STATE OF MINNESOTA

IN SUPREME COURT

A19-1921

Court of Appeals — Anderson, J.

State of Minnesota,

Respondent,

Filed: March 31, 2021
Office of Appellate Courts

vs.

Kevin Russel Serbus,

Appellant.

Keith Ellison, Attorney General, Saint Paul, Minnesota;

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

Scott A. Hersey, Special Assistant County Attorney, Saint Paul, Minnesota, for respondent.

Drake D. Metzger, Metzger Law Firm, LLC, Minneapolis, Minnesota, for appellant.

S Y L L A B U S

A driver of a motor vehicle on a public highway is in a "public place" for the purpose of Minn. Stat. § 624.7142 (2020).

Affirmed.

O P I N I O N

ANDERSON, Justice.

Minnesota Statutes section 624.7142, subdivision 1(4) (2020), prohibits a person who is under the influence of alcohol from carrying a pistol in a public place. Here we are asked to determine whether a driver of a motor vehicle is in a public place for the purpose of that statute when the vehicle is on a public highway. The district court determined that the interior of a private motor vehicle is not a public place when it is not regularly held open to the public and, accordingly, dismissed the count charging appellant Kevin Serbus with a violation of Minn. Stat. § 624.7142, subd. 1(4). The court of appeals reversed, concluding that the proper subject of analysis is the highway on which Serbus was driving, and reinstated the charge. Because we conclude that the Legislature intended to prohibit an impaired person from carrying a pistol on public streets even when that person is inside a motor vehicle, we affirm the decision of the court of appeals.

FACTS

The facts are not in dispute. On July 26, 2019, a deputy Renville County sheriff stopped Serbus after watching the vehicle Serbus was driving swerve across the center lane of the highway. The deputy conducted a field sobriety test after noting the smell of alcohol coming from the vehicle and that Serbus had bloodshot and watery eyes. A preliminary breath test showed that Serbus had an alcohol concentration of .09. The deputy arrested Serbus and placed him in the back of the squad car.

The deputy asked Serbus whether there were any items that Serbus wanted from his vehicle. Serbus replied that he wanted his keys, wallet, and phone. Serbus notified the

deputy that his phone was in the center console next to his firearm, a Ruger .45 caliber pistol. The deputy retrieved the items for Serbus and transported him to the Renville County Jail. At the time of the stop, Serbus had a valid permit to possess a pistol. There is no evidence in the record that Serbus possessed the pistol anywhere outside of his vehicle.

Serbus was charged with four crimes, including Count 4, carrying a pistol in a public place while under the influence of alcohol, in violation of Minn. Stat. § 624.7142, subd. 1(4). Serbus moved to dismiss the charges. After holding a contested omnibus hearing, the district court dismissed Count 4 for lack of probable cause. The district court relied on the definition of "public place" in Minn. Stat. § 624.7181 (2020), a statute under which Serbus was not charged. That statute prohibits the carrying of rifles and shotguns in a "public place," which it defines as including "private property that is regularly and frequently open to or made available for use by the public." *Id.*, subd. 1(c). The court observed that "a private motor vehicle is not a public place" and that there was no indication that Serbus "frequently makes his vehicle available for use by the public." Therefore, the court concluded, there was no probable cause that Serbus carried the pistol in a public place while under the influence of alcohol.

On the State's pretrial appeal, the court of appeals reversed. *State v. Serbus*, 947 N.W.2d 690 (Minn. App. 2020). The court of appeals looked to its holding in *State v. Gradishar*, 765 N.W.2d 901 (Minn. App. 2009), in which it had defined public place for the purpose of Minn. Stat. § 624.7142—the section under which Serbus is charged—as follows: " '[G]enerally 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.' " *Serbus*, 947 N.W.2d at 692 (quoting *Gradishar*, 765 N.W.2d at 903). Applying that definition here, the court concluded that the meaning of public place was nonetheless ambiguous because the relevant subject could be either the interior of Serbus's car or the highway on which he drove. *Id.* Employing several canons of construction, the court determined that the "proper subject of analysis is the public highway on which Serbus drove his vehicle," which it further concluded was a public place. *Id.* Accordingly, the court of appeals reversed the dismissal of Count 4 and remanded to the district court. *Id.* at 693.

Serbus filed a petition for review, which we granted.

ANALYSIS

In this pretrial appeal, we are asked to decide whether a person driving a vehicle on a public highway is in a "public place" for the purpose of Minn. Stat. § 624.7142, subd. 1. "When the State appeals a pretrial order, it must show clearly and unequivocally (1) that the district court's ruling was erroneous and (2) that the ruling will have a 'critical impact' on the State's ability to prosecute the case." *State v. Underdahl*, 767 N.W.2d 677, 683 (Minn. 2009); *see* Minn. R. Crim. P. 28.04, subd. 2(2). Because the district court dismissed the charge, critical impact is met. *See Underdahl*, 767 N.W.2d at 684 (stating that dismissal of a charge has a critical impact on the prosecution's case even if other charges remain). Thus, we need consider only whether the district court's interpretation of the statute was erroneous.

The interpretation of a statute is a question of law, which we review de novo. *Larson v. State*, 790 N.W.2d 700, 703 (Minn. 2010). The object of all statutory interpretation is to ascertain and effectuate the intent of the Legislature. Minn. Stat. § 645.16 (2020). "If the Legislature's intent is clear from the statute's plain and unambiguous language, then we interpret the statute according to its plain meaning without resorting to the canons of statutory construction." *State v. Struzyk*, 869 N.W.2d 280, 284–85 (Minn. 2015) (citation omitted) (internal quotation marks omitted). But if "a statute is susceptible to more than one reasonable interpretation, then the statute is ambiguous" and we may consider the canons of statutory construction. *State v. Hayes*, 826 N.W.2d 799, 804 (Minn. 2013).

A.

We first determine whether the meaning of public place is ambiguous. The statute provides: "A person may not carry a pistol on or about the person's clothes or person in a public place . . . (4) when the person is under the influence of alcohol." Minn. Stat. § 624.7142, subd. 1. The statute does not define "public place." Neither does the relevant definitions section in the same chapter. *See* Minn. Stat. § 624.712 (2020) (providing definitions for Minn. Stat. §§ 624.711–.717 (2020)). Because the statute does not define public place, we may "look to dictionary definitions of those words and apply them in the context of the statute" to determine whether public place has a plain and unambiguous meaning. *State v. Haywood*, 886 N.W.2d 485, 488 (Minn. 2016).

Dictionaries offer a variety of definitions for both "public" and "place." One meaning of public is "accessible to or shared by all members of the community." *Webster's Third New International Dictionary Unabridged* 1836 (2002). Another meaning is

"supported by or for the benefit of the people as a whole." *Id.* Still another is "exposed to general view: conspicuous, open." *Id.* In the context of the statute, which regulates where an intoxicated person may carry a pistol, all of these meanings are reasonable. *See Haywood*, 886 N.W.2d at 488 (stating that we consider dictionary definitions in light of the context of the statute when determining whether there is a plain meaning of a word).

Similarly, there are a variety of definitions of place, even after excluding meanings not related to location, such as those involving sequence, rank, or employment. Place can mean "[a]n area with definite or indefinite boundaries; a portion of space." *The American Heritage Dictionary of the English Language* 1345 (5th ed. 2011); *cf. Webster's Third New International Dictionary Unabridged* 1727 (defining place as "a physical environment: space"). It can also mean "[a] building or an area set aside for a specified purpose." *The American Heritage Dictionary of the English Language* 1345; *cf. Webster's Third New International Dictionary Unabridged* 1727 (defining place as "a building or locality used for a special purpose"). Still other meanings include a "dwelling"; a "business establishment or office"; a "locality, such as a town or city"; or a "public square or street with houses in a town." *The American Heritage Dictionary of the English Language* 1345. Thus, as relevant here, place can be used in either a geographical sense, such as one's presence on a highway, or in a spatial sense, such as one's presence inside a car, bus, or other vehicle.

Taken together, "public place" could reasonably mean a geographical or spatial location that is accessible to, supported by or for the benefit of, or visible to, people as a whole. Because there is more than one reasonable meaning of "public place," we conclude

that the statute is ambiguous. *See Hayes*, 826 N.W.2d at 804 (stating that a statute is ambiguous when it "is susceptible to more than one reasonable interpretation"). Consequently, we cannot determine from the face of the statute whether the driver of a motor vehicle on a highway is in a public place.

Although Serbus admits that the statute is ambiguous, he asserts that the interior of his car is unambiguously *not* a public place under the definition formulated by the court of appeals in *Gradishar*, 765 N.W.2d at 903. There, the court defined public place for the purpose of section 624.7142 as "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.* Of course, the interpretation of the court of appeals is not binding on us. *State v. Borg*, 806 N.W.2d 535, 546 n.4 (Minn. 2011). As we have determined, the language of the statute itself is ambiguous.[1]

B.

When a statute is ambiguous, we may consider additional canons of construction to determine the intent of the Legislature. Minn. Stat. § 645.16. As relevant here, the parties consider three statutory canons: the "mischief to be remedied," the "object to be attained" by the legislation, and the "consequences of a particular interpretation." *Id.* In addition, Serbus relies on a decision of the court of appeals that held that the interior of a car is not

---

[1] Even if the *Gradishar* definition were the relevant inquiry, we do not escape the ambiguity. The *Gradishar* definition substitutes "place" with "an indoor or outdoor area." But like "place," the word "area" can be used in either a geographical or spatial sense. *See Webster's Third New International Dictionary Unabridged* 115 (defining area as "a definitely bounded *piece of ground* set aside for a specific use or purpose" or "any particular *extent of space or surface*" (emphasis added)).

a public place in the context of a prostitution statute. *See State v. White*, 692 N.W.2d 749, 753 (Minn. App. 2005), *superseded by statute*, Act of June 2, 2005, ch. 136, art. 17, § 23, 2005 Minn. Laws 901, 1134 (codified as amended at Minn. Stat. § 609.321 (2020)), *appeal dismissed* (Minn. June 14, 2005). He also invokes the rule of lenity. We consider each of these arguments in turn.

1.

We turn first to the mischief to be remedied by section 624.7142. Minn. Stat. § 645.16(3). In this instance, the mischief is plain from the face of the statute. *See State v. Decker*, 916 N.W.2d 385, 387–88 (Minn. 2018) (determining the mischief to be remedied from the face of the statute). The statute prohibits any person from carrying a pistol on or about the person's clothes or person in a public place while under the influence of certain substances, including alcohol and controlled substances, that impact how the body functions. Minn. Stat. § 624.7142, subd. 1. Therefore, the relevant mischief is the carrying of a pistol in public while impaired, which endangers others.

This danger is present even when an impaired person is inside a vehicle. Vehicles are inherently mobile and can be driven to or past places where members of the public are frequently present, including parks, sidewalks, restaurants, stores, and parking lots. There are also other people inside of other vehicles traveling on public roads. As a result, there is a significant risk that a person who is under the influence of an impairing substance and who discharges a pistol—intentionally or accidently—in a place frequented by members of the community could injure someone, even if the impaired person is inside a car.

Consequently, this consideration weighs in favor of interpreting the statute to include the driver of a vehicle on a highway.

2.

We next consider the object to be attained by the statute, which is closely related to the identified mischief. Minn. Stat. § 645.16(4). Here, the plain goal of the statute is to reduce the risk of injury to people from the discharge of a pistol in places where people generally have a right to be present.

According to the State, because the ultimate goal is public safety, the object of the statute is to "minimize the locations" where a person may carry a firearm while impaired. Serbus claims that this formulation of the object is too broad. We agree. If the purpose of the statute were solely to minimize the locations where people could be endangered, the Legislature would have omitted the phrase "in a public place." But the presence of the phrase establishes that the Legislature chose to single out the danger posed in one set of locations, namely, public places, over another set of locations, namely, nonpublic places. *See State v. Lopez*, 908 N.W.2d 334, 340 (Minn. 2018) (Lillehaug, J., concurring) (observing that the burglary statute "singles out" the burglary of dwellings for a higher penalty than the burglary of other buildings). Our formulation of the object accounts for this distinction, giving meaning to the Legislature's inclusion of the phrase "in a public place." *See State v. Riggs*, 865 N.W.2d 679, 683 (Minn. 2015) ("[W]e construe a statute as a whole and interpret its language to give effect to all of its provisions.").

Nevertheless, even our narrow interpretation of the goal favors the State's position. Because a vehicle is mobile and may be driven in close proximity to people who are in

public places, prohibiting an impaired driver from carrying a pistol on a highway would promote the protective purpose of the statute. But excluding an impaired driver from the reach of the ban would expose members of the public to greater danger.[2]

3.

Next, we turn to the constitutional, doctrinal, and practical consequences of the parties' positions. Minn. Stat. § 645.16(6). As to constitutional implications, Serbus

---

[2] While analyzing the object to be attained, the parties briefly discuss the relationship between Minn. Stat. §§ 624.714 (the permit-to-carry statute) and 624.7142 (the carrying-while-impaired statute). Section 624.714 incorporates a definition of public place from section 624.7181, which includes "private property that is regularly and frequently open to or made available for use by the public." Minn. Stat. § 624.7181, subd. 1(c) (2020); *see* Minn. Stat. § 624.714, subd. 1a (incorporating the definition for public place in section 624.7181, subdivision 1(c)).

We do not find the incorporation of section 624.7181's definition into section 624.714 instructive because the canons of construction that would permit us to look to that section do not apply. Under our whole-statute canon, we read statutes "as a whole so as to harmonize and give effect to all its parts." *Riggs*, 865 N.W.2d at 683 (citation omitted). This canon may apply even when the statute in question is unambiguous. *Id.* A second canon, *in pari materia*, "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). This canon is applied only after a determination of ambiguity. *State v. Thonesavanh*, 904 N.W.2d 432, 437 (Minn. 2017).

Here, the same bill that enacted section 624.7142 substantially amended section 624.714, including by adding the definition of public place quoted above. *See* Act of Apr. 28, 2003, ch. 28, art. 2, §§ 4-28, 34, 2003 Minn. Laws 265, 274 (codified as amended at Minn. Stat. § 624.714 (2020)). Even so, neither canon applies because, as we have previously held, sections 624.714 and 624.7142 regulate "significantly different categories of people and conduct" and therefore "do not sufficiently speak to the same subject matter." *State v. Prigge*, 907 N.W.2d 635, 640 (Minn. 2018) (declining to rely on section 624.714 under the whole-statute canon when interpreting the phrase "on or about" one's person or clothes for the purpose of section 624.7142). Specifically, section 624.714 applies to pistol owners who do *not* have a permit to carry and applies *whether or not* they are impaired. *See id.* But section 624.7142 applies only to *impaired* pistol owners and applies *whether or not* they have a permit. *Id.* Accordingly, we are not guided by the definition of public place in section 624.714.

argues that treating a private vehicle as a public place opens the door to "warrantless vehicle searches." He explains that, during a traffic stop, a police officer could ask a passenger to show the passenger's permit to carry and identification. If the passenger appears intoxicated, the officer could then search those parts of the vehicle that are within arm's reach of the passenger.

The hypothetical is not of great concern for several reasons. First, as to this appeal, Serbus does not challenge the constitutionality of the search. In fact, Serbus admits that he gave the deputy permission to open the center console and informed the deputy that the pistol was there. Second, and more generally, under current law, the holder of a permit to carry is already required to display a permit card and identification "upon lawful demand by a peace officer." Minn. Stat. § 624.714, subd. 1b(a). This requirement is unaffected by our holding. Third, constitutional limitations on a police officer's authority to search a person or vehicle without a warrant still apply. Under our constitution, a police officer cannot expand the scope of a traffic stop beyond the original purpose of the stop without "at least a reasonable suspicion of additional criminal activity." *State v. Smith*, 814 N.W.2d 346, 350 (Minn. 2012); *see also* Minn. Const. art. I, § 10 (prohibiting unreasonable searches); *State v. Askerooth*, 681 N.W.2d 353, 365 (Minn. 2004) (holding that "Article I, Section 10 of the Minnesota Constitution requires that each incremental intrusion during a traffic stop be tied to and justified by one of the following: (1) the original legitimate purpose of the stop, (2) independent probable cause, or (3) reasonableness, as defined in *Terry*" *v. Ohio*, 392 U.S. 1 (1968)). Thus, if the police officer were conducting an ordinary traffic stop, the officer would not be permitted to ask whether the passenger has a

firearm or permit to carry without sufficient justification, such as a reasonable suspicion that the passenger was carrying a pistol. *See State v. Fort*, 660 N.W.2d 415, 419 (Minn. 2003) (holding that a police officer impermissibly expanded the scope of a routine traffic stop, in violation of the Minnesota Constitution, by asking the passenger about weapons and drugs without a reasonable suspicion of criminal activity beyond the traffic offense). Finally, our holding today is limited to the meaning of public place for the purpose of section 624.7142 and does not affect the meaning of public place in other statutes. Consequently, our holding here is narrow and does not open the door to warrantless vehicle searches.

As to doctrinal implications, the rule proposed by Serbus is problematic when applied to other modes of transportation. The rationale underlying his position is that the public do not "need protection from the interior of a private motor vehicle." Even if we agreed that an impaired motor vehicle driver with a pistol does not pose a threat to the public, this rationale raises serious questions about modes of transportation that are less enclosed. For example, would the driver of a convertible with the top down on a public street be in a public place? What about a tractor? A motorcycle and sidecar? An electric bicycle or scooter? However we chose to answer those questions in future cases would inevitably be disconnected from the goal of the statute in protecting passersby from impaired people with pistols.

Finally, as to practical considerations, applying section 624.7142 to impaired drivers on public roads protects the public while imposing only a minimal burden on lawful permit holders. To avoid liability under this statute, permit holders need only stow the pistol out

of arm's reach, such as in the trunk of the vehicle, if they want to take their gun with them in a car on a public road after they have been drinking.[3] *See State v. Prigge*, 907 N.W.2d 635, 640 (Minn. 2018) (holding that a person carries a pistol on or about their clothes or person, in violation of Minn. Stat. § 624.7142, subd. 1, "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"). This burden is minimal and it promotes public safety related to the risks caused by an impaired person carrying a pistol in public. By contrast, under Serbus's interpretation, an impaired driver (or passenger) could hold a loaded pistol in a vehicle with the windows down while on a busy street without liability under section 624.7142. In fact, the driver could even wave or point the pistol in an arguably threatening manner without liability under that section.

Consequently, because a public highway is a geographical location that is accessible to the general community, these statutory canons support a determination that the Legislature intended to prohibit the driver of a motor vehicle from carrying a pistol on a public highway while impaired.

4.

Serbus's remaining arguments do not change our analysis. Serbus cites to *State v. White*, in which the court of appeals held that, in the context of a statute regulating prostitution, the meaning of public place does not include the inside of a motor vehicle on

---

[3] Obviously, a person who is impaired by alcohol or other substances is criminally liable for *driving* while impaired, regardless of whether they are carrying a pistol on or about their person, in violation of Minn. Stat. § 624.7142, subd. 1.

a public street. 692 N.W.2d 749, 753 (Minn. App. 2005), *appeal dismissed* (Minn. June 14, 2005). In light of *White*, Serbus urges us to similarly determine that the driver of a motor vehicle, when operating the vehicle on a public street or highway, is not in a public place for the purpose of section 624.7142. We are not persuaded by this contention. *White* is not good law because its interpretation of public place was superseded by statute. *See* Act of June 2, 2005, ch. 136, art. 17, § 23, 2005 Minn. Laws 901, 1134 (codified as amended at Minn. Stat. § 609.321 (2020)). Further, the rationale in *White* in fact undermines Serbus's position. The court of appeals considered that the harm to be remedied was from the "publicly visible" nature of prostitution activity, which it concluded is lessened when a person is in a vehicle. *White*, 692 N.W.2d at 751. This reasoning cuts against Serbus's argument because the relevant danger here—the risk of physical harm from the discharge of a pistol—is present even when the gun is not visible to people outside of a vehicle. Consequently, *White* does not support Serbus's position.

Next, Serbus asks us to apply the rule of lenity to resolve the ambiguity in his favor. Although the rule of lenity directs courts to "favor a more lenient interpretation of a criminal statute," we recently clarified that the rule of lenity is a canon of "last resort" that applies "only when, after consulting traditional canons of statutory construction, we are left with an ambiguous statute." *State v. Thonesavanh*, 904 N.W.2d 432, 440 (Minn. 2017) (citations omitted) (internal quotation marks omitted). Because the ambiguity here can be resolved by resorting to the canons provided by Minn. Stat. § 645.16, the rule of lenity does not apply.

In sum, we conclude that the meaning of public place in section 624.7142 is ambiguous. Applying the relevant canons of statutory construction, we determine that the Legislature intended to prohibit an impaired driver from carrying a pistol on a highway in a vehicle. Accordingly, we hold that the driver of a motor vehicle on a public highway is in a "public place" for the purpose of Minn. Stat. § 624.7142.

CONCLUSION

For the foregoing reasons, the decision of the court of appeals is affirmed.

Affirmed.