STATE OF MINNESOTA

IN SUPREME COURT

A17-0986

Court of Appeals

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

State of Minnesota,

Respondent,

vs.

Filed: March 20, 2019
Office of Appellate Courts

Deronti Rogers, Jr.,

Appellant.

Keith Ellison, Attorney General, Michael Everson, Assistant Attorney General, Saint Paul, Minnesota; and

Janelle Kendall, Stearns County Attorney, Saint Cloud, Minnesota, for respondent.

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

S Y L L A B U S

Under the plain language of Minn. Stat. § 609.582, subd. 1(b) (2018), first-degree burglary committed while possessing "any article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon" requires that the victim be physically present during the burglary.

Reversed and remanded.

O P I N I O N

GILDEA, Chief Justice.

Minnesota Statutes section 609.582, subdivision 1(b) (2018) elevates burglary to a first-degree offense if "the burglar possesses, when entering or at any time while in the building, . . . any article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon." This case asks us to determine whether the victim must be physically present during the burglary for a conviction under subdivision 1(b). Because we conclude that the victim must be physically present under this subdivision, we reverse the decision of the court of appeals and remand to the district court for resentencing consistent with this opinion.

FACTS

On June 14, 2016, appellant Deronti Rogers Jr. burglarized J.T.'s house while J.T. and her children were away from home. A neighbor looking out of her window saw Rogers break open the back door of J.T.'s house and go inside. The neighbor called 911 and watched as Rogers made three trips in and out of the house, leaving with a television or other items each time.

When the police arrived, they found Rogers walking through an alley behind the house. The two responding officers parked their squad car on the street near the end of the alley and walked toward Rogers. As the officers approached, Rogers dropped an item that one of the officers believed was a gun. The officers yelled at Rogers to get on the ground and arrested him. After the arrest, the officers discovered that the dropped item was a

.177-caliber Daisy BB gun. The BB gun had no orange cap or other feature to distinguish it from a real firearm.

The State subsequently charged Rogers with one count of first-degree burglary under Minn. Stat. § 609.582, subd. 1(b), and one count of second-degree burglary under Minn. Stat. § 609.582, subd. 2(a)(1) (2018). Rogers waived his right to a jury trial, and the case was tried to the court. After trial, the district court convicted Rogers of both counts.

Only the first-degree burglary conviction is at issue on appeal. A person commits first-degree burglary under Minn. Stat. § 609.582, subd. 1(b), if he or she commits a burglary while possessing "any article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon" either "when entering or at any time while in the building." The district court found that Rogers possessed the BB gun at some point while inside the house[1] and determined that the BB gun qualified as an article "fashioned in a manner to lead *someone* to reasonably believe it to be a dangerous weapon." (Emphasis added). The court therefore found Rogers guilty of first-degree burglary.

Rogers appealed his first-degree conviction, arguing that subdivision 1(b) requires that the victim be present and reasonably believe the item is a dangerous weapon. *See State v. Rogers*, 912 N.W.2d 687, 691 (Minn. App. 2018). The court of appeals rejected the argument and held that the statute's plain language "does not require a burglary victim to be present, observe the article fashioned as a dangerous weapon, [or] subjectively conclude

[1] At the court of appeals, Rogers argued that there was insufficient evidence to prove that he possessed the BB gun while entering or inside the house. *See State v. Rogers*, 912 N.W.2d 687, 693–95 (Minn. App. 2018). The court of appeals affirmed the district court's finding, *id.*, and Rogers does not raise the issue on appeal to our court.

that it is a dangerous weapon." *Id.* at 693. The court of appeals concluded that the statute requires only "that the article's appearance supports an objective belief that it is a dangerous weapon." *Id.* Accordingly, the court affirmed Rogers's first-degree burglary conviction. *Id.* at 695.

We granted Rogers's petition for review.

ANALYSIS

In this appeal, the parties disagree over the interpretation of the first-degree burglary statute, in particular, Minn. Stat. § 609.582, subd. 1(b). Statutory interpretation is a question of law that we review de novo. *State v. Bakken*, 883 N.W.2d 264, 267 (Minn. 2016). Our role in interpreting statutes is to "ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2018). To do so, we first determine whether the statutory language is ambiguous. *State v. Struzyk*, 869 N.W.2d 280, 284–85 (Minn. 2015). A statute is ambiguous when it is "susceptible to more than one reasonable interpretation." *State v. Henderson*, 907 N.W.2d 623, 625 (Minn. 2018). If a statute is not ambiguous, we apply its plain meaning. *Larson v. State*, 790 N.W.2d 700, 703 (Minn. 2010).

In determining a statute's plain meaning, "words and phrases are construed according to rules of grammar and according to their common and approved usage." Minn. Stat. § 645.08(1) (2018);[2] *see also State v. Garcia-Gutierrez*, 844 N.W.2d 519, 521 (Minn. 2014). In addition, the meaning of a word is informed by how it is used in the context of a statute. *Henderson*, 907 N.W.2d at 626. We consider a statute as a whole " 'to harmonize

[2] The dissent faults us for relying on what it terms "grammatical conventions." But the Legislature itself has instructed that we are to follow the rules of grammar.

and give effect to all its parts.' " *Id.* at 627 (quoting *Bakken*, 883 N.W.2d at 268). And we presume that "the Legislature intended the entire statute to be effective and certain." *Id.*

Minnesota's first-degree burglary statute provides:

> Whoever . . . enters a building without consent and commits a crime while in the building . . . commits burglary in the first degree . . . if:
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> . . .
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> (b) the burglar possesses, when entering or at any time while in the building, any of the following: a dangerous weapon, any article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon, or an explosive . . . .

Minn. Stat § 609.582, subd. 1 (2018). Rogers was convicted under subdivision 1(b) for possessing an item "fashioned[3] in a manner to lead the victim to reasonably believe it to be a dangerous weapon" during the burglary.

The parties agree that subdivision 1(b) is unambiguous but argue that the plain meaning of the subdivision supports their respective interpretations.[4] Their disagreement

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[3] The State does not argue that Rogers "used" the BB gun, only that it was "fashioned" as a dangerous weapon. The decisions of the district court and the court of appeals were similarly rooted. *See Rogers*, 912 N.W.2d at 693. In addition, Rogers does not argue that he did not fashion the BB gun to appear as it did. Whether Rogers fashioned the BB gun is not at issue in this appeal.

[4] The dissent contends that the statute is ambiguous but does not offer an interpretation of the statute that gives effect to all of the words the Legislature included. *See Henderson*, 907 N.W.2d at 627 (noting that courts are to give effect to all parts of a statute). Specifically, to reach its desired outcome, the dissent reads out the verb "used," and changes the statute's language from "the victim" into "a potential victim." Our precedent does not permit such judicial legislation. *E.g.*, *Laase v. 2007 Chevrolet Tahoe*, 776 N.W.2d 431, 438 (Minn. 2009) ("We cannot rewrite a statute under the guise of statutory interpretation."). The dissent concedes as much when it challenges our principles of statutory interpretation as "problematic and worth questioning." In other words, because our precedent does not permit the desired result, that precedent must be wrong. We

centers on how the language "in a manner to lead the victim to reasonably believe [the item] to be a dangerous weapon" functions. Rogers asserts that, in addition to possession of the item at issue, the language adds another element. Specifically, Rogers argues that a conviction under this provision "requires that the victim be present and actually believe the article is a dangerous weapon."

The State, on the other hand, claims that the language merely describes the nature of the article that the burglar must possess. To support its interpretation, the State points to the word "possesses" and the dictionary definition of "fashioned." First, the State argues that the actus reus, that is, the wrongful deed, of the subdivision is possession. Second, the State asserts that "fashioned" means "to give shape or form" or to "make." *The American Heritage Dictionary of the English Language* 641 (5th ed. 2011). Because an item becomes "fashioned" at the moment it is formed or altered, the State argues that a burglar has violated subdivision 1(b) at the moment the burglar possesses the already-fashioned item in the building. Following this logic, the State concludes—as did the district court and the court of appeals—that the rest of the provision refers to the nature of the article,

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disagree with the dissent. Our statutory interpretation precedent is consistent with the Legislature's directive that "[w]hen the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit." Minn. Stat. § 645.16. Accordingly, we decline the dissent's invitation to reconsider our precedent.

requiring it to be such that "a burglary victim would reasonably believe it was a dangerous weapon."[5]

We agree with Rogers that the plain language of Minn. Stat § 609.582, subd. 1(b), requires the victim to be present. Subdivision 1(b) requires that the item be "fashioned in a manner to lead *the* victim," not *a* victim, to reasonably believe the item is a dangerous weapon. (Emphasis added). "The" is a limitation word that refers to a specific person or thing. *State v. Hohenwald*, 815 N.W.2d 823, 830 (Minn. 2012); *see also American Heritage Dictionary*, *supra*, at 1803. And we have repeatedly held that it is "textually significant" when the Legislature uses "the" rather than "a" or "an." *See, e.g.*, *Struzyk*, 869 N.W.2d at 286. Under the plain language of the first-degree burglary statute, it is not enough for an item to be fashioned in a manner to lead *a* victim to believe that it is a dangerous weapon. The item must be fashioned to lead *the* victim to believe that it is a dangerous weapon. In requiring that "the victim" have the reasonable belief, the statute requires that that specific victim be present.[6]

Despite the plain meaning of "the victim," the State argues that the statute cannot be interpreted to require that the victim be present because the statute uses the words "to

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[5] The dissent also focuses on the subdivision's use of "possesses" to support its interpretation. But, as discussed above, this interpretation would require us to rewrite the statute. Accordingly, the query from Sesame Street that the dissent posits is misplaced.

[6] In terms of the requirement that someone other than the burglar be present, this clause of subdivision 1(b) is consistent with the other paragraphs in subdivision 1; both paragraphs (a) and (c) of subdivision 1 require that another be present during the commission of the burglary. *See* Minn. Stat. § 609.582, subd. 1(a) (requiring that "another person" be present in the dwelling); *id.*, subd. 1(c) (requiring that "the burglar assaults a person within the building").

lead." Specifically, the State asserts that "to lead" is an infinitive verb and that such verbs represent "intentions, desires, or expectations." According to the State, if the Legislature had intended to require the victim to be present and subjectively believe the article is a dangerous weapon, it would have used a progressive verb like "leading" or "causing." We are not persuaded because the context of the statute makes clear that the victim must be present.[7]

Subdivision 1(b) includes both items that are "*used*" and items that are "*fashioned*." The parties agree that the victim has to be present for the "used" portion of the statute. We agree as well. One dictionary defines "used" as "put into action or service." *Webster's Third New International Dictionary* 2523 (2002). If "the victim" is not present, the weapon

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[7] The dissent argues that the Legislature simply imported a phrase from the criminal-sexual-conduct statute into the burglary statute and that we should interpret the phrase the same way in both statutes. Even if the dissent were correct and we were permitted to look to the criminal-sexual-conduct statute in interpreting the burglary statute, the result is the same. This is so because the phrase from the criminal-sexual-conduct statute that the dissent contends the Legislature imported into the burglary statute also requires that the victim (the "complainant" in the criminal-sexual-conduct statute, *see* Minn. Stat. § 609.341, subd. 13 (2018) (defining "complainant")), be present. *See* Minn. Stat. § 609.342, subd. 1(d) (2018) ("A person who engages in sexual penetration with another . . . is guilty of criminal sexual conduct in the first degree if . . . the actor is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon . . . ."). Obviously, the complainant cannot form a reasonable belief if the complainant is not present. The legislative history the dissent contends is relevant is also consistent with the conclusion that the victim must be present both in the criminal-sexual-conduct statute and the burglary statute. *See* S. Judiciary Comm., 75th Minn. Leg., *Summary of S.F. No. 2017*, at 2 (Mar. 5, 1988) (report by Senate Counsel Allison Wolf) ("The bill would expand the first-degree burglary provision to include a situation in which the burglar possesses an article 'used or fashioned' *so that the victim reasonably thought* that it was a dangerous weapon." (emphasis added)). Finally, the news accounts that the dissent cites as evidence of the purpose for the amendment to the burglary statute all recount stories where a fake weapon was used on a victim.

cannot be put into action against that person. The same must be true for items that are "fashioned" because the statute attaches "used or fashioned" to the same requirement—the victim's reasonable belief that the item is a dangerous weapon. In other words, the context of the statute confirms that the meaning of the phrase "in a manner to lead the victim to reasonably believe it to be a dangerous weapon" does not change depending on which verb (used or fashioned) is applied. *See Henderson*, 907 N.W.2d at 627 ("[W]e . . . consider the statute as a whole 'to harmonize and give effect to all its parts . . . .' " (quoting *Bakken*, 883 N.W.2d at 268)).

But, the State argues, requiring the victim's presence both when the weapon is "used" and when the weapon is "fashioned" renders "fashioned" superfluous. We disagree. There are certainly circumstances where a weapon could be used against the victim and fashioned at the same time; but there are also circumstances where a weapon could be fashioned in such a way that the victim reasonably believes it is a dangerous weapon, but that weapon is not used on the victim.

In sum, if subdivision 1(b) was intended to require only that the article's appearance "supports an objective belief that it is a dangerous weapon"—as the court of appeals determined, *Rogers*, 912 N.W.2d at 693—the Legislature would have drafted the statute to say that a person commits first-degree burglary if he or she possesses "any article used or fashioned in a manner that makes it reasonably appear to be a dangerous weapon." But the Legislature chose to require that the item be "used or fashioned in a manner to lead *the victim* to reasonably believe it to be a dangerous weapon." Minn. Stat. § 609.582, subd. 1(b) (emphasis added). We must give effect to the Legislature's inclusion of "the

victim" in subdivision 1(b). Given the plain language of the provision as a whole, we conclude that Minn. Stat. § 609.582, subd. 1(b), requires the victim to be physically present during the burglary.

Because it is undisputed that the victim was not physically present during the burglary, we hold that the evidence is not sufficient to support Rogers's conviction of first-degree burglary.

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals and remand to the district court with directions to vacate the conviction and sentence for first-degree burglary, enter a judgment of acquittal on the first-degree burglary charge, and sentence Rogers on the second-degree burglary conviction.

Reversed and remanded

D I S S E N T

THISSEN, Justice (dissenting).

Our job when interpreting a statute is to ascertain and implement the intent of the Legislature. *State v. Henderson*, 907 N.W.2d 623, 625 (Minn. 2018). The canons of construction and other techniques of judicial interpretation are tools to help us achieve that paramount goal. But we must be vigilant of the warning that "[w]e shape our tools and thereafter they shape us." John M. Culkin, S.J., *A Schoolman's Guide to Marshall McLuhan*, Saturday Rev., Mar. 18, 1967, at 51, 70. Because the majority fails to see the forest of legislative intent for the trees of grammatical conventions in this case, I dissent.

Our focus in this case is Minn. Stat. § 609.582, subd. 1(b) (2018). The statute provides:

> Whoever . . . enters a building without consent and commits a crime while in the building . . . commits burglary in the first degree . . . if: . . .
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> (b) the burglar possesses, when entering or at any time while in the building, any of the following: a dangerous weapon, any article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon, or an explosive[.]

Id.

The majority concludes that the language of subdivision 1(b) plainly and unambiguously means that when a burglary is committed with "an article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon," a victim must be present in the building. The majority reaches this conclusion by leaning heavily on a few words—"the victim" and "used"—plucked out of the operative descriptive phrase.

Even if one accepts that the majority's reading is reasonable, it certainly is not the only—or even the most—reasonable interpretation of the statutory language. In assessing whether language is ambiguous, the phrase "an article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon" should not be read in isolation. We have said that "it is an unsafe way of construing a statute to divide it by a process of etymological dissection into separate words, then apply to each thus separated from its context some particular definition given by lexicographers, and then reconstruct the instrument upon the basis of these definitions." *In re Raynolds' Estate*, 18 N.W.2d 238, 241 (Minn. 1945) (citing *Int'l Tr. Co. v. Am. Loan & Tr. Co.*, 65 N.W. 78, 79 (Minn. 1895)). Rules of construction require that we read and construe provisions of a statute as a whole and interpret the phrase in light of surrounding sections. *Eagan Econ. Dev. Auth. v. U-Haul Co. of Minn.*, 787 N.W.2d 523, 537 (Minn. 2010).

The focus of subdivision 1(b) is *possession* of certain items during the burglary. If "the burglar possesses" one of the items described in the statute, he is guilty of first-degree burglary rather than a lesser degree of burglary. Minn. Stat. § 609.582, subd. 1(b). Subdivision 1(b) describes three categories of items, the possession of which elevates the offense to first-degree burglary: "a dangerous weapon," "an explosive," or "any article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon." *Id.* Further, there is no dispute that mere possession of a dangerous weapon or an explosive—even if another person is not present in the building—is sufficient to elevate a burglary to first-degree burglary. In that context, it is quite reasonable to read the statute to mean that the third item ("an article used or fashioned in a manner to lead the victim to

reasonably believe it to be a dangerous weapon") should be treated the same as the other two items. Nothing in the structure of the statute suggests that the Legislature intended the statute to be a Sesame Street game of "One of These Things Is Not Like the Others."[1]

This reading of the statute is supported when one considers that the possession focus of subdivision 1(b) contrasts sharply with the other two circumstances under which a burglary is elevated to first degree. Under subdivision 1(a), first-degree burglary occurs when the burglary takes place in "a dwelling and another person, not an accomplice, is present in it when the burglar enters or at any time while the burglar is in the building." Minn. Stat. § 609.582, subd. 1(a) (2018). Subdivision 1(c) provides that first-degree burglary occurs when "the burglar assaults a person within the building or on the building's appurtenant property." Minn. Stat. § 609.582, subd. 1(c) (2018). In each case, the presence of another individual is explicitly required. Especially considering the language of subdivision 1(a), the Legislature knew how to make clear and plain that the presence of a

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[1] Viewers of Sesame Street would often be quizzed with the song "One of These Things":

One of these things is not like the others;
one of these things just doesn't belong.
Can you tell which thing is not like the others
By the time I finish my song?

See Michael Davis, *Street Gang: The Complete History of* Sesame Street 162 (2008) (quoting Bruce Hart & Joe Raposo, *One of These Things* (Instructional Children's Music, Inc. 1970)).

person could, in certain circumstances, be an element of first-degree burglary. It did not do so in subdivision 1(b).[2]

Because Minn. Stat. § 609.582, subd. 1(b), can be reasonably read to allow conviction for first-degree burglary for mere possession of "an article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon" regardless of whether another person is present in the building at the time of the burglary, the statute is at the very least ambiguous. *See Henderson*, 907 N.W.2d at 625 (stating that a statute is ambiguous when it is "susceptible to more than one reasonable interpretation"). And once we turn to the former law that preceded the current statute, the Legislature's intent becomes powerfully clear that mere possession is enough. *See* Minn. Stat. § 645.16(5) (2018) (instructing that we consider "the former law, if any, including other laws upon the same or similar subjects").[3]

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[2] In footnote 6, the majority acknowledges that we should look for interpretive guidance to the entire first-degree-burglary provision. It concludes, however, that the fact that subdivision 1(a) and 1(c) require the presence of another supports its position that one item identified in subdivision 1(b) may also require the presence of another, even if the other two items in subdivision 1(b) do not. This logic is odd. Subdivision 1(b) is about what "the burglar possesses," and no one disputes that possession of two of the three items described in subdivision 1(b) does not also require the presence of another person. Yet the majority's contextual analysis ignores those clues from the specific subdivision in which the language we are interpreting is found and instead looks to other subsections in subdivision 1 that have different purposes.

[3] The principle that courts must always start statutory interpretation by formalistically categorizing a statute as "unambiguous" or "ambiguous," *e.g.*, *State v. Struzyk*, 869 N.W.2d 280, 284 (Minn. 2015), is problematic and worth questioning. In particular, the rules for assessing whether language is unambiguous are opaque. It is not clear what level of imprecision in statutory language is required before a statute is found to be ambiguous, and this vagueness allows judges to use the ambiguity inquiry to reach results they desire rather than following the intent of the legislature. *See* Richard A. Posner, *The*

Two categories of items—a dangerous weapon and an explosive—have been part of subdivision 1(b) since the Legislature enacted the current burglary statute in 1983. *See* Act of June 14, 1983, ch. 321, § 2, 1983 Minn. Laws 2058, 2059. The 1983 version of subdivision 1(b) provided that first-degree burglary occurs when "the burglar possesses a dangerous weapon or explosive when entering or at any time while in the building." Nothing in the language of subdivision 1(b) when enacted in 1983 required that another person be in the building when the burglary occurred. The only requirement for a burglary to be of the first degree under subdivision 1(b) was that the burglar possess either a

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Federal Courts: Crisis and Reform 276–79 (1985) (questioning canons of construction). I would suggest that one prudent principle to guide the ambiguity inquiry is: "If there is a doubt, err on the side of ambiguity." This principle seems particularly apt in a case where, as here, each party argues for an interpretation of the statutory language that is directly contrary to the other side and each party asserts that its interpretation is unambiguously correct. While not always definitive, such a disagreement is one clue that ambiguity exists. *Phone Recovery Servs., LLC v. Qwest Corp.*, 919 N.W.2d 315, 326 n.1 (Minn. 2018) (McKeig, J., dissenting).

It is also problematic that judicial adherence to an algebraic process of applying hierarchical rules of interpretation like the pre-ambiguity/post-ambiguity wall that sets certain interpretative tools above others prevents courts from using often very useful materials like legislative history to do our job, which is to ascertain and implement legislative intent. *See, e.g.*, Robert A. Katzmann, *Judging Statutes* 52–53 (2014). Indeed, we have said that "the attention of the legislature should always be followed wherever it can be discovered, although the construction seems contrary to the letter of the statute." *Barker v. Kelderhouse*, 8 Minn. 207, 211 (1863) (citing *Grimes v. Byrne*, 2 Minn. 89 (1858)); *see also Judd v. Landin*, 1 N.W.2d 861, 863–64 (Minn. 1942). The majority's critique that I am ignoring precedent begs the question: "Which precedent?" Strict adherence to the interpretive doctrine of the day should yield to judicial humility that we are wiser than our predecessors. And the Legislature itself has instructed us first and foremost that "[t]he object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (titled "Legislative Intent Controls"). Finally, blind adherence to a hierarchy of rules of construction, while ignoring evidence of legislative intent available from so-called "post-ambiguity" sources even when they are useful, raises serious constitutional separation of powers issues. *See* Posner, *supra*, at 279.

dangerous weapon or an explosive when entering or any time while in the building. Subdivision 1(a) (burglary of a dwelling where a non-accomplice is present) and 1(c) (assault during a burglary), which each require the presence of another person, were also enacted 1983. Chapter 321, § 2, 1983 Minn. Laws at 2059. Subdivision 1(a) and 1(c) have remained substantively the same over the intervening 35 years. *Compare* chapter 321, § 2, 1983 Minn. Laws at 2059, *with* Minn. Stat. § 609.582, subd. 1(a), (c) (2018).

The Legislature, however, changed subdivision 1(b) in 1988. Act of May 4, 1988, ch. 712, § 9, 1988 Minn. Laws 1649, 1654. That year, the Legislature responded to significant public concern about the dangers posed by criminals' use of toy guns.[4] The Legislature amended Minnesota statutes to punish possession of a fake weapon equivalent to possession of a real weapon in both the aggravated robbery and burglary statutes. *See id*., § 5, 1988 Minn. Laws at 1651 (codified as amended at Minn. Stat. § 609.245, subd. 1 (2018)) (aggravated robbery); *id.*, § 9, 1988 Minn. Laws at 1654 (first-degree burglary). The Legislature also created a new crime that punished making terroristic threats using a replica firearm. *Id.*, § 15, 1988 Minn. Laws at 1656 (codified as amended at Minn. Stat. § 609.713, subd. 3 (2018)). To do so, the Legislature needed to find a way to statutorily

[4] Contemporary news reports and editorials highlighted this public concern. *See, e.g.*, Jeanne Landkamer, Editorial, *Gun Legislation*, White Bear Press, Dec. 9, 1987, at 4a; Brian Bonner, *Foley Set to Ask for Tough Toy Gun Law*, St. Paul Pioneer Press Dispatch, Dec. 4, 1987, at 1C; Joe Kimball, *Tom Foley Takes Aim at Realistic Toy Guns*, Star Trib., Dec. 4, 1987, at 1B. In addition to concerns about protecting crime victims, the proponents of the legislation were concerned that use of fake guns created confusion for police officers who respond to a crime and may use harmful force unnecessarily. *See, e.g.*, Kimball, *supra*.

describe a fake weapon, and it looked to existing statutory language in the first-degree criminal-sexual-conduct statute. *See* Minn. Stat. § 609.342, subd. 1(d) (1986).

At the time, Minnesota's first-degree criminal-sexual-conduct statute defined that offense (among other definitions) as engaging

> in sexual penetration with another person . . . if . . . the actor is armed with a dangerous weapon or *any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon* and uses or threatens to use the weapon or article to cause the complainant to submit.

Id. (emphasis added); *see also id.*, subd. 1(f)(ii) (using similar language). In assessing the severity of criminal sexual conduct, the Legislature directed that it did not matter whether the assailant used a real weapon or a fake weapon to cause the victim of the sexual assault to submit. The Legislature used the words "any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon" to describe such a fake weapon. Notably, the Legislature used the words "to lead" rather than "leading" in the provision. The focus of this phrase is on the understanding of the actor about the nature of the item rather than on what the complainant actually believed. Robert C. Farrell, *Why Grammar Matters: Conjugating Verbs in Modern Legal Opinions*, 40 Loy. U. Chi. L.J. 1, 35 (2008) (citation omitted). The conclusion that the language is a descriptive phrase is demonstrated by the Legislature's inclusion in subdivision 1(d) of an additional requirement that the actor "use[] or threaten[] to use" the weapon to cause the victim to submit. Minn. Stat. § 609.342, subd. 1(d). This latter part of the sentence sets forth the actus reus, Latin for "guilty act," *Actus Reus*, *Black's Law Dictionary* (10th ed. 2014), of the offense including the required complainant reaction (submission). The description of

the item—the phrase at issue in this case—and the use to which the item is put are distinct concepts in the criminal-sexual-conduct statute.

In its 1988 amendment to the first-degree burglary statute (as well as the aggravated robbery statute), the Legislature simply lifted the descriptive language from the criminal-sexual-conduct statute and inserted it nearly verbatim into the burglary statute. *See* chapter 712, § 9, 1988 Minn. Laws at 1654 (changing only the word "complainant" in Minn. Stat. § 609.342, subd. 1(d), to "victim"). Such a wholesale importation of the descriptive phrase "any article used or fashioned in a manner to lead the complainant [victim] to believe it to be a dangerous weapon" from the criminal-sexual-conduct statute into the burglary statute suggests that the descriptive nature of the phrase carries over. In that context, the meaning of the entire phrase is to describe a type of item (a fake weapon) and it should be read that way instead of being lexicographically pulled apart. *See* Minn. Stat. § 645.08(1) (2018) (noting that phrases that have acquired a special meaning "are construed according to such special meaning"); *Eelkema v. Bd. of Educ. of Duluth*, 11 N.W.2d 76, 77–78 (Minn. 1943) (applying phrase that "had grown to have a well defined meaning"); *see also Greenwood Tr. Co. v. Massachusetts*, 971 F.2d 818, 827 (1st Cir. 1992) (stating that when a legislative body borrows language from one statute and incorporates it into another, "the borrowed phrases do not shed their skins like so many reinvigorated reptiles"); Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 537 (1947) ("[I]f a word is obviously transplanted from another legal source, whether the common law or other legislation, it brings the old soil with it.").

There is no evidence whatsoever that, in taking the descriptive phrase from the criminal-sexual-conduct statute and importing it into the burglary statute, the Legislature intended to change the essential nature of subdivision 1(b) from a provision where mere possession of a listed item was sufficient to support a first-degree burglary conviction. Rogers asks us to transform subdivision 1(b) into a more complicated provision where mere possession remains sufficient for two of the items (a dangerous weapon or an explosive) but an additional element of proof—that a person also be present in the building—is necessary for the third category of item possessed, namely, a fake weapon. *Cf. County of Dakota v. Cameron*, 839 N.W.2d 700, 709 (Minn. 2013) (applying the canon *noscitur a sociis*—Latin for "it is known by its associates"—which requires statutory phrases to be interpreted in light of neighboring statutory language). Occam's razor is a useful interpretive tool for judges.[5]

Admittedly, the Legislature's drafting technique of grabbing language from one statute and inserting it with a minor change into a different statute may have been inartful. But the majority is using the inartful drafting to impose a new element to the crime of first-degree burglary that the Legislature, by any commonsense assessment of the language and history of the statute, never intended. Subdivision 1(b) of section 609.582 makes simple possession of a dangerous weapon, an item that appears to be a dangerous weapon, or an explosive while burglarizing a building a first-degree crime. Rogers had a fake weapon

[5] Occam's razor is the principle (attributed to William of Occam) that when there are two competing theories that make exactly the same predictions, the simpler one is the better. *The American Heritage Dictionary of the English Language* 1219 (5th ed. 2011).

with him while burglarizing J.T.'s house. Consequently, I would affirm the decision of the court of appeals and the district court and uphold Rogers's first-degree burglary conviction.

MCKEIG, Justice (dissenting).

I join in the dissent of Justice Thissen.