STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0913

State of Minnesota,
Respondent,

vs.

Bruce George Peck,
Appellant.

Filed July 1, 2024
Affirmed in part, reversed in part, and remanded
Bratvold, Judge

Crow Wing County District Court
File No. 18-CR-22-2433

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

Donald F. Ryan, Crow Wing County Attorney, Minnesota; and

Travis J. Smith, Special Assistant County Attorney, Slayton, Minnesota (for respondent)

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

Considered and decided by Larkin, Presiding Judge; Bratvold, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

In this appeal from appellant's conviction and sentence for misdemeanor domestic assault, appellant argues that his guilty plea was not voluntary or accurate because (1) the

district court imposed a sentence that exceeded the sentence in the plea agreement, (2) the factual basis was not accurate for an *Alford* plea,[1] and (3) the state used appellant's homelessness to induce the plea. We first conclude that the district court did not reject the plea agreement or allow appellant to affirm or withdraw the plea, but imposed a sentence that exceeded the sentence in the plea agreement. Thus, the guilty plea is invalid because it was involuntary, and we reverse appellant's conviction and remand for the district court to allow appellant either to affirm his plea and be resentenced or to withdraw his plea and proceed to trial. Because appellant's other challenges are relevant if Peck chooses to affirm his plea on remand, we also decide the other two issues and conclude that the plea was accurate and that the state did not coerce the plea. Thus, we affirm in part, reverse in part, and remand.

FACTS

On June 29, 2022, respondent State of Minnesota charged appellant Bruce George Peck with misdemeanor domestic assault under Minn. Stat. § 609.2242, subd. 1(2) (2020). The following summarizes the facts in the citation and probable-cause statement, which the district court received into the record at the plea hearing.

Peck reported a "verbal domestic" between himself and his roommate, S.C., to the Crosslake Police Department. As Peck spoke with a law-enforcement officer, he explained that he and S.C. were arguing about a garage sale and identified S.C., who was driving by

[1] *See North Carolina v. Alford*, 400 U.S. 25, 38 (1970) (permitting a guilty plea "despite [the defendant's] professed belief in his innocence" when there was a "strong factual basis for the plea"); *State v. Goulette*, 258 N.W.2d 758, 761 (Minn. 1977) (recognizing *Alford* pleas in Minnesota).

in a vehicle. The officer spoke with S.C. at a nearby hotel. S.C. stated that she "accidentally hit the brim of [Peck's] hat," which "caused him to get angry and he hit her twice." The officer observed a red mark on the side of S.C.'s face. S.C. also showed the officer her damaged eyeglasses and a photo of her face.

When the officer questioned Peck, he stated that he "stiff-armed" S.C. after "she hit him and said she was going to get a gun." The officer examined Peck's hand and noticed "a scab with some dried blood and some fresh blood" on his knuckles, which Peck said occurred when he moved a freezer that morning. The officer arrested Peck, who was later released on certain conditions. Relevant to this appeal, the conditions included a domestic-abuse no-contact order (DANCO) that required Peck to have no contact with S.C. and to stay away from the Crosslake home where Peck and S.C. had lived together.

The district court appointed a public defender to represent Peck. Peck moved to discharge his appointed attorney and petitioned to proceed pro se. On October 13, 2022, Peck moved the district court to remove the address restriction from the DANCO, arguing that he was "sleeping in [his] car."

At a hearing on these motions, the district court granted Peck's motion to discharge his attorney and allowed him to proceed pro se. At the same hearing, Peck claimed that S.C. had moved out of state and was no longer residing at the address in the DANCO. He stated that "[t]he landlord has changed the locks [and] . . . has issued orders removing her" and that the apartment has "been vacant for . . . two months." The prosecuting attorney stated that he had "personally talked with [S.C.] in the last two weeks," she had not moved out of state, and she wished to stay at the address in the DANCO. The district court

amended the order to allow Peck to retrieve his personal belongings with a law-enforcement escort. The district court did not remove the address restriction from the DANCO.

On November 7, 2022, Peck was self-represented at his plea hearing. The prosecuting attorney informed the court that the parties had reached an agreement. Peck agreed to plead guilty "on an *Alford* basis," and the state agreed to recommend a "90-day jail sentence stayed for a period of one year; unsupervised probation; a 50 dollar minimum fine; no same or similar offenses; remain law abiding." The prosecuting attorney added that, while the state requested a probationary no-contact order related to S.C., the state was "not requesting any address restrictions." The prosecuting attorney asked to "leave restitution open for 60 days, or in the alternative . . . set a separate restitution hearing."

The district court asked about a domestic-violence inventory (DVI), and the prosecuting attorney stated that they "did not contemplate completing a DVI" and that it "wasn't part of the offer." The district court stated that it would be ordering a presentence investigation (PSI). The prosecuting attorney acknowledged that a PSI was required by statute and asked the district court to "inquire of Mr. Peck if that impacts his desire to go forward today."[2]

The district court discussed with Peck what a PSI involves as well as Peck's options without a PSI. The district court informed Peck that they could not "wrap up" the case that

[2] Under Minn. Stat. § 609.2244, subd. 1(1) (2022), "[a] presentence domestic abuse investigation must be conducted and a report submitted to the court by the corrections agency responsible for conducting the investigation when . . . a defendant is convicted" of domestic abuse as defined in Minn. Stat. § 518B.01, subd. 2(a) (2020).

day because a PSI is required before sentencing. The district court also stated that a PSI "is supposed to include any recommendations or limitations on contact; whether or not there should be domestic abuse programming; whether or not there should be any chemical dependency evaluations or treatments." Peck asked for "the alternatives," and the district court responded, "We have a trial." The transcript of their discussion about the PSI runs six pages.

Following this discussion, Peck told the district court that he was "willing to go do" the PSI and pleaded guilty "under the *Alford* plea." Peck was then sworn in, and he testified that he understood the charge and the maximum penalty for that offense. He testified that he was waiving his right to a jury trial and all related rights, including the right to have the state prove its case beyond a reasonable doubt. Peck agreed that no one made threats or promises to him to get him to enter a plea of guilty, that his plea was free and voluntary, and that he was not under the influence of any drugs or alcohol.

Peck agreed that he received the police reports and "that if the state called in witnesses, including the alleged victim, and they testified consistent with the reports that they had given, that the jury would find [Peck] guilty of domestic assault." The prosecuting attorney then questioned Peck about the factual basis for the plea.

> Q: Mr. Peck, you understand that the state would present evidence at trial?
> A: Yes, sir.
> Q: And that would be in the form of testimony from [S.C.]?
> A: Yes, sir.
> Q: And if she did testify consistent with reports, she would testify that there was a verbal argument between you and her, that at some point you stiff-armed her or struck her in the face. You understand that?

> A: Yes, sir. The report also says that she admitted to hitting me first.
> Q: Well, I don't know that it does.
> A: Okay.
> Q: But you understand that there was an officer that subsequently came and took her statement?
> A: Pardon me?
> Q: You understand that there was an officer that came afterwards and took her statement?
> A: Yes.
> Q: And took photographs of her face. You understand that?
> A: Yes, sir.
> Q: And the state would at trial submit those photographs depicting her face and apparent redness and puffiness, and also a pair of glasses that she said that were broken when she said she was struck. You understand that's what the state would present?
> A: Yes.
> Q: And if that information was presented to a jury, do you believe that the jury would find you guilty?
> A: Yes.

Finally, Peck testified that he was waiving any claim of self-defense.

The district court found that Peck's plea was "free[] and voluntar[y]" and that "there is a factual basis to accept [Peck's] plea." The district court accepted Peck's plea, convicted Peck, and ordered a PSI, which would "also address the issue of restitution." The district court amended the pretrial DANCO to "remove the address restriction." The district court scheduled sentencing for January 2023, but it was later continued.

Community corrections prepared a PSI report before sentencing. The PSI report recommended, among other things, that the district court stay execution of the 90-day sentence and place Peck on supervised probation for two years. The PSI also recommended that Peck complete a domestic-violence assessment and education program. Peck filed an "answer" to the PSI report and challenged its summary of his criminal history.

Peck also moved to withdraw his plea and vacate his conviction. Peck argued that he was not guilty and that the "plea has conditions that [S.C.] tried to get [him] to break . . . to be put back in jail." Peck also submitted a brief in support of his motion and argued that he was not guilty because he was acting to defend himself when he "stiff-armed" S.C. and that he took the *Alford* plea to "make this go away." Peck asked the district court either to "throw this case out" or to hold a trial. The state opposed Peck's motion. On March 30, 2023, the district court issued an order denying Peck's motion to withdraw his plea after determining that "there has been no showing that the granting of [Peck's] motion is necessary to correct a manifest injustice" and that Peck had not "made a sufficient showing that it would be fair and just to grant his motion to withdraw his guilty plea."

On May 18, 2023, the district court sentenced Peck to 90 days in jail stayed for two years with supervised probation that included compliance with conditions that are discussed below.

Peck appeals.

DECISION

Peck argues his guilty plea is invalid because it was not voluntary and not accurate, and he therefore asks this court to reverse his conviction and allow him to withdraw his guilty plea. "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). "At any time the court must allow a defendant to withdraw a guilty plea upon a timely motion and proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P.

15.05, subd. 1. "[M]anifest injustice exists where a guilty plea is invalid." *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007).

Validity of a guilty plea is a question of law that appellate courts review de novo. *Raleigh*, 778 N.W.2d at 94. A valid guilty plea "must be accurate, voluntary, and intelligent (i.e., knowingly and understandingly made)." *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983). The appellant has the burden of showing their plea is invalid. *Raleigh*, 778 N.W.2d at 94. Peck argues that his plea is invalid because it was not voluntary or accurate for three reasons, which we consider in turn.

I. Peck's guilty plea was not voluntary because the plea agreement differed from the sentence imposed.

Peck argues that his plea is not voluntary because it was based on an "unfulfilled or unfulfillable promise" by the state, given that "[e]very term of his [plea] agreement was violated by the [district] court's sentencing order." The state argues that "by failing to object at sentencing [Peck] has waived his objection to the violation of the plea agreement" and alternatively contends that Peck "did not receive an unqualified promise regarding the sentence to be imposed." We consider the parties' arguments.

A. Peck did not waive his challenge to the validity of his guilty plea.

The state is correct that Peck did not object to his sentence at his sentencing hearing. Although Peck moved to withdraw his plea before he was sentenced, he did not argue that the plea was invalid. We rarely consider matters not argued to or considered by the district court. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (agreeing that a party's "failure to raise the issue before the district court at trial precludes . . . litigation [of the

issue] on appeal"). But the general rule does not apply here because the Minnesota Supreme Court has held that "defendants may challenge the validity of their guilty plea for the first time on appeal." *State v. Epps*, 977 N.W.2d 798, 800 n.4 (Minn. 2022). Peck therefore did not waive his challenge to the validity of his guilty plea.

B. Peck's guilty plea was not voluntary because the district court imposed a sentence that exceeded the sentence in the plea agreement and did not allow Peck to affirm or withdraw his plea.

To be constitutionally valid, a plea must be voluntary. *Raleigh*, 778 N.W.2d at 94. A guilty plea is not voluntary if it is "induced by unfulfilled or unfulfillable promises." *James v. State*, 699 N.W.2d 723, 729 (Minn. 2005) (quotation omitted). "[W]hen a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." *Id.* at 728 (quoting *Santobello v. New York*, 404 U.S. 257, 262 (1971)).

Peck's brief to this court points out that the district court imposed a sentence stayed for two years and supervised probation, which differed from the plea agreement. The state argues that Peck did not "receive an unqualified promise regarding the sentence to be imposed," citing *Black v. State*, 725 N.W.2d 772, 776 (Minn. App. 2007).[3] The state's brief describes the plea agreement as a "proposed agreement" and, based on Peck's colloquy

[3] In *Black*, the district court did not accept Black's plea pending the PSI and stated that it would consider the negotiated terms if no aggravating circumstance occurred before sentencing. *Id.* at 774-75. Black absconded to Massachusetts and did not appear for sentencing; the district court did not sentence him according to the plea agreement and did not allow him to withdraw his guilty plea during postconviction proceedings. *Id.* at 775. *Black* does not help our analysis. As discussed below, a district court has different options when it defers accepting a plea pending a PSI report. Minn. R. Crim. P. 15.04, subd. 3(2). Here, the district court accepted Peck's plea before receiving a PSI report.

with the district court about the PSI, urges us to conclude that Peck "was on notice that the district court was going to entertain condition[s] of [the] sentence other than those recited in the proposal."

We reject the state's view of the plea hearing. While Peck agreed to cooperate with a PSI and to delay sentencing, he did not agree that the district court could modify his sentence based on the PSI. At the plea hearing, the prosecuting attorney recited the terms of the plea agreement as including a "90-day jail sentence stayed for a period of one year" and that Peck would be placed on "*unsupervised* probation," would pay a "50 dollar minimum fine," would not commit any "same or similar offenses," and would "remain law abiding." (Emphasis added.)

Yet, at the sentencing hearing, the district court modified the length and terms of the stay. The district court imposed a 90-day jail sentence stayed for *two* years and required Peck to comply with different and additional conditions: (1) *supervised* probation, (2) remain "law abiding and of good behavior," (3) commit "no same or similar offenses," (4) "pay a fine of $135," (5) complete an intake with probation, (6) pay $413.10 in restitution, (7) have no contact with S.C., (8) "complete a domestic violence assessment," (9) complete a "domestic violence education program" and cooperate with the intake and recommendations, (10) "authorize the release of the PSI to the domestic violence assessor and the domestic violence program," (11) complete any required or requested cognitive skills, (12) not "display assaultive, threatening, disorderly, harassing or stalking behaviors," (13) not possess a firearm, (14) submit to searches by the probation

department, and (15) "follow the general rules of probation." Conditions (5)-(15) were not mentioned until the sentencing hearing.

Minnesota Rule of Criminal Procedure 15.04, subdivision 3(2), provides that "[w]hen a plea is entered and the defendant questioned, the district court judge must reject or accept the plea of guilty on the terms of the plea agreement." Alternatively, the same rule allows a district court to "postpone its acceptance or rejection until it has received the results of a presentence investigation." Minn. R. Crim. P. 15.04, subd. 3(2). If a district court "rejects the plea agreement, it must advise the parties in open court and then call upon the defendant to either affirm or withdraw the plea." *Id*.

Caselaw illustrates this rule. In *State v. Noreen*, this court remanded to allow the appellant to affirm or withdraw his guilty plea. 354 N.W.2d 77, 79 (Minn. App. 1984). Because Noreen's sentence included restitution that was not "articulated in the plea bargain," we determined that the district court "imposed additional conditions of probation which were not contemplated by the plea agreement." *Id*. at 78 (quotation omitted).

At Peck's plea hearing, the district court accepted the plea, convicted Peck, and deferred sentencing until after it received a PSI report. The district court left restitution open, but the parties had agreed on the length of the stay—one year—and unsupervised probation. At sentencing, however, the district court increased the stay to two years and imposed supervised probation. The district court also added several conditions to Peck's

stay that were not contemplated in the plea agreement.[4] We conclude that Peck's guilty plea was not voluntary because it was induced by a sentence in the plea agreement that the district court accepted but did not impose.

We note that the district court also imposed probation conditions consistent with the PSI report's recommendations. If, after receiving the PSI report, the district court decides to reject the plea agreement, rule 15.04, subdivision 3(2), states that the district court "must advise the parties in open court and then call on the defendant to either affirm or withdraw the plea." The district court did not advise the parties that it was rejecting the plea agreement; nor did it allow Peck to affirm or withdraw his plea.

Accordingly, we reverse Peck's conviction and remand for the district court to allow Peck to affirm his plea, or to withdraw his plea and go to trial, or to grant other relief that the district court deems appropriate. *See State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000) ("On demonstration that a plea agreement has been breached, the court may allow withdrawal of the plea, order specific performance, or alter the sentence if appropriate."). While we reverse on these grounds, we also address Peck's other arguments about accuracy and voluntariness because the issues may recur on remand.

[4] Peck's brief to this court suggests that the fine imposed differed from the $50 fine discussed at the plea hearing. The state's brief to this court notes that the "fine pronounced at the sentencing hearing was $135, but the sentencing order indicates that the pronounced $135 fine consisted of a $50 fine as agreed and $85[] in mandatory fees and surcharges." Indeed, the sentencing order lists a $50 fine, a $75 surcharge, and $10 in law-library fees. Accordingly, the district court imposed a fine at sentencing that followed the plea agreement.

II. Peck's *Alford* plea was accurate.

A valid plea must be accurate. *Williams v. State*, 760 N.W.2d 8, 11 (Minn. App 2009), *rev. denied* (Minn. Apr. 21, 2009). This "requirement is intended to protect the defendant from pleading guilty to a charge more serious than he or she could be convicted of were the defendant to go to trial." *Id.* at 12 (quotation omitted). Accordingly, the defendant's testimony at a plea hearing must include a "factual basis" for a plea to be accurate. *Id.*

When a defendant enters a guilty plea under *Alford*, they plead guilty while maintaining their innocence. *Alford*, 400 U.S. at 37-38. In *Alford*, the United States Supreme Court held that it was constitutional for a court to accept a guilty plea when there was a "strong factual basis for the plea demonstrated by the State" and the defendant "clearly expressed" that he wanted to enter a guilty plea "despite his professed belief in his innocence." *Id.* at 38. The Minnesota Supreme Court has stated that *Alford* pleas require "careful scrutiny" of the factual basis. *Theis*, 742 N.W.2d at 648-49. Because the defendant maintains their innocence in an *Alford* plea, the defendant does not testify to facts showing that they are guilty of the offense; rather, the "evidence [is] discussed with the defendant on the record at the plea hearing." *Id.* at 649.

Accordingly, the factual basis for an *Alford* plea requires two components: (1) "a strong factual basis" for the offense to which the defendant is pleading guilty and (2) "the defendant's acknowledgment that the evidence would be sufficient for a jury to find the defendant guilty beyond a reasonable doubt." *Williams*, 760 N.W.2d at 12-13. The supreme court instructs that the "best practice for ensuring" that an *Alford* plea is accurate "is to

have the defendant specifically acknowledge on the record at the plea hearing that the evidence the State would likely offer against him is sufficient for a jury, applying a reasonable doubt standard, to find the defendant guilty of the offense to which he is pleading guilty." *Theis*, 742 N.W.2d at 649.

Peck argues that his *Alford* plea was not accurate because "he never acknowledged a jury would find the elements of the offense applying the beyond-a-reasonable-doubt standard and the court never reviewed the record to determine whether there was a strong factual basis." We discuss the strong factual basis first, then the reasonable-doubt standard.

A. Strong Factual Basis

Peck argues that his plea did not have a strong factual basis "[b]ecause the [district] court did not evaluate the strength of the state's case" and did not determine that "there was a strong probability of conviction." The state argues that the district court need not expressly find that there was a strong probability of conviction.

"A factual basis exists if there are 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. Johnson*, 867 N.W.2d 210, 215 (Minn. App. 2015) (quotation omitted), *rev. denied* (Minn. Sept. 29, 2015). The supreme court in *Theis* held that an *Alford* plea is accurate if the district court can "independently conclude that there is a *strong probability* that the defendant would be found guilty of the charge to which he pleaded guilty, notwithstanding his claims of innocence." 742 N.W.2d at 649 (emphasis added).

Caselaw suggests that Peck's plea has a strong factual basis for two reasons. First, the prosecuting attorney summarized the state's case against Peck, and Peck agreed that a

jury would find him guilty. The supreme court in *Theis* stated that the "better practice" for developing an *Alford* plea is to discuss the evidence with the defendant on the record. *Id.* In *Goulette*, the factual basis for an *Alford* plea "consisted of a recitation by defense counsel, in summary form, of some of the key evidence." 258 N.W.2d at 760. The supreme court affirmed the district court's determination that the recitation, which "show[ed] that there [was] evidence which would support a jury verdict," provided a sufficient factual basis for an *Alford* plea. *Id*. at 762.

The prosecuting attorney's presentation of the factual basis for Peck's guilty plea was like the defense attorney's presentation in *Goulette*. The prosecuting attorney summarized the underlying facts and the evidence that would be offered at trial, and Peck acknowledged that the state's evidence against him is sufficient for the jury to find him guilty. The prosecuting attorney questioned Peck on the record about the underlying evidence and facts. Peck agreed that, based on the police report, S.C. would testify that "there was a verbal argument" between the two of them and that he "stiff-armed or struck her in the face," that an officer "took photographs of [S.C.'s] face," that the photographs would show that S.C.'s face was red and puffy, and that S.C.'s eyeglasses were broken. Peck also agreed that, if a jury was presented with this evidence, it would find him guilty.

Second, this court has rejected the claim that a district court must expressly find a strong probability of conviction before accepting a *Norgaard* plea, which also has an

accuracy requirement.[5] In *Johnson*, we affirmed that a *Norgaard* plea to felony domestic assault was accurate based on plea-hearing testimony discussing police reports that included the victim's statements that Johnson had strangled her. 867 N.W.2d at 213-15, 217. At his plea hearing, Johnson testified that he did not remember much of the incident because of a medical emergency, but he had an opportunity to review the police report. *Id.* at 213. Johnson agreed that, if his case went to trial and "the prosecution called witnesses who would testify to what is in [the] police reports about what happened that night at [his] residence," a fact-finder "applying the presumption of innocence and burden of proof beyond a reasonable doubt" would convict him. *Id.* at 214.

This court determined that the district court in *Johnson* did not err by failing to make "an express finding" that "there is a strong probability that the defendant would be found guilty" if the case went to trial. *Id.* at 216 (quotation omitted). We also determined that the requirement that a district court must "independently conclude" a strong factual basis exists "indicates merely that a district court must assure itself that the accuracy standard is satisfied." *Id.* (quotation omitted).

Given that the prosecuting attorney summarized the state's case, Peck agreed that a jury would find him guilty based on this evidence, and caselaw has held that a district court

[5] While *Norgaard* pleas differ from *Alford* pleas because *Norgaard* pleas are based on a lack of memory of the events that occurred rather than a claim of innocence, the same accuracy requirements apply to both *Norgaard* and *Alford* pleas. *Williams*, 760 N.W.2d at 12-13; *see also State ex rel. Norgaard v. Tahash*, 110 N.W.2d 867, 870-71 (Minn. 1961) (determining that the district court did not err by accepting a defendant's guilty plea when he could not remember his state of mind well enough to testify about the factual basis for the intent requirement of the crime).

need not expressly find a strong probability of guilt, we conclude that Peck's testimony provided a strong factual basis for his conviction.

B. Beyond-a-Reasonable-Doubt Standard

Peck next argues that his plea was not accurate because he did not testify that he believed a jury would find him guilty *beyond a reasonable doubt*. Peck's brief to this court acknowledges that he agreed at the plea hearing that, "if the state called in witnesses, including the alleged victim, and they testified consistent with the reports that they had given, that the jury would find [him] guilty of domestic assault." Peck argues that this acknowledgment was not enough to make his plea accurate because his testimony did not specify that evidence met the state's burden to provide his guilt "beyond a reasonable doubt." The state argues that the supreme court "has not mandated . . . specific acknowledgement" that a jury would find the defendant guilty '"beyond reasonable doubt' during the *Alford* plea colloquy."

Peck supports his argument by citing *Theis*, 742 N.W.2d at 649. In *Theis*, the supreme court determined that an *Alford* plea was not accurate when the defendant merely agreed that "if this case were to proceed there is a risk to [him] that [he] would be found guilty." 742 N.W.2d at 645, 650. On the other hand, in *State v. Ecker*, the supreme court determined that a plea was accurate when the defendant testified that "he believed a jury could convict him . . . based on the evidence against him." 524 N.W.2d 712, 715 (Minn. 1995).

Neither *Theis* nor *Ecker* supports Peck's assertion that the plea colloquy must include the words "beyond a reasonable doubt." The supreme court rejected Theis's plea

because he merely admitted that there was a "risk" that he would be "found guilty." *Theis*, 742 N.W.2d at 650. The supreme court accepted Ecker's plea because Ecker acknowledged that he believed a jury could convict him based on the evidence presented. *Ecker*, 524 N.W.2d at 715.

The supreme court stated in *Theis* that the "*best practice*" for a guilty-plea colloquy "is to have the defendant specifically acknowledge on the record at the plea hearing that the evidence the State would likely offer against him is sufficient for a jury, applying a reasonable doubt standard, to find the defendant guilty of the offense to which he is pleading guilty." 742 N.W.2d at 649 (emphasis added). But no caselaw holds that a failure to do so is reversible error. Accordingly, Peck's *Alford* plea is not inaccurate because his plea colloquy did not discuss the state's evidence using the "beyond a reasonable doubt" standard.

We acknowledge the supreme court's urging that the best practice for a plea colloquy about the state's evidence is to include the beyond-a-reasonable-doubt standard. *Id*. Here, Peck acknowledged the reasonable-doubt standard only when waiving all his trial rights. Still, Peck's plea testimony provided a strong factual basis for his conviction, and Peck agreed that the state's evidence was sufficient for the jury to find him guilty. We conclude, therefore, that Peck's *Alford* plea was accurate.

III. Peck's plea was voluntary and not based on improper pressure or coercion.

"The voluntariness requirement assures a defendant is not pleading guilty due to improper pressure or coercion." *Raleigh*, 778 N.W.2d at 96. A plea is not voluntary if the government induces the plea "through actual or threatened physical harm, or by mental

coercion overbearing the will of the defendant." *Ecker*, 524 N.W.2d at 719 (quotation omitted). Courts consider "all relevant circumstances" to determine whether a guilty plea is voluntary. *Raleigh*, 778 N.W.2d at 96.

Peck argues that he was coerced into pleading guilty because "he was homeless and living in his car, and . . . the prosecutor offered to drop the residence restriction of the DANCO in exchange for a guilty plea." He argues on appeal that the state used removal of the address restriction as leverage to make him plead guilty, which he claims is shown by the state's agreement to remove the address restriction as part of the plea agreement. The state argues that removing the address restriction as part of the plea agreement was not improper.

Caselaw supports the state's argument. In *Raleigh*, the appellant claimed that his guilty plea was involuntary because "he was under extreme stress and not thinking rationally when he entered his plea." *Id.* The supreme court noted that Raleigh did not provide "further explanation of how stress, irrational thinking, improper pressure, or coercion influenced his plea decision, nor [did] he cite any authority permitting a plea withdrawal under these circumstances." *Id.* The supreme court concluded that "neither stress nor irrational thinking rendered Raleigh's plea involuntary." *Id.*

While we acknowledge that Peck's homelessness was stressful, we conclude that the record does not support Peck's claim that the state used his homelessness to induce the plea for three reasons. First, the record supports the district court's decision to impose the DANCO with the address restriction, given that Peck violated the no-contact order. Peck

does not dispute his violation of the no-contact order on appeal.[6] Second, based on the record at the plea hearing, S.C. was no longer living at the apartment at the time Peck entered his guilty plea. Thus, the address restriction was removed at the plea hearing because there was no longer a reason to maintain the restriction. Third, Peck testified at the plea hearing that his testimony was free and voluntary and not the result of any threats or promises.

For all these reasons, we conclude that Peck has failed to meet his burden to show that his plea was involuntary. Accordingly, we reject Peck's argument that his guilty plea was involuntary.

Affirmed in part, reversed in part, and remanded.

[6] Peck's brief to this court argues that "the record does not support the conclusion that the [address restriction] . . . was appropriate." Peck relies on the *absence* of any evidence that S.C. "was entitled" to reside in the apartment. Peck also acknowledges that the district court rejected modifying the DANCO based on this argument. Nowhere does Peck's brief to this court acknowledge that the address restriction was added to the DANCO when Peck violated the no-contact provision by going to the apartment when S.C. was present.