[Cite as *State v. Dawson*, 2024-Ohio-2968.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
WASHINGTON COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. 23CA11
v.	:	
MICHAEL A. DAWSON,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellant.	:	

APPEARANCES:

Steven H. Eckstein, Washington Courthouse, Ohio, for appellant[1].

Nicole Tipton Coil, Washington County Prosecuting Attorney, Marietta, Ohio, for appellee.

CRIMINAL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED:7-25-24
ABELE, J.

{¶1} This is an appeal from a Washington County Common Pleas Court judgment of conviction and sentence. Michael Dawson, defendant below and appellant herein, assigns one error for review:

> "THE TRIAL COURT ERRED IN ACCEPTING THE DEFENDANT-APPELLANT'S ALFORD PLEA OF GUILTY WITHOUT STRONG EVIDENCE OF DEFENDANT-APPELLANT'S GUILT IN VIOLATION OF HIS CONSTITUTIONAL RIGHT TO ENTER A PLEA VOLUNTARILY AND INTELLIGENTLY."

[1] Different counsel represented appellant during the trial court proceedings.

{¶2} The charges in this case resulted from the death of Gannon Dawson, the two-month-old son of appellant and his wife, Megan Dawson. In September 2022, a Washington County Grand Jury returned an indictment that charged appellant with murder, involuntary manslaughter, felonious assault and endangering children. Appellant entered not guilty pleas.

{¶3} At the jury trial, Reno Fire Department Paramedic Rebecca Dunn testified that she responded to a July 23, 2020 call regarding an infant "unresponsive after choking." Dunn entered the residence and observed appellant "doing CPR on the child." Dunn took over and cleared the airway, but could not find a pulse. Appellant told Dunn that he "had been feeding [the child] when he choked." Dunn explained that within five minutes, first responders rushed the infant to the hospital about ten minutes away.

{¶4} Emergency Medicine Physician Dr. Brian Scharfenberg examined Gannon at the emergency room when he arrived around 9:00 a.m. in "full code," which means "there is not a pulse, or the heart is not beating." Medical staff restarted the child's heart and inserted a breathing tube. Scharfenberg initially spoke with appellant, who said he "was bouncing the child on [his] knee" when the baby began to "just sort of spontaneously going limp or just losing tone. I think going limp was the word that was used. He

just went limp, and then I * * * from reading my note, it said went - - went brain dead was the words that were used, as I recall." Scharfenberg stated that appellant's responses "frankly didn't make sense."

{¶5} Dr. Scharfenberg could not initially complete a thorough examination of the baby because the team continued to attempt to stabilize him. He observed, however, that "the child's pupils were dilated and fixed, which can be a sign of significant brain injury." Scharfenberg also noticed that the baby sustained bruises in "odd areas." For example, the child had a "dark bruise" in the "submental space, which is the space, the soft area sort of under your chin." He found that "very unusual. That was not something I expected to find." Scharfenberg explained that "in a child that's two months old, they can't really do that to themselves. There's no way for them to sustain an injury like that * * * of their own accord."

{¶6} Dr. Scharfenberg stated that when he observed this bruise, he became concerned about "non-accidental trauma," and reported his observations to Child Protective Services. Scharfenberg explained that during this time, "there were a number of times where we had to intervene to either maintain the child's breathing or maintain the child's heartbeat." Due to Gannon's

unstable oxygen saturation, staff replaced the endotracheal breathing tube.

{¶7} As staff waited for the Nationwide Children's Hospital flight crew, Dr. Scharfenberg offered Gannon's parents the opportunity to see their child before he left; however, the parents did not go in to see their child, "which I thought was odd." Scharfenberg diagnosed Gannon with "cardiopulmonary arrest," and staff transferred Gannon to Nationwide Children's Hospital about 90 minutes after he arrived at the Marietta Emergency Department.

{¶8} Dr. Scharfenberg added that "with infants, again, it's very unusual for an infant child to just suddenly die, which is what we're talking about. This child was dead when it came to me; its heart wasn't beating and it wasn't breathing. So that's very unnatural. Two, two-month old children don't just spontaneously die. * * * But the description that was provided to me, didn't from my perspective as an emergency physician, make any sense at all." Further, Scharfenberg remembered "there being some reluctance to be in the room" during the resuscitation, which seemed "unusual" to him. He explained, "as a general rule, parents, family members, loved ones, want to be close to the patient, particularly if there is a chance they may not survive. That's not always the case. But it's generally the case. And it wasn't the case here, generally."

{¶9} Washington County Sheriff's Detective Scott Smeeks testified that two detectives visited the Marietta hospital and spoke with appellant and Megan. Smeeks sought permission to search their home, but they refused. Smeeks then obtained a search warrant to document the scene and photograph the residence. In addition, because Smeeks learned that Gannon "was spitting up and puking" on the living room couch when he became unresponsive, Smeeks sought "that particular puke or spit up."

{¶10} Detective Smeeks stated that he found the house "basically clean." He observed trash bags on the back porch that contained trash and noticed earplugs inside one bag but did not find any evidence of vomit. On a coffee table in front of the couch Smeeks observed a bottle of milk and two small rags. Appellant told Smeeks that the bottle contained four ounces of milk, but when Smeeks found it, it had three and one-half. In the nursery adjacent to the living room, Smeeks noticed a baby bed, changing table, teething gel, and a bottle of infant gas relief. Smeeks collected four blankets and a sheet from the changing table, but none contained evidence of vomit.

{¶11} Detective Smeeks then traveled to Columbus to Nationwide

Children's Hospital to speak with appellant and the baby's mother, Megan. Smeeks learned that during the child's two months of life, he had been in their exclusive care. Appellant told Smeeks that Megan "has not done anything to hurt the child." When asked if he had done anything to hurt the child, appellant told Smeeks, "if something would have happened, if he would have done something to the baby, it was not on purpose." Appellant also told Smeeks, "if something would have happened, it would have been within the last couple days." During that conversation with appellant, Smeeks described appellant as "a little upset. He was aggravated, I think, because there was a lot of things going on that he wasn't getting answers to. But other than that, it was just a matter-of-fact." During Smeeks' conversation with Megan, "she was very upset, couldn't keep her composure, crying, angry." After Smeeks spoke with Megan, he did not believe she injured the baby, but conceded that he did find photographs on Megan's phone "of when the child was younger, and there was evidence that there had been previous injuries to the baby." Smeeks also acknowledged that a grand jury returned an indictment that charged Megan separately with permitting child abuse and endangering children.

{¶12} Washington County Sheriff's Deputy David Tornes testified that he is an evidence technician and discussed the chain of

custody of the various pieces of evidence. Washington County Sheriff's Deputy Tonya Tullius testified that she assisted with the evidence in this case. Tullius retrieved evidence from the Franklin County Coroner's Office and returned it to Washington County where she logged it back in.

{¶13} Clinical Therapist Alexis Wallace, a clinical medical social worker at Nationwide Children's Hospital, works with trauma patients in the pediatric ICU and often acted as a liaison between the medical team and families. Wallace's initial meeting with appellant and Megan occurred with ICU physician Dr. Chung present. Dr. Chung reviewed imaging and "explained that she was concerned that because of the injuries that she saw, that someone might have harmed him, and she also at that time shared a concern that the injuries were likely not survivable." Wallace testified that "[t]he mom was very distraught, crying, putting her hands up over her head, pacing back and forth. Dad just sat in the room."

{¶14} After Ms. Wallace accompanied appellant and Megan to the consultation room, "Mom was still quite upset, understandably. Dad was still in the same position." "Dr. Huber started asking questions about the events that led up to the hospitalization, and the parents got very frustrated with those questions, because they felt like they had answered them several times already." Wallace

stated that at that time, "Mom became increasingly upset at this time. She was actually curled up on the floor in the fetal position towards the back of the conference room, almost underneath of a sink, rocking back and forth, crying. She was not able to participate much more at that time." Wallace further stated that "as we continued to try to gain additional information from parents, eventually, they no longer wished to speak with us - - which is their right, and so we excused ourselves from the room." Wallace added that appellant "asked how [Gannon] could have gotten this injury, because no one has hurt him like that." Wallace added that appellant and Megan "had declined to go into [Gannon]'s room and to see him."

{¶15} Ms. Wallace interacted with the parents again the following morning when medical staff advised Wallace that Gannon "was less stable," and staff noted an increased urgency to be able to communicate with the parents regarding their wishes for end-of-life care. Staff advised Wallace that the parents "were not present overnight" and staff "could not get a hold of them to have that conversation." Wallace phoned Megan and informed her that the medical team needed to speak with her and appellant about their goals for Gannon and asked when they planned to return to the hospital. "Mom did not know at that time when they were planning

to come back." Megan inquired if Wallace could help her secure lodging, which Wallace stated she could not, but informed her that she was "more than welcome to stay at the bedside with patient for the duration of his stay." However, Megan stated that she "wasn't sure that she wanted to do that with everything going on." When Wallace asked if there was anything else she could do to be helpful, Megan responded, "they can reach me at this number," and disconnected the call.

{¶16} Ultimately, appellant and Megan returned to the hospital later that day and the medical team recommended withdrawal care. However, the parents proceeded with brain death testing rather than withdrawal of care. Ms. Wallace testified that, when the Child Assessment Team (CAT) began their assessment with the parents, Wallace wrote in her report that the parents "engage[ed] minimally" and provided "one-word responses. Shortly into the assessment, parents escalated." The parents said, "we've been asked these questions a million times. These questions are not f*cking relevant. You just told us our kid was going to die. There is not a f*cking God." Wallace's report also reflected that appellant said, "he was choking. That's all I want to say."

{¶17} At the close of the state's evidence, the defense notified the trial court of appellant's desire to enter an *Alford*

plea to Count 3, Involuntary Manslaughter, in exchange for the dismissal of the other charges. At that juncture, the court held an *Alford* plea hearing and the state read the very sad and startling findings from the coroner's report:

> Contusions on the inferior chin and jawline; focal right parieto-occipital subscapular hemorrhage; healing stellate right parietal skull fracture; surtual distases; acute subdural hemorrhage of the brain - - which meant that something happened in the short time prior to the incident being reported, that's what acute means, short period of time; patchy acute subarachnoid hemorrhage of the brain; acute global hypoxic-ischemic encephalopathy with severe cerebral * * * and cerebellar edema, cerebellar tonsillar herniation; bilateral retinal hemorrhages too numerous to count; bilateral optic nerve sheath subdural hemorrhages; fascial hemorrhage of the left side of the back; left mid-clavicular callus, which * * * means that the ribs are, there were fractures, but they were beginning to heal.
>
> Multiple bilateral anterolateral and * * * posterior healing rib fractures with callus formation - again, some that are at different stages of healing. Recent left posterior rib fractures of the bones in the rib cage. * * * [S]ubarachnoid, and subdural hemorrhages of the spinal cord. Spinal nerve root hemorrhage. Acute hypoxic-ischemic injury of the spinal cord. Additional injuries of skeletal survey, which showed up on skeletal survey x-rays.
>
> Focal cortical irregularity and marginal sclerosis of the distal left femoral metaphysis, compatible with healed corner fracture. Linear lucency with sclerotic margins of the distal left tibial metaphysis compatible with healing nondisplaced fracture. And a grade 1 laceration of the liver.
>
> Because of these constellation of injuries and the fact that there was no other viable explanation given by the parents as to accidental trauma the child Gannon Dawson had suffered, or any other medical history which would

> explain these injuries, Dr. Huber of Nationwide Children's Hospital submitted an expert report that her expert opinion was that, the finding that these injuries were consistent with physical abuse and inflicted injury.

The state further noted that, during his interview with law enforcement, appellant emphasized that Megan "did not do it," and that "something had happened in the last couple of days before his child went brain dead." Appellant refused to elaborate as to what may have occurred, only that "he never did anything intentional to his child, purposeful to his child, or anything with mean intent to his child." Appellant stated, "it's not like I was beating him, throwing him on the ground and kicking him like a soccer ball, you know what I mean." Appellant also asked the detective, "I mean, what happens if - if he does die? You know what I mean? I've got to sit here and deal with this, possibly deal with court, jail and prison over some crazy bullshit." The death certificate reflected "blunt head trauma by another individual(s)" as the cause of death.

{¶18} At the hearing, appellant indicated that he had consulted with his attorney, expressed satisfaction with his representation, acknowledged that he understood the plea agreement, the allegations contained in the indictment, the rights he waived with his plea, and possible penalties. The trial court inquired:

> And are you indicating to the Court that, despite your claimed innocence of the crime charged, you acknowledge

> the strength of the evidence against you, and that you feel that it's in your best interest to waive the rights you would have at a trial and enter this plea in order to avoid the consequences of a trial, substantial certainty of a greater penalty?

Appellant replied, "Yes." When asked why he wished to enter an *Alford* plea, appellant stated, "I just want to do, like, a risk management situation here, you know. They've stacked so many charges against me, that I feel that's the best outcome at the moment."

{¶19} On March 31, 2023, appellant entered his *Alford* plea to Count 3, Involuntary Manslaughter. The trial court accepted appellant's plea and (1) sentenced him to serve an indefinite 11 to 16 ½ year prison term on Count 3, involuntary manslaughter, (2) dismissed Counts 1, 2, 4, 5, 6, and 7, (3) ordered appellant to serve a mandatory 2 to 5-year postrelease control term, and (4) ordered appellant to pay costs. This appeal followed.

I.

{¶20} In his sole assignment of error, appellant asserts the trial court erred when it accepted his *Alford* plea without strong evidence of his guilt in violation of his constitutional right to enter a plea voluntarily and intelligently.

{¶21} Crim.R. 11(A) provides, in pertinent part, that "[a]

defendant may plead not guilty, not guilty by reason of insanity, guilty or, with the consent of the court, no contest." A "plea of guilty is a complete admission of the defendant's guilt." Crim.R. 11(B)(1). However, pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), a criminal defendant may believe he or she is innocent of the charges but reluctantly conclude that the evidence is so incriminating that a significant likelihood exists that a jury would return a guilty verdict. An *Alford* plea "is predicated upon the defendant's desire to obtain a lesser penalty rather than risk the consequences of a jury trial." *State v. Krieg*, 2004-Ohio-5174, ¶ 9 (9th Dist.), citing *State v. Piacella*, 27 Ohio St.2d 92, syllabus (1971). Therefore, it is a "species" of guilty plea. *State v. Watson*, 2014-Ohio-2839, ¶ 16 (6th Dist.); *State v. Hart*, 2016-Ohio-1008, ¶ 14 (7th Dist.).

{¶22} In general, an *Alford* plea is procedurally indistinguishable from a guilty plea because it severely limits the errors that may be claimed on appeal. *State v. McDay*, 1997 WL 243584, *2 (6th Dist. May 9, 1997). However, an *Alford* plea does differ from a guilty plea because, before a court may accept an *Alford* plea, the court must evaluate the reasonableness of a defendant's decision to plead guilty, notwithstanding the protestation of innocence. *State v. Karsikas*, 2015-Ohio-2595, ¶ 18

(11th Dist.). This requires a presentation of some basic facts that surround the charge from which a court may determine whether an accused has made an intelligent and voluntary plea. *Krieg* at ¶ 14; *State v. Drzayich*, 2016-Ohio-1398, ¶ 13 (6th Dist.).

{¶23} When a defendant contends that a plea is invalid because a court failed to comply with nonconstitutional requirements of Crim.R. 11(C)(2)(a) and (b), or the constitutional requirements of Crim.R. 11(C)(2)(c) or the Alford requirements, 400 U.S. 25 (1970), a reviewing court must undertake a de novo review. *State v. Hughes*, 2021-Ohio-111, ¶ 6 (4th Dist.), citing *State v. Cassell*, 2017-Ohio-769, ¶ 30 (4th Dist.). Moreover, the United States Supreme Court held that a court may accept a plea, notwithstanding a defendant's claim of innocence, "when * * * a defendant intelligently concludes that his interests require entry of a guilty plea and the record before the judge contains strong evidence of actual guilt." *Alford*, 400 U.S. at 37. However, a court in an *Alford* case has a "heightened duty upon the trial court to ensure that the defendant's rights are protected and that entering the plea is a rational decision on the part of the defendant." *State v. Carey*, 2011-Ohio-1998, ¶ 7 (3d Dist.); *State v. Cunningham,* 2023-Ohio-4305 (4th Dist.).

{¶24} Consequently, when a defendant enters an *Alford* plea,

"[t]he trial judge must ascertain that notwithstanding the defendant's protestations of innocence, he has made a rational calculation that it is in his best interest to accept the plea bargain offered by the prosecutor." *State v. Padgett*, 67 Ohio App.3d 332, 338, 2d Dist. 1990). Further, the standard to determine an *Alford* plea's validity is "whether the plea represents a voluntary and intelligent choice among the alterative courses of action open to the defendant." *Alford*, 400 U.S. at 31. The Supreme Court of Ohio determined that this standard is met:

> Where the record affirmatively discloses that: (1) defendant's guilty plea was not the result of coercion, deception or intimidation; (2) counsel was present at the time of the plea; (3) counsel's advice was competent in light of the circumstances surrounding the indictment; (4) the plea was made with the understanding of the nature of the charges; and, (5) defendant was motivated either by a desire to seek a lesser penalty or a fear of the consequences of a jury trial, or both, the guilty plea has been voluntarily and intelligently made.

Piacella, 27 Ohio St.2d 92,(1971), paragraph one of the syllabus.

> Where a defendant enters an *Alford* plea, the trial court must inquire into the factual basis surrounding the charges to determine whether the defendant is making an intelligent and voluntary guilty plea. The trial court may accept the guilty plea only if a factual basis for the guilty plea is evidenced by the record. "When taking an *Alford* plea, the trial court cannot determine whether the accused was making an intelligent and voluntary guilty plea absent some basic facts surrounding the charge, demonstrating that the plea cannot seriously be questioned." "An *Alford* plea may not be accepted when the record fails to demonstrate facts upon which the trial court can resolve the apparent conflict between a defendant's claim of innocence and the

> defendant's desire to plead guilty to the charges." (Citations omitted.)

State v. Redmond, 2018-Ohio-2778, ¶ 11 (7th Dist.), quoting *State v. Alvedo*, 2017-Ohio-742, ¶ 23 (8th Dist.).

{¶25} In the case sub judice, appellant contends that the record lacks strong evidence that appellant committed the felonious assault upon which the involuntary manslaughter is based. Appellee, on the other hand, argues that although the record does indeed contain strong evidence of guilt, strong evidence is not necessarily required because the standard is whether a sufficient factual basis supports the criminal charges.

{¶26} In *Cunningham*, this court upheld an *Alford* plea when the trial court had access to the indictment, which included sufficient detail about the offenses, an arrest warrant affidavit that contained additional details regarding the specific actions that constituted the offenses, and the bill of particulars that added further information, such as the location of each offense. *Id.* at ¶ 27. Moreover, in *Cunningham* the trial court verified that the defendant had the opportunity to speak with his counsel about the consequences of an *Alford* plea. *Id.* Thus, this court concluded that *Cunningham* contained strong evidence of guilt.

{¶27} In the case sub judice, after our review we believe that the prosecution did present strong evidence of guilt. Here, the

prosecution provided details that supported the offense that included: (1) testimony from six witnesses before appellant decided to enter an *Alford* plea, (2) testimony from the emergency physician who contacted Children's Services, (3) the EMT's records, (4) death certificate that listed Gannon's cause of death as "blunt head trauma by another individual(s)", (5) the Children's Hospital social worker's notes outlining appellant's behavior and statements during his son's stay, (6) testimony regarding appellant's indifference in the face of his son's imminent death, both in Marietta and Columbus, (7) appellant's statement that Megan "has not done anything to hurt the child," (8) appellant's statement that "if something would have happened, if he would have done something to the baby, it was not on purpose," (9) appellant's statement that "if something would have happened, it would have been within the last couple days," (10) appellant's statement during the end-of-life assessment that "he was choking. That's all I want to say," (11) appellant's statement to police that "something had happened in the last couple of days before his child went brain dead," (12) appellant's statement to police, "it's not like I was beating him, throwing him on the ground and kicking him like a soccer ball, you know what I mean," and (13) appellant's statement to police, "I mean, what happens if - if he does die? You know what I mean? I've got to sit here and deal with this,

possibly deal with court, jail and prison over some crazy bullshit."

{¶28} In addition to evidence of guilt, our review of the record reveals that appellant intelligently and rationally concluded that his best interests supported his *Alford* plea. *See Alford,* 400 U.S. at 37. Specifically, appellant stated, "I just want to do, like, a risk management situation here, you know. They've stacked so many charges against me, that I feel that's the best outcome at the moment." Furthermore, our review finds (1) no evidence of coercion, deception or intimidation, (2) counsel was present at the time of the plea, (3) counsel rendered competent advice, (4) appellant entered his plea with the understanding of the nature of the charges, and (5) appellant was motivated either by a desire to seek a lesser penalty or a fear of the consequences of a jury trial, or both, and made the plea voluntarily and intelligently. *See Piacella*, 27 Ohio St.2d 92, paragraph one of the syllabus.

{¶29} Therefore, we conclude that the trial court did not err when it accepted appellant's *Alford* plea to the charge of involuntary manslaughter. Accordingly, for the foregoing reasons, we overrule appellant's assignment of error and affirm the trial court's judgment.

[Cite as *State v. Dawson*, 2024-Ohio-2968.]

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed. Appellee shall recover of appellant the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Washington County Common Pleas Court to carry this judgment into execution.

If a stay of execution of sentence and release upon bail has been previously granted by the trial court or this court, it is temporarily continued for a period not to exceed 60 days upon the bail previously posted. The purpose of a continued stay is to allow appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of the proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the 60-day period, or the failure of the appellant to file a notice of appeal with the Supreme Court of Ohio in the 45-day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of 60 days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J. & Wilkin, J.: Concur in Judgment & Opinion

For the Court

BY:_____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.