STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0678
A24-0704

State of Minnesota,
Respondent,

vs.

Thomas John Forcier,
Appellant.

Filed January 13, 2025
Affirmed in part, reversed in part, and remanded
Smith, Tracy M., Judge

Benton County District Court
File Nos. 05-CR-22-1783, 05-CR-22-1782

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

Kathleen L. Reuter, Benton County Attorney, Natalie Schiferl, Assistant County Attorney, Foley, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Laura G. Heinrich, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Frisch, Chief Judge; and Schmidt, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In these consolidated appeals from judgments of conviction, appellant Thomas John Forcier argues that he must be permitted to withdraw his *Alford* pleas[1] to one count of misdemeanor obscene or harassing telephone calls and one count of gross-misdemeanor harassment because both pleas were inaccurate. Forcier argues that the pleas were inaccurate because there is an insufficient factual basis to establish two elements that are essential to each offense—specifically, that Forcier had the intent to harass and that his conduct caused or would reasonably be expected to cause substantial emotional distress.

We conclude that Forcier's plea to misdemeanor obscene or harassing telephone calls was inaccurate because the record fails to establish the element of substantial emotional distress. But we conclude that his plea to gross-misdemeanor harassment was accurate because the record establishes the elements of intent and substantial emotional distress for that conviction. Accordingly, we affirm the conviction for gross-misdemeanor harassment, but we reverse the conviction for misdemeanor obscene or harassing telephone calls and remand for further proceedings.

[1] An *Alford* plea allows a defendant to plead guilty while maintaining their 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)).

FACTS

In October 2022, respondent State of Minnesota filed complaints against Forcier in two separate files, charging him with a total of seven counts. The charges stemmed from text messages that Forcier sent to his sister over multiple days in September 2022.

At a hearing in November 2022, Forcier and the state informed the district court that they had reached a plea agreement. Under the agreement, Forcier would enter *Alford* pleas to one count in each complaint—specifically, one count of misdemeanor obscene or harassing telephone calls in violation of Minnesota Statutes section 609.79, subdivision 1(1)(iii) (2022), and one count of gross-misdemeanor harassment in violation of Minnesota Statutes section 609.749, subdivision 2(b)(3) (2022). In exchange, the state would dismiss the remaining counts in both files. The plea agreement also included agreed-upon sentences and other terms.

Forcier was sworn in to testify, and, following a colloquy, the district court found that Forcier made a knowing, intelligent, and voluntary waiver of his rights. Defense counsel then examined Forcier to establish the factual basis for each plea—first, for his plea to misdemeanor obscene or harassing telephone calls and, second, for his plea to gross-misdemeanor harassment. After each colloquy, the district court determined that the factual basis was sufficient for the respective plea.

At a subsequent sentencing hearing, the district court accepted Forcier's *Alford* pleas and sentenced Forcier in accordance with the plea agreement.

Forcier appeals.

DECISION

Forcier argues that he should be permitted to withdraw his *Alford* pleas because the record does not contain a sufficient factual basis to establish the elements of intent to harass and substantial emotional distress.

"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 plea must be constitutionally valid, and a defendant may challenge the constitutional validity of a guilty plea for the first time on direct appeal. *See Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989). A defendant has the burden to show his plea was invalid. *Raleigh*, 778 N.W.2d at 94. "Assessing the validity of a plea presents a question of law that [appellate courts] review de novo." *Id.*

"To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent." *Id.* To be accurate, a plea must be supported by a proper factual basis. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). Given the "inherent conflict" in an *Alford* plea where a defendant pleads guilty while maintaining their innocence, an *Alford* plea requires "careful scrutiny of the factual basis." *State v. Theis*, 742 N.W.2d 643, 648-49 (Minn. 2007). An *Alford* plea is accurate when (1) the state establishes a "strong factual basis" for the offense and (2) the defendant agrees that the evidence is sufficient to support conviction beyond a reasonable doubt. *Williams v. State*, 760 N.W.2d 8, 12-13 (Minn. App. 2009), *rev. denied* (Minn. Apr. 21, 2009). These two requirements "provide the [district] court with a basis to 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." *Theis*, 742 N.W.2d at 649 (emphasis omitted).

The supreme court has counseled that the best practice to ensure the accuracy of 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.* That discussion can take place through interrogation of the defendant about the evidence that would likely be presented at trial, the introduction of witness statements or other documents at the plea hearing, or stipulations by the parties to factual statements in documents submitted to the district court at the plea hearing. *Id.*

With these principles in mind, we turn to the factual basis for each of Forcier's pleas.[2]

I. Forcier's *Alford* plea to misdemeanor obscene or harassing telephone calls lacks a sufficient factual basis.

Under Minnesota Statutes section 609.79 (2022), a person engages in obscene or harassing telephone calls when the person (1) "by means of a telephone," (2) "with the intent to harass or intimidate any person at the called or notified number," (3) "makes or causes the telephone of another to repeatedly or continuously ring or receive electronic notifications," and (4) "thereby . . . causes or would reasonably be expected to cause

[2] In a pro se supplemental brief, Forcier denies committing the crimes for which he was convicted and suggests that his innocence weighs in favor of reversing his convictions. The argument is unpersuasive. In an *Alford* plea, the defendant pleads guilty while maintaining their innocence, meaning that a district court may accept an *Alford* plea even if a defendant professes their innocence, so long as there is a strong factual basis of guilt. *See id.* at 647. As a result, to the extent that Forcier asserts his innocence, that assertion does not factor into this court's consideration as to whether he is permitted to withdraw his *Alford* pleas.

substantial emotional distress as defined in section 609.749, subdivision 2, paragraph (a), clause (4), to the other person." Minn. Stat. § 609.79, subd. 1(1)(iii). Forcier challenges the factual basis for the second and fourth elements.

Because it is dispositive, we begin with the fourth element, regarding substantial emotional distress. As a preliminary matter, the state contends that substantial emotional distress is not an element of the offense because it is not included as an element in the model jury instructions for misdemeanor obscene or harassing telephone calls. The state is correct that a substantial-emotional-distress element does not appear in the model jury instructions for this offense. *See* 10 *Minnesota Practice*, CRIMJIG 15.14 (2024). But it is well settled that the model jury instructions are not law and that, when there is a conflict between the model jury instructions and the statute, the statute controls. *State v. Taylor*, 869 N.W.2d 1, 15 (Minn. 2015) ("Where there is a conflict between the Minnesota Jury Instructions Guide, Criminal (CRIMJIG) and the statute or our case law, the latter two control." (citing *State v. Koppi*, 798 N.W.2d 358, 364 (Minn. 2011))); *State v. Pierce*, 792 N.W.2d 83, 86 (Minn. App. 2010) (noting that model jury instructions "are not the law"). Here, the statute requires that the defendant's conduct caused or would reasonably have been expected to cause substantial emotional distress, *see* Minn. Stat. § 609.79, subd. 1(1)(iii), and it is thus an element of the offense.

We turn to the factual basis for that element here. Minnesota Statutes section 609.79 borrows the definition of "substantial emotional distress" from the harassment statute, which defines the term as

> mental distress, mental suffering, or mental anguish as demonstrated by a victim's response to an act including but not limited to seeking psychotherapy as defined in section 604.20, losing sleep or appetite, being diagnosed with a mental-health condition, experiencing suicidal ideation, or having difficulty concentrating on tasks resulting in a loss of productivity.

Minn. Stat. § 609.749, subd. 2(a)(4) (2022).

During questioning by his counsel, Forcier agreed that he had had a chance to read the complaint, police reports, and other documents submitted in the case. He also agreed that, if the case went to trial, the state would call certain witnesses, including his sister, to testify. He agreed that his sister would testify that Forcier sent several text messages to her on September 14 and 20, 2022, the dates listed in the complaint. As to the content of the messages, Forcier testified:

> Q: And you acknowledge that she would testify that some of those text messages indicated that you were calling her a stupid b-tch, that you want your items back and for her not to f-ck with you, isn't that correct?
> A: Yes.
> Q: And including calling her a thief, a guilty thief, several times, isn't that correct?
> A: That is correct, yes.

Forcier agreed that, if his sister "testified consistently" with that description, there was "a sufficient likelihood applying the standard of reasonable doubt that the jury would convict [him]."

Forcier contends that this factual basis is insufficient because there was no discussion about the element of substantial emotional distress. We agree that the factual basis is insufficient with respect to that element. During the colloquy on this charge, there

was no description of any anticipated evidence that would be offered to show that Forcier's sister in fact suffered substantial emotional distress in response to the text messages. Nor was there any discussion about whether the evidence would be sufficient to prove that the described text messages would reasonably cause substantial emotional distress. Further, the content of the messages—while profane and angry—does not provide a strong basis for such a determination. The limited colloquy with Forcier was thus insufficient to provide the strong factual basis that is required for an *Alford* plea. *See Theis*, 742 N.W.2d at 648-49; *Williams*, 760 N.W.2d at 12-13. Accordingly, Forcier must be permitted to withdraw his *Alford* plea to misdemeanor obscene or harassing telephone calls.

II. Forcier's *Alford* plea to gross-misdemeanor harassment is accurate.

Under Minnesota Statutes section 609.749, subdivision 2(c)(4) (2022), "[a] person commits harassment . . . if the person[] repeatedly makes telephone calls, sends text messages, or induces a victim to make telephone calls to the actor, whether or not conversation ensues." The offense is a gross misdemeanor if the person committing harassment does so "with the intent to kill, injure, harass, or intimidate another person" and "causes or would reasonably be expected to cause substantial emotional distress to the other person." Minn. Stat. § 609.749, subd. 2(b)(3). Forcier does not challenge the factual basis for harassment under Minnesota Statutes section 609.749, subdivision 2(c)(4). But he argues that the record does not establish a strong factual basis for the elements of intent to harass and substantial emotional distress required for gross-misdemeanor harassment.

A. Intent to Harass

Under Minnesota's criminal code, when criminal intent is an element of a crime, the phrase "with intent to" means that "the actor either has a purpose to do the thing or cause the result specified or believes that the act, if successful, will cause that result." Minn. Stat. § 609.02, subd. 9(4) (2022). Intent can be inferred from the totality of circumstances. *State v. Raymond*, 440 N.W.2d 425, 426 (Minn. 1989).

The factual basis for this plea was established through the following examination of Forcier regarding the text messages at issue:

> Q: And you understand that [your sister] would testify to receiving several text messages, including messages on September 23rd . . . that say, "Try me b-tch and you will be with your daughter soon," isn't that correct?
> A: Yes, correct.
> Q: And you understand that she would testify that she received additional text messages including that, "You will not get away with this" and . . . saying that, "I will f-cking kill you, and if you do not give me my things and my money," do you understand that?
> A: Yes.
> Q: And you sent another text calling her a worthless b-tch, isn't that correct?
> A: Yes.
> Q: So you would agree that she would testify and there were pages of text messages, but she would testify that she felt harassed by –. . . those text messages, isn't that correct?
> A: Yes.
> Q: And you would agree that she would testify that those text messages . . . actually caused her substantial emotional distress, isn't that correct?
> A: If that's what she says, yes.
> . . . .
> Q: . . . [Y]ou would agree that there is a substantial likelihood that the jury after hearing this testimony would find you guilty.
> A: Likely, yes.

Forcier argues that the number and content of the text messages discussed in this colloquy did not rise to a level sufficient to establish an intent to harass. The state contends the opposite. Both parties look to *State v. Badiner*, 412 N.W.2d 810 (Minn. App. 1987), *rev. denied* (Minn. Dec. 18, 1987), for support.

In *Badiner*, we held that a defendant phoning his downstairs neighbor "two or three times a week," sometimes "several times during the day," complaining about noise was sufficient to establish a specific intent to harass.[3] 412 N.W.2d at 811. Forcier argues that, here, in contrast to *Badiner*, the evidence of the number of calls was minimal—he points out that the word "several" was used and that it was not clear whether the content described was from more than two messages. The state, on the other hand, argues that the evidence is more than sufficient to establish an intent to harass under *Badiner*, emphasizing the profane and threatening language in the multiple text messages.

We agree with the state. The plea colloquy establishes that the evidence would show that Forcier sent multiple text messages that included derogatory language and threats to his sister's life. Although the precise number of text messages was not clearly identified, their threatening nature allows a reasonable inference to be drawn that Forcier

[3] Although *Badiner* discusses "intent to harass" as it is used in Minnesota Statutes section 609.79, the obscene or harassing telephone calls statute, we note that section 609.749, which is the statute at issue here, uses "intent to harass" in the same way. *Compare* Minn. Stat. § 609.79, subd. 1(1)(iii), *with* Minn. Stat. § 609.749, subd. 2(b), (c)(4) (2022). Accordingly, we conclude that *Badiner* is helpful in determining whether the number and content of the text messages that Forcier sent establish an intent to harass under section 609.749 (2022).

intended his conduct to harass his sister. Thus, the plea colloquy establishes a strong factual basis for the element of intent to harass.

B. Substantial Emotional Distress

Finally, we turn to the element of substantial emotional distress. As noted above, the term "substantial emotional distress" is defined in the harassment statute as "mental distress, mental suffering, or mental anguish as demonstrated by a victim's response . . . including but not limited to seeking psychotherapy . . . , losing sleep or appetite, . . . or having difficulty concentrating," among other responses. Minn. Stat. § 609.749, subd. 2(a)(4).

Forcier contends that the element of substantial emotional distress was not sufficiently established at the plea hearing because the evidence described was that his sister would testify that the text messages caused her "substantial emotional distress" but the plea colloquy did not include further detail demonstrating her substantial emotional distress. We are not persuaded.

Forcier acknowledged that the state would present testimony from the victim that his text messages in fact caused her substantial emotional distress. We are not convinced that a more detailed explanation was required. Moreover, the content of the messages—which included physical threats—provided an ample basis for the district court to conclude that the messages "would reasonably be expected" to cause his sister substantial emotional distress. *See id.*, subd. 2(b)(3). For these reasons, a strong factual basis for the element of substantial emotional distress is present.

Because the plea colloquy sufficiently established the intent and substantial-emotional-distress elements, Forcier's *Alford* plea to gross-misdemeanor harassment was accurate.

In sum, we affirm Forcier's conviction for gross-misdemeanor harassment because his *Alford* plea was valid. We reverse Forcier's conviction for misdemeanor obscene or harassing telephone calls because his *Alford* plea to that offense was not valid, and we remand to the district court to permit Forcier to withdraw that plea.[4]

Affirmed in part, reversed in part, and remanded.

[4] We offer no opinion as to the effect of a plea withdrawal on the plea agreement as a whole, which covered multiple charges across two court files. *See State v. Misquadace*, 629 N.W.2d 487, 491 (Minn. App. 2001) (ruling that district court on remand could consider motions to vacate or to modify plea agreement and reconsider its own decision to accept plea agreement when challenged sentences were part of "package" plea agreement), *aff'd*, 644 N.W.2d 65 (Minn. 2002).