

*This opinion is nonprecedential except as provided by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
A24-1695**

State of Minnesota,
Respondent,

vs.

Nicolle Renee Berg,
Appellant.

**Filed August 11, 2025
Affirmed
Worke, Judge**

Norman County District Court
File No. 54-CR-23-140

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

Elizabeth B. Brainard, Norman County Attorney, Ada, Minnesota (for respondent)

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

Considered and decided by Smith, Tracy M., Presiding Judge; Worke, Judge; and
Johnson, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant argues that she should be permitted to withdraw her guilty plea to fifth-degree controlled-substance possession because the factual basis did not establish that she possessed a controlled substance at the time of the alleged offense. We affirm.

FACTS

In May 2023, appellant Nicolle Renee Berg was on probation with a condition prohibiting the use and possession of controlled substances. In mid-May, Berg submitted to a chemical test which returned a positive test for methamphetamine. Berg admitted to her probation agent that she had used methamphetamine in a camper located on the property where she was staying. On May 15, 2023, Norman County sheriff's deputies assisted probation agents in a search of the property in Gary, Minnesota. Law enforcement found baggies and multiple items of paraphernalia, including a straw and smoking pipes, that tested positive for methamphetamine residue. Respondent State of Minnesota charged Berg with fifth-degree controlled-substance possession, in violation of Minn. Stat. § 152.025, subd. 2(1) (2022).¹

In March 2024, Berg pleaded guilty to fifth-degree controlled-substance possession. In establishing the factual basis, Berg's attorney asked: "[A]round [May 15, 2023], . . . is it true that you . . . were . . . under supervised probation to an agent in Norman County?" Berg agreed that she was being supervised on or about May 15, 2023, and had "tested positive for methamphetamine." She agreed that her probation agent came to her home in "Gary, Minnesota" in "Norman County" to administer a chemical test, and she told her agent that she had "recently used methamphetamine."

¹ The state also charged Berg with storage of methamphetamine paraphernalia in the presence of a child because her daughter was present on the property during the search, and with unlawful possession of ammunition because law enforcement found ammunition in the home on the property. These charges were dismissed as part of Berg's plea agreement.

Berg's attorney asked: "[Y]ou agree that in order to use methamphetamine you would actually have to first possess methamphetamine?" Berg replied: "You mean like hold it in my hand? Yes." Berg's attorney asked: "[T]hat day or about that day . . . you had actually received some methamphetamine . . . and you had used it?" Berg replied: "Yep, it was – I think it was like four days prior to that day, but yes – on or about, yeah."

The district court accepted Berg's guilty plea, finding that there was a sufficient factual basis to support it. The district court sentenced Berg to 19 months in prison. This appeal followed.

DECISION

Berg argues that she should be permitted to withdraw her guilty plea because it is invalid.

"A defendant has no absolute right to withdraw a guilty plea after entering it." *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). A defendant bears the burden of showing that the guilty plea is constitutionally invalid. *Id.* at 94. A constitutionally valid guilty plea is accurate, voluntary, and intelligent. *Id.* We review the validity of a guilty plea de novo. *Id.*

Berg challenges the accuracy component of her guilty plea. An accurate plea is supported by a proper factual basis. *Id.* A factual basis must be sufficient to show that the defendant's conduct fits within the charge for which she is pleading guilty. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). The accuracy requirement protects a defendant from pleading guilty to a charge that is not supported by the facts, *id.*, and from pleading guilty

to a more serious offense than that for which she could be convicted if she went to trial. *Raleigh*, 778 N.W.2d at 94.

Berg claims that her plea is not accurate for three reasons. First, she claims that it does not establish the date of the offense. Second, she claims that it does not establish the location of the offense. And third, she claims that it does not establish possession. Stated another way, Berg claims that her guilty plea does not establish that she possessed methamphetamine on May 15, 2023, in Norman County.

Berg pleaded guilty to fifth-degree controlled-substance possession. Berg's guilty plea had to show that she "unlawfully possesse[d] one or more mixtures containing a [scheduled] controlled substance (methamphetamine)." Minn. Stat. § 152.025, subd. 2(1).

In establishing the factual basis, Berg admitted that: "[A]round [May 15, 2023], . . . [she was] . . . under supervised probation to an agent in Norman County." She admitted that her probation agent came to her home to administer a chemical test, and she told her agent that she had "recently used methamphetamine." She admitted that "around May 15, 2023, . . . [she] actually tested positive for methamphetamine."

With respect to Berg's first argument that the factual basis does not establish the date of the offense, "[t]he precise time at which the offense was committed need not be stated in the indictment, but may be alleged to have been committed at any time before the finding thereof, except where the time shall be a material ingredient in the offense." Minn. Stat. § 628.15 (2022).

In *State v. Fraser*, the defendant pleaded guilty to indecent assault and later claimed that he could not have committed the offense on the date that he admitted it was committed

because it was a “Sunday, ‘a day when it was impossible for him to commit the crime.’” 152 N.W.2d 731, 731 (Minn. 1967). The supreme court concluded that this claim failed because the “on or about” date was not an essential element of the crime. *Id.* The supreme court stated that “the general statutory rule” and the “general common-law rule” provide that a date is an essential element when the act done “is unlawful only during certain seasons, on certain days, or at certain hours of the day.” *Id.* at 732 (quoting *State v. Dufour*, 143 N.W. 1126, 1126 (Minn. 1913)).

Here, the precise date of the offense is not a “material ingredient in the offense” because Berg’s possession of methamphetamine is not unlawful only during a specific season, on a specific day, or at a specific time of day. *See id.*; Minn. Stat. § 628.15.

Berg next claims that the factual basis is insufficient because it does not establish the location of the offense. In *State v. Paulson*, the supreme court recently held that a factual basis can be adequate even if the plea does not properly establish venue. 22 N.W.3d 144, 146 (Minn. 2025). The defendant in *Paulson* entered an *Alford* plea to kidnapping. *Id.* at 148. In reciting the facts to support Paulson’s *Alford* plea, the prosecutor described the evidence the state had prepared for trial to establish the elements of the offense occurring in Isanti County. *Id.* Paulson argued on appeal that the factual basis did not establish the accuracy requirement because the offense occurred in Isanti County, not Anoka County where he entered his plea. *Id.*

The supreme court held that the statutory venue requirement that “every criminal cause shall be tried in the county where the offense was committed” is not an *element* of an offense. *Id.* at 151; *see* Minn. Stat. § 627.01, subd. 1 (2024). The supreme court

concluded that “a violation of the statutory venue requirement does not negate a defendant’s criminal culpability,” which is particularly relevant in the context of a plea-withdrawal request, because the purpose of the accuracy requirement is to ensure that the defendant is “substantively culpable for the crime of conviction.” *Paulson*, 22 N.W.3d at 151. So, the failure to establish venue as part of the factual basis does not make the plea inaccurate because it does not change the fact that the defendant is criminally culpable.

Here, Berg agreed that her probation agent came to her home in “Gary, Minnesota” in “Norman County” to administer a chemical test and that she admitted to her agent that she had recently used methamphetamine. She admitted that on “that day or about that day (May 15, 2023) . . . [she] had actually received some methamphetamine.” The factual basis adequately established that Berg was “substantively culpable” for possessing methamphetamine and it is reasonable to infer that her recent possession occurred in Norman County. *See Nelson v. State*, 880 N.W.2d 852, 861 (Minn. 2016) (accuracy standard requires district court to ensure facts exist from which defendant’s guilt can be *reasonably inferred*).

Berg lastly claims that the factual basis is insufficient because it does not establish possession. Possession may be actual or constructive. *State v. Salyers*, 858 N.W.2d 156, 159 (Minn. 2015). Actual possession means “direct physical control.” *State v. Barker*, 888 N.W.2d 348, 353 (Minn. App. 2016) (quotation omitted), *rev. denied* (Minn. Mar. 27, 2019). Constructive possession may be established by showing (1) that the item was in a place under the defendant’s “exclusive control to which other people did not normally have access,” or (2) that there is a strong probability that the “defendant was at the time

consciously exercising dominion and control over” the item even if it was in a place to which others had access. *State v. Florine*, 226 N.W.2d 609, 611 (Minn. 1975). Two people may have joint constructive possession of an item. *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017).

Here, the following colloquy occurred between Berg and her attorney:

- Q: [W]ould you agree that in order to use methamphetamine you would actually have to first possess methamphetamine, is that right?
- A: You mean like hold it in my hand? Yes.
- Q: You . . . would have to either have got methamphetamine from someone else, you would have had to either smoke it, snorted it, rolled it around, inhaled it, ingested it, something – right?
- A: Yes, that’s correct.
- Q: Okay. And . . . in fact that’s what you had done that . . . day or about that day is you had actually received some methamphetamine . . . and you had used it, is that right?
- A: Yep, it was – I think it was like four days prior to that day, but yes – on or about, yeah.
- Q: On or about that date . . . you had methamphetamine, is that right?
- A: Yes.
- Q: Okay and that’s what makes you guilty of the [possession] offense . . . is that correct?
- A: Uh yes.

Berg admitted that she “received some methamphetamine,” and that she “had methamphetamine.” She clarified that possessing methamphetamine could mean “hold[ing] it in [her] hand.” The factual basis shows that Berg admitted to having some sort of control over the methamphetamine—by receiving it, having it, and holding it—before using it. We conclude that Berg’s guilty plea is accurate and constitutionally valid.

Affirmed.