STATE OF MINNESOTA

IN SUPREME COURT

A21-1619

Court of Appeals Moore, III, J.

Bradley D. Fordyce,

Appellant,

vs.

Filed: September 6, 2023
Office of Appellate Courts

State of Minnesota,

Respondent.

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Assistant Public Defender, Saint Paul, Minnesota, for appellant.

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

Donald F. Ryan, Crow Wing County Attorney, Travis J. Smith, William C. Lundy, Special Assistant County Attorneys, Slayton, Minnesota, for respondent.

S Y L L A B U S

1. Willful and lewd exposure occurs "in any place where others are present" under the indecent-exposure statute, Minnesota Statutes section 617.23, subdivision 1 (2022), if the exposure is reasonably capable of being viewed by others.

2. The State presented sufficient evidence that appellant exposed himself "in any place where others are present" under the indecent-exposure statute, Minnesota

Statutes section 617.23, subdivision 1, where appellant was in a partially-enclosed backyard in clear view from the back porch of another residential property located directly across a public alley from appellant's location.

Affirmed.

O P I N I O N

MOORE, III, Justice.

This case presents the question of whether an individual who willfully and lewdly exposes himself in the privately owned, partially enclosed backyard of his home has done so in a "public place, or in any place where others are present" within the meaning of the indecent-exposure statute, Minnesota Statutes section 617.23, subdivision 1 (2022). A jury found appellant Bradley D. Fordyce guilty of gross-misdemeanor indecent exposure, and Fordyce later filed a petition for postconviction relief, arguing that the State failed to produce evidence sufficient to sustain his conviction. The district court denied Fordyce's petition, and the court of appeals affirmed. *Fordyce v. State*, No. A21-1619, 2022 WL 3711483, at *1 (Minn. App. Aug. 29, 2022). Because we conclude that a reasonable jury could have found that Fordyce's exposure occurred in a "place where others are present" within the meaning of the indecent-exposure statute, we affirm.

FACTS

On July 1, 2019, at approximately 9:00 a.m., B.T. was at her home in the City of Crosby in Crow Wing County, where she was in her enclosed back porch about to go outside to tend to her flowers. With the door to the back porch open but without stepping out from her porch, B.T. testified that she saw Fordyce standing alone in the backyard of

his home across the alley. Fordyce was "not doing anything," only "standing there" without any clothes on, according to B.T.[1] Fordyce was initially standing sideways before facing toward her and then turning to the wall of his house, and from that angle, B.T. could see his buttocks. From the back, B.T. saw no indication that Fordyce was wearing "a pair of underwear or thong underwear or anything." B.T. testified that she was "really scared" by Fordyce's behavior because she was alone. She stepped out onto her deck, took two photographs of Fordyce with her cell phone, and drove directly to the police station to report what she had seen.

Respondent State of Minnesota initially cited Fordyce for misdemeanor indecent exposure in violation of Minnesota Statutes section 617.23, subdivision 1(1). Because of a prior indecent-exposure conviction, however, the State later charged Fordyce with gross-misdemeanor indecent exposure in violation of Minnesota Statutes section 617.23, subdivision 2(2) (2022).

The evidence at trial showed that B.T.'s porch door opens toward a paved public alley, and across the alley is Fordyce's backyard. Both properties sit just north of Highway 210, which is a main thoroughfare through Crosby. A police officer testified that the neighborhood was mostly residential with small city lots. The officer took photographs and estimated the distance between where B.T. and Fordyce were standing to be approximately 79 feet. A fence runs along at least one other side of Fordyce's property, but there is an unobstructed view from B.T.'s deck to Fordyce's back door. In addition,

[1] According to the testimony of a Crosby police lieutenant, B.T. told police that Fordyce "was not only just standing outside the door but was dancing."

anyone in the public alley between the two properties would have a clear view into Fordyce's backyard.

The jury found Fordyce guilty of gross-misdemeanor indecent exposure. Fordyce did not file a direct appeal.

In a petition for postconviction relief filed in June 2021, Fordyce argued, in part, that the State failed to prove his guilt beyond a reasonable doubt because it did not prove the "place" element of the offense. Specifically, Fordyce argued that the State failed to prove that he was in a public place at the time of the alleged offense. *See* Minn. Stat. § 617.23, subd. 1. The district court denied the petition, concluding that Fordyce's actions occurred in a public place because his "conduct was so likely to be observed, either by a neighbor or a passerby in the alley, that it must be reasonably presumed that [his] conduct was intended to be witnessed." Even though Fordyce was on his own property, the district court reasoned that "it is less important what level of privacy an individual believes he should have, rather it is the likelihood of the conduct being witnessed that is more significant."

The court of appeals affirmed. *Fordyce*, 2022 WL 3711483, at *1. In examining the place element of the indecent-exposure statute, the court of appeals concluded that "the jury reasonably could have concluded that [Fordyce] was either in a public place or in a place where others were present" based on the visibility of Fordyce's conduct. *Id.* at *5. Specifically, the court of appeals reasoned that Fordyce was in a public place because he "was in a place that was open to view from the alley behind his home and where he was easily visible to anyone passing through the alley." *Id.* The court of appeals similarly

reasoned that "Fordyce was in 'a place where others are present' in the sense that he was within view of the neighbor, despite her being on her own property." *Id.*

We granted review to determine whether the privately owned, partially enclosed backyard of a home satisfies the "place" element of the indecent-exposure statute, Minnesota Statutes section 617.23, subdivision 1.

ANALYSIS

At issue in this case is whether the State presented sufficient evidence of the place element of the indecent-exposure statute to sustain Fordyce's conviction. To satisfy this element, the State must prove the defendant committed the prohibited act "in any public place, or in any place where others are present." Minn. Stat. § 617.23, subd. 1. "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).

I.

The object of all statutory interpretation "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). If a statute is unambiguous, we must "follow that plain meaning." *State v. McReynolds*, 973 N.W.2d 314, 318 (Minn. 2022). But if "a statute is susceptible to more than one reasonable interpretation, then the statute is ambiguous and we may consider the canons of statutory construction." *State v. Hayes*, 826 N.W.2d 799, 804 (Minn. 2013).

A.

We begin by considering whether the relevant language in the indecent-exposure statute is ambiguous. "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.' " *McReynolds*, 973 N.W.2d at 318 (quoting Minn. Stat. § 645.08(1) (2020)). When a statute does not define terms, we may "look to the dictionary definitions of those words and apply them in the context of the statute" to determine whether the phrase has a plain and unambiguous meaning. *State v. Haywood*, 886 N.W.2d 485, 488 (Minn. 2016). We examine the statute as a whole, considering the entire statute, not merely the specific phrase at issue, *State v. Pakhnyuk*, 926 N.W.2d 914, 920 (Minn. 2019), and each section of the statute should be reviewed in light of the surrounding sections to avoid conflicting interpretations, *Roberts v. State*, 945 N.W.2d 850, 853 (Minn. 2020).

With the principles of statutory interpretation in mind, we turn to the statute at issue. The indecent-exposure statute prohibits the willful and lewd exposure of one's body or private parts "in any public place, or in any place where others are present." Minn. Stat. § 617.23, subd. 1. By use of the disjunctive "or" in the place element of the statute, the State need only prove one of two alternatives: that Fordyce was either "in any public place" or "in any place where others are present." Minn. Stat. § 617.23, subd. 1; *see also State v. Loge*, 608 N.W.2d 152, 155 (Minn. 2000) ("We have long held that in the absence of some ambiguity surrounding the legislature's use of the word 'or,' we will read it in the disjunctive and require that only one of the possible factual situations be present in order

for the statute to be satisfied.").[2] Because the State need only show that Fordyce was "in any place where others are present" to satisfy the place element of the indecent-exposure statute, and because we conclude that Fordyce was in a place where others are present at the time of the incident at issue, we resolve the case on that basis, and for that reason need not reach the issue of whether Fordyce was in a "public place" within the meaning of Minnesota Statutes section 617.23, subdivision 1.[3]

Fordyce argues that the phrase "in any place where others are present" in section 617.23, subdivision 1, means a shared physical location between the defendant and other person, which would not include Fordyce's backyard because B.T. was in her own home. The State, on the other hand, argues that "in any place where others are present" means any place that another person's lewd conduct might be seen. The crux of the parties' dispute hinges on the definition of the word "present" in the phrase "in any place where others are

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[2] The State argues that Fordyce forfeited consideration of whether the State proved he was "in any place where others are present" by raising this issue for the first time before us. Because the jury could have concluded that Fordyce was guilty based on this allegedly forfeited issue, the State urges us to dismiss this appeal as improvidently granted.

But the State misstates the record. The State did not file a brief in the court of appeals, participate in oral argument before it, or respond to Fordyce's petition for review of the decision of the court of appeals. At oral argument in the court of appeals, Fordyce presented an uncontested argument that there was insufficient evidence to prove he was "in any place where others are present." Oral Argument at 02:33, *Fordyce*, 2022 WL 3711483, https://www.mncourts.gov/CourtOfAppeals/OralArgumentRecordings/ArgumentDetail.aspx?rec=2045. Therefore, because Fordyce raised the issue before the court of appeals, and the court of appeals addressed the merits of the issue in its opinion, this issue was not forfeited, and we proceed to the merits of his appeal.

[3] We therefore express no opinion on the court of appeals' resolution of the question of whether Fordyce was "in any public place" at the time of the incident involved in this case.

present." Minn. Stat. § 617.23, subd. 1. The statute does not define either the phrase "in any place where others are present" or the word "present." *Id.*

We have previously considered the meaning of the word "presence" in another subdivision of the indecent-exposure statute. *See State v. Decker*, 916 N.W.2d 385, 387 (Minn. 2018) (reviewing a defendant's conviction of fifth-degree criminal sexual conduct and indecent exposure for sending a picture of his genitals to a minor via social media).[4] In *Decker*, we explained that dictionaries offer a variety of definitions of the derivative word "presence," including, "alternately . . . 'the state of being in front of or in the same place as someone or something' and 'the condition of *being within sight* or call.' " *Id.* at 387 n.2 (emphasis in original) (quoting *Webster's Third New International Dictionary of the English Language Unabridged* 1793 (2002)). We concluded that these alternative definitions were reasonable in the context of the indecent-exposure statute, so the presence requirement was ambiguous. *Id.*

Following this line of reasoning, we also hold that "present" in subdivision 1 of the indecent-exposure statute is ambiguous. Minn. Stat. § 617.23, subd. 1. Based on the various definitions of "present," including "at hand" or "[i]n attendance; not elsewhere," *Present*, *Black's Law Dictionary* (11th ed. 2019), and "being in one place and not elsewhere : being within reach, sight, or call or within contemplated limits : being in view or at hand," *Webster's Third New International Dictionary of the English Language*

[4] Decker was convicted of gross-misdemeanor indecent exposure because the "exposure occur[red] 'in the presence of a minor under the age of 16.' " *Decker*, 916 N.W.2d at 387 (quoting Minn. Stat. § 617.23, subd. 1(2) (2016)).

Unabridged 1793 (2002), there are several reasonable definitions of the word "present" in the context of the indecent-exposure statute. It is reasonable in the context of the indecent-exposure statute that the Legislature sought to criminalize lewd exposure in a particular spatial or geographical area, but it is likewise reasonable that the Legislature intended to criminalize such conduct when it is within sight. Consequently, the language of the statute is ambiguous.

B.

When a statute is ambiguous, we may consider additional canons of construction to ascertain the intention of the Legislature. Minn. Stat. § 645.16 (explaining that "[w]hen the words of a law are not explicit," the Legislature's intention "may be ascertained by considering" several nonexclusive canons of statutory construction). As relevant in this case, the parties examine three particular canons: "the mischief to be remedied," "the object to be attained," and "the consequences of a particular interpretation." *Id.* We consider each of the arguments the parties make in reference to these canons in turn.

1.

We first turn to the mischief to be remedied by section 617.23. Minn. Stat. § 645.16(3). In *Decker*, we considered the mischief to be remedied by the statute's prohibition of lewd exposure "in the presence of a minor" in section 617.23, subdivision 2(1). *See* 916 N.W.2d at 387–88. In that case, the defendant had engaged in "simultaneous electronic communications with a minor" in which he exposed his genitals. *Id.* at 386. We were tasked with determining whether this conduct was "in the presence of a minor under the age of 16," which would elevate the crime to a gross misdemeanor. *Id.* at 387 (internal

quotation marks omitted) (quoting Minn. Stat. § 617.23, subd. 2(1)). We explained that the mischief to be remedied was "adults lewdly exposing themselves to children." *Id*. at 388. Fordyce, however, argues that the mischief targeted by subdivision 1, which does not mention minors, is "far less weighty" and therefore does not warrant a broad interpretation. We disagree.

Although subdivision 2(1) of the indecent-exposure statute was specifically devised to protect children from being exposed to lewd conduct, the statute's prohibition in subdivision 1 of lewd conduct in any public place or place where others are present clearly protects *adults* from being exposed to the same conduct. Thus, both provisions seek to remedy the same general type of mischief—the difference is only that subdivision 2(1) aims to protect children specifically. *See Decker*, 916 N.W.2d at 387–88; Minn. Stat. § 617.23, subd. 2(1) (providing that a person commits a gross misdemeanor when "the person *violates subdivision 1* in the presence of a minor under the age of 16" (emphasis added)). The fact that subdivision 2(1) makes the act a gross misdemeanor—a more serious offense—if the offense is committed in the presence of a child does not affect the mischief the Legislature sought to remedy in subdivision 1.

The purpose of the indecent-exposure statute is apparent from the statute's face. *See Decker*, 916 N.W.2d at 387–88 (determining the mischief to be remedied from the face of the statute); *State v. Serbus*, 957 N.W.2d 84, 89 (Minn. 2021) (concluding that in an ambiguous criminal statute, the mischief to be remedied was nonetheless "plain from the face of the statute"). The Legislature sought to remedy the mischief of people lewdly exposing themselves to others, that is, to curb the offense or annoyance or even fear others

may experience when they *view* lewd conduct, which makes the possibility of being *viewed* the touchstone of determining whether indecency occurs in a place where others are present. *See, e.g.*, *Decker*, 916 N.W.2d at 387 n.2 (declining the "invitation to require the minor and the adult to be in the same physical space").[5] Other jurisdictions have recognized a similar purpose in their indecent-exposure statutes. *See State v. Bauer*, 337 N.W.2d 209, 211 (Iowa 1983) ("The legislative purpose of [the statute], then, is to render indecent exposure essentially a visual assault crime. It is only exposure with a sexual motivation, *inflicted upon an unwilling viewer*, which will constitute the offense." (citation omitted) (internal quotation marks omitted)); Townsend *v. State*, 750 N.E.2d 416, 418 (Ind. Ct. App. 2001) ("[The purpose of the statute is] to protect the non-consenting viewer who might find such a spectacle repugnant." (alteration in original) (citation omitted) (internal quotation marks omitted)); *People v. Legel*, 321 N.E.2d 164, 168 (Ill. Ct. App. 1974) ("The purpose of [the public-indecency statute] is to protect the public from shocking and embarrassing displays of sexual activities."). Given the statute's purpose of remedying the mischief of people lewdly exposing themselves to others, limiting a definition of "present" to a shared geographical location would undermine the statute's ability to protect a non-consenting

[5] This purpose is also apparent from another post-ambiguity canon, which allows consideration of the history of Minnesota's indecent-exposure statute. *See* Minn. Stat. § 645.16(5) (explaining that legislative intent may be ascertained by considering the former law on the same or similar subjects). That history reveals that since the inception of Minnesota law prohibiting indecent exposure, the statute's aim has been to curtail offense or annoyance caused by viewing lewd conduct. *See* Act of Feb. 17, 1881, ch. 33, § 28, 1881 Minn. Laws 51, 51 (making it a crime for a person to "willfully make[] any indecent exposure of his or her person, in any public place, or in any place where there are other persons to be offended or annoyed").

viewer from being exposed to vulgar, sexual conduct. As the facts here show, a person may be easily subjected to another's lewd conduct even if they are in different physical locations.

Consequently, the mischief to be remedied by Minnesota's indecent-exposure statute weighs in favor of interpreting the statute broadly enough to encompass conduct that is reasonably capable of being *viewed* by unwilling observers who may suffer annoyance or offense from the sight of the lewd exposure of another.

2.

We next consider a closely related canon—the object to be attained by the statute. Minn. Stat. § 645.16(4). Here, the object of the indecent-exposure statute is to prevent the offense or annoyance one may experience from being exposed to the lewd conduct of others.

According to Fordyce, defining a place where others are present based on geography in relation to others rather than visibility to others would better serve the legislative purpose of the statute based on the Legislature's use of the word "place" in the phrase "place where others are present" in section 617.23, subdivision 1. Because the language of subdivision 1 focuses on the population of the physical location where the lewd conduct takes place rather than on what others necessarily *view*, Fordyce argues that the Legislature's intent in passing the statute was to prevent lewd conduct in certain places. But in context, a statute that seeks to remedy annoyance or offense caused by exposure to lewd conduct—that is, by sight—must necessarily seek to reduce the risk that unwilling observers would experience offense from viewing such lewd conduct. We think it more reasonable to conclude that a statute seeking to remedy the negative impact of viewing lewd conduct also

has the object of reducing the risk that such conduct would be *viewed*, rather than reducing the risk that lewd conduct will occur only in certain geographic locations. And Fordyce offers no compelling reason to conclude that the geographic scope the Legislature contemplated necessarily stops at the boundary of one's private property. Under Fordyce's reading of the statute, because no other individual was physically in his backyard when he engaged in lewd conduct, he was not in a place where others were present. This interpretation is unreasonable when his yard was fully visible from the public alley abutting his property and anyone present in the general vicinity could have viewed his conduct. We decline to ascribe to the Legislature an intent to draw so arbitrary a line in construing a statute that aims to protect those subjected to the lewd conduct of others from being offended, annoyed, or fearful.

Consequently, the object to be attained by section 617.23, subdivision 1, weighs in favor of interpreting the statute to encompass conduct that is reasonably capable of being viewed.

3.

Next, we turn to the consequences of the parties' interpretations. Minn. Stat. § 645.16(6). Fordyce argues that a broad interpretation of a place where others are present would impermissibly expand the statute's scope. In particular, because indecent exposure is a general-intent crime rather than a specific-intent crime, Fordyce argues that defining a place where others are present based on visibility would encompass lewd conduct in private spaces, including the interior of homes, so long as someone happens to view the behavior, even accidentally.

Fordyce's fears are not likely to come to fruition. It is true that in *State v. Jama*, we held that the offense of indecent exposure, in violation of Minnesota Statutes section 617.23, subdivision 1(3), is a general-intent crime, not a specific-intent crime. 923 N.W.2d 632, 637 (Minn. 2019). Section 617.23, subdivision 1(3), however, does not require that the defendant's exposure occur "willfully and lewdly," as required under subdivision 1(1), the provision Fordyce was accused of violating. But even so, in *Jama*, we made clear that the statute nonetheless "requires the State to prove that the openly lewd exposure was volitional, as opposed to accidental." 923 N.W.2d at 636. We also noted that factors related to the "certainty of the observation," such as "the nature and location of the exposure," were relevant to the determination of whether the conduct was volitional. *Id.* (emphasis removed). As a result, an accidental exposure in one's own home—or anywhere else—would be insufficient to support a conviction for indecent exposure under Minnesota law. *Compare State v. Peery*, 28 N.W.2d 851, 853–55 (Minn. 1947) (involving a naked defendant who accidentally forgot to pull the shades to his dormitory window and reversing his conviction for indecent exposure), *and State v. Stevenson*, 656 N.W.2d 235, 241 n.5 (Minn. 2003) (explaining that a person who swims nude in the Boundary Waters Canoe Area would not be guilty of indecent exposure because the likelihood that the conduct would be witnessed is small), *with State v. Prince*, 206 N.W.2d 660, 660 (Minn. 1973) (affirming a conviction for indecent exposure when the defendant "stood completely naked in the doorway of his home and attracted the attention of three passing high school girls by saying, 'Hi, girls' ").

To the contrary, defining "in any place where others are present" in section 617.23, subdivision 1, based on strict geographical boundaries, as Fordyce encourages, would allow volitional, openly visible lewd conduct under the indecent-exposure statute as long as the conduct takes place within one's own property lines, even if it causes annoyance and offense to a great many passersby. We decline to construe the indecent-exposure statute's "place" requirement in a manner that would so thwart the clear legislative intent behind the statute. Instead, the canons of statutory construction support a determination that, in criminalizing willful, lewd conduct "in any place where others are present," the Legislature intended to prohibit lewd conduct that is reasonably capable of being viewed by others. Minn. Stat. § 617.23, subd. 1.

We further note that this definition is consistent with our past construction of the word "presence." In *Stevenson*, we were tasked with determining the meaning of "in the presence of a minor" under the statute for fifth-degree criminal sexual conduct, Minnesota Statutes section 609.3451, subdivision 1 (2000). 656 N.W.2d at 238. We concluded that the phrase at issue meant "reasonably capable of being viewed by a minor," without requiring physical proximity. *Stevenson*, 656 N.W.2d at 239 (internal quotation marks omitted). In *Decker*, we reached the same conclusion when considering whether the defendant's simultaneous online transmission of a nude photograph to a minor constituted the willful and lewd exposure of his private parts "in the presence of a minor" under another provision of the indecent-exposure statute, Minnesota Statutes section 617.23, subdivision 2(1). *Decker*, 916 N.W.2d at 387 & n.2 (concluding that the "presence" requirement is ambiguous and that the phrase means "reasonably capable of being viewed").

Additionally, the fact that the word "presence," used as a noun in subdivision 2 of the indecent-exposure statute, is merely a different syntactical form of the word "present" at issue here, used as an adjective in subdivision 1, suggests that the same meaning should apply to the two words. *See State v. Schmid*, 859 N.W.2d 816, 820–21 (Minn. 2015) (declining to provide two different definitions for "take" and "taking" when "the difference is not definitional, but syntactical"); *Wilbur v. State Farm Mut. Auto. Ins. Co.*, 892 N.W.2d 521, 524 (Minn. 2017) (holding that the same word used in different subdivisions of the same statute must be given the same meaning).[6] Bolstering our conclusion is the fact that the relevant dictionary definitions of "presence" are almost identical to those given for "present." *See Webster's Third New International Dictionary of the English Language Unabridged* 1793 (2002) (defining "presence" as "the state of being in front of or in the same place as someone or something" or "the condition of being within sight or call" and "present" as "being before, beside, with, or in the same place as someone or something,"

[6] Fordyce argues that the logic of *Schmid* does not apply because "present" and "presence" are not different tenses of the same verb as were the words at issue in *Schmid*, and the overall phrasing of the two subdivisions of the indecent-exposure statute is different. *Compare* Minn. Stat. § 617.23, subd. 1 ("in any place where others are present"), *with* Minn. Stat. § 617.23, subd. 2(1) ("in the presence of a minor"). We decline to read *Schmid* so narrowly. *Schmid* does not require that words derive from the same verb or that they be different forms of the same verb to be given the same meaning. *See* 859 N.W.2d at 821. If a word differs in syntactical form, the phrasing incorporating that word must necessarily be different, as that word then takes on a different grammatical role in the sentence or clause. Consequently, it does not necessarily offend the logic of *Schmid* to ascribe the same definition to two different forms of the same word when the sentences are phrased differently because the different grammatical role of each word naturally requires some difference in phrasing.

"being within reach, sight, or call or within contemplated limits," or "being in view or at hand").

* * *

In sum, we hold that the meaning of "in any place where others are present" in section 617.23, subdivision 1, is ambiguous. Applying the relevant canons of statutory construction, we conclude that in criminalizing certain lewd conduct "in any place where others are present," the Legislature intended to prohibit lewd behavior that is reasonably capable of being viewed by others, in light of the totality of the circumstances.[7]

II.

Next, we apply the meaning of section 617.23, subdivision 1, to the facts here to determine whether the State presented sufficient evidence to support Fordyce's conviction for indecent exposure. When reviewing the sufficiency of the evidence to convict in a given case, we 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

[7] Although we reject Fordyce's argument that the phrase "in any place where others are present" in section 617.23, subdivision 1, is defined by geographic scope, we do not hold that any location in which one *might* be viewed by others is sufficient under the statute. Rather, a case-by-case analysis of the totality of the circumstances is required of considerations such as distance from populated locations, whether observation itself would require some invasion of privacy (such as peering into someone's window or looking over a fence), and other facts that would assist a jury in determining whether a person's lewd conduct was reasonably capable of being viewed by others.

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.*

The sole issue here is whether the State proved that Fordyce engaged in willful, lewd conduct "in any place where others are present" because he was reasonably capable of being viewed by others. The evidence presented at trial supports a conclusion that Fordyce exposed his private parts in a place where he was reasonably capable of being viewed by others.[8] The trial evidence further showed that Fordyce's backyard was not completely enclosed; rather, the evidence showed that Fordyce's neighborhood consisted of small, residential lots, and Fordyce's backyard faced a public alley with houses on the other side such that there is a clear view from at least one of those houses into Fordyce's backyard, unobstructed by a fence or other barrier. According to the testimony and photographic evidence produced at trial, one of Fordyce's neighbors, B.T., was in fact able to see Fordyce standing naked from her enclosed porch. Consequently, we hold that, under the totality of the circumstances here, the evidence supports the conclusion that Fordyce's exposure occurred in a "place where others are present" because he was reasonably capable of being viewed—and was in fact viewed—at that location by others.

CONCLUSION

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

Affirmed.

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[8] It should be noted that Fordyce did not seek review on the question of whether the evidence was sufficient to conclude that he willfully and lewdly exposed his private parts, and we therefore do not review the sufficiency of the evidence as to that prong of the indecent-exposure statute.