STATE OF MINNESOTA

IN SUPREME COURT

A20-1435

Court of Appeals McKeig, J.

State of Minnesota,

Respondent,

vs. Filed: April 27, 2022
Office of Appellate Courts

Barry Ishmael McReynolds,

Appellant.

Keith Ellison, Attorney General, Saint Paul, Minnesota; and

Rebecca Duren, Kelly & Lemmons, P.A., Saint Paul, Minnesota, for respondent.

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, Saint Paul, Minnesota, for appellant.

S Y L L A B U S

1. Appellant's guilty plea was not supported by a sufficient factual basis because the record of his plea—that he used a cell phone camera to record a woman without her consent while in the same room with her—does not satisfy the statutory requirement of using a recording device "through the window or any other aperture of a house or place of dwelling" as provided in Minn. Stat. § 609.746, subd. 1(b)(2) (2020).

Reversed.

O P I N I O N

MCKEIG, Justice.

At issue in this case is whether the guilty plea of appellant Barry Ishmael McReynolds to interference with privacy was accurate. McReynolds admitted to using his cell phone to record a woman while she was naked in her bed, without her consent and knowing that she likely would not have consented. The question before us is not whether McReynolds' conduct was wrong, but instead whether the statute McReynolds pleaded guilty to violating, Minn. Stat. § 609.746, subd. 1(b) (2020), covers his conduct. More specifically, we must determine whether the statutory requirement that an individual "use[] any device for . . . recording . . . *through the window or any other aperture of a house or place of dwelling of another*" is satisfied when a person surreptitiously records another person in the same room with a cell phone camera. *Id.*, subd. 1(b)(2) (emphasis added). Because appellant's conduct is not prohibited by the plain language of Minn. Stat. § 609.746, subd. 1(b)(2), we reverse.

FACTS

On April 28, 2017, McReynolds and a woman went on a first date. Following the date, McReynolds and the woman travelled to her apartment and McReynolds stayed the night. The next day, the woman contacted the West St. Paul Police Department. She told officers that McReynolds had sent himself naked pictures of her from her phone to his phone. The woman also reported that she had previously told McReynolds that she would not send him naked pictures of herself after he asked her for such pictures. During the subsequent investigation, officers interviewed McReynolds. McReynolds admitted that he

took a nude video of the woman, and that he "tried not to make her aware of it because she would have fussed at me."

Respondent State of Minnesota charged McReynolds with interference with privacy, Minn. Stat. § 609.746, subd. 1(b). McReynolds entered a guilty plea to that offense on the first day of trial. McReynolds admitted that he went on a date with a woman; afterwards, they went to her apartment and ended up naked, in bed. He said that during the night, he took a cell phone video of the woman while she was in bed. McReynolds agreed that he took the video without her consent, and that he intended to interfere with her privacy in doing so.

The court accepted his guilty plea and set a date for sentencing. Before sentencing, McReynolds moved to withdraw his plea, claiming that the withdrawal "would ensure a 'fair and just' outcome and avoid a 'manifest injustice.' "[1] The motion to withdraw alleged, among other claims, that his plea did not "fit[] the elements of the crime for which he was convicted and charged." The district court denied the motion, stating that the factual basis admitted during the plea hearing "addresses every element of the crime of interference with privacy." The district court did not specifically address the "through the window or any other aperture of a house" language of Minn. Stat. § 609.746, subd. 1(b)(2).

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[1] The "fair and just" language comes from Minn. R. Crim. P. 15.05, subd. 2, which states that "[i]n its discretion the court may allow the defendant to withdraw a plea at any time before sentence if it is fair and just to do so." The "manifest injustice" language comes from Minn. R. Crim. P. 15.05, subd. 1, which provides that, at any time, "the court must allow a defendant to withdraw a guilty plea . . . [if] withdrawal is necessary to correct a manifest injustice."

McReynolds appealed. In a nonprecedential opinion, a divided panel of the court of appeals affirmed McReynolds' conviction, concluding that his guilty plea was accurate. *State v. McReynolds*, No. A20-1435, 2021 WL 3611376, at *1 (Minn. App. Aug. 16, 2021). The court of appeals reasoned that McReynolds had used the aperture of a "cellphone's camera to take photos of [the woman] while she was in bed in her apartment, a 'place of dwelling' within the meaning of the statute." *Id.* at *3. It explained that through prior decisions, it had defined aperture to be both an opening in a camera and simply the space through which an individual views into a place where someone has a reasonable expectation of privacy. *Id.* at *3–4. The court of appeals also concluded that McReynolds' interpretation would lead to "an absurd result: it would essentially allow guests in a home to record residents at will so long as the recording was not done through 'a window or some other aperture.' " *Id.* at *4. This result, the court of appeals reasoned, "would remove residents' reasonable expectation of privacy in their own home." *Id.*

The dissent concluded that while McReynolds' conduct was "morally repugnant," his action of taking nude images of another person within their bedroom did not violate Minn. Stat. § 609.746, subd. 1(b). *McReynolds*, 2021 WL 3611376, at *5 (Jesson, J., dissenting). The dissent argued that the majority's expansive definition of "aperture" violated several principles of statutory construction and that the legislative history supported the interpretation that aperture does not include the opening of a camera. *Id.* at *5–6.

We granted McReynolds' request for further review.

ANALYSIS

Following rapid advances in technology, voyeurism has evolved far past the prototypical "peeping Tom."[2] These types of invasions have a host of negative consequences, including interfering with individual's autonomy, self-respect, and ability to develop intimacy. *See* Danielle Keats Citron, *Sexual Privacy*, 128 Yale L.J. 1870, 1898–99 (2019). Voyeurism also particularly impacts women and persons from marginalized communities (in particular, people of color and LGBTQ+ individuals) who generally "shoulder the brunt" of invasions of sexual privacy. *Id.* at 1875, 1892, 1907.

But the question before us is not whether certain acts of voyeurism *should* be criminalized. Our sole task is to determine whether McReynolds' actions *are* criminalized under existing Minnesota law. Specifically, we must determine whether McReynolds' guilty plea was "accurate." *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). To be accurate, a plea must be established by a proper factual basis. *State v. Mikulak*, 903 N.W.2d 600, 603 (Minn. 2017); *Lussier v. State*, 821 N.W.2d 581, 588 (Minn. 2012). "The factual-basis requirement is satisfied 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 he pled guilty." *Nelson v. State*, 880 N.W.2d 852, 859 (Minn. 2016);

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[2] Technological advancements, particularly increased accessibility to advanced surveillance methods, has made voyeurism an "increasingly prevalent and unsettling threat to human dignity and the right to privacy." Maria Pope, *Technology Arms Peeping Toms with A New and Dangerous Arsenal: A Compelling Need for States to Adopt New Legislation*, 17 J. Marshall J. Computer & Info. L. 1167, 1167–68 (1999); *see also* Danielle Keats Citron, *Sexual Privacy*, 128 Yale L.J. 1870, 1874 (2019) (describing ways new technologies facilitate the invasion of sexual privacy, including home devices, hidden cameras, and websites featuring nonconsensual disclosures of sexual images).

State v. Genereux, 272 N.W.2d 33, 34 (Minn. 1978). A manifest injustice exists when defendants plead guilty to a more serious offense than that for which they could have been convicted had they insisted on their right to trial. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). The rules of criminal procedure *require* a court to permit plea withdrawal upon "proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1.

We review the validity of a guilty plea de novo. *Barrow v. State*, 862 N.W.2d 686, 689 (Minn. 2015). McReynolds bears the burden of showing that his plea is invalid. *Raleigh*, 778 N.W.2d at 94. Here, the parties' dispute about the accuracy of McReynolds' plea centers on the meaning of the language of Minn. Stat. § 609.746, subd. 1(b)(2). Questions of statutory interpretation we likewise review de novo. *State v. Thonesavanh*, 904 N.W.2d 432, 435 (Minn. 2017).

A.

"The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2020). In interpreting a statute, we first examine the language of the statute to see if the statute is ambiguous or if only one reasonable interpretation exists. *State v. Khalil*, 956 N.W.2d 627, 634 (Minn. 2021). If the Legislature's intended meaning is clear from the plain text of the statute, we follow that plain meaning. *State v. Stay*, 935 N.W.2d 428, 430 (Minn. 2019). We cannot apply what we believe the law *should* be. *Khalil*, 956 N.W.2d at 634.

To determine whether a statute is ambiguous, we first construe words and phrases in the statute "according to rules of grammar and according to their common and approved

usage." Minn. Stat. § 645.08(1) (2020). Where the statute does not define terms, we may use dictionary definitions to determine the ordinary meaning of the terms. *See Thonesavanh*, 904 N.W.2d at 436. We examine the statute as a whole, considering the statute in its entirety and not merely the specific phrase at issue. *State v. Pakhnyuk*, 926 N.W.2d 914, 920 (Minn. 2019). If, after this examination, we conclude that the statute is subject to more than one reasonable interpretation, the statute is ambiguous. *Id.*

The subdivision under which McReynolds was charged provides that:

> A person is guilty of a gross misdemeanor who:
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> (1) enters upon another's property;
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> (2) surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or any other aperture of a house or place of dwelling of another; and
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> (3) does so with intent to intrude upon or interfere with the privacy of a member of the household.

Minn. Stat. § 609.746, subd. 1(b). The phrase at issue is "installs or uses any device for . . . recording . . . *through the window or any other aperture of a house or place of dwelling of another*." *Id.*, subd. 1(b)(2) (emphasis added).

The parties focus much of their attention on the word "aperture." The State argues that aperture has two meanings: "(1) a hole, gap, slit, or other opening; (2) a usually adjustable opening in an optical instrument that limits the amount of light passing through a lens." *The American Heritage Dictionary* 60 (New College Ed. 1982). Relying on the second definition, the State argues that a camera can satisfy the aperture requirement. McReynolds, in turn, argues that the second definition of aperture cannot apply to this

statute for several reasons, including because an aperture of a camera is not a part of a house or place of dwelling.

We agree with McReynolds that based on the language of Minn. Stat. § 609.746, subd. 1(b)(2), the aperture must be "of a house or place of dwelling of another." "Of" means "[b]elonging or connected to: *the rungs of a ladder*." *The American Heritage Dictionary*, *supra*, at 911; *see also The Chicago Manual of Style* § 5.21 (17th ed. 2017) ("The preposition *of* may precede a noun . . . to express relationship, agency, or possession."). The phrase "aperture of a house or place of dwelling of another" therefore plainly means that the aperture belongs to or is connected to the house or dwelling. Even if a part of a cell phone camera could be considered an aperture, that aperture does not belong to and is not connected to a house or dwelling. Therefore, a part of a cell phone camera simply cannot be an aperture as contemplated in Minn. Stat. § 609.746, subd. 1(b)(2).

But, the State argues, an individual satisfies the "through . . . any . . . aperture of a house or place of dwelling" element by simply crossing through an aperture of the dwelling to gain access to it. This interpretation is consistent with the discrete "aperture of a house" phrase contained in the statute, but violates basic rules of grammar when considered against the broader language in subdivision 1(b)(2). The statute makes it a crime for a person to "surreptitiously install[] or use[] any device for . . . recording . . . sounds or events *through* the window or any other aperture of a house or place of dwelling of another." Minn. Stat. § 609.746, subd. 1(b)(2) (emphasis added). The use of "through" creates an adverbial phrase. *See The Chicago Manual of Style*, *supra*, at § 5.176. As an adverbial phrase,

"through the window or any other aperture" modifies the verbs preceding it ("installs or uses"). *See id.* at § 5.156; Minn. Stat. § 609.746, subd. 1(b)(2). Therefore, the installing or using of the recording device itself must be done *through* an aperture to satisfy the elements in Minn. Stat. § 609.746, subd. 1(b)(2). The statutory language does not criminalize accessing a home through an aperture and then installing or using a recording device from inside the home, unless that installation or use itself is done through an aperture—perhaps a threshold of a door, a keyhole, or a hole drilled into a wall of an adjoining room. *See State v. Perez*, 779 N.W.2d 105, 107 (Minn. App. 2010) (upholding a conviction under Minn. Stat. § 609.746, subd. 1(d), when a husband videotaped his wife in their shared bathroom through a hole in their bathroom wall).

Admittedly, the result that the statute's plain meaning compels is oddly narrow in that a person does not violate the statute merely by using a recording device inside the same room as their target. It may even, as the State suggests, embolden stalkers to gain access to their victims' homes to record their victims, particularly to the extent that there is no other Minnesota statute that expressly criminalizes such conduct. The court of appeals determined, and the State argues, that this outcome is "absurd."

We have departed from the plain language of a statute in only one case. *See Wegener v. Comm'r of Revenue*, 505 N.W.2d 612, 617 (Minn. 1993), *as amended on reh'g* (Nov. 19, 1993); *see also Schatz v. Interfaith Care Ctr.*, 811 N.W.2d 643, 651 (Minn. 2012) (noting that it is "exceedingly rare" for this court to override a statute's plain language and that we do so only when "the plain meaning of the statute 'utterly confounds' the clear legislative purpose of the statute," and has only done so once, in *Wegener*). And we have

never done so to override the plain language of a criminal statute. *State v. Ortega-Rodriguez*, 920 N.W.2d 642, 646 (Minn. 2018) (stating that this court has only "looked beyond the plain language due to 'absurdity,' " in *Wegener*, and has "never done so in a criminal case"). A bad policy outcome is not enough to justify departure from the plain language of a statute. *Id.*; *see also Khalil*, 956 N.W.2d at 637–38. The language of Minn. Stat. § 609.746 expresses the Legislature's policy choices as to which specific acts are criminal intrusions of privacy. The fact that section 609.746, subdivision 1(b), does not cover the conduct in this case may be undesirable, but it does not "utterly confound" the legislative purpose.

Technology has rapidly evolved over the past two decades. We note that in that period, the Legislature has amended Minn. Stat. § 609.746 only twice, with neither amendment substantively changing the conduct criminalized in the statute.[3] But whether technological advancements should prompt amendments to this statute is a question for the Legislature, not this court.[4] *See Khalil*, 956 N.W.2d at 634.

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[3] *See* Act of May 28, 2019, ch. 5, art. 4, § 11, 2019 Minn. Laws 1, 44 (providing increased penalties for interfering with the privacy of a minor); Act of May 31, 2005, ch. 136, art. 17, § 43, 2005 Minn. Laws 901, 1150–51 (changing offense levels for various violations under the statute).

[4] In fact, several states and the federal government criminalize any intentional, nonconsensual intrusion on an individual's privacy in an area where the individual has a reasonable expectation of privacy. *See, e.g.*, 18 U.S.C. § 1801(a) (criminalizing "whoever . . . has the intent to capture an image of a private area of an individual without their consent, and knowingly does so under circumstances in which the individual has a reasonable expectation of privacy"); Wash. Rev. Code § 9A.44.115 (2021) (making it a crime to knowingly view, photograph, or film "[a]nother person without that person's knowledge and consent while the person being viewed, photographed, or filmed is in a

B.

Under the circumstances here, McReynolds' guilty plea is not accurate because the plain language of Minn. Stat. § 609.746, subd. 1(b) does not apply to his conduct. McReynolds admitted to using a cell phone camera to record a woman naked without her consent. But he did so within the same room as the woman, not through an aperture of a dwelling of another. *See* Minn. Stat. § 609.746, subd. 1(b)(2). Given that McReynolds could not have been convicted of violating Minn. Stat. § 609.746, subd. 1(b), a manifest injustice occurred when he pled guilty to that crime. *See Barrow*, 862 N.W.2d at 691–92. Accordingly, McReynolds must be permitted to withdraw his plea. *See* Minn. R. Crim. P. 15.05, subd. 1.

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals and remand for further proceedings consistent with this opinion.

Reversed.

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place where he or she would have a reasonable expectation of privacy"); Mass. Gen. Laws ch. 272, § 105(a) (2020) (prohibiting photographing a nude or partially nude individual "with the intent to secretly conduct or hide such activity, when the other person in such place and circumstance would have a reasonable expectation of privacy in not being so photographed, videotaped or electronically surveilled, and without that person's knowledge and consent").