**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A19-1769**

David Tanner Eberhart, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed July 6, 2020**
**Affirmed**
**Smith, Tracy M., Judge**

Clay County District Court
File No. 14-CR-15-3865

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Brian J. Melton, Clay County Attorney, Michael D. Leeser, Assistant County Attorney, Moorhead, Minnesota (for respondent)

Considered and decided by Reilly, Presiding Judge; Smith, Tracy M., Judge; and Florey, Judge.

**U N P U B L I S H E D  O P I N I O N**

**SMITH, TRACY M.**, Judge

In this appeal from an order denying postconviction relief, appellant David Tanner Eberhart challenges the district court's denial of his petition to withdraw his guilty plea to

fifth-degree controlled-substance possession. Because the district court did not err by holding that Eberhart's plea was accurate, we affirm.

## FACTS

Eberhart was charged with fifth-degree controlled-substance possession in violation of Minn. Stat. § 152.025, subd. 2(a)(1)(2014), after law enforcement found a Vyvanse pill in the cup holder of his car during a traffic stop. Eberhart agreed to plead guilty as charged, and, in exchange, the state recommended that he receive a stay of adjudication pursuant to Minn. Stat. § 152.18 (2014). To establish the factual basis for his plea, Eberhart testified to the following at his plea hearing.

In November 2015, a police officer pulled Eberhart over for speeding. Eberhart owned the vehicle that he was driving and was alone in it. After the initial stop, the officer searched Eberhart's vehicle and found a Vyvanse pill in the cup holder. Vyvanse, or lisdexamfetamine, is a schedule II controlled substance, and Eberhart did not have a prescription for it. *See* Minn. Stat. § 152.02, subd. 3(d)(5)(2014).

Eberhart testified that he did not know that the pill was in his car until the officer found it. After he said this, the district court engaged him in the following exchange:

> THE COURT: Where was it in the car? Where did the officer find it?
> EBERHART: I think he found it—I think it was in the ashtray or on the passenger side somewhere.
> THE COURT: Was there anybody else in the car with you at the time?
> EBERHART: No, not at the time, no.
> THE COURT: So how do you suppose it got there?
> EBERHART: Some friends from school. Somebody left it in there.

> THE COURT: And so had you had friends from school in your car that you knew had some controlled substances on them or in your vehicle?
> EBERHART: Yes.
> THE COURT: Okay. And so you should have had a reasonable basis of knowing that those controlled substances were there?
> EBERHART: I suppose so, yes.
> THE COURT: And was that—the area in the car where the pill was found was it under your exclusive possession and control at the time?
> EBERHART: Yes, I was the only one in the vehicle.
> THE COURT: [Alright]. So it wasn't a shocker to you that there was a controlled substance in your car?
> EBERHART: Yes and no.

The district court then asked Eberhart to explain what he meant by "yes and no." Eberhart stated that he did not know that the pill was there but was "not surprised" to learn that it was. The district court then expressed to Eberhart that it needed to "figure out [what was] going on" and whether there was a sufficient basis to accept his guilty plea, explaining that, "if a Vyvanse fell out of sky and landed in your car and you had absolutely zero idea it was there nor should you have known it was there, I can't find you guilty." Eberhart subsequently testified that there were people in his car in the past that he knew had drugs on them and that he had knowingly allowed them in his car. He agreed that it was "reasonably foreseeable" that drugs would be in his car.

The prosecutor asked Eberhart to clarify whether the pill was specifically found in the cup holder of his car, and Eberhart said that it was. The district court then followed up:

> THE COURT: Where was the cup holder?
> EBERHART: In the front.
> THE COURT: All right. The front seat cup holder and you're in the driver's seat, so—I mean, I have a necklace and some earrings in my cup holder and I can see them all the time, so certainly it was within your sight.

EBERHART: Right. Yes.

The district court ultimately determined that Eberhart provided a sufficient factual basis for fifth-degree controlled-substance possession and accepted his guilty plea.

At his sentencing hearing in May 2016, the district court granted Eberhart a stay of adjudication and ordered that he serve five years on probation pursuant to Minn. Stat. § 152.18. Successful completion of probation was to result in discharge and dismissal of the proceeding. *Id.*, subd. 1(c).

About a year after his sentencing hearing, Eberhart admitted to a probation violation. The district court adjudicated him guilty of fifth-degree controlled-substance possession but stayed imposition of a sentence and reinstated his probation. About four months later, after finding another probation violation, the district court ordered that Eberhart serve 120 days in jail but again reinstated his probation. Some four months later, in March 2018, Eberhart admitted to another probation violation and demanded execution of his sentence, and the district court imposed an executed sentence of imprisonment for one year and one day.

In June 2019, Eberhart filed a petition for postconviction relief, arguing that he is entitled to plea withdrawal because his plea was not accurate. The district court denied his request for relief, and this appeal follows.

## D E C I S I O N

The validity of a guilty plea is a question of law, which we review de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). A person has no absolute right to withdraw a guilty plea after it has been accepted. *Perkins v. State*, 559 N.W.2d 678, 685 (Minn. 1997).

But "the court must allow a defendant to withdraw a guilty plea upon a timely motion and proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice."[1] Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice exists if a guilty plea is not valid. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). To be valid, a guilty plea must be "accurate, voluntary and intelligent." *Id.* (quotation omitted). Eberhart challenges the accuracy of his plea.

To be accurate, a plea must be supported by an adequate factual basis. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). Typically, a factual basis is established by defense counsel, the prosecutor, or the district court "questioning the defendant and asking the defendant to explain in his or her own words the circumstances surrounding the crime." *Id.* The defendant's explanation "usually will suggest questions to the court which then, with the assistance of counsel, can interrogate the defendant in further detail." *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983). The district court must not accept the guilty plea "unless the record supports the conclusion that the defendant actually committed an offense at least as serious as the crime to which he is pleading guilty." *Id.* at 251-52.

Eberhart pleaded guilty to fifth-degree possession of a controlled substance in violation of Minn. Stat. § 152.025, subd. 2(a)(1), which makes it a crime for a person to

[1] We question whether Eberhart's plea-withdrawal request, made over a year after he demanded execution of his sentence, is "timely" within the meaning of Minn. R. Crim. P. 15.05, subd. 1. *See State v. Byron*, 683 N.W.2d 317, 321 (Minn. App. 2004) (explaining that "[t]here is no explicit time limit barring motions for a plea withdrawal, but the motion should be made with due diligence, considering the nature of the allegations quoted therein") (quotation omitted)), *review denied* (Minn. Sept. 29, 2004). But because the state did not raise a timeliness argument, we do not address the issue here.

"unlawfully possess[] one or more mixtures containing a controlled substance classified in Schedule I, II, III, or IV, except a small amount of marijuana." To prove that a defendant possessed a controlled substance, "the state must prove that defendant consciously possessed . . . the substance and that defendant had actual knowledge of the nature of the substance." *State v. Florine*, 226 N.W.2d 609, 610 (Minn. 1975).

Eberhart challenges the accuracy of his guilty plea on two bases. He argues that the factual basis for the plea was insufficient to show that he (1) possessed the controlled substance or (2) had actual knowledge of the nature of the controlled substance.

**1. Possession of the controlled substance**

Possession can be actual or constructive. *Id.* Actual possession involves direct physical control. *State v. Barker*, 888 N.W.2d 348, 353 (Minn. App. 2016). Constructive possession, on the other hand, is shown when either (1) "the police found the substance in a place under [the] defendant's exclusive control to which other people did not normally have access" or (2) if the substance was found in a place to which others did have access, "there is a strong probability (inferable from other evidence) that [the] defendant was at the time consciously exercising dominion and control over it." *State v. Mollberg*, 246 N.W.2d 463, 472 (Minn. 1976) (quotation omitted).

The parties appear to agree that this is a constructive, rather than actual, possession case. But Eberhart argues that the factual basis for his plea was insufficient to establish that he constructively possessed the Vyvanse pill because he testified in his plea colloquy that he had recently had friends in the car and that the friends left the pill in his cup holder without his knowledge. He argues that, even though he conceded that "it was reasonably

foreseeable that [the pill] would be in his car," such an acknowledgement does not prove that he was consciously exercising dominion over the pill. The state responds that the factual basis shows that Eberhart constructively possessed the pill because, at the time of his arrest, he was the only person in the vehicle, the pill was close by him in the cup holder, the pill was within his line of sight, and he admitted that he suspected there may be controlled substances in his car.

Eberhart did make statements during the plea colloquy that tended to negate the constructive possession element of the offense. *See State v. Iverson*, 664 N.W.2d 346, 350 (Minn. 2003) ("[T]he factual basis of a plea is inadequate when the defendant makes statements that negate an essential element of the charged crime because such statements are inconsistent with a plea of guilty."). But, as the supreme court has explained, the accuracy standard "is clear: It is well established that before a plea of guilty can be accepted, the trial judge must make certain that facts exist from which the defendant's guilt of the crime charged *can be reasonably inferred*." *Nelson v. State*, 880 N.W.2d 852, 861 (Minn. 2016) (emphasis added) (quotation omitted). Eberhart did not have any other passengers in his car, the pill was in close proximity to him, and the pill was within his line of sight. *See State v. Breaux*, 620 N.W.2d 326, 334 (Minn. App. 2001) ("Proximity is an important factor in establishing constructive possession."). From these facts, it can reasonably be inferred that he was in constructive possession of the pill, as there is "a strong probability that [he] was . . . consciously exercising dominion and control over" it. *Mollberg*, 246 N.W.2d at 472 (quotation omitted).

Eberhart cites *State v. Harris* for support. 895 N.W.2d 592 (Minn. 2017). There, the supreme court explained that, to prove constructive possession, "the [s]tate must prove more than the defendant's mere proximity to the [contraband]." *Id.* at 601. Evaluating the sufficiency of the evidence to support the defendant's conviction for unlawful possession of a firearm, the supreme court applied the circumstantial-evidence standard of review and determined that the circumstances proved at trial were consistent with a reasonable inference other than possession of the weapon by the defendant. *Id.* at 601-03. This was so because the firearm was found between the headlining and roof of the car, the defendant was the driver but did not own the car, several other people were in the car at the time of the stop, and DNA on the firearm matched that of multiple people. *Id.* at 602-03.

*Harris* does not change our conclusion that Eberhart's plea was accurate. First, *Harris* was reviewing the sufficiency of the evidence to support a conviction under the circumstantial-evidence standard of review and thus asked whether the evidence supported any rational hypothesis other than guilt. *See id.* at 598. To evaluate the accuracy of a guilty plea, in contrast, we must only determine whether "facts exist from which the defendant's guilt . . . can be reasonably inferred." *Nelson*, 880 N.W.2d at 861 (quotation omitted). Second, this case is factually distinguishable from *Harris*. Eberhart was alone in a vehicle that he owned at the time that law enforcement found the pill in his cup holder. He conceded that the car was under his exclusive possession and control and that the pill would have been in his line of sight. Despite his contention that a friend left the pill in his car, it is still reasonable to infer that he constructively possessed it under the circumstances.

### 2. Knowledge of the nature of the controlled substance

Eberhart also argues that his plea was insufficient to show that he had knowledge of the nature of the Vyvanse pill. His argument tracks his possession argument—he contends that, because he did not know that the Vyvanse pill was in his car *at all*, he could not have known that the pill was a controlled substance. The state responds that Eberhart admitted that he knew his friends brought drugs into his car, and argues that he did not need to admit knowledge of the specific controlled substance at the plea hearing.

Again, to prove unlawful possession of a controlled substance, the state must prove that the defendant possessed the substance and "had actual knowledge of the nature of the substance." *Florine*, 226 N.W.2d at 610. This court determined in *State v. Ali* that the knowledge requirement is satisfied upon proof that the defendant knew the substance he possessed was illegal. 775 N.W.2d 914, 918-19 (Minn. App. 2009). The state need not show that the defendant knew the precise nature of the substance. *Id.* at 919. Knowledge that the substance is illegal "is customarily determined from circumstantial evidence." *Id.*

Eberhart specifically testified that he knew that his friends brought controlled substances into his car and that he allowed them to do so. His argument that he did not know the nature of the pill largely depends on his argument that he did not know the pill was in his car, which we have already disposed of. Because the factual basis establishes that Eberhart constructively possessed the pill—and thus knew it was in his car— it is

reasonably inferable from the remainder of Eberhart's testimony that he knew that the pill that he possessed was a controlled substance.[2]

**Affirmed.**

[2] Because we conclude that Eberhart testified to facts sufficient to show that his guilty plea was accurate, we do not reach the state's alternative argument that his plea was accurate as an *Alford* plea. *See North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160 (1970).