ELECTRONICALLY FILED NOV 02, 2025 CLERK OF SUPREME COURT

IN THE SUPREME COURT OF IOWA

Supreme Court No. 25-0555

Linn County No. FECR151994

STATE OF IOWA, Plaintiff-Appellee,

vs.

WALTER LEON CONKRIGHT,

Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT

OF LINN COUNTY

Hon. Ian K. Thornhill, JUDGE

APPELLANT'S BRIEF AND ARGUMENT

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CERTIFICATE OF SERVICE

On the 2nd day of November, 2025, the Defendant/Appellant served the within Brief on all parties to this appeal by electronically filing the Brief to the Court and mailing one copy thereof to the Defendant at his last known address.

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Routing Statement:

This case should be transferred to the Court of Appeals because the issues raised involve applying existing legal principles. Iowa R. App. P. 6.903(2)(d) and 6.1101(3)(a).

STATEMENT OF THE ISSUE:

Does Iowa Code Section 710.10(2) prohibit conduct involving individuals who are neither minors under the age of sixteen nor law enforcement officers or agents posing as minors under the age of sixteen.

STATEMENT OF THE CASE

Nature of the Case:

Defendant-Appellant, Walter Leon Conkright ("Conkright"), appeals from his conviction following his plea of guilty to Enticing a Minor Under 16–Sexual Purpose, in violation of Iowa Code Section 710.10(2). The charge and plea followed from Conkright's virtual conversation with private citizens posing as a minor under the age of sixteen who subsequently reported him to law enforcement. Conkright asserts that the language of Iowa Code Section 710.10(2) does not prohibit such conduct between adults who are not law enforcement officers or agents.

Course of Proceedings/Disposition of Case:

On December 6, 2023, Conkright was charged by Trial Information with one count of Enticing a Minor 16–Sexual Purpose in violation of Iowa Code Section 710.10(2), a Class D Felony. D0014, Trial Information at 1 (12/6/2023). On June 6, 2924, Conkright filed a Motion for Adjudication of Law Points requesting the Court to determine "whether a defendant can be convicted under Iowa Code § 710.10

where a private citizen, who is not an agent of the State nor law enforcement, pretends to be a minor and no actual minor is involved." D0023, Motion for Adjudication of Law Points at 4. On July 8, 2024, the Court held that the language of Section 710.10 did not limit the scope of that section to only actual minors and law enforcement officers or their agents. D0031, Order at 1. On January 9, 2025, Conkright filed a written conditional plea of guilty to the charged offense, which the State joined. D0038, Waiver of Rights and Plea of Guilty. The plea of guilty was conditioned on an appeal of the Court's ruling on his Motion of Adjudication of Law Points decided on July 8, 2024. D0038 at 5. The Court accepted Conkright's plea and scheduled the matter for sentencing. Plea; D0039 Order to Accept Plea. On March 4, 2025, the Court sentenced Conkright to a five–year suspended prison sentence, with a four-year term of supervised probation. D0046, Order of Disposition.

Facts

The Minutes of Testimony establish the following facts: A private organization called Bikers Against Predators exists to conduct "sting" operations against people it determines are "online predators." D0013, Minutes of Testimony at 1. This organization is operated by adults who use online dating applications to communicate with other adults. D0013 at 1. Members of this organization constructed a fictitious profile on a dating application pretending to be a thirteen-

year-old girl named Emma. D0013 at 1. On October 25, 2023, using this fake profile on the dating application, the adult members of Bikers Against Predators engaged in a conversation with Conkright of a sexual nature. D0013 at 1. During the course of this conversation, Conkright arranged for "Emma" to come to his hotel room for sex. D0013 at 1. "Emma" eventually revealed to Conkright that she was thirteen years old, but Conkright indicated that "Emma" should come to his hotel room anyway. D0013 at 1. Adult member of Bikers Against Predators arrived at Conkright's hotel room that evening and confronted him. D0013 at 1. Eventually, the adult members of Bikers Against Predators contacted the Cedar Rapids Police Department and reported Conkright's behavior. D0013 at 1.

ARGUMENT:

A defendant cannot be convicted under Iowa Code Section 710.10 where the conduct involves the defendant's interaction with adult private citizens who are neither minors nor law enforcement officers or their agents.

Preservation of Error:

This appeal is limited to the specific ruling reserved in the conditional plea agreement joined by the State and accepted by the Court. See *State v. McClain*, 20 N.W.3d 488, 495 (Iowa 2025). Conkright preserved error by properly filing a conditional plea under Iowa Rule of Criminal Procedure 2.8(2)(b)(9).

Statement of Jurisdiction

The Iowa appellate courts must be conferred jurisdiction to hear an appeal either constitutionally or statutorily. *State v. Propps*, 897 N.W.2d 91, 96 (Iowa 2017). The right to appeal is statutory. *State v. Loye*, 670 N.W.2d 141, 147 (Iowa 2003). In criminal cases, Iowa Code section 814.6 contains the standards for subject-matter jurisdiction for the review of a criminal defendant's appeal. Iowa Code § 814.6(1) (2023).

Iowa Code Section 814.6(3) allows for discretionary appeal in the event of a conditional plea "with the consent of the prosecuting attorney and the defendant." Iowa Code § 814.6(3). The Court has jurisdiction over conditional guilty pleas only when they comply with Section 814.6(3) and "when the appellate adjudication of the reserved issue is in the interest of justice." *Id.*

Here, Conkright pleaded guilty according to an agreement with the State that expressly allowed him to challenge the district court's ruling on the motion for adjudication of law points and the district court accepted Conkright's plea on those terms. The issue reserved by the conditional plea is the issue now on appeal and a favorable ruling on appeal would grant Conkright some relief. *See State v. Scullark*, 23 N.W.3d 49, 53 (Iowa 2025). Thus, the plea in this matter complies with Section 814.6(3), appellate adjudication is in the interest of justice, and the Court therefore has jurisdiction over this appeal. *Id.*

Standard of Review:

The standard of review for questions of statutory interpretation is for corrections of errors at law. *State v. Coleman*, 907 N.W.2d 124, 134 (Iowa 2018).

Merits:

Iowa Code Section 710.10 provides:

1. A person commits a class "C" felony when, without authority and with the intent to commit sexual abuse or sexual exploitation upon a minor under the age of thirteen, the person entices or attempts to entice a person reasonably believed to be under the age of thirteen including a law enforcement officer or agent posing as a minor under the age of thirteen.
2. A person commits a class "D" felony when, without authority and with the intent to commit an illegal sex act upon or sexual exploitation of a minor under the age of sixteen, the person entices or attempts to entice a person reasonably believed to be under the age of sixteen including a law enforcement officer or agent posing as a minor under the age of sixteen.
3. A person commits a class "D" felony when, without authority and with the intent to commit an illegal act upon a minor under the age of sixteen, the person entices a person reasonably believed to be under the age of sixteen including a law enforcement officer or agent posing as a minor under the age of sixteen.
4. A person commits an aggravated misdemeanor when, without authority and with the intent to commit an illegal act upon a minor under the age of sixteen, the person attempts to entice a person reasonably believed to be under the age of sixteen including a law enforcement officer or agent posing as a minor under the age of sixteen. A person convicted under this subsection shall not be subject to the registration requirements under chapter 692A unless

> the finder of fact determines that the illegal act was sexually motivated.

Iowa Code §§ 710.10(1)–(4).

Section 710 thus prohibits a person from enticing or attempting to entice "a person reasonably believed to be under the age of sixteen including a law enforcement officer or agent posing as a minor under" a given age. The sole question before the Court here is whether this language precludes conviction under Section 710.10 where the purported victim is neither an actual minor nor a law enforcement officer posing as a minor. Both the canons of statutory interpretation and the legislative intent behind this code section require a narrow interpretation of Section 710.10.

The Plain Language of Section 710.10 Requires a Purported Victim to be Either a Minor in Fact or a Law Enforcement Officer or Agent.

When interpreting a statute, the Court first looks to the plain language of the statute, considered in the context of the statute as a whole, to determine whether ambiguity exists. *State v. Nall*, 894 N.W.2d 514, 518 (Iowa 2017)). When the language at issue "is ambiguous, [the Court] must employ additional tools of statutory interpretation to ascertain statutory meaning." *State v. Richardson*, 890 N.W.2d 609, 616 (Iowa 2017). Further, concern for due process requires that "ambiguous statutes imposing criminal liability be strictly construed in favor of the defendant." *State v. Hearn*, 797 N.W.2d 577, 585 (Iowa 2011).

Here, the language of Section 710.10 identifying the scope of potential victims is ambiguous. On the one hand, the phrase "a person reasonably believed to be under the age of sixteen" is quite capacious and could include many people who are not minors. On the other hand, the phrase "including a law enforcement officer or agent posing as a minor . . ." modifies the preceding phrase in a way that is not entirely clear. Standing alone, the phrase "a person reasonably believed to be under the age of sixteen" could include law enforcement officers posing as minors as well as private citizens who are not minors. Unless it is presumed that first portion of the sentence does not include law enforcement officers, the modifying language "including a law enforcement officer or agent posing as a minor . . ." seems to serve no real purpose in defining the parameters of the prohibition. Thus, the plain language of the statute describing the categories of possible victims is ambiguous and the Court must interpret its meaning based on context and canons of interpretation.

It is presumed that all words in a statute have meaning and the Court endeavors to avoid interpretations that render portions of the statute excess or meaningless. See *Vroegh v. Iowa Dep't of Corr.*, 972 N.W.2d 686, 703 (Iowa 2022). "Canons of statutory interpretation require that every word and every provision in a statute is to be given effect, if possible, and *not* deemed mere surplusage." *Id.*

(emphasis in original). The Court will "presume the legislature included all parts of the statute for a purpose, so [it] will avoid reading the statute in a way that would make any portion of it redundant or irrelevant." *Rojas v. Pine Ridge Farms*, LLC 779 N.W.2d 223, 231 (Iowa 2010). "[T]he legislature will be presumed to have inserted every part in a statute for a purpose and to have intended that every part shall be carried into effect." *State v. Jennie Coulter Day Nursery*, 218 N.W.2d 579, 582 (Iowa 1974).

The initial category of victim described by Section 710.10—"a person reasonably believed to be under the age of sixteen"—must therefore be read in the context of the phrase which follows. The phrase "including law enforcement officers" implies that the preceding phrase necessarily excludes law enforcement officers. In this light, the phrase "a person reasonably believed to be under" a certain age is far less expansive than it seems. This phrase should be interpreted not as referring to *any* person—including adults pretending to be under a certain age, which would clearly include law enforcement officers and agents, obviating the need for the second portion of the sentence—but should instead be read more narrowly to mean a *minor* person reasonably believed to be under the age specified in each subsection. This interpretation is consistent with judicial interpretation of similar statutes purporting to criminalize offenses against children where no children are actually involved. See *Ashcroft v. The Free Speech Coalition* 535 U.S. 234, 254

(2002) (holding unconstitutional a ban on virtual child pornography "that records no crime and creates no victims."); see also *State v. Staup*, No. 2005 WL 579005 (Ohio Ct. App. March 14, 2005) (overturning conviction of defendant who pleaded guilty to possession of material that all parties erroneously thought was child pornography), *Moore v. State*, 882 A.2d 256, 261–262 (Md. Ct. App. 2005), *State v. Majeed*, 474 P.3d. 1085, 1089–1090 (Wash. Ct. App. 2020) (holding that fictitious or invented minor could not satisfy element of offense requiring communication minor). Put another way, if the statute was intended to prohibit contact with *anyone* pretending to be a minor, the legislature is capable of making that intent clear and there would be absolutely no reason to specifically identify law enforcement as being able to mimic being a minor.

This conclusion finds further support in the principle of *expresio unius est exclusion alterius*, or the notion that the expression of one thing excludes the other. Legislative intent may be "expressed by omission as well as by inclusion, and the express mention of one thing implies the exclusion of others not so mentioned." *Kucera v. Baldazo*, 745 N.W.2d 481, 487 (Iowa 2008). Here, the language of Section 710.10 prohibiting contact with a person reasonably believed to be under a certain age is modified to specifically include both law enforcement officers and their agents. The inclusion of the finite, discernable categories necessarily excludes other categories not so included. Applying the principle of *expresio unius est*

exclusion alterius to the language of Section 710.10, the clear purpose of the legislature was to ensure that actual minors remained protected by the statute and to allow law enforcement officers and agents working on their behalf to investigate and offenses under the statute. If the legislature intended to enable *any* adult to deputize themselves and conduct vigilante investigations under Section 710.10, it would not have limited the modifying language of the statute to such a specific category of people—law enforcement officers and their agents only. *Ramirez-Trujillo v. Quality Egg, LLC*, 878 N.W.2d 759, 770 (Iowa 2016) ("[W]e look to the language chosen by the legislature and not what the legislature might have said.").

Based on the cited rules of statutory construction, the Court should find that the language of Section 710.10 does not permit enforcement of that section when the purported victim is neither and actual minor nor a law enforcement officer or agent posing as a minor.

The History of Section 710.10 Demonstrates the Legislative Intent to Broaden Section 710.10 to Include Only Law Enforcement Officer and Agents.

The interpretation of Section 710.10 described above is further supported by its legislative history. A statute's legislative history may be used to determine the meaning of ambiguous statutes. *State v. Gross*, 935 N.W.2d 695, 703 (Iowa 2019) (citing Iowa Code § 4.6(3)). "Legislative history that shows a bill's changes over the course of its enactment can be especially revealing." *Est. of Butterfield by Butterfield v. Chautauqua Guest Home, Inc.,* 987 N.W.2d 834, 840 (Iowa 2023).

The history of Section 710.10 is particularly instructive here. Prior to 2023, the statute read as follows:

> A person commits a class "D" felony when, without authority and with the intent to commit an illegal sex act upon or sexual exploitation of a minor under the age of sixteen, the person entices or attempts to entice a person reasonably believed to be under the age of sixteen.

Iowa Code § 710.10(2) (2022).

During the 2023 Legislative Session the Iowa Legislature amended the statute. Effective July 1, 2023 the statute states as follows:

> A person commits a class "D" felony when, without authority and with the intent to commit an illegal sex act upon or sexual exploitation of a minor under the age of sixteen, the person entices or attempts to entice a person reasonably believed to be under the age of sixteen **including a law enforcement officer or agent posing as a minor under the age of sixteen.**

Iowa Code § 710.10(2) (2023) (emphasis added to additional language).

The sponsor of the amendment, then-Representative Matthew Rinker, when introducing the amendment for a vote in the Iowa House, described the purpose of the change.

> Thank you, Mr. Speaker. Simply put, this amendment just ensures that law enforcement officials have a course or an avenue that they can take when they're communicating online with somebody who thinks that they're communicating with an underage child, whether sending messages or graphic material that they have the ability then to follow through with the enforcement of the law

Statement of Representative Matthew Rinker, Iowa 90th G.A. Legislative Debate on H1178 (April 4, 2023)[1]

After introducing his amendment in this manner, the legislature engaged in no further debate and the amendment was passed. See *id.* Neither the author of the amendment itself nor the other members of the legislature who passed the amendment adding the language "including law enforcement officer or agent posing as a minor" argued for or discussed the possibility that the statute would include adult private citizens.

This history sheds much needed light on the effort to interpret the meaning of Section 710.10. As discussed above, if the legislature intended this statute to include *all* adults posing as minors, it very easily could have made such an amendment. Instead, the legislature chose the words "law enforcement officer or agent" carefully and deliberately with the intent of expanding the ambit of the statute only these categories of people to ensure that the statute could be enforcement by peace officers, not by vigilante citizens. The amendment was intended to ensure that law enforcement officers or agents alone were able to pose as minors. To reach any other conclusion here would require reading intent into the statute that is contained in neither its plain language nor its legislative history.

[1] Accessible at https://www.dropbox.com/scl/fi/0tb3lhvna0j7vjpmi5qzy/House-Floor-Explanation-Conkrigh.wmv?rlkey=3av7b9zfigjcsxquclrv4fojh&e=1&st=b3w87ih3&dl=0.

In determining the meaning of statutes, the "'primary goal is to give effect to the intent of the legislature.'" *State v. Anderson,* 782 N.W.2d 155, 158 (Iowa 2010) (quoting *In re Detention of Betsworth,* 711 N.W.2d 280, 283 (Iowa 2006)). Here, the legislature's intent is clear. Section 710.10 is intended to criminalize two categories of behavior: (1) certain conduct with minor children who fall into various categories of offense depending on how old a person could reasonably believe them to be, and (2) similar conduct with law enforcement officers and their agents who are posing as minors of various age ranges.

CONCLUSION

For reasons stated above, Conkright respectfully requests this court to vacate his sentence and overturn his conviction.

STATEMENT OF DESIRE TO BE HEARD IN ORAL ARGUMENT

Defendant-Appellant desires to be heard in oral argument upon submission of this appeal, pursuant to Rule 6.21(1), Iowa R. App. P.

Certificate of Compliance

This brief complies with Iowa R. App. P. 6.903(1)(g)(1) because:

This brief has been prepared in a proportionally spaced typeface using Times New Roman in 14 point font and contains 2,999 words, excluding the parts of the brief exempted by Iowa R. APP. 6.903(1)(i)(1).

_____

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