

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1921**

State of Minnesota,
Appellant,

vs.

Kevin Russel Serbus,
Respondent.

**Filed July 13, 2020
Reversed and remanded
Florey, Judge**

Renville County District Court
File No. 65-CR-19-208

Keith Ellison, Attorney General, St. Paul, Minnesota; and

David Torgelson, Renville County Attorney, Olivia, Minnesota; and

Scott A. Hersey, Special Assistant County Attorney, St. Paul, Minnesota (for appellant)

Drake D. Metzger, Metzger Law Firm, L.L.C., Minneapolis, Minnesota (for respondent)

Considered and decided by Reilly, Presiding Judge; Tracy M. Smith, Judge; and
Florey, Judge.

S Y L L A B U S

A motor vehicle traveling on a public highway is in a public place for the purposes
of the crime of carrying a pistol in a public place while under the influence of alcohol.

OPINION

FLOREY, Judge

The state seeks review of the district court's pretrial order dismissing for lack of probable cause a charge against the defendant of carrying a pistol while under the influence of alcohol. The district court concluded that an uncontested fact—that the pistol was located in the center console of the personal vehicle the defendant was operating on a public highway at the time of the stop—precluded satisfaction of the statutory requirement that the defendant was carrying the pistol in a public place. We reverse and remand.

FACTS

In July 2019, a police officer stopped a vehicle on a public highway after watching it swerve in and out of its driving lane. The driver identified himself to the officer as Kevin Serbus—the respondent herein. The officer suspected that Serbus was intoxicated and, after Serbus admitted to consuming alcohol that night, conducted several field sobriety tests. After the field sobriety tests and having failed a preliminary breath test, the officer arrested Serbus for driving under the influence of alcohol and placed him in the back of the squad car.

Serbus asked the officer to retrieve his phone, wallet, and keys from his vehicle. The officer retrieved the wallet and keys, but informed Serbus that he was unable to find the phone. Serbus described his phone as being in the center console, next to his gun. The officer returned to Serbus's vehicle and found the phone and a handgun. It is undisputed that Serbus held a permit to carry a pistol. The officer secured the handgun before returning to the squad car and transporting Serbus to the county jail.

The state charged Serbus, in relevant part, with carrying a pistol while under the influence of alcohol in violation of Minn. Stat. § 624.7142, subd. 1 (2018), which prohibits “carry[ing] a pistol on or about the person’s clothes or person in a public place” while under the influence of alcohol and/or other controlled substances.¹ Serbus moved to dismiss the charge for lack of probable cause. The district court granted the motion, concluding that the center console of Serbus’s vehicle,² which he was operating on a public highway at the time of the stop, was not a “public place” as contemplated by section 624.7142, subdivision 1. The state seeks review of that order.

ISSUE

Does one carry a pistol “in a public place” by having a pistol in the center console of the personal vehicle the person is operating on a public highway?

ANALYSIS

Because the district court dismissed the charge on the basis that a statutory element could not be met by an uncontested factual allegation, the issue presented on appeal is one of statutory interpretation—a legal question subject to de novo review. *Larson v. State*, 790 N.W.2d 700, 703 (Minn. 2010). The aim of any statutory interpretation is to ascertain, for the purpose of effectuating, the intent of the legislature. *State v. Zeimet*, 696 N.W.2d

¹ Serbus does not contest that the pistol located in the center console of his vehicle at the time of the stop was “on or about [his] clothes or person.” Minn. Stat. § 624.7142, subd.1; see *State v. Prigge*, 907 N.W.2d 635, 640 (Minn. 2018) (“[A] pistol is carried ‘on or about’ one’s person or clothing if there is either a physical nexus between the person and the pistol or if the pistol is carried within arm’s reach of the person.”).

² Neither the parties nor the district court raised or considered issues relating to the Fourth Amendment expectation of privacy, so we do not purport to address any such issues here.

791, 793 (Minn. 2005). “The first step in statutory interpretation is to determine whether the statute’s language, on its face, is ambiguous.” *Larson*, 790 N.W.2d at 703 (quotation omitted). Statutory language is ambiguous if it is susceptible to more than one reasonable interpretation. *Id.* “If 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.” *State v. Peck*, 773 N.W.2d 768, 772 (Minn. 2009) (quotation omitted). However, if statutory language is ambiguous, we may “look to other interpretative tools to assist our inquiry into legislative intent.” *Rodriguez v. State Farm Mut. Auto. Ins. Co.*, 931 N.W.2d 632, 634 (Minn. 2019).

We note from the outset that this question—whether the language in section 624.7142, subdivision 1, is ambiguous—has already been before this court. In *State v. Gradishar*, we decided that one carries a pistol in a “public place” when he carries it on his person in his personal place of business; specifically, a bar that he owns and operates. 765 N.W.2d 901, 902 (Minn. App. 2009). We concluded that the term “public place” was susceptible to more than one reasonable definition and that, because the statute does not define that term, it was ambiguous. *Id.* at 903. Having so concluded, we adopted the following definition: “generally an indoor or outdoor area, whether privately or publicly owned, to which the public have access by right or by invitation, expressed or implied, whether by payment of money or not.” *Id.* Here, the district court dismissed the charge by applying this definition and finding that Serbus did not, expressly or impliedly, hold his vehicle open to the public. Our issue, then, narrows to whether the *Gradishar* definition is itself ambiguous as applied in this case. *See Peck*, 773 N.W.2d at 772.

Rather than disputing whether the interior of Serbus’s vehicle is a public place, the state contends that the focus of the analysis should not be the vehicle itself, but the public highway on which Serbus was driving. Because the proper subject of analysis is reasonably debatable from the statutory text alone and because *Gradishar* provides only the definition to be applied—rather than the proper subject of the analysis of that definition’s applicability—we conclude that the term “public place,” as applied here, is ambiguous. Therefore, we must further interpret the statutory language and may turn to interpretive tools to do so. *See Rodriguez*, 931 N.W.2d at 634.

Employing the same interpretive tools used in *Gradishar*, we hold that the proper subject of analysis is the public highway on which Serbus drove his vehicle. We arrive at this conclusion in part by considering “the mischief to be remedied” by the statute. Minn. Stat. § 645.16(3) (2018). We identified the mischief in *Gradishar* as “the possession of weapons by those who are intoxicated,” and narrowed it further by distinguishing Minn. Stat. § 624.714 (2018), which prohibits possession of a pistol in a “public place” without a permit but excludes from the definition of “public place” one’s home and business. 765 N.W.2d at 904. From its exclusion of one’s home and business, we concluded that the definition to which section 624.714 referred was intended to allow people to protect their homes and businesses; and by not referring to that definition in section 624.7142, subdivision 1, the legislature intended to protect the *public* from the dangers inherent in firearm possession while impaired. *Id.* Because those dangers to the public are present regardless of whether the impaired and armed individual is in a vehicle or on foot,

remedying the targeted mischief would not be served by an interpretation that excludes the former.

This result is further supported by a consideration of “the object to be obtained” by the law, which led us in *Gradishar* to conclude that “[w]ith public safety as the ultimate goal, it is evident that the legislature would attempt to minimize the locations where a permit holder may carry a firearm while intoxicated.” *Id.* (citing Minn. Stat. § 645.16(4) (2018)).

Finally, we consider “the consequences of a particular interpretation.” Minn. Stat. § 645.16(6) (2018). In so doing, we “give a reasonable and sensible construction to the statute, presuming that the legislature did not intend an absurd result.” *Gradishar*, 765 N.W.2d at 904 (quotation omitted). By applying the *Gradishar* definition to Serbus’s vehicle, rather than the highway on which it was operated, the district court’s rationale could justify absurd results. For example, a strict application of the *Gradishar* definition, such as that employed by the district court, would allow an intoxicated person to carry a pistol in a latched handbag or backpack at a busy public establishment or event; given the fact that people do not typically hold, expressly or impliedly, their backpacks or handbags out for the public to access. This would, of course, be highly contrary to the legislature’s intent to protect the public from intoxicated persons with firearms and would not be a sensible interpretation. Therefore, for purposes of section 624.7142, subdivision 1, a personal vehicle operated on a public highway is a mode of transportation and cannot be considered a private place.

DECISION

Because the district court improperly applied the definition of “public place” to the vehicle Serbus was operating on a public highway at the time of the stop, it erred in dismissing the charge against him for carrying a firearm in a public place while under the influence of alcohol. We reverse and remand for proceedings consistent with this opinion.

Reversed and remanded.