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**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0176**

State of Minnesota,
Respondent,

vs.

Nathan Ernest Hatch,
Appellant.

**Filed November 2, 2020
Affirmed
Reilly, Judge**

Hennepin County District Court
File No. 27-CR-18-1074

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

Christopher P. Renz, Prosecuting Attorney Metropolitan Airports Commission, Gary K. Luloff, Assistant Prosecuting Attorney, Chestnut Cambronne PA, Minneapolis, Minnesota (for respondent)

Lynne Torgerson, Minneapolis, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Larkin, Judge; and Reilly, Judge.

UNPUBLISHED OPINION

REILLY, Judge

Appellant challenges his conviction for carrying a firearm without a permit on the ground that the statute is unconstitutional. We affirm.

FACTS

In January 2018, appellant Nathan Hatch, a former marine with no felony convictions, was on his way to work when his vehicle broke down in the jurisdiction of the Metropolitan Airports Commission. Police responded to assist appellant and he informed the officers that he had two knives in his pocket and might have a handgun in a backpack in the back seat. The officers located a pistol in the vehicle. After confirming that appellant did not have a permit to carry a pistol, the officers placed appellant under arrest. The Metropolitan Airports Commission charged appellant with gross-misdemeanor carrying or possessing a pistol without a permit in violation of Minn. Stat. § 624.714, subd. 1a (2018).

Appellant moved to strike down the statute on the ground that requiring a permit to carry a firearm violates the Second Amendment to the United States Constitution. The district court issued an order denying appellant's motion to declare the statute unconstitutional and determined that the statute is "reasonably adapted to substantially serve the State's significant interests in protecting public safety and preventing crime." The parties submitted the case to the district court for a stipulated-facts trial in November 2019, and stipulated that appellant "knowingly possessed a loaded pistol in a motor vehicle on a public street" and "did not possess a permit issued or recognized by the State of Minnesota to carry a pistol." Based on the evidence presented, the district court found appellant guilty of the charged offense and imposed sentence.

Appellant now appeals from the judgment of conviction, seeking reversal of the order denying his dismissal motion on the ground that the statute is unconstitutional.

DECISION

Appellant argues that Minnesota’s permit-to-carry statute is unconstitutional and violates his Second Amendment rights to keep and bear arms. An appeal challenging the constitutionality of a statute is subject to de novo review. *State v. Hensel*, 901 N.W.2d 166, 170 (Minn. 2017). Minnesota statutes “are presumed constitutional,” and a reviewing court “will strike down a statute as unconstitutional only if absolutely necessary.” *State v. Leonard*, 943 N.W.2d 149, 160 (Minn. 2020) (quotation omitted). Because statutes are presumed constitutional, we will “read a statute as constitutional if at all possible.” *Id.* (emphasis omitted) (quotation omitted). The party challenging the constitutionality of a statute bears the burden of demonstrating that the statute is unconstitutional beyond a reasonable doubt. *State v. Rey*, 890 N.W.2d 135, 139 (Minn. App. 2017), *aff’d*, 905 N.W.2d 490 (Minn. 2018).

Under Minnesota law, a person, other than a peace officer, who carries, holds, or possesses a pistol in a motor vehicle is guilty of a gross misdemeanor, unless the person first obtains a permit to carry. Minn. Stat. § 624.714, subd. 1a. To receive a permit to carry, an applicant must submit an application to the county sheriff where the applicant resides. *Id.*, subd. 2(a) (2018). A sheriff “must” issue a permit to an applicant if the person has completed gun safety training, is at least 21 years old, is a citizen or permanent resident of the United States, has completed an application for the permit, is not prohibited from possessing a permit to carry, and is not listed in the criminal gang investigative data system. *Bergman v. Caulk*, 938 N.W.2d 248, 250 (Minn. 2020) (citing *id.*); *see also* Minn. Stat. § 645.44, subd. 15a (2018) (“‘Must’ is mandatory.”).

Appellant argues that Minnesota’s permit-to-carry statute is facially unconstitutional under the Second Amendment to the United States Constitution and the United States Supreme Court decision in *District of Columbia v. Heller*, 554 U.S. 570, 626, 128 S. Ct. 2783, 2816 (2008). The Second Amendment to the United States Constitution provides that: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. Const. amend. II. The Second Amendment is “fully applicable to the State of Minnesota.” *State v. Craig*, 826 N.W.2d 789, 792 (Minn. 2013); *see also McDonald v. City of Chicago*, 561 U.S. 742, 750, 130 S. Ct. 3020, 3026 (2010) (holding that the Second Amendment extends to states).

Yet, as Justice Scalia wrote in the majority opinion in *Heller*, “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” 554 U.S. at 626, 128 S. Ct. at 2816. The constitutional right to possess firearms does not extend to any sort of confrontation, nor does it extend to any type of weapon. *Id.* at 625-26, 128 S. Ct. at 2816. Further, *Heller* cautioned that “nothing in [its] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places.” *Id.* at 626, 128 S. Ct. at 2816-17. *Heller* also explicitly recognized “the problem of handgun violence in this country,” and confirmed that the “Constitution leaves . . . a variety of tools for combating that problem.” *Id.* at 636, 128 S. Ct. at 2822.

Similarly, as Minnesota courts have noted, “the right to possess a firearm does not extend to ‘any weapon whatsoever in any manner whatsoever and for whatever purpose.’” *Craig*, 826 N.W.2d at 792 (quotation omitted). The Minnesota Supreme Court has

previously concluded that certain firearm-possession statutes are “presumptively lawful.” *Id.* at 793 (holding that Minnesota statute prohibiting possession of a firearm by an ineligible person was not unconstitutional on its face or as applied to defendant). Given the holdings in *Heller* and *Craig*, we conclude that Minnesota’s permit-to-carry statute is a presumptively lawful state regulation and not unconstitutional on its face.

Having concluded that Minnesota’s permit-to-carry statute is not unconstitutional, we turn our analysis to whether the statute survives constitutional scrutiny. The parties disagree about the appropriate level of scrutiny on appeal. Appellant argues that the permit-to-carry statute is subject to strict scrutiny. Strict scrutiny is a high standard and requires the state to prove that the challenged legislative act “advance a compelling state interest and . . . be narrowly tailored to further that interest.” *SooHoo v. Johnson*, 731 N.W.2d 815, 821 (Minn. 2007). Respondent argues that this court should instead apply intermediate scrutiny. A statute survives intermediate scrutiny when it is “substantially related to an important governmental objective.” *Clark v. Jeter*, 486 U.S. 456, 461, 108 S. Ct. 1910, 1914 (1988). Minnesota courts have yet to decide which level of scrutiny is appropriate, but even under the most stringent strict scrutiny standard, we conclude that Minn. Stat. § 624.714, subd. 1a, is narrowly tailored to serve a compelling state interest.

The United States Supreme Court recognized the problem of handgun violence in this country and has authorized individual states to regulate handguns. *Heller*, 554 U.S. at 636, 128 S. Ct. at 2822. In Minnesota, it is not difficult to obtain a permit to carry a pistol, and there is a statutory presumption in favor of granting a permit as long as the applicant satisfies the minimum requirements for eligibility. *State v. Ndikum*, 815 N.W.2d 816, 821

(Minn. 2012). The statute, moreover, mandates that the sheriff “must issue a permit” to any applicant who has gun-safety training, is at least 21 years old and a citizen or permanent resident of the United States, completes a permit application, is not prohibited from owning a firearm, and is not listed in the criminal gang investigative data system. Minn. Stat. § 624.714, subd. 2(b). Section 624.714 also allows gun owners to possess guns in public without a permit under certain conditions. *Ndikum*, 815 N.W.2d at 821.

We conclude that Minnesota’s permit-to-carry statute survives strict constitutional scrutiny because the state has a compelling interest in regulating an individual’s ability to carry a firearm in public, the statute is narrowly tailored to achieve that end, and there is a statutory presumption in favor of granting a permit.

Affirmed.