the window and did not see anyone, but heard Andersen say, "Please don't call the police," and "I'm not armed." Andersen held up his shirt for N.B. so that she could see that he did not have a gun. N.B. spoke to Andersen on the porch of her home about turning in his gun. She told him that he could not enter the house and that she had changed the locks.

While they were talking, a police car pulled up to the home. Andersen ran past N.B. into the house. Officer Melissa Myers approached N.B., and N.B. stated that Andersen was inside the house. Officers Myers and Reinbold entered the house and found Andersen in the basement.

After being confronted by the police officers, Andersen ran up the stairs. Officer Reinbold grabbed Andersen at the top of the stairs and ordered him several times to get on the ground, but Andersen refused. Andersen fought the officers; at one point, Andersen was on top of Officer Myers, and she had difficulty breathing.

Officer Reinbold warned Andersen several times that if he did not stop fighting, he would be tased. Officer Reinbold tased Andersen, but Andersen still continued to fight with Officer Myers by kicking her. Andersen then fought with Officer Reinbold over the taser. Officer Reinbold eventually got the taser away from Andersen and had N.B. place it away from Andersen on a table.

More police officers arrived at the scene and were able to handcuff and arrest Andersen. As a result of struggling with Andersen, Officer Myers "suffered multiple contusions to her knees and arms" and had a "sore neck."

The state charged Andersen with two counts of first-degree burglary (assault person in building and occupied dwelling), stalking (pattern-of-stalking conduct), and fourth-degree assault of a peace officer. *See* Minn. Stat. §§ 609.582, subds. 1(a), 1(c), .749, subd. 5(a), .2231, subd. 1 (2012). Andersen entered *Alford* pleas on the counts of pattern-of-stalking conduct and fourth-degree assault of a peace officer, and the state dismissed the burglary charges and also dismissed all charges against him in an unrelated

file. The district court accepted Andersen's guilty pleas and sentenced him to 90 days in jail, with credit for time served; a stay of imposition on both counts; community service in lieu of a fine; and probation for five years. This appeal followed.

D E C I S I O N

Andersen asserts that the factual bases supporting his *Alford* pleas to fourth-degree assault of a peace officer and pattern-of-stalking conduct were invalid, entitling him to withdraw his pleas.[1] The validity of a guilty plea is a question of law reviewed de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). A defendant is entitled to withdraw his plea if necessary to correct a manifest injustice. Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice exists if a guilty plea is not constitutionally valid; to be valid, a plea must be accurate, voluntary, and intelligent. *Raleigh*, 778 N.W.2d at 94. The "defendant bears the burden of showing his plea was invalid." *Id.*

"A proper factual basis must be established for a guilty plea to be accurate." *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). "The factual basis of a plea is inadequate when the defendant makes statements that negate an essential element of the charged crime because such statements are inconsistent with a plea of guilty." *State v. Iverson*, 664 N.W.2d 346, 350 (Minn. 2003). An appellant cannot withdraw a guilty plea "simply because the court failed to elicit proper responses if the record contains sufficient evidence to support the conviction." *Raleigh*, 778 N.W.2d at 94. A guilty plea may be supported by "other evidence to establish the factual basis." *Lussier v. State*, 821 N.W.2d

[1] The state did not file a brief. Under Minn. R. Civ. App. P. 142.03, we decide the case on the merits.

581, 589 (Minn. 2012). But a complaint cannot support a factual basis where a defendant maintains his innocence and does not "affirm that the evidence supporting these allegations would lead a jury to find him guilty" of the offense. *State v. Theis*, 742 N.W.2d 643, 650 (Minn. 2007). The district court "should not accept the plea unless the record supports the conclusion that the defendant actually committed an offense at least as serious as the crime to which he is pleading guilty." *State v. Trott*, 338 N.W.2d 248, 251–52 (Minn. 1983).

An *Alford* plea is a plea under which the defendant acknowledges that the record establishes his guilt and that he reasonably believes the state has sufficient evidence to secure a conviction, but does not expressly admit the factual basis for guilt and maintains his innocence. *North Carolina v. Alford*, 400 U.S. 25, 37–38, 91 S. Ct. 160, 167–68 (1970); *see also State v. Goulette*, 258 N.W.2d 758, 761 (Minn. 1977) (recognizing *Alford* pleas in Minnesota). District courts must closely scrutinize the factual basis of an *Alford* plea "because of the inherent conflict in pleading guilty while maintaining innocence." *Theis*, 742 N.W.2d at 648–49. An *Alford* plea is valid "if the court, on the basis of its interrogation of the accused and its analysis of the factual basis offered in support of the plea, reasonably concludes that there is evidence which would support a jury verdict of guilty and that the plea is voluntarily, knowingly, and understandingly entered." *Id*. at 647 (quotation omitted). The district court has the responsibility to determine whether an adequate factual basis has been established. *Goulette*, 258 N.W.2d at 761.

A. Fourth-Degree Assault of a Peace Officer

Andersen asserts that he should be able to withdraw his *Alford* plea for fourth-degree assault of a peace officer because he negated the element of intent and acted "reflexively while struggling to get away." We hold that the factual basis on the assault count is sufficient to uphold Andersen's conviction.

Andersen entered an *Alford* plea for fourth-degree assault under Minnesota Statutes section 609.2231, subdivision 1, which states that it is a felony to commit an assault on a licensed "peace officer . . . when that officer is effecting a lawful arrest or executing any other duty imposed by law" that "inflicts demonstrable bodily harm." To prove fourth-degree assault, the factual basis must establish that Andersen intended to make the movement that inflicted bodily harm on Officer Myers. *See* Minn. Stat. § 609.02, subd. 10(2) (2012); *State v. Fleck*, 810 N.W.2d 303, 309–10 (Minn. 2012). "Intent may be proved by circumstantial evidence, including drawing inferences from the [appellant's] conduct, the character of the assault, and the events occurring before and after the crime." *In re Welfare of T.N.Y.*, 632 N.W.2d 765, 769 (Minn. App. 2001) (citing *Davis v. State*, 595 N.W.2d 520, 525–26 (Minn. 1999)).

At the plea hearing, Andersen stated that he understood that Officer Myers would testify at trial "that during her struggles with [him] she suffered multiple contusions to her knees and arms and that she received a sore neck." He also stated he understood "that if Officer [Myers] testified at trial that she did in fact sustain those injuries and the jury believed her that it is likely [he] would have been convicted of fourth degree assault as a felony." Andersen then said that he did not intend to hurt Officer Myers, exclaiming, "I

didn't try to hurt anybody!" At no point in the plea hearing did Andersen state that he was not in control of his actions when he physically struggled with Officer Myers.

The factual basis of the *Alford* plea supports the finding that Andersen's voluntary movements caused Officer Myer's injuries. The record as a whole shows that Officer Myers sustained her injuries while trying to restrain and arrest Andersen for violating an order for protection and allegedly committing burglary. Instead of complying with a lawful arrest, Andersen chose to fight the police officers as part of his attempt to escape. Andersen's conduct was not a reflex as he states in his brief; his voluntary movements resulted in Officer Myers suffering "multiple contusions to her knees and arms" and having "a sore neck." Andersen's voluntary actions satisfy the requirements of Minnesota Statutes section 609.2231, subdivision 1, even though he may not have specifically intended to injure Officer Myers. *See Fleck*, 810 N.W.2d at 309 (holding that assault-harm is a general-intent crime). Although we find the factual basis for the assault conviction to be valid, we reverse for the reason given below.

B. Pattern-of-Stalking Conduct

Andersen contends that his *Alford* plea to the pattern-of-stalking conduct charge lacks a sufficient factual basis and that he is, therefore, entitled to withdraw his guilty plea. Because the record does not support all of the elements for a pattern-of-stalking-conduct conviction, we reverse the district court's acceptance of Andersen's *Alford* plea and hold that he is entitled to withdraw his plea.

For Andersen's guilty plea for pattern-of-stalking conduct to be valid, the factual basis must show that Andersen

> engage[d] in a pattern of stalking conduct with respect to a single victim or one or more members of a single household which the actor knows or has reason to know would cause the victim under the circumstances to feel terrorized or to fear bodily harm and which does cause this reaction on the part of the victim[.]

Minn. Stat. § 609.749, subd. 5(a). "Pattern of stalking conduct" is defined as two or more prohibited acts within a five-year period. *Id.*, subd. 5(b). A conviction under subdivision 5(a) "can stand only when at least two separate and discrete criminal acts against a single individual occur." *State v. Richardson*, 633 N.W.2d 879, 887 (Minn. App. 2001). To establish Andersen's pattern of stalking N.B., the prosecutor only questioned Andersen during the plea hearing about the alleged burglary on September 20 and the violation of the order for protection that happened that same evening. As Andersen correctly asserts, these two violations were part of the same behavioral incident and were not "two separate and discrete criminal acts." *See id.*

Andersen violated the order for protection when he initially went to N.B.'s home on September 20, and the burglary allegedly occurred when he then entered N.B.'s home. The violation of the order for protection and the burglary were part of the same behavioral incident because they "occurred at substantially the same time and place" and "arose from a continuing and uninterrupted course of conduct, manifesting an indivisible state of mind or coincident errors of judgment." *See State v. Bauer*, 776 N.W.2d 462, 478 (Minn. App. 2009) (quotation omitted), *aff'd*, 792 N.W.2d 825 (Minn. 2011).

Because the factual basis for Andersen's *Alford* plea on pattern-of-stalking conduct does not show "two separate and discrete criminal acts," it does not establish a pattern. *See Richardson*, 633 N.W.2d at 887. Andersen is therefore entitled to withdraw this *Alford* plea.

Because Andersen entered his two *Alford* pleas based on a plea bargain that required the state to dismiss two other counts on this case, as well as charges in an unrelated case, we reverse both counts. Plea agreements are analogous to contracts, and reversing one count and not the other would give neither party what they bargained for. *See Puckett v. United States*, 556 U.S. 129, 137, 129 S. Ct. 1423, 1430 (2009) ("Although the analogy may not hold in all respects, plea bargains are essentially contracts. . . . [W]hen one of the exchanged promises is not kept . . . we say that the contract was broken."); *State v. Montermini*, 819 N.W.2d 447, 455 (Minn. App. 2012); *cf. Liebsch v. Abbott*, 265 Minn. 447, 451, 122 N.W.2d 578, 581 (1963) ("An attempted restoration of the status quo is an essential part of a rescission of a contract unless such restoration is impossible."). For this reason, we reverse Anderson's convictions and remand for further proceedings consistent with this opinion and Minnesota law.

Reversed and remanded.