**CASE NO. A14-0275**

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State of Minnesota

In Supreme Court

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Jane Doe 136,

 *Appellant,*

vs.

Ralph Liebsch,

 *Respondent.*

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**AMICUS BRIEF OF NATIONAL CENTER**

**FOR VICTIMS OF CRIME IN SUPPORT OF**

**APPELLANT JANE DOE 136**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**STATEMENT OF THE CASE AND FACTS**

 This is a civil battery case in which Plaintiff sued Defendant for sexually abusing her.[[1]](#footnote-1) Defendant had previously entered a guilty plea to the gross misdemeanor charge of fifth degree sexual conduct pursuant to *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970) ("*Alford* plea") in a criminal case arising from the same underlying acts, denying that he committed the acts while pleading guilty to the crime in order to benefit from the plea agreement.

 In his answer to the complaint in this case, Defendant admitted making the guilty plea, but the Trial Court declined to estop Defendant from litigating the issue of liability for the acts to which he had pled guilty, and excluded from evidence both the portion of the answer to the complaint admitting the plea and the plea itself, finding that an *Alford* plea was not an admission against interest. The Trial Court also prohibited the Plaintiff from impeaching the Defendant with evidence of his conviction resulting from the *Alford* plea. The jury found for Defendant at trial.

 Plaintiff appealed, asserting that the Trial Court committed prejudicial error in denying the admissibility of the *Alford* plea as an admission against interest or as impeachment of Defendant’s credibility because of a criminal conviction. The Court of Appeals affirmed.

**STATEMENT OF LEGAL ISSUES INVOLVED**

1. **Issue No. One**

Is an *Alford* plea admissible as an admission against interest?

1. **Description of how issue was raised in the Trial Court**

The appellee filed a motion *in limine* in the Trial Court to exclude evidence of his *Alford* plea to fifth degree criminal sexual conduct, which the Trial Court granted.

1. **Statement of Trial Court Ruling**

The Trial Court granted the motion *in limine* and prohibited the appellant from using the *Alford* plea for any purpose.

1. **How Issue was Preserved for Appeal**

Appellant filed a timely appeal asserting that the Trial Court erred in excluding the evidence of the *Alford* plea.

1. **Most Appropriate Case and Law**
2. *Jankowski v. Clausen*, 167 Minn. 437, 209 N.W. 317 (1926)
3. Minn. R. Evid. 402
4. **Issue No. Two**

Is an *Alford* plea admissible to impeach the credibility of the convicted person if it is inconsistent with the person's trial testimony?

1. **Description of how issue was raised in the Trial Court**

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1. **Statement of Trial Court Ruling**

The Trial Court granted the motion *in limine* and prohibited Appellant from using the *Alford* plea for any purpose.

1. **How Issue was Preserved for Appeal**

Appellant filed a timely appeal asserting that the Trial Court erred in excluding the evidence of the *Alford* plea.

1. **Most Appropriate Case and Law**
2. *O'Neill v. Minneapolis St. Ry. Co.*, 213 Minn. 514, 7 N.W. 2d 665 (1942)
3. Minn. R. Evid. 613

**ARGUMENT**

**Issue No. One: Is an *Alford* plea admissible as an admission against interest?**

 In Minnesota, an accused must ordinarily enter either a "guilty" or "not guilty" plea to a criminal offense. Minn. R. Crim. P. 14.01. Pleas of "no contest" are not allowed. *Id.*; *State v. Brown*, 758 N.W. 2d 594, 599 n. 2 (Minn. App. 2008). *See also* Minn. R. Evid. 410.[[2]](#footnote-2)

 An accused who wishes to plead guilty while maintaining his innocence is permitted to plead guilty under the standard enunciated in *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970).[[3]](#footnote-3) *State v. Goulette*, 258 N.W. 2d 758, 760 (Minn. 1977) (adopting *Alford*). Such a plea requires that "the court, on the basis of its interrogation of the accused and its analysis of the factual basis offered in support of the plea, reasonably concludes that there is evidence which would support a jury verdict of guilty and that the plea is voluntarily, knowingly, and understandably entered." *State v. Goulette*, 258 N.W. 2d at 760*.*

 Appendix A to Minn. R. Crim. P. 15 sets forth the requirements of a plea petition. Defendant executed such a petition, acknowledging by his signature the truth of paragraphs 24 and 25 of the petition, which state:

“My attorney has told me, and I understand that a judge will not accept a plea of guilty for anyone who claims to be innocent.

I now make no claim that I am innocent.”

Plea Petition, ¶¶ 24-25. In paragraph 28 of the Plea Petition, Defendant acknowledged by his signature "That in view of all above facts and considerations I wish to enter a plea of guilty." Plea Petition, ¶ 28. Defendant's plea of guilty is clearly a statement of the Defendant.[[4]](#footnote-4)

 Defendant's guilty plea was based on the same criminal acts as was the civil lawsuit, and was therefore indisputably relevant in the civil suit. Nonetheless, the Trial Court excluded the guilty plea under Minn. R. Evid. 403, concluding that its probative value was substantially outweighed by the danger of unfair prejudice.

 The Trial Court's ruling was contrary to more than a century of jurisprudence. *Wischstadt v. Wischstadt*, 47 Minn. 358, 359, 50 N.W. 225 (Minn. 1891) (guilty plea to criminal slander was admissible in civil slander suit arising from the same false statements, the guilty plea was "entitled to greater weight because of the deliberateness with which the plea is presumed to have been made."); *Jankowski v. Clausen*, 167 Minn. 437, 440, 209 N.W. 317 (1926) ("The record of the plea of guilty was correctly received in evidence as an admission[,]" but the defendant was entitled to "show, if he could, that he had not violated the law and to explain the inducements which led him to enter the plea."); *Klein v. Pasch*, 153 Minn. 291, 293, 190 N.W. 338 (Minn. 1922) (documents evidencing guilty plea to the crime of mayhem were property admitted in a later civil action against the defendant as "an admission that [the defendant] was the aggressor in the affray."). *See also* Minn. R. Evid. 804(b)(3) (statement against interest admissible when declaration is unavailable as a witness).

 Defendant received considerable benefits from his plea bargain in the criminal case, including a dramatically reduced charge,[[5]](#footnote-5) a recommendation of probation, avoidance of the anxiety and notoriety of a public trial, and reduced expense. Plea Petition, ¶ 20a. To obtain these benefits, however, Defendant accepted the consequences of a guilty plea. The holdings of the Trial Court and the Court of Appeals that these consequences do not include the use of the guilty plea and conviction in a subsequent civil action arising from the same criminal acts demeans the criminal justice process – and the victims of the criminal acts[[6]](#footnote-6) – by creating two categories of "guilt" – one for those who enter *Alford* pleas, and one for those who enter traditional guilty pleas. These holdings equate *Alford* pleas to "no contest" pleas, supplanting the legislature's delegation of the authority to this Court, through a statutorily-mandated process, to create the rules of criminal procedure.[[7]](#footnote-7) Minn. Stat. 480.059 (delegating to the Minnesota Supreme Court the authority to "regulate the pleadings, practice, procedure, and the forms thereof in criminal actions in all courts of this state, by rules promulgated by it from time to time[,]" and setting forth the process for adoption of such rules).

 Other jurisdictions have held that *Alford* pleas are guilty pleas, and are admissible for all the same purposes as any other plea of guilt, including as an admission by the defendant who entered the plea. *E.g., People v. Miller,* 239 A.D. 2d 787, 788 658 N.Y.S.2d 482 (N.Y. App. Div. 3d Dep’t 1997), *affirmed,* 91 N.Y.2d 372, 694 N.E.2d 61, 670 N.Y.S.2d 978 (N.Y. 1998) (citing cases); *Harden v. State Farm Fire & Cas. Co.,* 269 Ga. App. 732, 734, 605 S.E.2d 37 (2004) (*Alford* plea constituted an admission against interest that established a *prima facie* case that insurer had no duty to defend or indemnify insured); *see also Blohm v. Commissioner of Internal Revenue*, 994 F.2d 1542, 1554-1556 (11th Cir. 1993) ("the collateral consequences flowing from an *Alford* plea are the same as those flowing from an ordinary plea of guilt. Were this not so, defendants pleading guilty would routinely proclaim their innocence to reap two benefits: (1) the avoidance of a trial and a possible reduction in sentence, and (2) the extinguishment of all collateral consequences of their plea. Nothing in . . . *Alford* sanctions this distortion of the pleading process."). This Court should follow the lead of these other courts, and hold that an *Alford* plea is the same as any other guilty plea.

 **Issue No. Two: Is an *Alford* plea admissible to impeach the credibility of the convicted person?**

The Trial Court also erred in disallowing evidence of Defendant's guilty plea to impeach Defendant after he "testified that he has denied the allegations 'any time anybody has asked' about them and has never told anyone anything other than that he denied the conduct alleged against him." *Doe v. Liebsch*, 856 N.W. 2d 699, 704 (Minn. App. 2014).

 Defendant pleaded guilty to sexually molesting Appellant. To permit him to testify in substance that he has never acknowledged responsibility for such molestation undoubtedly left the jury with the impression that he had not. Appellant should have been permitted to impeach Defendant with evidence of his guilty plea as a prior inconsistent statement notwithstanding his entry of an *Alford* plea, because "[a] prior contradictory statement is always admissible to impeach a witness." *O'Neill v. Minneapolis St. Ry. Co.*, 213 Minn. 514, 520, 7 N.W. 2d 665 (1942). *See* Minn. R. Evid. 613 (impeachment by prior inconsistent statements).

 The question of whether a witness's testimony is inconsistent with a prior statement "should be determined not from isolated answers, but from his testimony as a whole." *O'Neill*, *supra* at 520*.* That is, the "inconsistency is to be determined, not by individual words or phrases alone, but by the *whole impression or effect* of what has been said or done." *Id.,* quoting 3 Wigmore, Evidence § 1040, p. 725 (3rd ed.) (emphasis in original).

 Regardless of its admissibility on other grounds, the Trial Court should have permitted Appellant to impeach Defendant with guilty plea after Defendant testified inconsistently with the plea.

**CONCLUSION**

 An *Alford* plea is a guilty plea, which is an admission of responsibility for a criminal act. To exclude evidence of an *Alford* plea in a civil action arising from the same criminal acts converts an *Alford* plea to a "no contest" plea, which Minnesota does not recognize.

 Appellant was improperly denied the use of evidence of Defendant's guilty plea, and this Court should reverse the Court of Appeals' finding that the Trial Court did not abuse its discretion by excluding the *Alford* plea, and remand the matter for a new trial.

 Dated: March 24, 2015.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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**CERTIFICATE OF COMPLIANCE**

 I hereby certify that the foregoing *Amicus* Brief in Case No. A14-0275 was prepared with Microsoft Word Version 2007, and complies with the requirements of Minnesota Rules of Appellate Procedure 132.01 Subd. 3(c)(1), and that the Brief contains 3,092 words, which is less than the limitation for *Amicus* briefs.

 Dated: March 24, 2015.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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STATE OF OHIO )
 ) SS: **AFFIDAVIT OF SERVICE**
COUNTY OF CHAMPAIGN )

 Christina L. Albright, being first duly sworn on oath, deposes and states that she is a secretary in the office of Harris, Meyer, Heckman & Denkewalter, L.L.C., Attorneys at Law, One Monument Square, Suite 200, Urbana, Ohio 43078; that on the 24th day of March, 2015, she made service of:

1. *Amicus* Brief of National Center for Victims of Crime in Support Appellant Jane Doe 136

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Subscribed and sworn to before me

this \_\_\_\_\_\_ day of March, 2015.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

1. Pursuant to Minn. R. App. P. 129.03, Counsel hereby certifies that he and attorney Erin K. Olson, Oregon State Bar No. 934776, authored the entire brief, and no other person made a monetary contribution to the preparation or submission of the brief. [↑](#footnote-ref-1)
2. Minn. R. Evid. 410 provides:

"Evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime or of statements made in connection with any of the foregoing pleas or offers, is not admissible in any civil, criminal, or administrative action, case, or proceeding whether offered for or against the person who made the plea or offer." [↑](#footnote-ref-2)
3. All but three states accept *Alford* pleas. *See* Stephanos Bibas, *Harmonizing Substantive-Criminal-Law Values and Criminal Procedure: The Case of Alford and Nolo Contendere Pleas*, 88 Cornell L. Rev. 1361, 1372 n. 52 (2003) (forty-seven states plus the District of Columbia permit *Alford* pleas; only Indiana, New Jersey, and Michigan prohibit them); Jenny E. Ronis, *The Pragmatic Plea: Expanding Use of the Alford Plea to Promote Traditionally Conflicting Interests of the Criminal Justice System*, 82 Temple L. Rev. 1389, 1399 (2010). [↑](#footnote-ref-3)
4. Minn. R. Evid. 801 (d)(2) provides that a statement by a party opponent is not hearsay if offered against the party, and Minn. R. Evid. 402 provides in relevant part that "[a]ll relevant evidence is admissible, except as otherwise provided by the United States Constitution, the State Constitution, statute, by these rules, or by other rules applicable in the courts of this state." The Court of Appeals concluded that Minn. R. Evid. 801(d)(2) was not relevant to the analysis of the issues before it, *Doe v. Liebsch*, 856 N.W. 2d 699, 704 (Minn. App. 2014), leaving the Trial Court's exclusion under Minn. R. Evid. 403 as the sole basis for exclusion of the plea. [↑](#footnote-ref-4)
5. Defendant was permitted to enter an *Alford* plea to a gross misdemeanor count of criminal sexual conduct in the fifth degree in an amended complaint. The original criminal complaint charged him with criminal sexual conduct in the first degree, a felony carrying a penalty of up to 30 years imprisonment. Complaint, ¶¶ 6-7; Answer, ¶¶ 6-7; Minn. Stat. 609.3451, subd. 1(a) (gross misdemeanor); Minn. Stat. 609.342 (felony). [↑](#footnote-ref-5)
6. *C.f.* Claire Molesworth, *Knowledge Versus Acknowledgment: Rethinking the Alford Plea in Sexual Assault Cases*, 6 Seattle J. for Soc. Just. 907 (2007). [↑](#footnote-ref-6)
7. *See* Curtis J. Shipley, *The Alford Plea: A Necessary but Unpredictable Tool for the Criminal Defendant*, 72 Iowa L. Rev. 1063, 1084-85 (1987). [↑](#footnote-ref-7)