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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1066**

State of Minnesota,
Respondent,

vs.

Kong Meng Xiong,
Appellant.

**Filed June 28, 2021
Affirmed
Cochran, Judge**

Hennepin County District Court
File Nos. 27-CR-19-1600, 27-CR-19-10869

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Amy Lawler, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Cochran, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellant pleaded guilty to first-degree controlled-substance crime and unlawful possession of a firearm. In this direct appeal, appellant challenges the validity of his guilty pleas and argues that he should be allowed to withdraw his pleas because they are not

accurate. Because we conclude that the record from the plea hearing establishes that appellant's guilty pleas are accurate, we affirm.

FACTS

In 2019, respondent State of Minnesota charged appellant Kong Meng Xiong by two complaints with seven criminal offenses. The complaints contained the following allegations.

In January 2019, following a police investigation of Xiong, police executed a search warrant at a home in New Hope. Officers found Xiong lying on a bed in the basement of the home. In another area of the basement, two young children were lying in two twin-sized beds. An adult woman was in the basement bathroom. The police found two additional adults elsewhere in the home.

During a search of the basement bedroom area, officers found mailings in Xiong's name on the nightstand near where Xiong was found. Officers also found a pair of pants containing a wallet and Xiong's identification. A black jacket was lying next to the pants. The jacket contained 116 grams of methamphetamine in one pocket and 4 grams in the other, as well as multiple packages of small plastic baggies and \$1,509 in cash. The police also found a key ring in the jacket, which held keys to the home, Xiong's vehicle, and a locked safe. The locked safe was located in a backpack that police found in the basement bedroom where Xiong was located when they executed the warrant. The police unlocked the safe with its key and found 228.6 grams of methamphetamine and \$50,000 in cash inside. After searching the rest of the basement, the police also found more cash, plastic baggies, and drug paraphernalia, as well as additional quantities of methamphetamine and

marijuana. The police then searched Xiong's vehicle, which was in the garage of the home. The car contained latex gloves, packaging materials, and a scale. A dresser in the garage also held packaging materials consistent with narcotics distribution.

Based on the items found in the search, the state charged Xiong with four controlled-substance crimes, including one count of first-degree controlled-substance crime (sale of methamphetamine) under Minn. Stat. § 152.021, subd. 1(1) (2018). The state also charged Xiong with gross misdemeanor child endangerment. The state filed the complaint a few days after executing the search warrant.

In May 2019, approximately four months after the state filed the January 2019 complaint, law enforcement stopped a car registered to Xiong. Xiong was arrested, and the police searched the car. In the trunk of the car, police allegedly found a .22-caliber revolver, a .45-caliber automatic handgun, a magazine for a .40-caliber handgun, and ten 9-mm bullets. Under the backseat of the car, the police found another .45-caliber handgun, 56.13 grams of methamphetamine, and \$1,000 in cash. Based on this search, the police charged Xiong with two additional offenses, including another first-degree controlled-substance crime (possession of methamphetamine) and one count of unlawful possession of a firearm in violation of Minn. Stat. § 624.713, subd. 1(2) (2018).

In March 2020, Xiong pleaded guilty to two charges: first-degree controlled-substance crime (sale of methamphetamine), as charged in January 2019, and unlawful possession of a firearm, as charged in May 2019. In exchange, the state agreed to dismiss the remaining charges in both complaints and to not charge Xiong with two additional offenses. Consistent with the plea agreement, the district court imposed an

executed sentence of 107 months for the first-degree controlled-substance crime and a concurrent 60-month sentence for unlawful possession of a firearm.

Xiong appeals.

DECISION

Xiong challenges the validity of his guilty pleas. The validity of a guilty plea is a question of law, which this court reviews de novo. *State v. Boecker*, 893 N.W.2d 348, 350 (Minn. 2017). “To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent.” *Id.* (quotation omitted).

Here, Xiong challenges only the accuracy of his pleas. 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), *review denied* (Minn. Feb. 27, 2019). But “[e]ven if an element to an offense is not verbalized by the defendant [at the plea hearing], a district court may nevertheless draw inferences from the facts admitted to by the defendant.” *Rosendahl v. State*, 955 N.W.2d 294, 299 (Minn. App. 2021) (emphasis omitted) (citing *Nelson v. State*, 880 N.W.2d 852, 861 (Minn. 2016)). “A district court should not accept a 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.” *Boecker*, 893 N.W.2d at 350 (quotation omitted).

Xiong argues that both of his guilty pleas are inaccurate because the factual bases for his pleas fail to establish elements of each offense. Xiong additionally contests the manner by which the factual bases for his pleas were established. We address the factual

basis for each of Xiong's pleas individually before turning to Xiong's remaining arguments.

First-Degree Controlled-Substance Crime

A person is guilty of first-degree controlled-substance crime if “on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of 17 grams or more containing cocaine or methamphetamine.” Minn. Stat. § 152.021, subd. 1(1). The definition of “sell” as used in this statute includes possessing methamphetamine with intent to sell. Minn. Stat. § 152.01, subd. 15a (2018). Xiong contends that the factual basis for his plea did not establish that he (1) possessed 17 or more grams of methamphetamine or (2) intended to sell 17 or more grams of methamphetamine. We disagree. We conclude that the factual basis for Xiong's plea was sufficient to establish both possession and intent to sell.

Possession

Possession can be proved by evidence of actual possession or constructive possession. *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017). Constructive possession exists “where the inference is strong that the defendant at one time physically possessed the substance and did not abandon his possessory interest in the substance but rather continued to exercise dominion and control over it up to the time of the arrest.” *State v. Florine*, 226 N.W.2d 609, 610 (Minn. 1975). Constructive possession requires a showing either that the police found the substance in a place under the defendant's exclusive control to which others did not usually have access or that, if 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 the substance. *Id.* at 611; *see also State v. Hunter*, 857 N.W.2d 537, 542 (Minn. App. 2014) (explaining that constructive possession requires a suspect’s exercise of dominion and control over the substance, not over the place where it is found). Although not dispositive, the defendant’s proximity to an item is an important factor in establishing constructive possession. *State v. Sam*, 859 N.W.2d 825, 834 (Minn. App. 2015). In addition, “[a] defendant may possess an item jointly with another person.” *Harris*, 895 N.W.2d at 601.

At the plea hearing, Xiong answered “Yes” when asked by his attorney whether police found “more than a hundred grams of methamphetamine” in the home “[b]etween a jacket and a safe.” Xiong also answered “Yes” when his attorney asked, “[E]ven though *you’re possessing it*, the statute is entitled first-degree sale?” (Emphasis added.) And Xiong answered “Yes” to the question, “And it’s presumed, that if you have that type of quantity, that you’re selling it?” Following these questions by his attorney, the prosecutor asked Xiong some additional questions about the methamphetamine that was found in the home. Xiong answered “Yes” when asked: whether the police found a bag of methamphetamine in some clothing near the area where he was sleeping; whether that clothing was near where his identification and wallet were found; and whether the bag contained “approximately 116 grams” of methamphetamine. And Xiong further answered “Yes” when asked whether “about 225 grams” of methamphetamine was found in a safe in the basement.

From this testimony, it can be inferred that Xiong was exercising dominion and control over a quantity of methamphetamine much greater than the statutory minimum of

17 grams. *See, e.g., State v. Cusick*, 387 N.W.2d 179, 181 (Minn. 1986) (holding evidence was sufficient to establish constructive possession by defendant where cocaine was found next to defendant's wallet in front seat of car). Xiong's admissions at the plea hearing are sufficient to establish constructive possession of this quantity even if there were other persons in the home, because constructive possession may be joint among two or more people. *See Harris*, 895 N.W.2d at 604. Xiong contends that the factual basis for his plea is insufficient because he did not admit that any specific quantity of methamphetamine was his. But Xiong's factual admissions at the plea hearing support a reasonable inference of constructive possession of far more than 17 grams of methamphetamine. The factual basis was sufficient to establish the possession element of the first-degree controlled-substance offense.

Intent to Sell

The factual basis was also sufficient to establish Xiong's intent to sell. Possession of a "large quantity of drugs" tends to show an intent to sell or distribute. *State v. Hanson*, 800 N.W.2d 618, 623 (Minn. 2011) (quotation omitted). Moreover, possession of a large amount of cash, along with a large quantity of drugs, supports an inference of intent to sell. *See State v. Marshall*, 411 N.W.2d 276, 281 (Minn. App. 1987) (evidence of large amounts of cash supported findings that defendant was in "drug distribution hierarchy"), *review denied* (Minn. Oct. 26, 1987).

Here, Xiong answered "Yes" when asked whether he had intended to sell or transfer "some" of the methamphetamine. He also answered "Yes" when asked whether there is a presumption, based on the quantity of methamphetamine found, that he was "selling it."

While Xiong correctly notes that these admissions alone likely do not indicate that he possessed or planned to sell any particular quantity of methamphetamine, Xiong's additional admissions at the plea hearing, discussed above, establish that he possessed a total of 341 grams of methamphetamine. The amount of methamphetamine Xiong admitted that he possessed certainly constitutes a large quantity of drugs indicative of an intent to sell. *See Hanson*, 800 N.W.2d at 623; *see also State v. Heath*, 685 N.W.2d 48, 63 (Minn. App. 2004) (stating that "ten or more grams of methamphetamine" constitutes "a substantial amount that is often greater than for personal use"), *review denied* (Minn. Nov. 16, 2004). Furthermore, Xiong admitted at the plea hearing that the safe found in the basement which contained methamphetamine also contained approximately \$48,000 in cash. The large quantity of drugs and cash that Xiong possessed, in addition to Xiong's admissions that he intended to sell at least "some" of the methamphetamine, supports a reasonable inference that Xiong intended to sell 17 or more grams of methamphetamine. Xiong's guilty plea to first-degree controlled-substance crime was supported by a sufficient factual basis and is therefore accurate.

Unlawful Possession of a Firearm

We next address whether the factual basis for Xiong's guilty plea to unlawful possession of a firearm was sufficient. Under Minn. Stat. § 624.713, subd. 1(2), "a person who has been convicted of . . . a crime of violence" is not "entitled to possess ammunition or a pistol or . . . any other firearm." Like possession of a controlled substance, possession of a firearm may be proved through evidence of actual or constructive possession. *Harris*, 895 N.W.2d at 601. To convict a defendant of being a felon in possession of a firearm, the

state must prove in relevant part that the defendant *knowingly* possessed the firearm. *Id.* Xiong contends that the factual basis for his plea was insufficient because he did not admit at the plea hearing that “he knew that [the guns] were in the car before he was arrested.” We are not persuaded.

At the plea hearing, Xiong answered “Yes” when asked whether he was “in possession” of a gun found in the trunk of the car he was driving. He also answered “Yes” when asked whether he was “aware that there were handguns in the vehicle with [him] that day.” He further answered “Yes” when asked whether one of the guns was “operational.” Xiong’s affirmative responses to those questions establish that Xiong knowingly possessed a firearm.

Xiong contends that the factual basis for his plea was insufficient because he “did not know what model or caliber of weapons were found in his car,” “did not admit to ever owning or handling a gun, or to putting them into the car, or to knowing how they got there,” and did not say at the plea hearing “when on that day he became aware of the guns, or whether he became aware before he drove the car.” But Xiong cites no legal authority to support his argument that any of these admissions are required to support a guilty plea to unlawful possession of a firearm. Section 624.713, subdivision 1(2), requires knowing possession; it does not require ownership, proof of how the person came to possess the firearm, or knowledge about the caliber of the firearm in question. *See Harris*, 895 N.W.2d at 601 (explaining that an unlawful-possession-of-a-firearm conviction requires a showing that the defendant “knowingly possessed the firearm”). Because Xiong admitted at the plea hearing to knowingly possessing a firearm on the day of his arrest, Xiong’s guilty plea

to unlawful possession of a firearm was supported by a sufficient factual basis and is therefore accurate.

Xiong's Remaining Arguments

Xiong further suggests that both of his guilty pleas were inaccurate because the attorneys and the district court primarily asked him leading questions to establish the factual bases for his pleas. This argument is unpersuasive. The supreme court has “long discouraged” the practice of establishing a factual basis for a guilty plea by asking leading questions. *State v. Raleigh*, 778 N.W.2d 90, 95 (Minn. 2010). The preferred method for establishing a factual basis involves asking the defendant “to express in his own words what happened.” *Id.* (quotation omitted). Nonetheless, the use of leading questions “does not by itself invalidate a guilty plea.” *Barnslater v. State*, 805 N.W.2d 910, 914 (Minn. App. 2011) (citing *State v. Ecker*, 524 N.W.2d 712, 717 (Minn. 1994)); *see also Raleigh*, 778 N.W.2d at 95. “Ultimately, the accuracy requirement ensures that a defendant does not plead guilty to a crime more serious than that of which he could be convicted if he elected to go to trial.” *Raleigh*, 778 N.W.2d at 95. If the attorneys and district court establish a factual basis that meets this standard by asking leading questions, the defendant’s plea will be accurate and valid “despite its disfavored format.” *Id.* at 96.

Here, although the attorneys and district court primarily asked leading questions at the plea hearing, Xiong’s answers satisfied the objective of the accuracy requirement. Xiong’s answers established that he (1) possessed 17 or more grams of methamphetamine with intent to sell and (2) knowingly possessed a firearm. Xiong’s challenge based on the format of the questioning is unavailing.

In his reply brief, Xiong also argues that this court's recent decision in *Rosendahl* requires a reversal of his convictions. He contends that, under *Rosendahl*, "[i]n the context of a guilty plea, a reasonable inference of guilt is not enough, because the defendant must actually admit the elements of the offense." Xiong's reliance on *Rosendahl* is misplaced. In *Rosendahl*, we expressly acknowledged that "[e]ven if an element to an offense is not verbalized by the defendant, a district court may nevertheless draw *inferences* from the facts admitted to by the defendant." 955 N.W.2d at 300 (citing *Nelson*, 880 N.W.2d at 861) (emphasis added). There, we concluded that the factual basis for Rosendahl's guilty plea to second-degree assault with a dangerous weapon was insufficient because Rosendahl did not admit at the plea hearing that he intended to cause the victim fear of immediate bodily harm or death, nor did he make any statements from which one could infer that he intended to cause such fear in the victim. *Id.* at 299-300. In contrast to the facts of *Rosendahl*, Xiong admitted facts at the plea hearing from which the district court could reasonably infer that the elements of each of the offenses were satisfied.

In sum, the record establishes that Xiong's guilty pleas are accurate and therefore valid.

Affirmed.