COURT OF APPEALS
DECISION
DATED AND RELEASED

AUGUST 20, 1996

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-0284-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

NICODEMUS LEONARD,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Marathon County: RAYMOND F. THUMS, Judge. *Affirmed*.

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Nicodemus Leonard appeals a judgment convicting him of first-degree reckless injury while armed and an order denying his motion to withdraw his ***Alford***[1] plea. Leonard argues that the trial court failed to find "strong proof of guilt" when accepting his ***Alford*** plea and that his

[1] ***North Carolina v. Alford***, 400 U.S. 25 (1970).

plea was improperly coerced by the State's offer to return $5,000 bail money to his family. We reject these arguments and affirm the judgment and order.

Leonard was initially charged with recklessly causing great bodily harm (§ 940.23, STATS.) and one count of recklessly endangering another's safety (§ 941.30(1), STATS.) based on an incident in which he was alleged to have stabbed his cousin, Richard Leonard with a knife, and burned his face. While he was released on bail pending trial with a condition that he not drink, Leonard was involved in a traffic accident and was found to be intoxicated. Leonard was then charged with two counts of felony bail jumping based on his consumption of alcohol. Pursuant to a plea agreement, Leonard entered an ***Alford*** plea to one count of first-degree reckless injury while armed and one count of bail jumping. The State dismissed the other two charges and agreed that it would not seek forfeiture of the $5,000 cash bond posted by Leonard's family.

Whether to allow withdrawal of a guilty plea is a matter committed to the trial court's discretion. Its discretionary decision will be sustained if it is made upon facts appearing in the record and in reliance on the appropriate and applicable law. ***State v. Canedy***, 161 Wis.2d 565, 579-80, 469 N.W.2d 163, 169 (1991). The burden is on Leonard to establish by clear and convincing evidence that withdrawal of the plea is necessary to correct a manifest injustice. ***State v. Schill***, 93 Wis.2d 361, 383, 286 N.W.2d 836, 846-47 (1980). "Strong proof of guilt" is necessary before the trial court may accept an ***Alford*** plea. ***State v. Garcia***, 192 Wis.2d 845, 859-60, 532 N.W.2d 111, 116-17 (1995).

Contrary to Leonard's argument, the trial court specifically found strong evidence to support Leonard's guilt and the record supports that finding. Police reports and the transcript of the preliminary hearing establish a sufficient basis for accepting an ***Alford*** plea. Before he was transported to the hospital, the victim told police "Nic stabbed me." Leonard told police on the day of the stabbing that he got into a fight with his cousin and that he stabbed his cousin in the neck with a knife. At the preliminary hearing, a neighbor testified that Leonard came to his home, intoxicated and covered with blood, and told the neighbor that he had cut his cousin Richard's jugular area and stated that he had killed him. A detective testified that on the day of the stabbing, Leonard volunteered that his cousin had asked Leonard to kill him

but that Leonard was not drunk enough. Leonard then stated that he "just killed him" and wanted to know if he was right or wrong. The detective also found evidence in the residence that there had been a fight, including items overturned in the kitchen, a broken shower stall in the bathroom, and blood throughout the house. Both men were found with bloodstained knifes. The police reports and the testimony from the preliminary hearing establish strong evidence of Leonard's guilt.

At the sentencing hearing, the defense called a chemist, Melvin Neuman, who offered his opinion that the burns and the cut to the victim's neck could have been caused by an exploding battery. The trial court noted that it is "a real stretch to believe that a clean knife cut, or a clean cut in the man's neck that severs blood vessels is going to come off something that explodes off a battery." The exploding battery theory does not account for the victim's statements, Leonard's statements to the police and to the neighbor, and does not account for the bloody knives. Neuman's testimony does not undermine the State's strong evidence of Leonard's guilt.

The trial court found that Leonard failed to establish that his plea was coerced by the State's offer not to seek forfeiture of the $5,000 cash bond and the record supports that finding. Leonard's father testified that in his opinion, the return of the money was the only reason Leonard entered a plea "because his attorney advised him that they had a good chance of winning at trial." The trial court discounted that testimony, noting that Leonard was not concerned about his family's money when he violated the conditions of his bond. The trial court is the sole judge of the credibility of witnesses. *See* ***Leciejewski v. Sedlak***, 116 Wis.2d 629, 637, 342 N.W.2d 734, 738 (1984). The prospect of the State returning the $5,000 cash bond to Leonard's family did not present Leonard with "no fair or reasonable alternative to choose from." *See* ***Rahhal v. State***, 52 Wis.2d 144, 151-52, 187 N.W.2d 800, 804 (1971). The distinction between a motivation that induces and a force that compels the human mind to act must be kept in focus. ***Id***. The State's agreement not to pursue forfeiture of the $5,000 bond cannot reasonably be described as a force that would compel acceptance of the plea agreement.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.