STATE OF MINNESOTA

IN SUPREME COURT

A18-0792

Court of Appeals

McKeig, J.
Concurring, Thissen, J., Gildea, C.J., Anderson, J.

State of Minnesota,

Respondent,

vs.

Filed: March 25, 2020
Office of Appellate Courts

Savonte Maurice Townsend,

Appellant.

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

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota, for respondent.

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant Appellate Public Defender, Saint Paul, Minnesota, for appellant.

S Y L L A B U S

1. The force element of simple robbery is satisfied the moment an actor uses force for the purpose of overcoming another's resistance to the taking or carrying away of property.

2. The State presented sufficient evidence to support appellant's simple-robbery conviction.

Affirmed.

O P I N I O N

MCKEIG, Justice.

The question in this case is what force is necessary to establish the offense of simple robbery under Minn. Stat. § 609.24 (2018). Following a bench trial, appellant Savonte Townsend was convicted of simple robbery. On appeal, Townsend argues that the evidence introduced at trial was insufficient to prove that her temporary use of force overcame another person's resistance. Because the force element of simple robbery is satisfied the moment an actor uses force for the purpose of overcoming another's resistance to the taking or carrying away of property, and because Townsend's use of force is undisputed, we affirm.

FACTS

In May 2017, Townsend and another woman entered a liquor store in St. Louis Park and placed liquor bottles inside their purses.[1] When an employee asked Townsend and the other woman to pay for the bottles, they ran past the employee and into the entryway of the store. The employee attempted to stop Townsend from leaving with the unpaid merchandise by grabbing Townsend's shirt. Townsend yelled for the other woman, who had run ahead, to get mace. The employee did not see any mace, but believed that he was going to be sprayed with mace.

[1] The record does not specify the number of bottles that were taken from the store. Townsend testified that she took one bottle; the employee testified that she had at least three. The district court found that Townsend "placed multiple bottles of liquor in her purse."

The employee then pushed Townsend up against a wall in the entryway of the store using his left forearm while "tug of warring" over Townsend's purse with his right hand. Townsend said, "I'm going to bite you, I'm going to bite you," and tried to bite the employee's arm. The employee recoiled from Townsend's threat and let go of her. On her way toward the exit, Townsend slipped and fell on the floor. The employee then "re-engaged" and grabbed Townsend's purse. At some point during their struggle, the employee sprained his ankle. The employee's uniform was torn open and ripped, destroying one sleeve. The employee's necklace was also ripped off, breaking the chain. While once again "tug of warring" over the purse, Townsend and the employee left the store. Once they were both outside the store, the employee recovered the bottles of liquor from Townsend's purse and let her go. Townsend ran away.

Townsend was charged with one count of simple robbery. Following a bench trial, Townsend was convicted of simple robbery and sentenced to 51 months in prison. Townsend appealed, and the court of appeals affirmed. *State v. Townsend*, 925 N.W.2d 280 (Minn. App. 2019). We granted Townsend's petition for review.

ANALYSIS

On appeal, Townsend argues that her robbery conviction should be reversed because of insufficient evidence. When considering a sufficiency-of-the-evidence argument, we view the evidence in the light most favorable to the verdict, assuming the fact-finder believed the State's witnesses and disbelieved any evidence to the contrary. *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). We will not overturn a verdict if the fact-finder could reasonably have found the defendant guilty of the charged offense, giving due regard to the

presumption of innocence and the prosecution's burden of proving guilt beyond a reasonable doubt. *State v. Lopez*, 908 N.W.2d 334, 335 (Minn. 2018). When the meaning of a criminal statute is intertwined with the issue of whether the State proved a defendant's guilt beyond a reasonable doubt, we are presented with a question of statutory interpretation, which we review de novo. *State v. Vasko*, 889 N.W.2d 551, 556 (Minn. 2017).

I.

This case requires us to interpret the meaning of the phrase "uses . . . force against any person to overcome the person's resistance" in the simple-robbery statute, Minn. Stat. § 609.24. Specifically, we must determine whether an individual must actually overcome another person's resistance to commit the offense.

The first step in statutory interpretation is to determine whether the statute's language, on its face, is ambiguous. *State v. Thonesavanh*, 904 N.W.2d 432, 435 (Minn. 2017). A statute is ambiguous only if it is subject to more than one reasonable interpretation. *Id.* If the statutory language is plain and unambiguous, we do not engage in any further construction. *State v. Maurstad*, 733 N.W.2d 141, 148 (Minn. 2007).

If a statute does not define a word or phrase, we may look to the dictionary definitions of the words. *State v. Prigge*, 907 N.W.2d 635, 638 (Minn. 2018); *see* Minn. Stat. § 645.08(1) (2018). Because the meaning of a phrase often depends on how it is being used in the context of the statute, we examine words and phrases in context. *See State v. Henderson*, 907 N.W.2d 623, 626 (Minn. 2018). We also interpret statutes according to the rules of grammar. *Shire v. Rosemount, Inc.*, 875 N.W.2d 289, 296 (Minn. 2016).

We begin our analysis by examining the text of the simple-robbery statute, which states in relevant part:

> Whoever, having knowledge of not being entitled thereto, takes personal property from the person or in the presence of another and uses or threatens the imminent use of force against any person to overcome the person's resistance or powers of resistance to, or to compel acquiescence in, the taking or carrying away of the property is guilty of robbery . . . .

Minn. Stat. § 609.24. In this case, we are focused on only one phrase in the text of the statute: "uses . . . force against any person to overcome the person's resistance."[2] *Id.* Because the Legislature did not define this phrase in this statute, we turn to dictionary definitions. *See* Minn. Stat. § 645.08(1).

Townsend argues that the infinitive phrase "to overcome" functions as an adjective and modifies the direct object "force." Following Townsend's interpretation, the phrase "to overcome" would describe the type of force required: force that actually overcomes resistance. In contrast, the State argues that the infinitive phrase functions as an adverb and modifies the verb "uses." Because we conclude that the position presented by the State is the only reasonable interpretation, the statute is unambiguous.

"Infinitive phrases, usually constructed around *to* plus the base form of the verb (*to call*, *to drink*), can function as nouns, as adjectives, or as adverbs." Diana Hacker & Nancy Sommers, *A Writer's Reference* 319 (9th ed. 2018). "Adverbial infinitive phrases usually qualify the meaning of the verb, telling when, where, how, why, under what conditions, or to what degree an action occurred." *Id.*

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[2] Because the facts of this case do not concern the meaning of "to compel acquiescence," we do not discuss its meaning here.

Here, the infinitive phrase "to overcome" functions as an adverb that describes the purpose for using force. Considered in context, the phrase "to overcome" in the simple-robbery statute requires that an actor use force for the purpose of overcoming another person's resistance to the taking or carrying away of property. This interpretation of the simple-robbery statute aligns with the common and accepted use of the word "to" as "in order to." *See* Bryan A. Garner, *Garner's Dictionary of Legal Usage* 460 (3d ed. 2011) ("The phrase *in order to* is often wordy for the simple infinitive—e.g.: '*In order to* [read *To*] avoid . . . .' ") (brackets in original); *see also* Bryan A. Garner, *The Red Book: A Manual on Legal Style* 245 (4th ed. 2018) (recommending that authors replace "in order to" with "to").

This interpretation is also consistent with our precedent. In *State v. Kvale*, we recognized that "[t]he robbery statute speaks of using force or threats to compel acquiescence in either the taking or the carrying away of the property," and not "merely us[ing] force to escape." 302 N.W.2d 650, 652–53 (Minn. 1981). We explained that the simple-robbery statute requires "only that the use of force or threats precede or accompany either the taking or the carrying away and that the force or threats be used to overcome the victim's resistance or compel [the victim's] acquiescence in the taking or carrying away." *Id.* at 653. Here, our interpretation of the phrase "uses . . . force against any person to overcome the person's resistance . . . [in] the taking or carrying away of the property" distinguishes the use of force necessary to complete the offense of simple robbery from

other possible purposes for using force.[3] *See also State v. Brown*, 597 N.W.2d 299, 303−04 (Minn. App. 1999) (finding sufficient evidence to sustain a conviction for aggravated robbery where "the jury could reasonably conclude that [the defendant's] use of force accompanied the carrying away of the [property] *and was intended to overcome* [the store employee's] resistance to the carrying away") (emphasis added), *rev. denied* (Minn. Sept. 14, 1999).

Townsend's interpretation of "to overcome" is unreasonable because it ignores the distinctive nature of simple robbery. The *use* of force is the characteristic element that differentiates robbery from theft, not whether the *amount* of force is sufficient to deter or avert a victim's resistance.[4] *See State v. Burrell*, 506 N.W.2d 34, 37 (Minn. App. 1993) ("Mere force suffices for the simple robbery statute."), *rev. denied* (Minn. Oct. 19, 1993); *State v. Stanifer*, 382 N.W.2d 213, 220 (Minn. App. 1986) ("Simple robbery is basically a theft accomplished by means of an assaultive act.").

Townsend argues that the element of force is satisfied only if the use or threat of force successfully overcomes another's resistance. But robbery does not depend on a

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[3] In contrast, the interpretation advanced in the concurrence adds elements to the crime that do not exist in statute. It is unreasonable to conclude that the element of force is satisfied only if the perpetrator is able to "meaningfully move the property a distance after a person starts to resist," given that the statute does not require proof that the property was carried "a distance" at all. *See* Minn. Stat. § 609.24.

[4] The *amount* of force that is used or threatened distinguishes simple robbery from its aggravated counterpart. *See, e.g.*, Minn. Stat. § 609.245, subd. 1 (2018) ("Whoever, while committing a robbery . . . inflicts bodily harm upon another, is guilty of aggravated robbery in the first degree"); *id.*, subd. 2 (2018) ("Whoever, while committing a robbery, implies, by word or act, possession of a dangerous weapon, is guilty of aggravated robbery in the second degree . . . .").

layperson's understanding of "success." *See State v. Solomon*, 359 N.W.2d 19, 21 (Minn. 1984) (recognizing that a jury composed of non-lawyers may struggle with the technical meaning of an element of simple robbery). A robbery is complete the moment all of the elements have been satisfied, even if the actor is unable to escape or ultimately drops the property to run. *See id.* ("[T]he fact that the control or dominion did not last long does not make any difference."). It is therefore unreasonable to interpret the phrase "to overcome" to require proof that the actor was "successful" in the use of force.

Because the plain and ordinary meaning of the phrase "uses . . . force against any person to overcome the person's resistance" in Minn. Stat. § 609.24 supports only one reasonable interpretation, the simple-robbery statute is unambiguous. We therefore conclude that the force element of simple robbery is satisfied the moment an actor uses force for the purpose of overcoming another person's resistance to the taking or carrying away of property.

II.

With this framework in mind, we turn to the issue of whether sufficient evidence supports Townsend's simple-robbery conviction. It is the State's burden to prove every element of the charged offense. *State v. Struzyk*, 869 N.W.2d 280, 289 (Minn. 2015). The crime of simple robbery has four elements. The first element is that an individual must have "knowledge of not being entitled" to the property at the time of the offense. Minn. Stat. § 609.24. The second element is that the individual must "take[ ] personal property." *Id.* The third element requires the taking to be accomplished "from the person or in the presence of another." *Id.* The final element is that the individual must "us[e] or

threaten[] . . . force against any person to overcome the person's resistance [to] . . . the taking or carrying away of the property." *Id.*

Townsend does not dispute that the State proved the first three elements of simple robbery beyond a reasonable doubt. Indeed, at trial, Townsend testified that she took property that she knew she was not entitled to in the presence of another. The only issue on appeal is whether the State provided sufficient evidence of Townsend's use of force to sustain a conviction for simple robbery.

We review the evidence of Townsend's use of force in the light most favorable to the conviction. *See State v. Robinson*, 921 N.W.2d 755, 761 (Minn. 2019). When Townsend testified about her interaction with the employee, she stated that the employee grabbed her as she walked away with the liquor, and that she pulled away from him when a bottle was still in her possession. The employee also testified about their physical interaction. He described their struggle as "tug of warring," and stated that Townsend threatened, and attempted, to bite him. His testimony of the aftermath of their encounter—describing his sprained ankle, broken necklace, and "destroyed" shirtsleeve—depicted a forceful exchange. According to the employee, their struggle ended only once he regained possession of the bottles.

Because the testimonial evidence of Townsend's struggle with the employee permits a fact-finder to reasonably conclude that Townsend used force for the purpose of overcoming the employee's resistance to the carrying away of property, Townsend's appeal fails. *See Brown*, 597 N.W.2d at 303–04; *Burrell*, 506 N.W.2d at 36. Here, the fact-finder, acting with due regard for the presumption of innocence and the requirement

of proof beyond a reasonable doubt, could reasonably conclude that Townsend was guilty of simple robbery. Her conviction is sustained.

CONCLUSION

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

Affirmed.

C O N C U R R E N C E

THISSEN, Justice (concurring).

This case requires us to interpret Minnesota's simple-robbery statute, Minn. Stat. § 609.24 (2018). The provision is a mouthful:

> Whoever, having knowledge of not being entitled thereto, takes personal property from the person or in the presence of another and uses or threatens the imminent use of force against any person to overcome the person's resistance or powers of resistance to, or to compel acquiescence in, the taking or carrying away of the property is guilty of robbery . . . .

This case is about the requirement that the State prove that a defendant "use[d] . . . force against any person to overcome the person's resistance or powers of resistance to . . . the taking or carrying away of the property . . . ."[1] The central question posed is whether, under Minn. Stat. § 609.24, the State must prove that a defendant's use of force *actually* overcame a person's resistance or powers of resistance in the taking or carrying away of the property, or whether it is enough for the State to prove that the defendant used force for the *purpose* of overcoming a person's resistance even if the defendant did not, in fact, actually overcome the resistance.

I conclude that the Legislature intended that the State must prove that the defendant's use of force actually overcame a person's resistance or powers of resistance in the taking or carrying away of property. The rules of grammar do not definitively point to

[1] No one argued in this case that the liquor store employee who tried to stop appellant Savonte Townsend from leaving with the unpaid-for liquor ever "acquiesced" in the taking or carrying away of the bottles. Nor is this a case about threats of imminent use of force. Accordingly, I will use the simpler statement that eliminates reference to "threatens the imminent use of force" and "to compel acquiescence in," although the same analysis would apply in those circumstances as well.

a single reasonable interpretation of the language, and thus the language is ambiguous. Second, the legislative and statutory histories demonstrate that the Legislature intended that a perpetrator's use of force actually must overcome a person's resistance to a taking or carrying away.

I.

The statute does not unambiguously answer the question of whether a defendant's use of force actually overcame a person's resistance or powers of resistance in the taking or carrying away of property, or whether it is enough for the State to prove that the defendant used force for the purpose of overcoming a person's resistance, even if the defendant did not, in fact, actually overcome the resistance. As the State aptly observes in its brief:

> It is questionable . . . whether the statutory words and phrases are, in fact, unambiguous if one is required to resort to grammatically diagraming the statutory language. Determining the common and ordinary meaning of the words in a statute should not require a master's degree in English or Linguistics.

The court nonetheless adopts as the only reasonable reading of the statute the State's interpretation—that it is enough for the State to prove that the defendant used force for the *purpose* of overcoming a person's resistance, even if the defendant did not, in fact, actually overcome the resistance. As stated by the court, one grammatical parsing of the words "uses . . . force against any person to overcome the person's resistance. . . [in] the taking or carrying away of the property" is that the infinitive phrase "to overcome" functions as an adverb modifying the verb "uses." Infinitive phrases may serve as adverbs depending on the context. Under this interpretation (and the technical grammatical link is not entirely

clear to me), the adverbial phrase "to overcome" describes the purpose of using force. The court also points out that, in statutes, the word "to" is sometimes a short-form version of "in order to." Ultimately, this technical parsing of the simple-robbery statute is sufficiently reasonable to me, but it is not definitive. By holding that the State's interpretation is the *only* reasonable interpretation, the court imposes its preference rather than truly ascertaining the Legislature's intent.

Appellant Savonte Townsend asserts that the opposite interpretation is better. She argues that the infinitive phrase "to overcome" actually operates as an adjective modifying the word "force." In addition to functioning as an adverb, infinitive phrases may also serve as adjectives (and nouns too), depending on the context. In this reading, the words "to overcome" describe the category of force that is required under the statute: force that overcomes resistance. Stated another way, the force that is used must actually overcome resistance to the taking or carrying away of the property. This to me is also a reasonable and grammatically supportable position.

Two reasonable interpretations means that the statute is ambiguous and we may resort to other statutory interpretation tools to ascertain what the Legislature meant when it enacted the law. *Vill. Lofts at St. Anthony Falls Ass'n v. Hous. Partners III-Lofts, LLC*, 937 N.W.2d 430, 435–36 (Minn. 2020).

One place we can look for clues about legislative intent is former law on the subject. Minn. Stat. § 645.16(5) (2018). That rule seems particularly apt here. The current statutory language was enacted as part of the 1963 overhaul of Minnesota's criminal code. Act of May 17, 1963, ch. 753, art. I, 1963 Minn. Laws 1185, 1202–03 (codified at Minn. Stat.

§ 609.24). The advisory committee comment for the 1963 revision noted that "[t]he recommended sections [on robbery] are taken substantially from the present Minnesota sections on the subject. These include [Minnesota's existing robbery statute, Minn. Stat.] § 619.41 . . . ." 40A Minn. Stat. Ann. 107, advisory comm. cmt. (West 2018).

Prior to 1963, section 619.41 defined "robbery" as follows:

> Robbery is the unlawful taking of personal property from the person of another or in his presence, against his will, by means of force or violence, or fear of injury, immediate or future, to his person or property, or the person or property of a relative or member of his family, or of any one in his company at the time of the robbery. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force used is immaterial. If used merely as a means of escape, it does not constitute robbery.

Minn. Stat. § 619.41 (1961). A comparison of the two statutes supports the conclusion that the Legislature did not intend to broadly change Minnesota law—and where a change was intended, the advisory committee was explicit in highlighting that intent.

1961 Version	1963 Version
"unlawful taking of personal property . . . against his will"	"knowing he is not entitled thereto, takes personal property"[2]

[2] The advisory committee changed the statutory language from "unlawful" to "knowing he is not entitled thereto" to reflect the then-current Minnesota law on mens rea in the robbery statute. The advisory committee noted that the 1961 statute was silent on "intent," and the "word 'unlawfully' does not cover the point." 40A Minn. Stat. Ann. 107, advisory comm. cmt. (West. 2018). It further noted that *State v. Bruno*, 169 N.W. 249 (Minn. 1918), held that intent was not an element of robbery. 40A Minn. Stat. Ann. 107, advisory comm. cmt. (West. 2018). The committee also concluded that a belief by the defendant that he was taking his own property should be a defense. *Id.* This language captured the current state of the law at enactment.

"from the person of another or in his presence"	"from the person or in the presence of another"
"by means of force or violence" [or] "by means of . . . fear of injury, immediate or future"	"uses . . . force" [or] "threatens the imminent use of force"[3]
"to his person or property, or the person or property of a relative or member of his family, or of any one in his company at the time of the robbery"	"against any person"[4]
"Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking"	"to overcome his resistance or powers of resistance to . . . the taking or carrying away of the property" [or] "to compel acquiescence in[] the taking or carrying away of the property"
"If used merely as a means of escape, it does not constitute robbery."	No counterpart[5]

[3] The advisory committee explicitly decided to change Minnesota law to eliminate the fear of future injury from the robbery statute, noting that criminal coercion is a newly separate crime in the criminal code overhaul. *See* 40A Minn. Stat. Ann. 108, advisory comm. cmt. (West. 2018).

[4] The advisory committee observed:

> The reference in the present Minnesota statutes to relatives and members of the family has not been used. It is unnecessary with the restriction of the threats to present use of force. Under these circumstances it may be any person even under present statutes.
>
> Force against property is not included as this is again an instance of coercion and is covered by the recommended coercion section . . . .

40A Minn. Stat. Ann. 108, advisory comm. cmt. (West 2018).

[5] The advisory committee explained that the sentence was "considered unnecessary." 40A Minn. Stat. Ann. 108, advisory comm. cmt. (West 2018). In *State v. Kvale*, we interpreted the deletion and the comment:

Narrowing the focus to the language relevant to resolution of this case, the pre-1963 statute provides that the taking must be "*by means of* force or violence" where the force is "used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking." Minn. Stat. § 619.41 (1961) (emphasis added). The words "by means of" and "use" mean the same thing. *Merriam-Webster's Collegiate Dictionary* 1301 (10th ed. 1996) (defining "use" as "to carry out a purpose or action by means of"). Significantly, the 1961 statute directs that the force "must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking." In other words, the 1961 statutory language limits the category of force (like an adjective) to force used to obtain or retain possession of the property or to prevent or overcome resistance to the taking. More pointedly, the 1961 statute means that force must actually overcome resistance.

Nothing in either the 1963 statutory language or the comments of the advisory committee shows the Legislature's intent to change Minnesota law on that point. As noted,

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> Prior to 1963, the statute defining robbery had stated that one of the elements of robbery was use of force or fear to obtain or retain possession of property. The statute went on to say that if the force was used "merely as a means of escape," that would not constitute robbery. What the Advisory Committee Comment meant was that it was not necessary to reiterate that the use of force in escaping only was insufficient to constitute robbery because it is clear from the statute that one must do more than merely use force to escape with stolen property to commit robbery.

302 N.W.2d 650, 652–53 (Minn. 1981). Stated another way, there is no robbery unless the force is used to accomplish the taking or the carrying away. Later use of force during an escape, but after the taking and carrying away had been accomplished without force, does not convert a theft into robbery. That was true both before and after the statutory language was changed; the advisory committee simply considered the escape provision superfluous.

the advisory committee comments state that the revised statute is "taken substantially" from the pre-1963 statute and the advisory committee made it plain when it intended to change the law. As noted above, the current language—"uses . . . force . . . to overcome the person's resistance or powers of resistance to . . . the taking or carrying away of the property"—reasonably supports the interpretation that the use of force must actually overcome resistance. And the examples provided in the advisory committee comments on the phrase "uses or threatens the imminent use of force against any person to overcome his resistance or powers of resistance" are situations where the resistance is actually overcome:

> This encompasses two types of cases. (1) Where force is used. The defendant knocks the victim unconscious and then takes his wallet. His "powers of resistance" were thereby overcome. The defendant pushes the victim against a wall and takes his wallet. In this instance the force was used to overcome the resistance in fact raised. (2) Where threats are used. The defendant points a gun at victim and either demands his wallet or takes it from him. Here not force but a threat is used to compel acquiescence. The second category is a form of extortion.

40A Minn. Stat. Ann. 108, advisory comm. cmt. (West 2018). This history leads me to conclude that, in enacting section 609.24, the Legislature intended that, to prove simple robbery, the State must prove that the defendant's use of force actually overcame resistance to the taking or carrying away of the property.[6]

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[6] Our case law supports this conclusion—particularly *State v. Kvale*, 302 N.W.2d 650, 652–53 (Minn. 1981). In *Kvale*, the defendant used a threat of force to take the money from the victim. *Id.* at 651. After the taking was completed, the defendant insisted that the victim also say, "I didn't hurt your car." *Id.* When the victim refused, the defendant cut the victim's throat. *Id*. There was really no question that the defendant's threat of force to take the money was enough to prove simple robbery. But the State charged the defendant not with simply robbery but with aggravated robbery, which requires infliction of bodily harm on the victim. *Id.* The defendant argued that, to transform simple robbery into

II.

Having concluded that section 609.24 requires the State to prove that the defendant's use of force (or threat of force) actually overcame resistance to the taking or carrying away of the property, I turn to the facts of this case.

In Minnesota, a taking—defined as momentary "control or dominion" over property—by force is sufficient to establish simple robbery. *State v. Solomon*, 359 N.W.2d 19, 21 (Minn. 1984). No proof of "carrying away" the property is required to convict as long as a taking by force or threat of force is shown.[7] *Id*.

In this case, however, Townsend did not "take" the bottles by force. Taking the bottles without use of force is not robbery—it is theft. To transform such a taking without

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aggravated robbery, the infliction of the bodily harm had to occur before or simultaneously with the taking. *Id.* at 652.

We rejected that argument. In so doing, we explained that the statute "requires only that the use of force or threats precede or accompany either the taking or the carrying away and that the force or threats *be used to overcome* the victim's resistance or compel his acquiescence in the taking or carrying away." *Id*. at 653 (emphasis added). In other words, we read the statute to require that the force actually overcome the resistance or compel acquiescence. We concluded that "the threats of force preceded the taking and the use of force in the infliction of bodily harm overcame the victim's power to resist and compelled his acquiescence both in the completed taking and in the contemporaneous carrying away of the money." *Id*.

[7] Historically, the State would bear the burden of proving both the "taking" and the "carrying away." *See State v. Thonesavanh*, 904 N.W.2d 432, 439 (Minn. 2017) (noting that the common law elements of robbery—"caption" or taking and "asportation" or carrying away—were both required to prove theft crimes); *State v. Madden*, 163 N.W. 507, 508 (Minn. 1917). It is also clear that Minnesota law considers "taking" and "carrying away" to be separate acts. *Thonesavanh*, 904 N.W.2d at 439.

The court claims that I am adding a new element of "carrying away" to the robbery statute. That is not correct. My point is that if the defendant did not use force to *take* the property, then the State must prove that the *carrying away* was accomplished through force. That is what the statute says.

use of force into robbery, the State must prove that Townsend "carried away" the bottles and used force to do so—force that actually overcame resistance to the carrying away of the property.

We have stated that carrying away requires something "different and additional to a 'taking': the movement of the property." *State v. Thonesavanh*, 904 N.W.2d 432, 439 (Minn. 2017) (citing *State v. Madden*, 163 N.W. 507, 508 (Minn. 1917)). But carrying away does not require that the perpetrator retain possession of the property after the carrying away or movement of the property.

Madden is illustrative here. In *Madden*, the defendant participated in a car theft. 163 N.W. at 508. The defendant and his partner started the car and drove it 150 feet before crashing and abandoning the car. *Id.* We upheld his conviction on both the taking and the carrying away:

> The control or dominion over the automobile did not last long, but we do not see why it was not complete and absolute for a time. We have considered the authorities referred to by counsel. We think the case is within the rule stated in 2 Wharton's Criminal Law (11th Ed.) § 1161:
>
> > "To take a thing from a person it is necessary that the taker should at some particular moment have adverse possession of the thing. But this independent, absolute control need endure only for an instant."
>
> The point that there was no "carrying away" or asportation of the car is based on the idea that defendant and his companion were unable to get farther than they did because of the locked gas feed . . . . The car ran a distance of at least 150 feet before it mounted the curb . . . . But clearly the car was moved a sufficient distance to constitute larceny.

Id. Stated another way, we concluded that the State proved carrying away based on the defendant's 150-foot ride, even though the defendant abandoned the car at that point.

Based on that understanding, I conclude that a perpetrator overcomes a person's resistance to the carrying away for purposes of section 609.24 if she is able to meaningfully move the property a distance after a person starts to resist the carrying away or movement of the property. The fact that the perpetrator does not ultimately retain possession of the property is not pertinent to the analysis.

Applying that principle, Townsend did overcome the employee's resistance to her carrying away the bottles. Had Townsend taken the bottles without using force and then left the bottles when confronted by the employee's demand that she do so, Townsend's conduct would not be robbery. But Townsend was able to move the bottles a distance *after* the employee started to resist or stop such movement. In other words, she overcame the employee's resistance by moving the bottles toward the exit despite the employee's resistance. Accordingly, sufficient evidence supports Townsend's robbery conviction.

GILDEA, Chief Justice (concurring).

I join in the concurrence of Justice Thissen.

ANDERSON, Justice (concurring).

I join in the concurrence of Justice Thissen.