

STATE OF MINNESOTA

IN SUPREME COURT

A20-0366

Court of Appeals

State of Minnesota,

Respondent,

vs.

Edgar Galvan-Contreras,

Appellant.

Gildea, C.J.
Dissenting, McKeig,
Chutich, and Thissen, JJ.

Filed: October 12, 2022
Office of Appellate Courts

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

Michael O. Freeman, Hennepin County Attorney, Brittany D. Lawonn, Assistant County Attorney, Minneapolis, Minnesota, for respondent.

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S Y L L A B U S

1. To convict a defendant of felony interference with the privacy of a minor under Minn. Stat. § 609.746, subd. 1(e)(2) (2018), the State must prove that the defendant committed the offense while knowing or having reason to know a person under the age of 18 was present.

2. Because the parties agreed to utilize a specific procedural vehicle, Minn. R. Crim. P. 26.01, subd. 4, to seek appellate review of the district court’s pretrial ruling, this court’s adoption of the appellant’s interpretation of Minn. Stat. § 609.746, subd. 1(e)(2), requires reversal of the pretrial ruling, which results in the dismissal of the felony charge.

Reversed.

O P I N I O N

GILDEA, Chief Justice.

This case asks us to interpret Minn. Stat. § 609.746, subd. 1(e)(2) (2018). The statute makes it a crime to secretly install or use a device to record or photograph a person in a place “where a reasonable person would have an expectation of privacy and has exposed or is likely to expose their intimate parts.” *Id.*, subd. 1(d)(1) (2018). If the defendant secretly records “a minor under the age of 18, knowing or having reason to know that the minor is present,” the offense is enhanced from a gross misdemeanor to a felony. *Id.*, subd. 1(e)(2).

The State charged appellant Edgar Galvan-Contreras with a felony violation of section 609.746, subd. 1(e)(2), based on allegations that he used his cell phone to secretly record 15-year-old E.B. in a public bathroom stall at a fitness center. Galvan-Contreras filed a pretrial motion to dismiss the charge for lack of probable cause, arguing the State failed to allege that he knew or had reason to know E.B. *was a minor under the age of 18* when he committed the offense. The State conceded it could not prove Galvan-Contreras knew or had reason to know E.B. was under the age of 18. But the State argued it was required to prove only that Galvan-Contreras had reason to know a person *was present* in

the recorded location. Persuaded by the State's argument, the district court found that the statute requires the State to prove the defendant's knowledge of the presence of a person, not the age of the person present, and therefore denied the motion to dismiss the felony charge.

Acting in accordance with Minn. R. Crim. P. 26.01, subd. 4, Galvan-Contreras stipulated to the State's case in order to appeal the district court's dispositive pretrial ruling on the motion to dismiss. As part of the stipulated record, the State conceded it could not prove that Galvan-Contreras knew E.B. was a minor under the age of 18 when he committed the offense. The district court found Galvan-Contreras guilty of the felony offense.

In a precedential opinion, the court of appeals agreed with the district court's reading of Minn. Stat. § 609.746, subd. 1(e)(2) and concluded that the language of the statute does not require the defendant to have knowledge of the victim's age when the offense is committed. Therefore, the court of appeals affirmed the district court's pretrial ruling. *State v. Galvan-Contreras*, 953 N.W.2d 529, 533 (Minn. App. 2021). We granted further review.

Because we conclude that the plain language of section 609.746, subdivision 1(e)(2), requires the State to prove that Galvan-Contreras committed the offense while knowing or having reason to know a person under the age of 18 was present, the district court's pretrial ruling was erroneous. Accordingly, we reverse.

FACTS

On September 20, 2018, a 15-year-old boy, E.B., was at a fitness center in Bloomington. E.B. was in the locker room using a bathroom stall when he heard a noise and turned to his right. From between a gap in the bathroom stalls, E.B. observed a cell phone camera directed at him. E.B. immediately went to the fitness center lobby where he told his mother and a fitness center employee about the incident. The fitness center employee went to investigate and found an adult male, later identified as Galvan-Contreras, in the adjacent bathroom stall. The fitness center employee confronted Galvan-Contreras about the cell phone incident. Galvan-Contreras denied any involvement and walked away.

On October 10, 2018, officers from the Bloomington Police Department obtained a search warrant for the cell phone, computer, and other electronic devices of Galvan-Contreras. A forensic examination of the cell phone revealed a saved video recording of a young male pulling up his underwear in a bathroom stall.

On October 17, 2018, Galvan-Contreras went to the Bloomington Police Department for a voluntary interview. Initially, he denied recording E.B. with his cell phone camera in the fitness center bathroom stall. But later during the interview, Galvan-Contreras admitted to placing his cellphone camera between a gap in the bathroom stalls. He also told the officers that “[E.B.] didn’t look like a man, you know what I am saying. I noticed right away that he was a kid.”

The State charged Galvan-Contreras with violating the interference with privacy statute, Minn. Stat. § 609.746, subd.1(e)(2).¹ The statute makes it a crime to “surreptitiously” install or use a device to photograph or record in a place “where a reasonable person would have an expectation of privacy and has exposed or is likely to expose their intimate parts.” Minn. Stat. § 609.746, subd. 1(d)(1). The surreptitious recording or photography must be done “with intent to intrude upon or interfere with the privacy of the occupant.” *Id.*, subd. 1(d)(2). The offense is a gross misdemeanor. *Id.*,

¹ Minnesota Statutes section 609.746, subdivision 1, reads in relevant part:

(d) A person is guilty of a gross misdemeanor who:

(1) surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or other aperture of a sleeping room in a hotel, as defined in section 327.70, subdivision 3, a tanning booth, or other place where a reasonable person would have an expectation of privacy and has exposed or is likely to expose their intimate parts, as defined in section 609.341, subdivision 5, or the clothing covering the immediate area of the intimate parts; and

(2) does so with intent to intrude upon or interfere with the privacy of the occupant.

(e) A person is guilty of a felony and may be sentenced to imprisonment for not more than two years or to payment of a fine of not more than \$5,000, or both, if the person:

. . .

(2) violates this subdivision against a minor under the age of 18, knowing or having reason to know that the minor is present.

The Legislature amended section 609.746 in 2019, and the amendment became effective for offenses committed on or after August 1, 2019. Act of May 30, 2019, ch. 5, art. 4, § 11, 2019 Minn. Laws 993. Although the language quoted above was unchanged by the amendment, we rely on the 2018 version of the statute, under which Galvan-Contreras was charged and convicted.

subd. 1(d). But the statute elevates the offense to a felony if the defendant “violates this subdivision against a minor under the age of 18, knowing or having reason to know that the minor is present.” Minn. Stat. § 609.746, subd.1(e)(2). The State only charged Galvan-Contreras with the felony offense, not the gross misdemeanor.

Galvan-Contreras filed a pretrial motion to dismiss the charge for lack of probable cause. He argued that the State failed to allege he knew or had reason to know “the person present was a minor.” The State conceded it could not prove Galvan-Contreras had reason to know E.B. was a minor. But the State argued that it was required to prove only that Galvan-Contreras had reason to know the “the victim was present.”

The district court denied the motion to dismiss the charge against Galvan-Contreras. Observing that the relevant statutory language reads “knowing or having reason to know that the minor is present,” as opposed to “knowing or having reason to know that the minor is under the age of 18,” the district court concluded that it is the *presence* of the victim, not the victim’s age, that must be known by the defendant at the time he commits the offense. As for the Legislature’s use of the definite article “the” in the dependent clause “the minor is present” in the statute, the district court concluded that the article is used to “consistently identify[] the victim in accordance with the preceding clause necessitating that the violation occur[s] against *a minor* under the age of 18.” (Emphasis added.)

The parties submitted the case under Minnesota Rule of Criminal Procedure 26.01, subdivision 4, which allows a defendant to stipulate to the State’s case to obtain appellate review of a pretrial ruling. In accordance with the rule, the parties agreed that the district court’s pretrial ruling on the motion to dismiss was either dispositive of the case or that a

trial would be unnecessary if Galvan-Contreras prevailed on appeal. Galvan-Contreras stipulated to the prosecution's evidence, which included police reports, a video recording of the police interviewing Galvan-Contreras, photographs of the bathroom in the fitness center, photographs of Galvan-Contreras in the fitness center lobby, and an audio recording of the police interviewing the victim. The parties also included the following written stipulation:

Defendant agrees that the State can prove beyond a reasonable doubt that he knew or should have known a person was present, and that the State can prove beyond a reasonable doubt that the person who was present was in fact a minor under the age of 18. The State agrees that it lacks sufficient evidence to prove beyond a reasonable doubt that at the time of the offense, the Defendant knew or should have known this person was a minor.

The district court found Galvan-Contreras guilty of the charged offense. In its written order, the district court found that the State's evidence proved beyond a reasonable doubt that Galvan-Contreras "knew a person was there in the neighboring stall, and that the [v]ictim was later determined to be a minor."

On appeal, Galvan-Contreras argued that the plain language of section 609.746, subd.1(e)(2), "unambiguously establishes that the offense has a *mens rea* element requiring that a defendant knows or has reason to know that the victim of his offense is a minor under the age of eighteen." In contrast, the State argued it "did not have to prove that [Galvan-Contreras] had knowledge of the fact that the victim was under the age of 18." The court of appeals affirmed in a precedential opinion, concluding that the plain language of section 609.746, subd. 1(e)(2), "establishes age as a material element but requires

knowledge only of the victim's presence, not knowledge of the victim's age.”² *State v. Galvan-Contreras*, 953 N.W.2d 529, 532 (Minn. App. 2021).

We granted Galvan-Contreras's petition for further review.

ANALYSIS

This case requires us to interpret Minn. Stat. § 609.746, subd. 1(e)(2), and then apply the interpretation to this case. We address each question in turn.

I.

First, we must consider whether the knowledge element in Minn. Stat. § 609.746, subd. 1(e)(2), “knowing or having reason to know,” attaches to the victim's presence or age. We review issues of statutory interpretation *de novo*. *State v. Thonesavanh*, 904 N.W.2d 432, 435 (Minn. 2017). When interpreting a statute, the first step is to determine whether the language of the statute is ambiguous. *State v. Degroot*, 946 N.W.2d 354, 360 (Minn. 2020). When “the Legislature's intent is clear from the statute's plain and unambiguous language, then we interpret the statute according to its plain meaning without resorting to the canons of statutory construction.” *State v. Struzyk*, 869 N.W.2d 280, 284–85 (Minn. 2015). “The language of a statute is unambiguous when there is only one reasonable way to read the text.” *State v. Fugalli*, 967 N.W.2d 74, 77 (Minn. 2021). We read words and phrases according to the rules of grammar and their common and

² In reaching this conclusion, the court of appeals relied on the definition of “criminal intent” in a separate statute, which states that “proof of knowledge of the age of a minor” is not required to establish that intent “even though age is a material element in the crime in question.” *Galvan-Contreras*, 953 N.W.2d at 532 (quoting Minn. Stat. § 609.02, subd. 9(6) (2018)); *see id.*, subd. 9(1) (2018) (explaining that criminal intent is shown by “some form of the verb[] ‘know’ ”).

approved usage. Minn. Stat. § 645.08(1) (2020). We do not read a statute in isolation; rather, we read all parts of a statute together as a whole. *State v. Pakhnyuk*, 926 N.W.2d 914, 920 (Minn. 2019); *see also* Minn. Stat. § 645.17(2) (2020) (noting that the Legislature is presumed to intend that “the entire statute . . . be effective and certain”).

Minnesota Statutes section 609.746 subdivision 1(e)(2), provides that “[a] person is guilty of a felony . . . if the person . . . violates this subdivision against a minor under the age of 18, knowing or having reason to know that the minor *is present*.” (Emphasis added.) Galvan-Contreras argues that the language “knowing or having reason to know that the minor is present” requires the State to prove that the defendant knew or had reason to know the victim is a minor at the time the offense is committed. By contrast, the State argues that it must prove only that the defendant knew or had reason to know *a person* was present when the offense is committed; and if the person happens to be a minor under the age of 18, the offense can be enhanced to a felony. We agree with Galvan-Contreras.

When looking at the phrase “against a minor under the age of 18, knowing or having reason to know that the minor is present” in Minn. Stat. § 609.746, subd. 1(e)(2), the word “know” has a statutory definition that must be applied. In criminal statutes, the term “know” requires “that the actor believes that the specified fact exists.” Minn. Stat. § 609.02, subd. 9(2) (2018). There are no other defined terms within the phrase, so we consider the ordinary meaning of the other words in light of the surrounding context.

The first part of the statutory language in question, “a minor under the age of 18,” identifies the victim of the crime. Minn. Stat. § 609.746, subd. 1(e)(2). There is no dispute that the victim of the felony offense must be a minor, which is a person under the age of 18.

The second part of the statutory language in question, “knowing or having reason to know that the minor is present,” identifies the knowledge requirement for the crime. *Id.* This makes sense because Minn. Stat. § 609.746, subd. 1(e)(2), is the enhancement provision of the statute. The enhancement provision is telling us why the offense is elevated from a gross misdemeanor to a felony by identifying a specific victim *and* a specific knowledge requirement.

Applying the statutory definition of “know” to the ordinary meaning of the other words in the statute yields the following result: the defendant must believe in the existence of the specified fact—that the *minor* is *present*. In other words, the defendant must know or have reason to know that a minor under the age of 18 (the victim) is present when the offense is committed.

The grammar and context of the statutory phrase support this conclusion. The article in the phrase “violates this subdivision against a minor under the age of 18, knowing or having reason to know that the minor is present,” changes from “a” to “the” because the same subject is being referenced in both parts. *Id.* Once we know who the victim is (a minor), then we are told that the defendant must know or have reason to know that the victim (the minor) is present. This makes sense because using “the” as the definite article refers “to someone or something previously mentioned or clearly understood from the context or situation.” Webster’s 3rd New International Dictionary, 2368 (1981). In short, the interpretation Galvan-Contreras offers is consistent with the plain meaning of the words used in the statute, and therefore is a reasonable interpretation.

By contrast, the State’s proposed interpretation is unreasonable. The State’s interpretation effectively erases “the minor” from the second clause, thereby making anyone’s presence (as opposed to a minor’s presence) determinative. See Minn. Stat. § 609.746, subd. 1(e)(2). The canon of surplusage instructs us to “avoid interpretations that would render a word or phrase superfluous, void, or insignificant, thereby ensuring each word in a statute is given effect.” *State v. Thompson*, 950 N.W.2d 65, 69 (Minn. 2020). Under the State’s interpretation, the language of the statute requires proof only that the defendant knew or had reason to know a person—*any* person—is present in the location being recorded. Such an interpretation focuses on the *presence* of a person. But this interpretation is not reasonable because it ignores the plain language of the statute that identifies the victim of the offense as a minor under the age of 18 and fails to properly apply the statutory definition of “know,” which sets forth the defendant’s knowledge requirement for the enhanced felony offense. The State’s interpretation also effectively removes the meaningful *mens rea* distinction between the gross misdemeanor and felony offenses.³ Clearly, the Legislature elevated the offense from a gross misdemeanor to a

³ Under Minn. Stat. § 609.746, subd. 1(d), a person is guilty of a gross misdemeanor if he or she “surreptitiously installs or uses any device” for recording in a “place where a reasonable person would have an expectation of privacy and has exposed or is likely to expose their intimate parts” and “does so with intent to intrude upon or interfere with the privacy of the occupant.” The language of Minn. Stat. § 609.746, subd. 1(e), elevates the offense to a felony if the person commits the offense “knowing or having reason to know that the minor is present.” The defendant’s knowledge or *mens rea* is the meaningful distinction between the two offenses. For the gross misdemeanor offense, the defendant intends to intrude upon the privacy of the victim, any person. For the felony offense, the defendant intends to intrude upon the privacy of *a minor*. It makes sense to protect the privacy of minors by imposing a harsher punishment upon defendants who seek them out.

felony to make the punishment more severe if a person intentionally commits the offense against a minor victim. We therefore conclude that the interpretation proposed by the State is unreasonable.⁴

In sum, the plain language of Minn. Stat. § 609.746, subd.1(e)(2), requires the State to prove that the defendant knew or had reason to know the person secretly recorded is a minor under the age of 18.

II.

Second, we must apply the plain language interpretation of Minn. Stat. § 609.746, subd. 1(e)(2), to this case. The parties appealed using a specific procedural vehicle available in criminal cases under Minn. R. Crim. P. 26.01, subd. 4, which allows the preservation and appeal of a district court's pretrial ruling. To utilize the procedure set forth in the rule, the parties must agree that the district court's ruling "on a specified pretrial

But the State's interpretation eliminates the higher level of protection and corresponding punishment.

⁴ The dissent agrees that the State's interpretation is unreasonable. *See infra* at D-4. But the dissent also believes that the plain language interpretation set forth above is unreasonable and then puts forth what it contends is another reasonable interpretation of the statute. The dissent's interpretation suffers from the same defect as the State's interpretation. The dissent concludes that the defendant does not need to know that the person recorded is a minor as long as the defendant has reason to know that minors could be in the location recorded. The statute precludes this interpretation because it requires that the defendant have reason to know that "*the minor*" is present. Minn. Stat. § 609.746, subd. 1(e)(2). We do agree with the dissent, however, that the State's ability to prove that the defendant knew or had reason to know the minor is present when the offense is committed could depend on the location where the recording takes place. *See infra* at D-7 n.6. And we agree with the dissent's reasoning that the linking verb "is" in the statute identifies the characteristic that must be known (the minor) and what must be known (presence). *See infra* at D-6.

issue is dispositive of the case, or that the ruling makes a contested trial unnecessary.” Minn. R. Crim. P. 26.01, subd. 4(a). The rule replaces the procedure originally authorized in *State v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980), which allowed the defendant to stipulate to the prosecution’s case to obtain appellate review of the pretrial ruling. See *State v. Diede*, 795 N.W.2d 836, 842 n.2 (Minn. 2011).

Appellate review of a case appealed using Rule 26.01, subd. 4, is limited to consideration of the dispositive pretrial ruling only. See Minn. R. Crim. P. 26 cmt. By contrast, if there is no dispositive pretrial ruling in a case or the defendant wishes to have the full scope of appellate review, including a challenge to the sufficiency of the evidence on appeal, then the parties should use Rule 26.01, subd. 3, instead. See *State v. Busse*, 644 N.W.2d 79, 89 (Minn. 2002). Rule 26.01, subd. 3, allows the parties to submit a case to the district court for a verdict based entirely on stipulated facts and/or stipulated evidence, and then the defendant can raise any issue(s) on appeal.

Here, the State and Galvan-Contreras agreed that the district court’s pretrial ruling denying Galvan-Contreras’ motion to dismiss the felony interference with the privacy of a minor charge was dispositive of this case. Therefore, this case has been properly appealed using Rule 26.01, subd. 4. But also included in the written stipulation is the following concession by the State: “The State agrees that it lacks sufficient evidence to prove beyond a reasonable doubt that at the time of the offense, the Defendant knew or should have known this person was a minor.” *State v. Galvan-Contreras*, No. 27-CR-19-3719, Stipulation at 1 (Henn. Cnty. Dist. Ct. filed Aug. 27, 2019). Because the State has stipulated that it cannot prove that Galvan-Contreras knew or had reason to know the

victim, E.B., is a minor, the dispositive pretrial ruling by the district court must be reversed and the charge against Galvan-Contreras dismissed.

The dissent insists that the case should be remanded to the district court for further proceedings to consider the dissent's interpretation of Minn. Stat. § 609.746 subd. 1(e)(2), one which "was neither addressed in the parties' written agreement nor considered by the district court." *See infra* at D-8. That has no bearing on the clear impropriety of remand here, where the State squarely conceded that under the construction of Minn. Stat. § 609.746 subd. 1(e)(2) argued by Galvan-Contreras, it cannot prove him guilty of the felony offense.⁵ Nor does our case law support a remand under the circumstances described by the dissent. The primary case relied on by the dissent, *Buzzell v. Walz*, 974 N.W.2d 256, 265-66 (Minn. 2022), is a case where the district court dismissed a *civil complaint*. The standard we applied in *Buzzell* has nothing to do with the procedure created in the criminal rule at issue in this case.⁶

⁵ During the police interview, Galvan-Contreras told the officers that "[E.B.] didn't look like a man, you know what I am saying. I noticed right away that he was a kid." The dissent insists that this piece of evidence should foreclose outright reversal of the conviction. *See infra* at D-1, D-10. The dissent overlooks, however, that for whatever reason, the State chose not to rely on this piece of evidence. In fact, the written stipulation agreed to by the prosecutor implicitly rejects the evidence. It is not our role to second guess these types of strategic decisions of prosecutors.

⁶ The dissent also cites *State v. Boettcher*, 931 N.W.2d 376, 382 (Minn. 2019) (addressing restitution after jury trial). That case is likewise inapposite because it does not arise in the context of Minn. R. Crim. P. 26.01, subd. 4. As explained above, there is no way to square a remand here with the plain language of the rule or what the district court was told in the parties' stipulation.

The parties decided and agreed to utilize a specific procedural vehicle, Minn. R. Crim. P. 26.01, subd. 4, to seek appellate review of only a pretrial ruling—a ruling the parties agreed was “*dispositive* of the case.” Requiring the district court to reengage in this case on remand is not consistent with the text or spirit of Rule 26.01, subd. 4. The legally commanded result here is a reversal of the district court’s pretrial ruling, which results in the dismissal of the felony charge against Galvan-Contreras.

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals and reverse the district court’s pretrial ruling on the motion to dismiss.

Reversed.

DISSENT

McKEIG, Justice (dissenting).

The court reverses the felony conviction of a defendant who used a recording device to surreptitiously intrude on the privacy of a child and then told the police, “I noticed right away that he was a kid.” In doing so, the court adopts an unreasonable interpretation of the relevant statute. Because the court’s analysis is neither reasonable nor just, I dissent.

A.

Minnesota Statutes section 609.746, subdivision 1(e)(2) (2018), prohibits a person from surreptitiously using a recording device with the intent to intrude on the privacy of a person under the age of 18 in a place where a reasonable person would have an expectation of privacy and is likely to expose their private parts. In describing the knowledge requirement for the offense, the Legislature wrote, “knowing or having reason to know that the minor *is present*.” Minn. Stat. § 609.746, subd. 1(e)(2) (emphasis added.) According to the court, the only reasonable interpretation of this language is the State must “prove that the defendant knew” that “the person secretly recorded *is a minor*.” *Supra* at 12 (emphasis added.) As explained below, the court’s interpretation is unreasonable for three reasons.

When interpreting a statute, the first step is to determine whether the language of the statute is unambiguous. *State v. Boss*, 959 N.W.2d 198, 203 (Minn. 2021). The language of a statute is unambiguous if it is susceptible to only one reasonable interpretation. *Id.* In determining whether the language of a statute is subject to more than one reasonable interpretation, we consider the canons of interpretation in Minn. Stat.

§ 645.08 (2020).¹ The canons in section 645.08 are intrinsic canons that direct us to construe words and phrases according to the rules of grammar and their common and approved usage. Minn. Stat. § 645.08(1). In determining the plain and ordinary meaning of a word or phrase, we may consider dictionary definitions. *State v. Jama*, 923 N.W.2d 632, 636 (Minn. 2019). We may also consider the canon against surplusage, which is an intrinsic canon that favors giving each word or phrase in a statute a distinct meaning. *State v. Prigge*, 907 N.W.2d 635, 638 (Minn. 2018). Stated differently, the canon against surplusage directs us to “avoid interpretations that would render a word or phrase superfluous, void, or insignificant, thereby ensuring each word in a statute is given effect.” *State v. Thompson*, 950 N.W.2d 65, 69 (Minn. 2020). If we conclude that the language of a statute is subject to only one reasonable interpretation, we must apply the statute’s plain meaning. *State v. Overweg*, 922 N.W.2d 179, 183 (Minn. 2019).

Consistent with this well-established law, I begin my analysis with the language of the statute. Minnesota Statutes section 609.746 subdivision 1(e)(2), provides that “[a] person is guilty of a felony . . . if the person . . . violates this subdivision against a minor under the age of 18, knowing or having reason to know that the minor *is present*.”

¹ Consistent with the language of Minn. Stat. § 645.08, we use the term “canons of interpretation” when referring to the canons listed in section 645.08. The Revisor of Statutes has inserted an inaccurate headnote that reads, “**645.08 CANONS OF CONSTRUCTION.**” Although the inaccurate headnote does not affect the scope of meaning of the statute, see Minn. Stat. § 645.49 (2020) (explaining that “[t]he headnotes printed in boldface type before sections and subdivisions in editions of Minnesota Statutes are mere catchwords to indicate the contents of the section or subdivision and are not part of the statute.”), it arguably creates a trap for the unwary and therefore the Revisor of Statutes may want to revisit the headnote.

(Emphasis added.) The first part of the dependent clause indicates the defendant violates this subdivision and is guilty of a felony offense when they surreptitiously record a minor victim under the age of 18. The Legislature’s use of the indefinite article “a” signals a generic reference to nonspecific minor victims. See Bryan A. Garner, *The Redbook: A Manual on Legal Style* § 10.38 (2d ed. 2006) (explaining that it is “well-established that the use of the indefinite article ‘a’ or ‘an’ signals a generic reference”); *State v. Culver*, 941 N.W.2d 134, 140 (Minn. 2020) (same).

The second part of the dependent clause creates a carve out. It clarifies that to be found guilty of the felony offense, the defendant must have made the recording intruding on a minor victim’s reasonable expectation of privacy *knowing or having reason to know* the minor victim *is present*. The auxiliary verb “is” links the subject of a sentence to “something affirmed of the subject.” *The Chicago Manual of Style* 5-154 (2017) (stating that the verb “is” is a form of “be,” which is “the most common linking verb that connects the subject with something affirmed of the subject”). Here, the noun “minor” is linked to the adjective “present,”² in the phrase “knowing or having reason to know that the minor is present.” The linking verb “is” identifies the characteristic that must be known, or reasonably known, about “the minor,” namely they are “present” in the recorded location.

² The word “present” is an adjective that means “being in one place and not elsewhere.” *Webster’s Third New International Dictionary* 1793 (1981); *The American Heritage Dictionary of the English Language* 1393 (5th ed. 2018) (“[b]eing at hand or in attendance”); *Merriam-Webster’s Collegiate Dictionary* 982 (11th ed. 2014) (“being in view or at hand”).

Keeping in mind the nature of the linking verb “is,” I consider the reasonableness of the competing interpretations offered by the State and Galvan-Contreras.

The State argues it must prove the defendant knew or had reason to know *a person* was present when they surreptitiously recorded; and if the person happens to be a minor, the offense is elevated to a felony. The State’s proposed interpretation, however, effectively erases “the minor” from the second clause, thereby making anyone’s presence (as opposed to a minor’s presence) determinative.³ Because the interpretation proposed by State violates the canon against surplusage, which directs us to avoid interpretations that would render a word or phrase superfluous, void, or insignificant, I agree with the court’s conclusion that the State’s interpretation of the statutory language is unreasonable.

Having concluded that the State’s interpretation is unreasonable, I consider the reasonableness of the interpretation proposed by Galvan-Contreras and adopted by the court. Under their interpretation, the language “knowing or having reason to know that the minor is present” requires the State to prove the defendant knew or had reason to know that the victim is a minor under the age of 18. Based on the nature of the linking verb “is,” however, their argument requires them to change the statutory language “knowing or having reason to know that the minor *is present*” to “knowing or having reason to know

³ The State’s argument is also inconsistent with the district court’s example of a situation in which a defendant would not have reason to know a minor victim was present, specifically “a defendant takes a photo over a neighboring stall seeing the legs of an adult under the door, but once viewing the photograph discovers the adult was assisting their minor child in the bathroom.” In such a situation, the defendant knows or has reason to know “a person” is present (the adult) but does not know or have reason to know a minor is present.

that the victim *is a minor*.” *See supra* at 10. This is so because, according to Galvan-Contreras and the court, the characteristic that must be known, or reasonably known, about “the minor” is that they are a minor. But this does not work for three reasons. First, we are not permitted to rewrite a statute. *State v. Holl*, 966 N.W.2d 803, 812 (Minn. 2021). Second, the proposed rewrite effectively removes the word “present” from the statutory language; as mentioned above, the canon of surplusage requires us to avoid interpretations that render a word superfluous, void, or insignificant. *Thompson*, 950 N.W.2d at 69. Third, in changing the important characteristic that must be known from “being present” to “being a minor under the age of 18,” the proposed rewrite creates a rather circular requirement: “being a minor” is the important characteristic that must be known about the minor. I acknowledge that the court substitutes the phrase “the victim” for the phrase “the minor” when it articulates the requirement, *supra* at 10, but that substitution does not change the fact that the court’s position is a defendant must know or have reason to know the minor is a minor. I therefore conclude that the interpretation proposed by Galvan-Contreras and the court is also unreasonable.

Having concluded that the interpretations offered by the parties and the court are unreasonable, I turn back to the plain language of the text to see if there is any other reasonable interpretation.⁴ Minnesota Statutes section 609.746, subdivision 1(e)(2),

⁴ We have a duty to decide cases in accordance with the law. *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990). When the interpretations of a statute proposed by the parties are unreasonable, we consider whether there is any other reasonable interpretation of the statutory language. *State v. Heiges*, 806 N.W.2d 1, 16 (Minn. 2011), *abrogated on other grounds by State v. Holl*, 966 N.W.2d 803, 811-12 (Minn. 2021).

provides that “[a] person is guilty of a felony . . . if the person . . . violates this subdivision against *a minor* under the age of 18, knowing or having reason to know that *the minor* is present.” (Emphasis added.) As mentioned above, the first part of the dependent clause under subdivision 1(e)(2), requires that a victim be a minor and the second part of the dependent clause creates a carve out for defendants who do not know, or have reason, to know a minor is present in the recorded location. In my view, this language supports a third reading of the statute; when a defendant knows or has reason to know a minor is present—and surreptitiously intrudes into places where a minor has a reasonable expectation of privacy—the defendant has violated subdivision 1(e)(2). *See Webster’s Third International Dictionary* 2368 (1981) (defining the word “the” as “used as a function word to indicate that a following noun or noun equivalent refers to someone or something previously mentioned or clearly understood from the context or the situation.”). Under this interpretation of Minn. Stat. § 609.746, subd. 1(e)(2), the State would have to prove the defendant knew or had reason to know *a minor* was present in the recorded location; and if the victim is in fact a minor, the offense is elevated to a felony. Put differently, the defendant must know or have reason to know more than “a person is present” in the recorded location but need not know the specific victim is a minor under the age of 18.

The third interpretation is reasonable for the following reasons. First, the rules of grammar support the third interpretation. In the phrase “knowing or having reason to know the minor is present,” the linking verb “is” identifies the characteristic that must be known, or reasonably known, about the noun “the minor,” namely they are “present” in the

recorded location.⁵ Consistent with the rules of grammar, the third interpretation makes presence in the recorded location the important characteristic that must be known.

Second, requiring the State to prove the defendant knew or had reason to know “a minor” is present in recorded location makes sense. In its pretrial order, the district court described a situation in which a defendant would have no reason to know a minor was present in the recorded location, specifically “a defendant takes a photo over a neighboring stall seeing the legs of an adult under the door, but once viewing the photograph discovers the adult was assisting their minor child in the bathroom.” Similarly, a defendant who used a recording device in an adults-only fitness center or an adults-only bar would have no reason to know a minor victim was present in the recorded location, absent additional information showing that a minor is in fact present.⁶ Under the third interpretation, the

⁵ At least one other jurisdiction has recognized that when the legislature enacts a statute that requires a defendant to know the child is present, the defendant need only have knowledge of the child’s presence, not the child’s age. *Roof v. State*, 665 S.W.2d 490, 491 (Tex. Crim. App. 1984).

⁶ Ultimately, a determination of whether the defendant knew or had reason to know a minor was present in the recorded location will depend on the totality of the circumstances. See *State v. Mauer*, 741 N.W.2d 107, 115 (Minn. 2007) (proof of knowledge may be based on circumstantial evidence). The nature of the recorded location will often be relevant. For example, if a defendant installed a recording device in a middle school locker room, the location itself conveys important information about whether the defendant knew or had reason to know a minor victim will be present in that particular location. Our caselaw also supports looking to the location of the offense as relevant and important circumstantial evidence. See *State v. Stevenson*, 656 N.W.2d 235, 237 (2003) (upholding a conviction based on the defendant’s location because both his vehicle and his conduct—namely parking and masturbating in a handicapped stall directly in front of the playground—was “reasonably capable of being viewed by a minor”); see also *State v. Jama*, 923 N.W.2d 632, 636 (Minn. 2019) (clarifying that under Minn. Stat. § 617.23, subd. 2 (2018), the indecent-exposure statute, it is “the nature and location of the exposure

carve out clause of the statute squarely addresses these accidental or inadvertent recording situations.

Finally, the third interpretation does not violate the canon against surplusage because it gives meaning to the words “minor” and “present” in the phrase “the minor is present” by requiring the State to prove the defendant knew or had reason to know *a minor* was *present* in the recorded location.

For the reasons discussed above, I conclude that under the only reasonable interpretation of the language of Minn. Stat. § 609.746, subd. 1(e)(2), the State must prove that the defendant committed the interference with privacy knowing or having reason to know a minor victim is present in the recorded location.

B.

Now I consider whether a remand is appropriate to allow the district court to reconsider Galvan-Contreras’ pretrial motion to dismiss the charge for lack of probable cause, applying the only reasonable interpretation of Minn. Stat. § 609.746, subd. 1(e)(2), which was neither addressed in the parties’ written agreement nor considered by the district court.

that impacts the certainty of the observation—not the person’s subjective intent”) (emphasis omitted); *compare State v. Peery*, 28 N.W.2d 851, 853 (Minn. 1947) (involving a naked defendant who accidentally forgot to pull down the shades in his dorm room), *with State v. Prince*, 206 N.W.2d 660, 660 (Minn. 1973) (involving a naked defendant standing in the doorway calling out “[h]i, girls”). The third interpretation also squarely addresses surreptitious cameras that are not monitored “live” by the defendant because the defendant knows or has reason to know the character of the location recorded when the defendant *sets up* the camera.

To obtain appellate review of the district court’s pretrial order, the parties signed a written agreement that addressed all of the requirements of Minn. R. Crim. P. 26.01, subd. 4 (Stipulation to Prosecution Case to Obtain review of a Pretrial Ruling). *State v. Galvan-Contreras*, No. 27-CR-19-3719, Stipulation at 2-3 (Henn. Cnty. Dist. Ct. filed Aug. 27, 2019). The parties’ agreement did not discuss, nor did the district court consider, the issue of whether the State could prove that at the time of the offense, Galvan-Contreras knew or had reason to know that *a minor* was present in the recorded location, the bathroom in the fitness center.

In other contexts, we have remanded to allow the district court to apply an interpretation of the statute that was not previously considered by the district court. For example, in *Buzzell v. Walz*, the court adopted a definition of the word “commandeer” in Minn. Stat. § 12.34, subd. 2 (2020), that “neither the court of appeals nor the district court applied in determining whether Buzzell stated a claim sufficient to survive a motion to dismiss.” 974 N.W.2d 256, 265 (Minn. 2022). More specifically, the court defined “commandeer” to mean “exercise[ing] exclusive control over or obtain[ing] exclusive possession of the types of property listed in section 12.34, subdivision 1(2), such that the government could physically use it for an emergency management purpose.” *Id.* at 263. Having adopted a definition that was not applied by the district court, this court remanded the case “to the district court to determine whether the allegations in the complaint could support the conclusion that, by issuing the emergency orders, the Governor exercised exclusive control over or obtained exclusive possession of Buzzell’s property such that the government could physically use it for emergency management

purposes.” *Id.* at 265-66. Similarly, in *State v. Boettcher*, the court clarified that “a district court may order restitution only for losses that are directly caused by, or follow naturally as a consequence of, the defendant’s crime.” 931 N.W.2d 376, 381 (Minn. 2019). Because neither the district court nor the court of appeals applied that standard, the court remanded to the court of appeals for reconsideration under the clarified standard. *Id.* at 382.

Consistent with *Buzzell* and *Boettcher*, I would remand to the district court to reconsider Galvan-Contreras’ pretrial motion to dismiss the charge for lack of probable cause, focusing on the issue of whether Galvan-Contreras knew or had reason to know that *a minor* was present in the recorded location, because the only reasonable interpretation of section 609.746, subd. 1(e)(2), was not advanced by the parties nor applied by the district court.⁷ Rejecting this sound approach, the court reverses the felony conviction of a defendant who used a recording device to surreptitiously intrude on the privacy of a child

⁷ The court tries to call into question my reliance on *Buzzell* and *Boettcher*, by simply observing that *Buzzell* did not involve a criminal complaint and *Boettcher* did not involve a proceeding under Rule 26.01, subd. 4. *Supra* at 13-14. The court’s analysis falls short because it fails to explain why these admitted differences are material. The general legal principle announced in *Buzzell* and *Boettcher* is that when an appellate court announces an interpretation of a statute that the lower courts did not apply in resolving the parties’ dispute, a remand to reconsider the dispute under the correct interpretation is appropriate. The court fails to explain why the application of this sound legal principle in Galvan-Contreras’ case is *inconsistent* with *Buzzell* and *Boettcher*. Here, the parties mistakenly believed there were only two interpretations of the statute, and that the adoption of either interpretation would fully resolve the parties’ dispute. Having determined that the only reasonable interpretation of the statute is one that was not considered by the parties, was not applied by the lower courts, and does not fully resolve the parties’ dispute, I conclude that the sound legal principle announced in *Buzzell* and *Boettcher* applies with equal force here and therefore I would remand the case to the district court to reconsider Galvan-Contreras’ pretrial motion to dismiss the charge for lack of probable cause under the correct interpretation of the statute.

and then told the police, “I noticed right away that he was a kid.” In doing so, the court adopts an unreasonable interpretation of the relevant statute. Because the court’s analysis is neither reasonable nor just, I dissent.

CHUTICH, Justice (dissenting).

I join in the dissent of Justice McKeig.

THISSEN, Justice (dissenting).

I join in the dissent of Justice McKeig.