

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A21-1210**

State of Minnesota,  
Respondent,

vs.

Jes Keven Johnson,  
Appellant.

**Filed June 20, 2022  
Affirmed  
Bratvold, Judge**

Crow Wing County District Court  
File No. 18-CR-19-2856

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

Donald F. Ryan, Crow Wing County Attorney, Janine LePage, Assistant County Attorney,  
Brainerd, Minnesota (for respondent)

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

Considered and decided by Bjorkman, Presiding Judge; Segal, Chief Judge; and  
Bratvold, Judge.

**NONPRECEDENTIAL OPINION**

**BRATVOLD**, Judge

Appellant asks this court to reverse his conviction and remand to allow him to  
withdraw his guilty plea to felony domestic assault by strangulation. Appellant argues his  
guilty plea is not accurate because the record includes no facts showing his relationship to

the victim. We first determine that appellant testified at the plea hearing that the complaint is true and accurate. As a result, we may consider the complaint and probable-cause statement as part of the record supporting appellant's plea. We conclude that appellant's plea is accurate because the record establishes that appellant was living with the victim at the time of the assault. Accordingly, we affirm.

## FACTS

These facts are taken from the probable-cause statement attached to the complaint. On July 21, 2019, Brainerd police officers were dispatched to appellant Jes Keven Johnson's apartment following reports of "possible physical domestic" abuse. "Due to previous law enforcement contacts," one of the dispatched officers was "aware [Johnson] lived at the residence with a female who was identified as K.M.S." While Johnson was speaking with an officer, K.M.S. allowed another officer into the apartment.

K.M.S. told the officer "she had been kicked [in] the face and that Johnson had 'choked' her." K.M.S. continued on to tell officers that Johnson was on top of her, had his right hand around her throat, and "tightened his grip to the point that it was hard to breathe and talk." She also said that when she tried to escape, Johnson "pinned her shoulders to the ground and attempted to strangle her another time" and that she "started to lose consciousness."

Respondent State of Minnesota charged Johnson with domestic assault by strangulation under Minn. Stat. § 609.2247, subd. 2 (2018), as well as third-degree assault and misdemeanor domestic assault. At the omnibus hearing, Johnson's attorney told the district court that the parties had reached a plea agreement. Johnson agreed to plead guilty

to the domestic-assault-by-strangulation charge, and the state agreed to recommend a stay of adjudication for three years with supervised probation and a release to treatment. Separately, the state supported the victim's request that a domestic-abuse no-contact order (DANCO) be lifted. After being sworn in, Johnson pleaded guilty. Johnson then acknowledged each of the trial rights he was waiving before he signed and submitted his plea petition.

The district court asked Johnson's attorney to establish a factual basis. Johnson testified that during an argument with "the female" on July 21, 2019, he was "on top of her" with his hands around her throat "in an aggressive manner" that was "an attempt to cause her difficulty" in breathing.

The prosecuting attorney then asked if Johnson had read the state's complaint. Johnson said that he had read the complaint and, in response to a follow-up question, agreed that he had read the two-page probable-cause statement filed with the complaint. Johnson then testified that "it was not completely accurate but . . . the events were similar to what happened." The prosecuting attorney asked clarifying questions:

Q: So if [K.M.S.] said that during the point in time when you were strangling her she started to lose consciousness, her vision began to blur, and she was seeing stars; she said it was hard to breathe and she wasn't able to talk or say anything. Do you have any reason to doubt that information?

A: Um, I was—no, I have no reason to doubt that, I guess.

Q: Do you agree that the Court can accept that information in the Complaint as true to help support your plea to the strangulation charge?

A: Yes.

Johnson's attorney stated that she had no "objection to the [district court] relying on the probable cause statement." The district court stated that the "record will so reflect" and asked Johnson if he understood. Johnson responded, "Yes."

The district court found an adequate factual basis for Johnson's plea and that Johnson voluntarily and intelligently waived his trial rights. The district court stayed adjudication for three years. Eight months later, Johnson violated the conditions of his probation, and the district court entered a judgment of conviction and imposed a stayed sentence.

Johnson appeals.

## DECISION

Johnson asks this court to reverse his conviction and remand the case to allow him to withdraw his guilty plea. Johnson did not challenge the validity of his guilty plea during district court proceedings, but a guilty plea's validity may be challenged for the first time in a direct appeal. *State v. Schwartz*, 943 N.W.2d 411, 413 (Minn. App. 2020), *aff'd*, 957 N.W.2d 414 (Minn. 2021).

A defendant has no absolute right to withdraw a guilty plea. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). But withdrawal must be allowed when necessary to correct a manifest injustice. Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice occurs when a guilty plea is not constitutionally valid. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). "To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent." *Id.* "The defendant bears the burden of establishing the facts that support [their] claim that the guilty plea is invalid." *State v. Mikulak*, 903 N.W.2d 600, 603 (Minn.

2017). “Whether a plea is valid is a question of law which we review de novo.” *Lussier v. State*, 821 N.W.2d 581, 588 (Minn. 2012).

For a guilty plea to be accurate, a proper factual basis must be established for each element of the offense. *State v. Jones*, 921 N.W.2d 774, 779 (Minn. App. 2018), *rev. denied* (Minn. Feb. 27, 2019). A proper factual basis exists if there are “sufficient facts on the record to support a conclusion that defendant’s conduct falls within the charge to which he desires to plead guilty.” *Munger v. State*, 749 N.W.2d 335, 338 (Minn. 2008) (quotation omitted). “[T]he trial court has the primary responsibility for eliciting from defendant the testimony needed to establish a factual basis.” *State v. Nace*, 241 N.W.2d 101, 102 (Minn. 1976).

Johnson challenges the accuracy of his plea as to one element of the offense of conviction. Johnson argues that no facts in the record establish his relationship to K.M.S. The charging statute for Johnson’s offense provides, “whoever assaults a family or household member by strangulation is guilty of a felony.” Minn. Stat. § 609.2247, subd. 2. “Family or household members” includes “persons who are presently residing together or who have resided together in the past” and “persons involved in a significant romantic or sexual relationship.” Minn. Stat. § 518B.01, subd. 2(b)(4), (7) (2018).

In the brief submitted to this court, the state concedes that “[t]he judge, prosecutor and defense counsel . . . failed to ask the Appellant questions that established the element of ‘family or household members.’” We agree. During the hearing, Johnson’s testimony refers to the victim as “the female” and “her” and does not describe their relationship. The

state argues, however, that the probable-cause statement attached to the complaint provides the necessary factual basis for Johnson’s plea.<sup>1</sup>

Both parties rely on *Rosendahl v. State*, 955 N.W.2d 294 (Minn. App. 2021). In *Rosendahl*, we reversed an appellant’s conviction after determining that the complaint could not be considered to establish a factual basis for appellant’s guilty plea. *Id.* at 302. We held that a reviewing court determining the accuracy of a guilty plea “does not consider allegations in the complaint unless the truthfulness and accuracy of the allegations have been expressly admitted to by the defendant.” *Id.* Based on *Rosendahl*, we conclude that we may consider the probable-cause statement attached to the complaint to determine the accuracy of Johnson’s plea if Johnson testified to the truthfulness and accuracy of the complaint. *See id.*

Johnson argues he “never testified during his plea colloquy” that the allegations in the probable-cause statement “were true and accurate.” We disagree. Johnson agreed that the district court could “accept that information in the Complaint as true to help support [his] plea to the strangulation charge.” Before this question, the prosecuting attorney asked Johnson about the probable-cause statement attached to the complaint, which Johnson said he had read. The probable-cause statement indicates that K.M.S. lived with Johnson at the time of the offense.

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<sup>1</sup> Alternatively, the state argues we may infer the relationship between Johnson and K.M.S. based on the plea petition, the DANCO, and various statements by Johnson discussing the DANCO cancellation during the plea hearing. Because we conclude the record otherwise establishes the accuracy of Johnson’s plea, we do not consider these alternative arguments.

Johnson argues that the prosecuting attorney’s question during the plea hearing inquired only about the element of strangulation. We disagree. The prosecuting attorney asked Johnson about the complaint in the context of the “strangulation *charge*.” (Emphasis added.) The strangulation charge against Johnson requires, among other things, proof of a “family or household” relationship. Minn. Stat. § 609.2247, subd. 2.

Thus, because the complaint included a probable-cause statement and Johnson agreed the complaint was true and accurate and could be accepted by the district court, we may consider the probable-cause statement when determining the accuracy of Johnson’s plea. *See Rosendahl*, 955 N.W.2d at 296. Johnson’s attorney underscored the agreement by stating Johnson had no “objection to the [district court] relying on the probable cause statement.” The district court then asked Johnson if he understood, and Johnson agreed he did.

In conclusion, Johnson’s guilty plea is accurate because the record establishes a proper factual basis for the offense of domestic assault by strangulation, including a “family or household” relationship between Johnson and K.M.S.

**Affirmed.**