

STATE OF MINNESOTA

IN SUPREME COURT

A17-0403

Court of Appeals

Lillehaug, J.

State of Minnesota,

Appellant,

vs.

Filed: February 14, 2018
Office of Appellate Courts

Christopher Michael Prigge,

Respondent.

Lori Swanson, Attorney General, Saint Paul, Minnesota; and

Steven M. Tallen, Tallen & Baertschi, Minneapolis, Minnesota, for appellant.

Scott J. Strouts, Scott J. Strouts, LLC, Minneapolis, Minnesota; and

Larry Rapoport, Larry Rapoport, Ltd., Minnetonka, Minnesota, for respondent.

Francis J. Rondoni, Jeffrey D. Bores, Gary K. Luloff, Jennifer J. Crancer, Chestnut
Cambronne PA, Minneapolis, Minnesota, for amicus curiae Suburban Hennepin County
Prosecutors Association.

S Y L L A B U S

1. A person under the influence of alcohol who is driving a vehicle with a pistol within arm's reach is carrying a pistol "about the person's clothing or person" within the

meaning of Minn. Stat. § 624.7142 (2016).

2. Whether a person under the influence of alcohol who is driving a vehicle is carrying a pistol “about the person’s clothing or person” is a question of fact.

Reversed and remanded.

OPINION

LILLEHAUG, Justice.

Respondent Christopher Michael Prigge was stopped and arrested on suspicion of driving while under the influence of alcohol. During an inventory search of Prigge’s vehicle, police discovered a loaded handgun in the center console. Prigge was charged with “carrying a pistol on or about [his] clothes or person” while under the influence of alcohol in violation of Minn. Stat. § 624.7142, subd. 1(4) (2016). On Prigge’s motion, the district court dismissed the charge for lack of probable cause. The court of appeals affirmed. We granted review to decide whether a person is “carry[ing] a pistol on or about the person’s clothes or person” when that person is driving a vehicle with a handgun in the center console. We reverse the decision of the court of appeals and remand to the district court for proceedings consistent with this opinion.

FACTS

On April 27, 2016, respondent Christopher Michael Prigge was pulled over by a Maple Grove police officer who saw Prigge’s vehicle weaving within its traffic lane. After stopping Prigge’s vehicle, the officer observed that Prigge smelled “strongly” of alcohol and had “glassy and watery” eyes. Prigge admitted that he had consumed alcohol that evening, and he failed field sobriety tests. He was then arrested for driving under the

influence of alcohol. During an inventory search of his vehicle, which was impounded, police discovered a loaded handgun in the vehicle’s center console. After being read the Implied Consent Advisory, Prigge consented to a breath test that revealed an alcohol concentration of .10.

Prigge was charged with five counts, including one count of carrying a pistol while under the influence of alcohol (“Count III”). *See* Minn. Stat. § 624.7142, subd. 1(4). Prigge moved to dismiss Count III, arguing that the pistol in the center console of the vehicle was not being carried “on or about [his] clothes or person in a public place.”¹ *Id.* The district court granted Prigge’s motion and dismissed Count III, concluding that “ ‘carrying on or about the person’s clothes or person’ does not extend to a pistol within the closed center console²—if never removed, and absent any evidence that it was ever handled or personally carried by the [d]efendant while he [was] under the influence of alcohol.”

The State appealed, and the court of appeals affirmed. *State v. Prigge*, 900 N.W.2d 890, 895 (Minn. App. 2017). The court concluded that the statute was unambiguous, and that “[t]he phrase to ‘carry a pistol on or about the person’s clothes or person’ . . . requires a physical nexus between the person or the person’s clothes and a pistol.” *Id.* Because the nexus requirement was not met, the court of appeals affirmed the district court’s dismissal of Count III of the complaint.

¹ The issue of whether Prigge’s pistol was in a “public place” is not before us.

² At oral argument, the parties agreed that the record does not show whether the center console was open or closed. That fact makes no difference for the purpose of our decision.

We granted the State’s petition for review.

ANALYSIS

I.

The sole legal issue before us is whether the intoxicated driver of a vehicle is “carry[ing] a pistol on or about the person’s clothes or person” when the pistol is in the vehicle’s center console. This issue requires us to interpret Minn. Stat. § 624.7142, subd. 1. Statutory interpretation is a question of law that we review de novo. *Rushton v. State*, 889 N.W.2d 561, 563 (Minn. 2017).

The State focuses on the phrase “on or about,” and argues that the use of the word “about” suggests that the proper inquiry is whether the pistol is “readily accessible.” Prigge focuses on the word “carry,” and argues that “carry” requires a physical nexus between (1) the pistol, and (2) the person or the person’s clothing.

Statutory interpretation begins by assessing “whether the statute’s language, on its face, is ambiguous.” *Larson v. State*, 790 N.W.2d 700, 703 (Minn. 2010) (quoting *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001)). An ambiguity exists “only when the statutory language is subject to more than one reasonable interpretation.” *State v. Fleck*, 810 N.W.2d 303, 307 (Minn. 2012). If a statute is unambiguous, we “apply the statute’s plain meaning.” *Larson*, 790 N.W.2d at 703.

If a statute does not define a word or phrase, we give that word or phrase its “plain and ordinary meaning.” *State v. Hayes*, 826 N.W.2d 799, 803–04 (Minn. 2013). To determine plain meaning, we “look to the dictionary definitions of th[e] words and apply them in the context of the statute.” *State v. Haywood*, 886 N.W.2d 485, 488 (Minn. 2016).

We “construe a statute as a whole and interpret its language to give effect to all of its provisions.” *State v. Riggs*, 865 N.W.2d 679, 683 (Minn. 2015). The canon against surplusage, an intrinsic canon, “favors giving each word or phrase in a statute a distinct, not an identical, meaning.” *State v. Thonesavanh*, 904 N.W.2d 432, 437 (Minn. 2017).

Minnesota Statutes § 624.7142 makes it a crime for a person to “carry a pistol on or about the person’s clothes or person” while under the influence of alcohol. Minn. Stat. § 624.7142, subd. 1(4). Applying ordinary rules of grammar, here the word “carry” is used as a transitive verb. *See Thonesavanh*, 904 N.W.2d at 436 n.2 (“A transitive verb is an action verb that requires one or more objects.”). The “pistol” is the object, and “on or about” is a prepositional phrase describing the area in which the person may (or may not) carry that object. “On” and “about” are separated by the disjunctive “or.” *See State v. Bakken*, 883 N.W.2d 264, 268 (Minn. 2016) (stating that the word “or” “requir[es] that only one of the possible factual situations linked by the ‘or’ be present”); *see also The American Heritage Dictionary of the English Language* 1238 (5th ed. 2011) (defining “or” as “[u]sed to indicate an alternative”). Applying the canon against surplusage, carrying a pistol “about” one’s person must mean something different than carrying a pistol “on” one’s person. *See Thonesavanh*, 904 N.W.2d at 437.

With this grammatical framework in mind, we first look to dictionary definitions to determine the ordinary meaning of the phrase “carry a pistol on or about the person’s clothes or person.” We start with “carry.” The American Heritage Dictionary provides 27 definitions of the word “carry” as a transitive verb. Many are plainly inapplicable in this context, but plausible definitions of “carry” are: (1) “[t]o hold or support while moving;

bear,” (2) “[t]o move or take from one place to another; transport: *a train carrying freight*,” and (3) “[t]o keep or have on one’s person.” *The American Heritage Dictionary of the English Language* 285 (5th ed. 2011); *see also Webster’s Third New International Dictionary* 343 (2002) (defining “carry” as “to move while supporting (as in a vehicle or in one’s hands or arms)”).

Turning to the “on or about” portion of the phrase, the word “on” is “[u]sed to indicate contact with or extent over (a surface) regardless of position.” *The American Heritage Dictionary of the English Language* 1230 (5th ed. 2011); *see also Webster’s Third New International Dictionary* 1574 (2002) (defining “on” as “used as a functional word to indicate contiguity or dependence”). The applicable definitions of the word “about” include (1) “[a]pproximately; nearly” and (2) “[i]n the area or vicinity; near.” *The American Heritage Dictionary of the English Language* 5 (5th ed. 2011); *see also Webster’s Third New International Dictionary* 5 (2002) (defining “about” as “in the vicinity” or “in the immediate neighborhood of”).

Taken together, the only reasonable interpretation of the phrase “carry a pistol on or about the person’s clothes or person” is that a person carries a pistol on or about one’s person by either (1) physically moving the pistol, or (2) having the pistol in one’s personal vicinity while moving. As a practical matter, for a pistol to be in one’s personal vicinity, it must be within arm’s reach. *See State v. Saccomano*, 355 N.W.2d 791, 792 (Neb. 1984) (“A weapon is concealed on or about the person if it is concealed in such proximity to the driver of an automobile as to be convenient of access and within immediate physical reach.”).

Prigge asks us to adopt the court of appeals’ interpretation of “carry” and require a physical nexus between the person (or the person’s clothes) and the pistol. It is true that one definition of “carry” is “[t]o keep or have on one’s person.” *The American Heritage Dictionary* 285 (5th ed. 2011). But we must read “carry” in the context of the statute. *See Haywood*, 886 N.W.2d at 488. The physical-nexus interpretation might be reasonable if the statute *only* prohibited carrying a pistol “on” one’s person or clothing. But the statute prohibits carrying a pistol “about” one’s person or clothing as well. The physical-nexus interpretation would read the “or about” language out of the statute, and is therefore unreasonable. *See Riggs*, 865 N.W.2d at 683.

Prigge also urges us to do what the court of appeals did and read section 624.7142 in the context of section 624.714, the statute regulating permit-to-carry applications and the carrying of a pistol without a permit. *See* Minn. Stat. § 624.714 (2016). Under section 624.714, a person is guilty of a gross misdemeanor if that person “carries, holds, or possesses a pistol in a motor vehicle . . . on or about the person’s clothes or the person, or otherwise in possession or control in a public place . . . without first having obtained a permit to carry the pistol.” *Id.*, subd. 1a. Because section 624.714 speaks directly to prohibitions on pistols in motor vehicles and prohibits more than just “carry[ing]” a pistol, the court of appeals reasoned that the “different language” in section 624.7142 does not extend to the facts of this case. *Prigge*, 900 N.W.2d at 893–94.

In so reasoning, the court of appeals seems to have employed *in pari materia*—the related-statutes canon—which “allows two statutes with common purposes and subject matter to be construed together to determine the meaning of ambiguous statutory

language.” *State v. Lucas*, 589 N.W.2d 91, 94 (Minn. 1999). But *in pari materia* is only applied *after* a determination of ambiguity. See *Thonesavanh*, 904 N.W.2d at 437 (stating that *in pari materia* “is an extrinsic canon that applies only to ambiguous statutes.”). Here, the court of appeals held that the statute was unambiguous, *Prigge*, 900 N.W.2d at 893, so the *in pari materia* canon was inapplicable.

The whole-statute canon, by contrast, does not require ambiguity before it may be applied. *Riggs*, 865 N.W.2d at 683. Even so, the whole-statute canon is of no help, for two reasons. First, sections 624.7142 and 624.714 are not, in fact, part of the same statute. Section 624.7142 came into effect in 2003. See Act of Apr. 28, 2003, ch. 28, art. 2, § 29, 2003 Minn. Laws 287. Section 624.714 was first enacted in 1975. See Act of Jun. 4, 1975, ch. 378, § 4, 1975 Minn. Laws 1281–83. Section 624.714 was extensively amended when section 624.7142 was adopted, but the relevant language from section 624.714, subdivision 1, was merely recodified as subdivision 1a. See Minn. Stat. § 624.714, subd. 1a (2016); Minn. Stat. § 624.714, subd. 1 (1976).

Second, the two statutes do not sufficiently speak to the same subject matter. Both statutes relate to firearm regulation, but they apply to significantly different categories of people and conduct. Section 624.714, subdivision 1, applies only to pistol owners who do *not* have a permit to carry, and generally prohibits them from possessing a pistol in public (or in a vehicle) unless a statutory exception applies. See Minn. Stat. § 624.714, subs. 1, 9. By contrast, Section 624.7142, the statute at issue here, applies only to intoxicated pistol owners—carrying with or without a permit—and bars them from carrying a pistol “on or

about” their person. Minn. Stat. § 624.7142, subd. 1. In short, section 624.714 does not compel us to depart from the plain text of section 624.7142.

To summarize, 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.

II.

Having resolved the legal question, we now consider the correct disposition of this case.

A complaint will not be dismissed for lack of probable cause if there is a fact question for the jury’s determination on each element of the crime charged. *See State v. Slaughter*, 691 N.W.2d 70, 74–75 (Minn. 2005); *State v. Florence*, 239 N.W.2d 892, 903 (Minn. 1976). Whether a pistol is “about” a person, that is, within arm’s reach of the intoxicated person who is carrying it, is a question of fact.³

³ Our holding that a pistol is “about” a person if it is within arm’s reach, and that this is a question of fact, is consistent with authority from other states. *See, e.g., Dubin v. State*, 397 A.2d 132, 133–35 (Del. 1979) (holding that a defendant charged with carrying a concealed weapon “on or about his person” may have violated the statute by driving with a pistol in the glove compartment, but this “must be determined by a finding of whether the gun was available and accessible . . . for his immediate use”); *State v. Smith*, 67 So. 3d 409, 414 (Fla. Dist. Ct. App. 2011) (“Here, Smith concealed the firearm underneath the passenger seat We cannot say as a matter of law that the firearm was not ‘on or about his person’ or not ‘readily accessible’ to him.”); *Corbin v. State*, 206 A.2d 809, 812 (Md. 1965) (holding that a statute prohibiting “carry[ing] any pistol . . . concealed upon or about his person” is violated if the pistol “was in such proximity to him as would make it available for his immediate use”); *Saccomano*, 355 N.W.2d at 792 (“A weapon is concealed on or about the person if it is concealed in such proximity to the driver of an automobile as to be convenient of access and within immediate physical reach.”); *State v. Jones*, No. COA12-98, 2012 WL 4078521, at *3 (N.C. Ct. App. Sept. 18, 2012) (“[T]he weapon was placed within close proximity . . . of [the] defendant so that he had the ability to promptly use it.

In this case, the state alleged—and the parties agree—that a loaded handgun was found in the center console of the vehicle. Based on that factual allegation, the State’s sworn complaint was sufficient to survive Prigge’s motion to dismiss. Therefore, the district court erred when it granted Prigge’s motion to dismiss, as did the court of appeals when it affirmed that decision. On remand, the State will continue to bear the burden of proving all of the elements of Count III, including whether the handgun was within arm’s reach of Prigge.

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals and remand to the district court for further proceedings consistent with this opinion.

Reversed and remanded.

This evidence was sufficient to warrant defendant’s conviction for carrying a concealed weapon about his person.”); *State v. Waldbillig*, 203 N.E.2d 361, 361, 363 (Ohio 1964) (holding that a revolver stored under the seat of a driver was being carried “on or about” his person); *Ames v. Commonwealth*, No. 0526-16-1, 2017 WL 5140568, at *6 (Va. Ct. App. Nov. 7, 2017) (“The evidence . . . supports the trial court’s factual determinations and conclusion that the firearm was concealed ‘about’ the appellant’s ‘person.’ [The officer] saw the appellant rummaging in the center console [and] found the firearm just beneath the closed lid of the console.”).