

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1546**

State of Minnesota,
Respondent,

vs.

Aleshia Lynn Becklund,
Appellant.

**Filed July 22, 2019
Reversed and remanded
Rodenberg, Judge**

Wright County District Court
File No. 86-CR-17-2591

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

Thomas N. Kelly, Wright County Attorney, Greg T. Kryzer, Assistant County Attorney,
Buffalo, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Cleary, Chief Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

Appellant Aleshia Becklund appeals from her conviction and sentence for receiving
stolen property, arguing that her guilty plea was invalid because her plea colloquy failed to

establish either that she knew or had reason to know the car was stolen or that she was in possession of the stolen car. Because appellant's plea colloquy contained no admission of the element of possession, we reverse and remand.

FACTS

The state charged appellant with felony receiving stolen property under Minn. Stat. § 609.53, subd. 1 (2016), and gross misdemeanor giving a peace officer a false name under Minn. Stat. § 609.506, subd. 2 (2016). Under an agreement with the state, appellant pleaded guilty to the charge of receiving stolen property. In exchange for appellant's plea, the state agreed to dismiss the giving-a-peace-officer-a-false-name charge. The agreement also contemplated that, if appellant successfully completed treatment, the state would recommend at sentencing that the district court consider a dispositional departure to probation for 30-months under a stay of the 30-month sentence. If appellant violated the agreement's terms, the district court would impose the 30-month sentence.

At the guilty-plea hearing, appellant testified that she had been a passenger in a stolen vehicle in May 2017. Appellant's attorney asked her if she "made some admissions or represented to the deputy that [she] possessed [the] vehicle." Appellant answered, "Yes." Appellant also testified that she "knew or should have had reason to know that [the car] was, in fact, stolen property." The district court accepted appellant's guilty plea, finding that she "made a knowing, voluntary and intelligent waiver of [her] rights, [and] provided sufficient facts to support [her] plea."

Between the plea hearing and sentencing, appellant began a treatment program, but she failed to complete it and was discharged. At sentencing, the district court confirmed

the terms of the earlier agreement and explained that it was going to “follow that agreement.” The district court then sentenced appellant to a 30-month prison term with 277 days’ credit for time served.

This appeal followed.

DECISION

Appellant argues on appeal that her guilty plea was not valid because the factual basis provided in support of the plea did not establish two elements of the offense: (1) that appellant “knew or had reason to know” that the car in which she was a passenger was stolen, and (2) that she received, possessed, transferred, bought, or concealed the car.

Appellant did not move to withdraw her guilty plea before the district court. But, appellant is not required to have first raised the issue to the district court; she is entitled to challenge the sufficiency of her plea on direct appeal. *Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989); *State v. Johnson*, 867 N.W.2d 210, 214 (Minn. App. 2015), *review denied* (Minn. Sept. 29, 2015).

There is no absolute right to withdraw a guilty plea after it has been entered. *Perkins v. State*, 559 N.W.2d 678, 685 (Minn. 1997). To withdraw a guilty plea after sentencing, a defendant must show that withdrawal is necessary to correct a manifest injustice. *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010) (citing Minn. R. Crim. P. 15.05, subd. 1). A manifest injustice occurs if a plea is not valid. *Id.* at 94. A constitutionally valid plea must be voluntary, intelligent, and accurate. *Id.*; *see also Perkins*, 559 N.W.2d at 688. A defendant bears the burden of showing that the plea was invalid. *Lussier v. State*, 821 N.W.2d 581, 588 (Minn. 2012).

An accurate plea must be established on a proper factual basis. *State v. Theis*, 742 N.W.2d 643, 647 (Minn. 2007). Ordinarily, an adequate factual basis is established by questioning the defendant and asking the defendant to explain under oath in his or her own words the circumstances surrounding the crime. *Williams v. State*, 760 N.W.2d 8, 12 (Minn. App. 2009), *review denied* (Minn. Apr. 21, 2009). “[A] court should be particularly wary of situations in which the factual basis is established by asking a defendant only leading questions.” *Raleigh*, 778 N.W.2d at 94. A proper factual basis exists “if the record contains a showing that there is credible evidence available which would support a jury verdict that defendant is guilty of at least as great a crime as that to which [s]he pled guilty.” *Nelson v. State*, 880 N.W.2d 852, 859 (Minn. 2016) (quotation omitted).

Appellant pleaded guilty to receiving stolen property under Minn. Stat. § 609.53, subd. 1. A person is guilty of receiving stolen property if she “receives, possesses, transfers, buys or conceals any stolen property or property obtained by robbery, knowing or having reason to know the property was stolen or obtained by robbery.” Minn. Stat. § 609.53, subd. 1. Here, in order for appellant to be found guilty of receiving stolen property, the state was required to prove that: (1) the car was stolen or obtained by robbery; (2) appellant received, possessed, transferred, bought, or concealed the car; (3) appellant knew or had reason to know the property was stolen or obtained by robbery; and (4) appellant’s act took place on (or about) May 28, 2017, in Wright County. 10 *Minnesota Practice*, CRIMJIG 16.48 (2015).

We first address appellant’s argument that her guilty plea was invalid because the plea colloquy “established at most only that [appellant] *ought* to have had reason to know

the vehicle was stolen and did not unequivocally establish that she *did* have reason to know the vehicle was stolen.”

Appellant cites *State v. Melina* in support of her argument that her admission—that she “*should have*” had reason to know that the car was stolen—provided an insufficient factual basis for the required mental state. 210 N.W.2d 855, 856-57 (Minn. 1973). But in *Melina*, in finding the defendant guilty, the district court’s use of the “should have known” language was not sufficient because, *at that time*, Minn. Stat. § 609.53 only applied to a defendant with actual knowledge. Minn. Stat. § 609.53, subd. 1 (1972). The statute has since been amended to include both actors who know the property in question to be stolen and those who have “reason to know.” See 1982 Minn. Laws ch. 613, § 1, at 1470 (amending statute and adding that any person who possesses stolen property knowing “or having reason to know the property was stolen or obtained by robbery” and omitting “knowing the same to be” language).

At the plea hearing, appellant’s attorney asked, “And you knew or should have had reason to know that [the car] was, in fact, stolen property; is that correct?” Appellant answered, “Yes.” The inclusion of the words “should have” before “had reason to know” suffices to satisfy the third element of the offense.

Appellant next argues that the factual basis is insufficient to support her guilty plea because she did not admit that she actually possessed the car.

To obtain a conviction under Minn. Stat. § 609.53, subd. 1, the state must establish either actual or constructive possession of stolen property. *State v. Peterson*, 375 N.W.2d 93, 95 (Minn. App. 1985). Because the stolen property here was a car in which appellant

was a passenger, the state was required to prove constructive possession. To prove constructive possession, the state must prove that (1) police found the property in a place under appellant's exclusive control to which other people did not normally have access; or (2) if found in a place to which others had access, there is a strong probability (inferable from other evidence) that appellant was at the time consciously exercising dominion and control over the property. *State v. Florine*, 226 N.W.2d 609, 611 (Minn. 1975).

The purpose of the constructive-possession doctrine is to include within the possession statute those cases where the state cannot prove actual or physical possession at the time of arrest, but where the inference is strong that the defendant at one time physically possessed the thing in question or exercised dominion and control over it. *State v. Lozar*, 458 N.W.2d 434, 441 (Minn. App. 1990), *review denied* (Minn. Sept. 28, 1990). Proximity is an important consideration in assessing constructive possession. *State v. Smith*, 619 N.W.2d 766, 770 (Minn. App. 2000), *review denied* (Minn. Jan. 16, 2001). Constructive possession need not be exclusive, but may be shared. *Id.*

During the plea colloquy, appellant's attorney asked, "You made some admissions or represented to the deputy that you possessed this vehicle?" Appellant answered "yes." But appellant did not admit that she *actually* possessed the car, and the remainder of the plea colloquy does not establish whether appellant actually or constructively possessed the car.

When the officer stopped the car in which appellant was a passenger, R.B. was the driver. Appellant told the officer that the car belonged to her, but the officer later confirmed that the car was not appellant's and that it was stolen. The car was reported stolen about

11 days earlier. There is no indication from the complaint or elsewhere in the record that appellant ever drove the car, or that she was exercising dominion and control over it during the 11-day period after it was stolen. What is clear from the record is that appellant's claim to have been the owner of the car was a lie. The remainder of the record does not provide sufficient information to determine whether appellant "possessed" the car. *See Lussier*, 821 N.W.2d at 589 (collecting cases and noting that the district court may look to other record evidence to determine whether the plea was supported by a sufficient factual basis). The record suggests the contrary—in a presentence investigation report, appellant stated that her only involvement in the offense was that she was "riding in a car that wasn't [hers]." The record contains no other witness statements or other evidence that appellant drove or otherwise exercised control over the vehicle.

While appellant's plea colloquy established a factual basis concerning the first, third, and fourth elements, neither the plea colloquy nor the record support a finding that the possession element was admitted or proved. And we are unaware of any authority for the notion that a person "possesses" every vehicle in which she is a passenger. On the second element, the factual basis is insufficient. Accordingly, appellant's guilty plea was inaccurate, and we reverse and remand to the district court to allow appellant to withdraw her guilty plea. But we note that, because appellant's plea was made under an agreement with the state that included dismissal of other charges, the state may choose to withdraw from the agreement on remand. *State v. Montermini*, 819 N.W.2d 447, 455 (Minn. App. 2012); *see Johnson v. State*, 877 N.W.2d 776, 779 (Minn. 2016) (noting that where appellant's requested relief would alter a bargained-for sentence, a district court on remand

may allow the state to withdraw from the agreement and move forward to trial on the original charges).

Reversed and remanded.