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Court of Appeals
Division III
State of Washington
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No. 36593-0-III

IN THE COURT OF APPEALS DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent

v.

DONALD STENTZ, Appellant

APPEAL FROM THE SUPERIOR COURT
OF CHELAN COUNTY
THE HONORABLE JUDGE KRISTIN M. FERRERA

BRIEF OF APPELLANT

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I. ASSIGNMENTS OF ERROR

- A. The court erred by finding a factual basis supported the *Alford* plea to a residential burglary.

LEGAL ISSUE PERTAINING TO ASSIGNMENT OF ERROR

- A. A guilty plea is not knowingly intelligently, and voluntarily made when it is not supported by a factual basis. Where the factual basis for an *Alford* plea is insufficient, may a defendant withdraw his plea?

II. STATEMENT OF FACTS

A Chelan County sheriff submitted an affidavit of probable cause for felony violation of a domestic violence no contact order on August 21, 2018. CP 6-9. The affidavit alleged that while Donald Stentz was in jail, he enlisted the help of Nate Wooten to work on his Chevy truck. The truck was parked about 1000 feet away from the home of his former partner, Ms. Summer. CP 7. Once Wooten was released from jail, he was to fix the truck, and then use the Ford Explorer to tow Mr. Stentz's boat to an individual in Ephrata, who was expecting to store them. CP 8.

On August 14, 2018, with directions supplied by Mr. Stentz, Wooten went to the home. Instead of fixing the Chevy he snuck into

Ms. Summer's house and stole her rifles and a bag of items. CP 7. Some items in the bag had Mr. Stentz's name on them; aside from that, the affidavit did not describe what was in the bag. CP 8.

Unable to start Mr. Stentz's vehicle, Wooten left the Ford Explorer and boat in the driveway, and instead stole the neighbor's vehicle. CP 8. Police apprehended Wooten after the neighbor saw him filling the stolen car with gas and called the police. CP 7. To explain the stolen items in his possession, Mr. Wooten implicated Mr. Stentz, who was still in jail. CP 7.

The investigating officer talked with Mr. Stentz and then listened to a jail phone call between Mr. Stentz and his Ephrata friend. Mr. Stentz told his friend that Wooten did more than he was supposed to when he burglarized the house. CP 8.

Despite being in jail and having never had possession of any of the stolen items, on August 24, 2018, Chelan County prosecutors charged Mr. Stentz by information with one count of burglary in the first degree, domestic violence, two counts unlawful possession of a firearm in the first degree, two counts of theft of a firearm, and one count of felony violation of a court order, domestic violence. CP 1-5.

As part of a plea deal, an amended information filed January 2019, charged Mr. Stentz with only two crimes: residential burglary and violation of a no contact order alleged to have occurred on November 10, 2018. CP 10-11.

At the plea hearing, Mr. Stentz agreed the court could rely on the affidavit of probable cause for a factual basis for his *Alford* plea to the residential burglary. RP 35; CP 21. The court conducted a colloquy and determined that Mr. Stentz voluntarily, intelligently, and knowingly entered his plea. RP 27-38. Mr. Stentz also pled guilty to violating a no contact order on November 10, 2018. RP 37-38.

At the sentencing hearing, the prosecutor informed the court there seemed to be evidence that Wooten meant to double-cross Mr. Stentz, and steal from both Mr. Stentz and Ms. Summers. RP 48-49. Defense counsel stated that Wooten saw an opportunity and went on a crime spree. RP 49. Mr. Stentz told the court: "I'd plead not guilty to the crimes that ...Wooten did... I did not tell Nate Wooten to do all these things." RP 50.

The court acknowledged it sounded like Wooten did things that Mr. Stentz never told him to do. RP 51. Despite the prosecutor and defense counsel recommending a 72-month sentence, the

court imposed an 84-month sentence. CP 26. Mr. Stentz makes this timely appeal. CP 32.

III. ARGUMENT

There Was An Insufficient Factual Basis To Accept Mr. Stentz's *Alford* Plea To Residential Burglary.

1. Review Is Appropriate In This Matter

Under RAP 2.5(a)(3), an appellate Court does not generally review issues for the first time on appeal unless they relate to a manifest error affecting a constitutional right. There is no constitutional requirement for a factual basis to support a plea, however, CrR 4.2(d) requires one, and the court rule has constitutional implications.

The Fourteenth Amendment's due process clause requires that a defendant's guilty plea be knowing, voluntary, and intelligent. *State v. Mendoza*, 157 Wn.2d 582, 587, 141 P.3d 49 (2006). A plea cannot be voluntary if the defendant does not understand the elements of the charged offense(s) and understand how his conduct meets those elements. *State v. Easterlin*, 159 Wn.2d 203, 213, 149 P.3d 366 (2006).

CrR 4.2 provides that a plea must be made voluntarily and competently and requires the court to refrain from entering judgment unless it is “satisfied that there is a factual basis for the plea.” CrR 4.2(d). A factual basis exists if there is sufficient evidence for a jury to conclude that the defendant is guilty of the charged crimes. *State v. Saas*, 118 Wn.2d 37, 43, 820 P.2d 505 (1991). The establishment of a factual basis is constitutionally significant as it relates to the defendant’s understanding of his plea. *State v. Barr*, 102 Wn.2d 265, 269, 684 P.2d 712 (1984). This Court should address the merits of Mr. Stentz’s challenge to the factual basis supporting his *Alford* plea.

2. The Record Does Not Establish A Sufficient Factual Basis Required To Prove Residential Burglary.

When a defendant enters an *Alford* plea, he maintains his innocence but concedes that the evidence against him is strong and most likely would result in a conviction. *In re Pers. Restraint of Spencer*, 152 Wn. App 698, 700 n.1, 218 P.3d 924 (2009). However, because the individual is not pleading guilty by admitting to having committed the offense, the court must find an independent factual basis for the guilty plea, which substitutes for an admission of guilt. *State v. D.T.M.*, 78 Wn.App. 216, 896 P.2d

108 (1995). The trial court may consider any reliable source of information in the record in determining whether a factual basis exists, including the prosecutor's factual statement. *State v. Osborne*, 102 Wn.2d 87, 95, 684 P.2d 683 (1984); *State v. Saas*, 118 Wn.2d at 43.

Mr. Stentz agreed the court could rely on the affidavit of probable cause when he entered an Alford plea to the crime of residential burglary.

A person commits the crime of residential burglary if, with intent to commit a crime against a person or property therein, the person enters or remains unlawfully in a dwelling other than a vehicle.

RCW 9A.52.025(1).

3. Mr. Stentz Was Charged And Convicted As A Principal.

The information charged Mr. Stentz as a principal not as an accomplice. The facts show that Mr. Stentz did not enter the home on August 14, 2018; he was in jail. If the evidence shows that a defendant could not have been present at the scene of the crime, he can be convicted only if specifically charged as an accomplice. *State v. Cooper*, 26 Wn.2d 405, 412, 174 P.2d 545 (1946).

Accomplice liability is an essential element that must be proven for

a conviction. *State v. Cronin*, 142 Wn.2d 568, 579-80, 14 P.3d 752 (2000).

Under CrR 4.2, a defendant has the statutory right to plead guilty to the information *as charged*. *State v. Bowerman*, 115 Wn.2d 794, 799, 802 P.2d 116 (1990). Mr. Stentz was not charged as an accomplice, did not enter his plea as an accomplice, and the court did not find him guilty as an accomplice. The only other option is that the plea must support the factual basis required for liability as a principal. Because it was impossible for Mr. Stentz to have entered Ms. Summer's residence, the factual basis for the *Alford* plea is insufficient.

4. The State Also Did Not Provide A Factual Basis For Accomplice Liability.

Mr. Stentz provided Wooten with a map to the house and times when Ms. Summers would not be there. He directed Wooten to move items that belonged to him that were outside of the home.

The officer who listened in on Mr. Stentz's jail call swore that Mr. Stentz told his friend that Wooten had taken it upon himself to burglarize the home. The phone call clarified that Mr. Stentz did not

direct, nor did he intend for Wooten to cross the threshold and steal property.

Even if Mr. Stentz could have been charged as an accomplice, RCW 9A.08.020(3)(a) requires that to be an accomplice the person must either (1) solicit, command, or encourage, or request the other person to commit **the** crime or (b) aid or agree to aid the other person in planning or committing it. The acts must be done with the knowledge that they will promote or facilitate the commission of **the** crime. To be guilty as an accomplice, he must act with knowledge that he was facilitating the specific crime charged, not simply “a crime.” *State v. Walker*, 182 Wn.2d 463, 341 P.3d 976 (2015).

The affidavit of probable cause¹, on which the court relied, provided facts showing that Mr. Stentz may have violated the no contact order by sending Wooten to collect his boat and car off Ms. Summer’s property. However, the recounting of the jail call made clear that Mr. Stentz had no idea he was facilitating **the** crime of residential burglary.

¹ The affidavit alleged probable cause for violation of the no contact order. It did not alleged probable cause for residential burglary. CP 6.

“While an accomplice may be convicted of a higher degree of the general crime he sought to facilitate, he may not be convicted of a separate crime absent specific knowledge of that general crime.” *State v. King*, 113 Wn.App. 243, 288, 54 P.3d 1218 (2002) (citing *In re Pers. Restraint of Sarausad*, 109 Wn.App. 824, 836, 39 P.3d 308 (2001)), *review denied*, 149 Wn.2d 1013, 1015 (2003). Mr. Stentz’s culpability as an accomplice cannot extend beyond the crimes of which he actually had knowledge. *State v. Roberts*, 142 Wn.2d 471, 511, 14 P.3d 713 (2000) *rev. denied*, 151 Wn.2d 1027 (2004).

5. The Remedy Is Reversal.

“The fact a defendant who desires to plead guilty also refuses to admit guilt does not require a rejection of the plea *if the factual basis for the plea can nevertheless be established.*” *State v. Newton*, 87 Wn.2d 363, 370-71, 552 P.2d 682 (1976). Establishing the factual basis for a charged offense is an essential component of the accused’s understanding of the plea. *State v. Buckman*, 190 Wn.2d 51, 59, 409 P.3d 193 (2018).

Here, the record here shows that factual basis was insufficient because Mr. Stentz was charged as a principal, and it

was impossible for him to have committed the crime of residential burglary. Because the facts are insufficient to establish a basis for the plea, the remedy is for the guilty plea to be set aside and the matter remanded to the superior court. *State v. Easterlin*, 159 Wn.2d at 213.

IV. CONCLUSION

Based on the foregoing facts and authorities, Mr. Stentz respectfully asks the Court to remand with instructions that Mr. Stentz may withdraw his plea to residential burglary.

Respectfully submitted this 15th day of July 2019.

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CERTIFICATE OF SERVICE

I, Marie Trombley, do hereby certify under penalty of perjury under the laws of the State of Washington, that on July 15, 2019, I mailed to the following US Postal Service first-class mail, the postage prepaid, or electronically served, by prior agreement between the parties, a true and correct copy of the Appellant's Opening Brief to the following: Chelan County Prosecuting Attorney at prosecuting.attorney@co.chelan.wa.us and douglas.shae@co.chelan.wa.us and to Donald Stentz/DOC#374343, Coyote Ridge Corrections Center, PO Box 769 Connell, WA 99326.

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