

STATE OF MINNESOTA
IN SUPREME COURT

A21-1001

Court of Appeals

Moore, III, J.

Taquinia Kokela Douglas,

Appellant,

vs.

Filed: March 15, 2023
Office of Appellate Courts

State of Minnesota,

Respondent.

Cathryn Middlebrook, Chief Appellate Public Defender, John Donovan, Assistant State Public Defender, Saint Paul, Minnesota, for appellant.

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

Mary F. Moriarty, Hennepin County Attorney, Adam E. Petras, Assistant Hennepin County Attorney, Minneapolis, Minnesota, for respondent.

S Y L L A B U S

1. Under the plain language of the possession of shoplifting gear statute, Minnesota Statutes section 609.521(b) (2022), an “instrument designed to assist in shoplifting or defeating an electronic article surveillance system” means any item produced with special intentional adaptation to assist the defendant in shoplifting or defeating an electronic article surveillance system.

2. The evidence presented by the State that appellant covered security sensors on unpurchased items with aluminum foil to carry the unpurchased items out of the retail

store without detection by the electronic article surveillance system is sufficient to support a conviction under section 609.521(b).

Affirmed.

OPINION

MOORE, III, Justice.

In this case, appellant Taquinia Kokela Douglas was accused of folding aluminum foil around anti-theft security sensors on unpurchased retail merchandise to evade detection by the retail store’s electronic article surveillance system. The issue raised is whether the foil is an “instrument designed to assist in shoplifting or defeating an electronic article surveillance system” under the possession of shoplifting gear statute, Minnesota Statutes section 609.521(b) (2022). In 2017, Douglas was detained by police after employees from Buckle, a retail clothing store in Maple Grove, called the police because they suspected that she was shoplifting. The police officers found several pieces of aluminum foil¹ in Douglas’s possession, some of which were wrapped around security sensors attached to several items of unpurchased merchandise from a nearby Victoria’s Secret. After further investigation revealed other unpurchased property in Douglas’s possession from the two retail stores, the State charged Douglas with possession of shoplifting gear under

¹ In the parties’ filings and the trial transcript, the word “tin foil” is used interchangeably with “aluminum foil,” although the exact material in Douglas’s possession was likely aluminum foil, made from aluminum rather than tin. *See Foil*, Encyclopedia Britannica, <https://www.britannica.com/technology/foil-metallurgy> (last visited Jan. 3, 2023) [opinion attachment] (explaining that foil made from tin has been “replaced by aluminum for nearly all purposes”).

section 609.521(b). A jury found Douglas guilty. Douglas did not file a direct appeal of her conviction.

In a postconviction petition filed in 2020, which she amended in 2021, Douglas argued that the evidence presented by the State to the jury was insufficient to support her conviction. She contended that the aluminum foil found in her possession by police is a common household item that is not designed to assist in shoplifting or to defeat an electronic article surveillance system. The district court denied Douglas's request for postconviction relief. Specifically, the court concluded that the evidence presented by the State satisfies section 609.521(b) because Douglas carried aluminum foil into a retail store and applied it to security sensors on unpurchased merchandise with the intent of defeating the store's electronic article surveillance system. The court of appeals affirmed in a precedential opinion.

We hold that under the plain language of the possession of shoplifting gear statute, Minnesota Statutes section 609.521(b), an "instrument designed to assist in shoplifting or defeating an electronic article surveillance system" means any item produced with special intentional adaptation to assist the defendant in shoplifting or defeating an electronic article surveillance system. As a result, the evidence presented by the State is sufficient to support the jury's guilty verdict. Accordingly, we affirm the decision of the court of appeals.

FACTS

Many retail stores have electronic article surveillance systems, which use electronic sensors attached to the store's merchandise to detect if the merchandise is taken from the

store without authorization.² The stores often have “towers” located on either side of the exit that sound an alarm when a sensor attached to merchandise passes between them. Store employees remove the sensors when a customer purchases an item, which can then be taken from the store without sounding the alarm.

On October 21, 2017, Douglas entered Buckle in Maple Grove carrying a large purse and a used Victoria’s Secret shopping bag. A store employee testified that Douglas was hastily picking up and discarding merchandise at random, avoiding employees’ questions, and exhibiting other erratic behavior consistent with someone who plans to shoplift. The employee observed Douglas enter a dressing room with some items of clothing to try on, and when Douglas exited the dressing room, the bag she was carrying seemed “larger,” and a pair of jeans was missing from the items left behind in her dressing room. Another employee called 911 to report that Douglas was shoplifting.

As Douglas was walking out of the retail store, the anti-theft alarm system activated. Two police officers arrived just as Douglas was exiting the store and escorted her back inside. Douglas told the officers that she “just ha[d] stuff from Victoria’s Secret” and did not have any retail items from Buckle. As she pulled an item out of her used shopping bag, the officers observed aluminum foil wrapped around some retail items inside the bag. When the officers confronted Douglas, she removed a pair of jeans from her purse, which one of the store employees recognized as the pair missing from the dressing room.

² Under Minnesota Statutes section 609.521(a) (2022), an “electronic article surveillance system” refers to “any electronic device or devices that are designed to detect the unauthorized removal of marked merchandise from a store.”

After completing its investigation, the State charged Douglas with possession of shoplifting gear in violation of section 609.521(b), which provides:

Whoever has in possession any device, gear, or instrument designed to assist in shoplifting or defeating an electronic article surveillance system with intent to use the same to shoplift and thereby commit theft may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$5,000, or both.

Douglas pled not guilty, and the case proceeded to a jury trial. During the trial, the State's witnesses testified that wrapping aluminum foil around anti-theft security sensors on retail merchandise is a common method used to evade a store's electronic article surveillance system. During closing arguments, Douglas disputed that the aluminum foil found in her possession was "designed" to assist in shoplifting, noting that "everyone here has tinfoil in their house" and that it is "designed to do all sorts of things." The State responded that it was not required to prove that aluminum foil is designed *only* to assist in shoplifting, but that the items of aluminum foil discovered by the police were designed to defeat the retail store's electronic article surveillance system. The jury found Douglas guilty of possession of shoplifting gear. Douglas did not file a direct appeal of her conviction.

Douglas filed a petition for postconviction relief, arguing that "tinfoil is not a device 'designed' to assist in shoplifting or defeating an electronic article surveillance system as that language is used in the statute." Douglas asked the district court to grant her request for postconviction relief and reverse her conviction based on insufficient evidence. The district court denied Douglas's petition, finding that "tin foil . . . is not originally manufactured with the purpose of defeating security devices," but when Douglas "carried

it with her to the store and applied it to the sensor with the intent of defeating the security system it then became shoplifting gear.”

Douglas appealed, and the court of appeals affirmed in a precedential opinion. *Douglas v. State*, 973 N.W.2d 925, 928 (Minn. App. 2022). The court of appeals rejected Douglas’s suggestion that to be found guilty under section 609.521(b), the aluminum foil found in her possession must have been designed to assist in defeating an electronic article surveillance system “*by the original manufacturer.*” *Id.* at 927. The court of appeals determined that the manufacturer’s intent when designing the aluminum foil is not determinative because the item can be “redesign[ed] . . . for an altogether different purpose.” *Id.* Thus, given the “contextually broad meaning” of the word “designed” in the possession of shoplifting gear statute, the court of appeals concluded that under a plain-language reading of the statutory language, Douglas “designed a shoplifting device” when she used the aluminum foil in this case. *Id.* at 928.

We granted Douglas’s petition for further review.

ANALYSIS

“When a sufficiency-of-the-evidence claim turns on the meaning of the statute under which a defendant has been convicted, we are presented with a question of statutory interpretation that we review de novo.” *State v. Henderson*, 907 N.W.2d 623, 625 (Minn. 2018). “Under the de novo standard, we do not defer to the analysis of the courts below, but instead we exercise independent review.” *Wheeler v. State*, 909 N.W.2d 558, 563 (Minn. 2018). Accordingly, we must first interpret the language of the possession of

shoplifting gear statute, section 609.521(b), and then we must apply our interpretation of the statute to the facts of this case.

I.

“The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature.” Minn. Stat. § 645.16 (2022). To do so, we must first “determine whether the statute is ambiguous on its face.” *In re Dakota Cnty.*, 866 N.W.2d 905, 909 (Minn. 2015) (citation omitted) (internal quotation marks omitted). A statute is ambiguous if, when “interpret[ing] ‘words and phrases according to their plain and ordinary meanings,’ ” the court concludes that “the statutory language is subject to more than one reasonable interpretation.” *Id.* (internal quotation marks omitted) (first quoting *State v. Jones*, 848 N.W.2d 528, 535 (Minn. 2014); and then quoting *State v. Fleck*, 810 N.W.2d 303, 307 (Minn. 2012)). If a statute is unambiguous, the court must “follow that plain meaning” of the statute. *State v. McReynolds*, 973 N.W.2d 314, 318 (Minn. 2022).

When statutory terms are undefined, the court may look to dictionary definitions to determine the common and ordinary meanings of these terms. *State v. Thonesavanh*, 904 N.W.2d 432, 436 (Minn. 2017). In this case, the parties dispute whether aluminum foil used in a particular manner can be said to have been “designed” consistent with that use, offering a number of definitions of the word “design” or “designed.” *See, e.g., Design, American Heritage Dictionary of the English Language* 491 (5th ed. 2011) (defining “design” as “[t]o conceive or fashion in the mind; invent” or “[t]o create or contrive for a particular purpose or effect”); *Design, Webster’s Third International Dictionary of the*

English Language Unabridged 611 (2002) (defining “design” as “to plan or produce with special intentional adaptation to a specific end”); *Designed, Webster’s New Twentieth Century Dictionary* 493 (1983) (defining “designed” as “formed or done according to design; planned; purposed; intended”). Notably, all of the definitions of “design” and “designed” that the parties offer share a common focus on the creation of an item or idea to effectuate a particular “end,” “purpose,” or “plan.”

Indeed, we have had previous occasion to examine the word “designed” in a statute, and that analysis captures this common theme. In *Stepec v. Farmers Insurance Co.*, we were faced with the question of whether a snowmobile is a “motor vehicle” under Minnesota Statutes section 65B.22, subdivision 3 (1971), relating to uninsured-motorist coverage. 222 N.W.2d 796, 798 (Minn. 1974). We looked to Minnesota Statutes section 170.21, subdivision 5 (1971), which defined a “[m]otor vehicle” as a “self-propelled vehicle which is designed for use upon a highway,” and the definition of a “[s]nowmobile” in Minnesota Statutes section 84.81, subdivision 3 (2012), as “a self-propelled vehicle designed for travel on snow or ice steered by skis or runners.” *Stepec*, 222 N.W.2d at 798 (emphasis omitted). We focused our analysis on the common word “designed” in both of these statutes. We referred to the definition of “design” found in *Webster’s Third New International Dictionary of the English Language Unabridged* 611 (1961), which is “to plan or produce with special intentional adaptation to a specific end.” *Stepec*, 222 N.W.2d at 798. We concluded that, “as we construe the word ‘designed,’ ” a “motor vehicle” under the statute “is a vehicle intended and adapted for the purpose of ‘use upon a highway,’ ”

which does not include snowmobiles, which are instead “intended and adapted for the purpose of ‘travel on snow or ice.’ ” *Id.* at 798.

Looking at the plain language of the possession of shoplifting gear statute, the statute itself provides the specific purpose or end that is relevant here: “to assist in shoplifting or defeating an electronic article surveillance system.” Minn. Stat. § 609.521(b). Just as a snowmobile cannot be said to have been “designed” for use on a highway because it was not intended and adapted for that purpose, but instead for travel on snow and ice, section 609.521(b) prohibits the possession of an item that is “plan[ned] or produce[d] with special intentional adaptation to” the “specific end” of shoplifting. *See Design, Webster’s Third New International Dictionary of the English Language Unabridged* 611 (1961). We therefore conclude that an item “designed” to assist in shoplifting or defeating an electronic article surveillance system in section 609.521(b) unambiguously refers to an instrument that is planned or produced with special intentional adaptation to the specific end of assisting in shoplifting or defeating an electronic article surveillance system.³

This definition of “design” is different than the mere “use” of an item to shoplift. *See Thonesavanh*, 904 N.W.2d at 437 (explaining that the rule against surplusage “favors giving each word or phrase in a state a distinct, not an identical, meaning”). *Stepec* again shows this distinction. There, two snowmobiles collided while being used on a township

³ Although *Stepec* involves a civil, insurance-related claim rather than the interpretation of a criminal statute as in this case, our analysis of the word “designed” does not depend on the nature of the case at issue.

road. 222 N.W.2d at 797. In other words, the snowmobiles were being used on a highway. But that “use” alone was insufficient to make the snowmobiles “motor vehicles.” The snowmobiles were instead recognized as having been “intended and adapted for the purpose of ‘travel on snow or ice,’ ” and there was no reference to the snowmobiles—which were originally “designed” for that purpose—having in any way been intentionally adapted, that is, modified, for use on the roads. *See id.* at 798.

The court of appeals likewise recognized this distinction between a “design” or “redesign” of an item and its “use” as it applies to section 609.521(b). *See Douglas*, 973 N.W.2d at 927. Specifically, the court of appeals cited to its opinion, *State v. Skinner*, in which the defendant “had torn open a hidden pocket sewn into his trench coat and in it stashed a car stereo he took from the shelf of a retail store.” *Douglas*, 973 N.W.2d at 927 (citing 403 N.W.2d 912, 914 (Minn. App. 1987)). The court of appeals in *Skinner* affirmed the conviction for possession of shoplifting gear because, although the “ ‘special design’ was accomplished by a rather crude alteration,” the trench coat “was nonetheless ‘specially designed’ to assist in shoplifting just as [if] the coat [had] been the production of a chic boutique with the same purpose in mind.” 403 N.W.2d at 916.

We agree with this distinction between “design” and “use” reflected in *Stepec* and *Skinner*. Given the plain language of the possession of shoplifting gear statute as a whole, we conclude that an “instrument designed to assist in shoplifting or defeating an electronic article surveillance system” means any item produced with special intentional adaptation

to assist the defendant in shoplifting or defeating an electronic article surveillance system, as opposed to its mere “use . . . to shoplift.”⁴ Minn. Stat. § 609.521(b).

II.

Next, we apply the plain meaning of section 609.521(b) to the facts of this case to determine whether the State presented sufficient evidence to support Douglas’s conviction for possession of shoplifting gear. When reviewing the sufficiency of the evidence to convict in a given case, appellate courts must 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.” *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (citation omitted) (internal quotation marks omitted). We view the evidence “in the light most favorable to the verdict,” and “[t]he verdict will not be overturned if the fact-finder . . . could reasonably have found the defendant guilty of the charged offense.” *Id.*

Douglas argues that she merely “used” aluminum foil and that the State presented no evidence to prove that aluminum foil was “designed” to assist in shoplifting or defeating an electronic article surveillance system. Douglas argues that because she did not alter the aluminum foil in any “substantial manner” or use the foil “in a novel manner or combine

⁴ Douglas also invokes the *in pari materia* canon, also known as the related-statutes canon, and the legislative history of the statute to support her interpretation of the statute. These construction tools, however, are extrinsic canons used to determine the meaning of *ambiguous* statutory language. See *Thonesavanh*, 904 N.W.2d at 437 (*in pari materia*); *Auto Owners Ins. Co. v. Perry*, 749 N.W.2d 324, 328 (Minn. 2008) (legislative history). Because the word “designed” in the possession of shoplifting gear statute is unambiguous, they do not guide our decision here.

it with something else to create a new instrument or device,” only the original manufacturer’s design of the foil is relevant here. Because, Douglas argues, manufacturers design aluminum foil for primarily kitchen-related and industrial purposes, the aluminum foil in her possession cannot be “designed to assist in shoplifting or defeating an electronic article surveillance system” under section 609.521(b). Therefore, Douglas asserts that the evidence the State presented is insufficient to support a jury finding that Douglas violated the possession of shoplifting gear statute. The State, on the other hand, consistent with the court of appeals’ holding, contends that the evidence is sufficient to support Douglas’s conviction because the evidence shows that, by fashioning aluminum foil around the security sensors on merchandise, Douglas designed gear to assist in evading an electronic article surveillance system.

We agree with the State and affirm the court of appeals. As the court of appeals concluded, “raw material, like thin sheets of aluminum, can be designed by a manufacturer for one purpose but then molded, shaped, or altered by a user, including a crafty shoplifter, redesigning it for an altogether different purpose.” *Douglas*, 973 N.W.2d at 927. The fact that the aluminum foil itself is designed by manufacturers for kitchen and industrial purposes is not determinative. Aluminum foil does have a commercial design—it is designed to be “a complete barrier to light, oxygen, moisture and bacteria.” *Foil & Packaging*, The Aluminum Association, <https://www.aluminum.org/foil-packaging> (last visited Oct. 23, 2022) [opinion attachment]. This is consistent with Douglas’s argument that foil “was designed for kitchen-related purposes.” But aluminum foil is commercially sold as packaged rolls that are—in that packaged form—useless to serve as a barrier.

Aluminum foil is only “used” by molding and forming it into a shape “produce[d] with special intentional adaptation to a specific end,” see *Design*, *Webster’s Third New International Dictionary of the English Language Unabridged* 611 (1961), whether that end be for preserving or cooking food, blocking light and bacteria, improving the reach of television antennas, or obstructing the signals between a sensor and an electronic article surveillance tower. Unlike a vast number of other commercial products available for sale (like a snowmobile, for example), the use of aluminum foil therefore by necessity involves the design of coverings or other instruments made from that foil as the raw material for the new object.

Contrary to Douglas’s assertions, the aluminum foil found in Douglas’s possession by police officers was not a plain and unaltered roll similar to what is found in a box in someone’s kitchen drawer. Rather, the evidence shows that Douglas had torn and folded the aluminum foil to fit around security sensors attached to unpurchased merchandise. At trial, employees of the retail store testified about seeing Douglas enter a dressing room with some items of clothing and finding that a pair of jeans was later missing. The trial evidence showed that the store’s alarm system activated when Douglas attempted to leave the store, and an officer testified that he observed several items of unpurchased merchandise with aluminum foil wrapped around them. The State’s witnesses testified that wrapping aluminum foil around security sensors on retail merchandise is a common method used to evade a store’s electronic article surveillance system. The evidence thus supports a jury finding that Douglas did not have purely *unaltered* aluminum foil in her possession, but rather *wrappings* which she, albeit crudely, fashioned *out of* aluminum foil with the intent

to defeat the store's electronic surveillance system in order to shoplift. Under the plain language of the possession of shoplifting gear statute, Minnesota Statutes section 609.521(b), this evidence shows that Douglas possessed aluminum-foil coverings that were specially and intentionally adapted to assist her in shoplifting or defeating an electronic article surveillance system and that she intended to use them to shoplift.

Because the State proved that Douglas possessed aluminum-foil wrappings that were designed to thwart an in-store electronic article surveillance system and that Douglas intended to use them to shoplift, we conclude that the evidence at trial was sufficient to support her conviction.

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.

foil



aluminum foil and micrometer

foil, solid metal that has been reduced to a leaflike thinness by mechanical beating or rolling. Jewellers have long used a thin foil of copper-zinc alloy as backing for paste jewels and inferior gemstones. The colour and lustre of the gems is heightened by foil that has been silvered, burnished, and coated with translucent colouring.

The first mass-produced and widely used foil was made from tin, now replaced by aluminum for nearly all purposes. The reduction of sheet metal to foil is achieved principally through vertical pressure exerted by finishing-mill rolls combined with horizontal tension applied through mandrels paying out and rewinding the foil stock. Backup rolls mounted above the work rolls of the finishing mills provide increased vertical pressure. Finishing mills may be two, three, or four rolls high, depending on the foil width and thickness required. To produce very light gauge (thin) material, two sheets of aluminum may be rolled together, then parted and rewound individually. By rolling a double web, foil is produced that is bright on one side and matte finished on the other. Aluminum foil may be coloured, printed, embossed, bonded to other materials, or coated with a plastic film.

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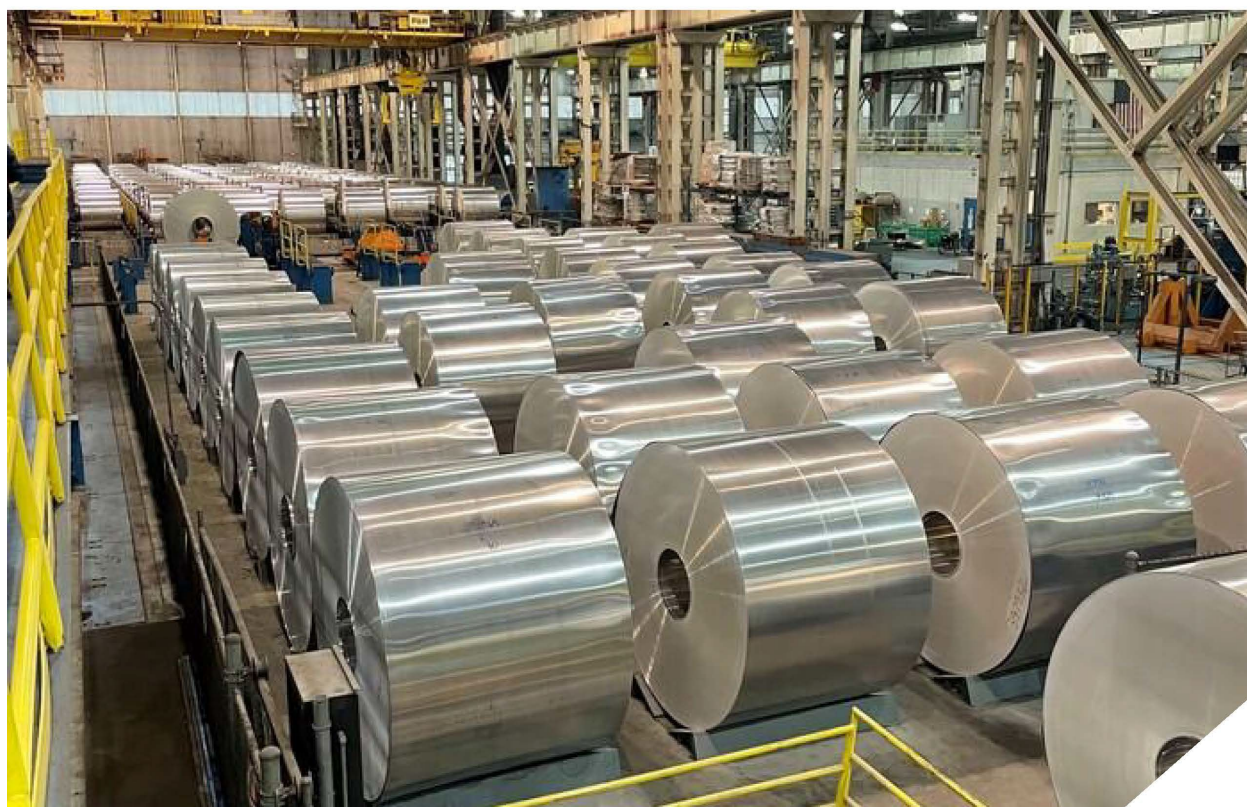
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