STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1173

State of Minnesota,
Respondent,

vs.

Kevin Lee Baker,
Appellant.

Filed July 17, 2023
Reversed
Bryan, Judge

Anoka County District Court
File No. 02-CR-18-3924

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

Brad Johnson, Anoka County Attorney, Kelsey R. Kelley, Assistant County Attorney, Anoka, Minnesota (for respondent)

Daniel S. Adkins, North Star Criminal Defense, St. Paul, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Smith, Tracy M., Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this direct appeal of his conviction for interference with the privacy of a minor by surreptitiously installing or using a recording device "through the window or any other aperture of a house," Minn. Stat. § 609.746, subd. 1(b)(2) (2016), appellant disputes the

sufficiency of the evidence presented against him. Given the holding in *State v. McReynolds*, 973 N.W.2d 314, 319 (Minn. 2022)—which reversed a conviction under the same statute after interpreting the plain language to not prohibit the use of "a recording device inside the same room as the[] target"—we conclude that the evidence presented in this case is likewise insufficient to establish the elements of the charged offense. We, therefore, reverse the conviction.

FACTS

On June 13, 2018, respondent State of Minnesota charged appellant Kevin Lee Baker with one count of interfering with the privacy of a minor. The complaint alleged that in early 2017, Baker had installed video recording devices in the bathroom and bedroom used by a twelve-year-old child. The case proceeded to trial, which included testimony from the child, her older brother, her mother, and several law enforcement officers from the Anoka County Sheriff's Department. The evidence presented established the following facts. The child testified that Baker was dating her mother at the time of the offense and was at their house "the majority of the time." One morning, the child was in her bedroom when she heard a speaker in her bathroom turn on unexpectedly. That evening, she discussed this with her mother and brother, went upstairs, and found the speaker plugged into a USB charging block that was different from the one that originally came with the speaker. The child also found a similar charging block in her bedroom.

The child's brother, who was home when the child found the charging blocks, described the devices as looking "like a regular USB charger block with a plug-in" but with a small camera on the block above the USB port. The child's mother testified that she had

left for work early that morning and that the child, the child's brother, and Baker were the only people at home. Several days later, the child's mother received an email intended for Baker asking Baker to rate his purchase of a "Wireless Spy Nanny Cam WIFI IP Pinhole DIY Digital Video Camera Mini Micro DVR."[1]

After the child's mother contacted law enforcement, a deputy sheriff came to the house and took pictures of the places where the recording devices were plugged in, which were admitted into evidence at trial. A detective also testified regarding an interview with Baker, during which Baker claimed that he gave the charging blocks to the child but did not know they contained cameras.[2] The detective searched the recording devices for evidence and recovered seven videos on one of the devices and twelve on the other. He noted that an individual shown grabbing the device in one of the videos resembled Baker. An investigator testified that he obtained Baker's eBay account history, which showed three purchases of video recording devices between 2016 and 2017, including a purchase of two devices that matched the ones found by the child.

On February 28, 2022, the jury found Baker guilty of the charged offense. Two months later, the supreme court issued its decision in *State v. McReynolds*, interpreting the

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[1] The child's brother also testified that, on the day that the family discovered the charging blocks, he also saw Baker open the door to the child's bathroom and look inside while she was taking a shower. The state, however, only charged Baker under the portion of the statute that criminalizes "surreptitiously install[ing] or us[ing] any device" to record through an aperture of a dwelling, Minn. Stat. § 609.746, subd. 1(b)(2), not the portion that prohibits "surreptitiously gaz[ing], star[ing], or peep[ing]" into an aperture, Minn. Stat. § 609.746, subd. 1(a)(2) (2016).

[2] Baker did not testify at trial. The defense called one witness, Baker's daughter, who testified that Baker had limited technological skills and that she had never seen Baker do anything inappropriate.

statute under which Baker was convicted. 973 N.W.2d at 319. Baker moved to vacate the judgment, arguing that his conduct did not violate the interference with privacy statute as interpreted in *McReynolds*. The district court denied Baker's motion. Baker now challenges that decision and appeals from the judgment of conviction.

DECISION

Baker argues that there was insufficient evidence to convict him of interfering with the privacy of a minor because the state failed to prove that he installed or used the recording devices through the aperture of the home.[3] Because we conclude that, like in *McReynolds*, the evidence does not establish that the recording devices were installed or used to record through an aperture, we reverse the conviction.[4]

"When evaluating the sufficiency of the evidence, appellate courts carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted." *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotations omitted). We view the evidence in the light most favorable to the verdict and assume that the fact-finder disbelieved any conflicting evidence. *Id.* "Because the meaning of a criminal statute is intertwined with the issue of whether the State proved beyond a reasonable doubt that the defendant violated the statute,

[3] We decline to separately review Baker's post-verdict motion. A post-verdict motion was not required to preserve this issue for appeal and the notice of appeal indicates that Baker's appeal is from the district court's judgment of conviction.

[4] Because we reverse Baker's conviction based on the insufficiency of the evidence, we need not address Baker's alternative argument regarding his motion to remove a juror.

it is often necessary to interpret a criminal statute when evaluating an insufficiency-of-the-evidence claim." *State v. Vasko*, 889 N.W.2d 551, 556 (Minn. 2017). A sufficiency-of-the-evidence claim that turns on the meaning of a statute is subject to de novo review. *State v. Pakhnyuk*, 926 N.W.2d 914, 920 (Minn. 2019).

Under Minnesota Statutes section 609.746, subdivision 1(b), a person commits a gross misdemeanor if that person:

> (1) enters upon another's property;
> (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
> (3) does so with intent to intrude upon or interfere with the privacy of a member of the household.

Violating this statute constitutes a felony-level offense if the person commits the offense against a minor while "knowing or having reason to know that the minor is present." Minn. Stat. § 609.746, subd. 1(e)(2) (2016).

Baker concedes that, viewing the evidence in the light most favorable to the verdict, a jury could reasonably conclude that Baker "intended to invade the privacy of the [child] through the lens of the camera in the charging blocks." He argues, however, that he did not install or use the recording devices "through the window or any other aperture of" the child's house as required by subdivision 1(b)(2), relying on *McReynolds*. *See McReynolds*, 973 N.W.2d at 318-20 (interpreting the meaning of the word "aperture"). In that case, McReynolds pleaded guilty to interference with privacy after he used a cell phone to take a video of a woman while she was sleeping. *Id.* at 316. McReynolds argued that his guilty

plea was invalid because he was in the same room as the victim and did not record her "through the window or any aperture of a house." *Id.*

This court rejected McReynolds's argument, concluding that the guilty plea was valid because the term "aperture" in the statute included the aperture of the camera used to record the victim. *State v. McReynolds*, No. A20-1435, 2021 WL 3611376, at *2-5 (Minn. App. Aug. 16, 2021), *rev'd*, 973 N.W.2d 314 (Minn. 2022). The supreme court reversed, however, holding that the aperture of the camera was not the "aperture" referred to in the statute. *McReynolds*, 973 N.W.2d at 319. Instead, "[t]he phrase 'aperture of a house or place of dwelling of another' . . . plainly means that the aperture belongs to or is connected to the house or dwelling." *Id.* (quoting Minn. Stat. § 609.746, subd. 1(b)(2)). The supreme court explained that the statutory language does not criminalize "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." *Id.* The supreme court acknowledged that "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," but observed that "[a] bad policy outcome is not enough to justify departure from the plain language of a statute." *Id.* at 319-20.

Baker argues, and we agree, that *McReynolds* controls because the recording devices were not installed or used through an aperture of the child's house. The state attempts to distinguish *McReynolds* because unlike McReynolds, Baker plugged the cameras into electrical outlets. We are not convinced because the state's argument conflicts with the

basic analysis in *McReynolds*. The supreme court analyzed the meaning of the word "through" and concluded that a person does not violate the statute if the recording device is in the same room as the target:

> The use of 'through' creates an adverbial phrase. As an adverbial phrase, 'through the window or any other aperture' modifies the verbs preceding it ('installs or uses'). 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) . . . .
>
> . . . . [A] person does not violate the statute merely by using a recording device inside the same room as their target.

Id. at 319 (quotations and citations omitted).

The state argues that this case differs from *McReynolds* because the recording devices were plugged into electrical outlets and those outlets contained openings that satisfy the definition of the statutory term "aperture." We are not convinced for two, related reasons. First, while an electrical outlet contains openings, Baker did not install the recording device "through" the openings in the outlet. *Id.* (concluding that because "through" modifies "installs" and "uses," the installing or using "must be done through an aperture"); *see also The American Heritage Dictionary* 1814 (5th ed. 2011) (defining the word "through," used as an adverb, to mean "[f]rom one end or side to another or an opposite end or side"). Nothing in the analysis of *McReynolds* indicates that the outcome would be different had McReynolds recorded his target while his camera was connected to a charger that in turn was plugged into the wall.

Second, Baker did not record the child through the openings in the outlet. *McReynolds*, 973 N.W.2d at 319 (concluding that McReynolds did not use the recording

device through an aperture because he was in the same room as the person he was recording). To further illustrate this interpretation, the supreme court in *McReynolds* distinguished the facts of *McReynolds* from *State v. Perez*, 779 N.W.2d 105, 107 (Minn. App. 2010). *McReynolds*, 973 N.W.2d at 319. The supreme court referenced the conclusion in *Perez* and noted that in that case, the offender "videotaped his wife in their shared bathroom through a hole in their bathroom wall." *McReynolds*, 973 N.W.2d at 319 (citing *Perez*, 779 N.W.2d at 107). The statute was not violated by McReynolds' conduct, but it was violated by Perez's conduct because the recording device used in *Perez* and the target were not in the same room but on different sides of the aperture. Here, as in *McReynolds* and unlike in *Perez*, the recording device and the victim were both in the same room, not separated by any aperture.[5]

Because the installation itself was not done through the outlet openings and because the recording device and the child were in the same room, the evidence does not establish that Baker violated the statute as interpreted in *McReynolds*.

Reversed.

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[5] To the extent that portions of the state's brief can be construed as arguing that Baker violated the statute when he walked through the bathroom and bedroom doors to place the recording device in the room with the victim, *McReynolds* also forecloses this argument: "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." 973 N.W.2d at 319. Similarly, although the state does not expressly argue that the recording device became a part of the house when it was plugged into an outlet, to the extent this could be inferred from the state's brief, this argument is undermined by the language in *McReynolds*. *Id.* ("[A] a cell phone camera cannot be connected to a house."). Given the analysis in *McReynolds*, we are not persuaded to conclude that a recording device becomes a part of the house only during those moments in time when it is connected by a cable to an outlet.