STATE OF MINNESOTA

IN SUPREME COURT

A20-0176

Court of Appeals — Hudson, J.

State of Minnesota,

Respondent,

vs.

Filed: August 4, 2021
Office of Appellate Courts

Nathan Ernest Hatch,

Appellant.

Christopher P. Renz, Gary K. Luloff, Chestnut Cambronne PA, Minneapolis, Minnesota, for respondent Metropolitan Airport Commission.

Lynne Torgerson, Minneapolis, Minnesota, for appellant.

Cicely R. Miltich, Peter Magnuson, Assistant Attorneys General, Saint Paul, Minnesota, for amicus curiae Minnesota Attorney General Keith Ellison.

Thomas R. Ragatz, Jeffrey A. Wald, Assistant Ramsey County Attorneys, Saint Paul, Minnesota, for amicus curiae Minnesota County Attorneys Association.

Alina Schwartz, Campbell Knutson PA, Eagan, Minnesota, for amicus curiae Suburban Hennepin County Prosecutors Association.

S Y L L A B U S

Minnesota Statutes § 624.714, subd. 1a (2020), does not violate the Second Amendment to the United States Constitution.

Affirmed.

O P I N I O N

HUDSON, Justice.

The question presented in this case is whether Minn. Stat. § 624.714, subd. 1a (2020), which requires individuals to obtain a permit to carry a handgun in public, violates the Second Amendment to the United States Constitution. Appellant Nathan Ernest Hatch was charged with carrying a pistol in a public place without a permit in violation of Minn. Stat. § 624.714, subd. 1a (the "permit-to-carry statute"). Hatch filed a pretrial motion to strike down the statute, arguing it violates the Second Amendment. The district court denied the motion and later convicted Hatch of the charged offense. The court of appeals affirmed his conviction. Because the permit-to-carry statute does not violate the Second Amendment, we affirm.

FACTS

The parties do not dispute the relevant facts. On the evening of January 8, 2018, Hatch was driving to work when his truck broke down in the jurisdiction of the Metropolitan Airport Commission. When airport police officers stopped to assist him, Hatch informed the officers that he might have a handgun in a backpack in the back seat of his truck. He also confirmed that he did not have a permit to carry a pistol. After the officers searched his truck and discovered a loaded, uncased pistol in the backpack, they placed Hatch under arrest.

The Metropolitan Airport Commission charged Hatch with carrying or possessing a pistol without a permit in violation of Minn. Stat. § 624.714, subd. 1a, a gross misdemeanor. Hatch filed a pretrial motion to strike down the permit-to-carry statute,

arguing that the requirement that an individual obtain a permit to carry a firearm violates the Second Amendment to the United States Constitution. According to Hatch, the permit-to-carry statute fails to survive strict scrutiny which requires a statute to be narrowly tailored to advance a compelling state interest. The district court denied the motion. Hatch then waived his right to a jury trial and submitted his case to the district court on stipulated facts. The district court found Hatch guilty of the charged offense and sentenced him to 180 days in the county workhouse but stayed execution of the sentence for 2 years.

On appeal, Hatch renewed his argument that the permit-to-carry statute violates the Second Amendment because it fails to survive strict scrutiny. *State v. Hatch*, No. A20-0176, 2020 WL 6390933, at *2 (Minn. App. Nov. 2, 2020). By contrast, the State argued the statute was subject to intermediate scrutiny, which only requires a statute to be substantially related to an important governmental objective. *Id.* The court of appeals did not resolve the parties' dispute because it concluded the permit-to-carry statute survives the more stringent standard of strict scrutiny. *Id*. at *3. We granted Hatch's petition for review.

ANALYSIS

The constitutionality of a statute is a question of law that we review de novo. *State v. Craig*, 826 N.W.2d 789, 791 (Minn. 2013). Statutes are presumed to be constitutional and should only be struck down "when absolutely necessary." *Id.* (quoting *In re Individual 35W Bridge Litig.*, 806 N.W.2d 820, 829 (Minn. 2011)). Accordingly, we will "uphold a statute unless the challenging party demonstrates that the statute is unconstitutional beyond a reasonable doubt." *Id.* (citing *State v. Yang*, 744 N.W.2d 539, 552 (Minn. 2009)).

The Second Amendment to the United States Constitution provides: "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.[1] Hatch argues the permit-to-carry statute violates the Second Amendment because it fails to survive strict scrutiny. We disagree.[2]

To survive strict scrutiny, the challenged law must be "justified by a compelling government interest" and narrowly tailored to achieve that interest. *Brown v. Ent. Merch. Ass'n*, 564 U.S. 786, 799 (2011); *see also State v. Melchert-Dinkel*, 844 N.W.2d 13, 21 (Minn. 2014) (stating same). A law is narrowly tailored if it is the "least restrictive means" for addressing the government's articulated interest. *Sable Commc'ns of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989). The narrow tailoring requirement, however, "does not require exhaustion of every conceivable . . . alternative, nor does it require a dramatic sacrifice of the compelling interest at stake." *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 135 (Minn. 2014) (citation omitted) (internal quotation marks omitted) (omission in original). Although strict scrutiny is "a demanding standard," *Brown*, 564 U.S. at 799, the Supreme Court has rejected "the notion that strict scrutiny is strict in theory, but fatal in fact."

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[1] The Minnesota Constitution contains no express right to keep and bear arms.

[2] The issue of whether statutes regulating firearms are subject to strict or intermediate scrutiny is an open question in Minnesota. *See Craig*, 826 N.W.2d at 798 ("Because we do not adopt an applicable level of scrutiny, we hold that the court of appeals erred in doing so and vacate the court's determination in that regard."). Because the permit-to-carry statute survives the more stringent standard of strict scrutiny, we need not answer this open question. For the same reason, we need not decide whether the conduct regulated by the permit-to-carry statute is categorially unprotected by the Second Amendment under the historical approach adopted in *Craig*, 826 N.W.2d at 795.

Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 237 (1995) (citation omitted) (internal quotation marks omitted).

Hatch does not dispute that the permit-to-carry statute serves a compelling government interest in ensuring public safety. The government's compelling interest in protecting the general public from gun violence is self-evident. *See State v. Paige*, 256 N.W.2d 298, 303 (Minn. 1977) (explaining that the purpose of the permit-to-carry statute is "to prevent the possession of firearms in places where they are most likely to cause harm in the wrong hands, i.e., in public places where their discharge may injure or kill intended or unintended victims"); *see also* Minn. Stat. § 624.714, subd. 22 (2020) (declaring the provisions of section 624.714 to be "necessary to accomplish compelling state interests"). Hatch instead contends that the permit-to-carry statute fails strict scrutiny because it is not narrowly tailored.

For the following reasons, we conclude that the permit-to-carry statute is narrowly tailored to serve the compelling governmental interest in ensuring public safety. The Supreme Court has explained that a statute is narrowly tailored "[s]o long as the means chosen are not substantially broader than necessary to achieve the government's interest." *Ward v. Rock Against Racism*, 491 U.S. 781, 800 (1989). Although the imposition of criminal penalties for noncompliance may be a relevant factor to consider, *see District of Columbia v. Heller*, 554 U.S. 570, 633–34 (2008) (suggesting that the imposition of "significant criminal penalties" as opposed to a "small fine and forfeiture of the weapon" may deter persons from using guns to protect themselves and therefore might infringe on the core of the Second Amendment), it is not determinative. *See Heller v. District of*

Columbia, 801 F.3d 264, 273–74 n.1 (D.C. Cir. 2015) (noting that a "de minimis burden" imposed by a firearm registration requirement is valid even if noncompliance may result in "criminal penalties"). A statute can therefore be narrowly tailored in its scope even when it imposes criminal penalties for noncompliance. *See State v. Casillas*, 952 N.W.2d 629, 644 n.10 (Minn. 2020) (rejecting appellant's argument that a statute criminalizing the nonconsensual dissemination of private sexual images could have been more narrowly tailored by providing only civil remedies).

Minnesota Statutes section 624.714 lays out the requirements for carrying a handgun in public as well as the penalties for noncompliance with the statute. Under subdivision 1a, a person commits a gross misdemeanor if he "carries, holds, or possesses a pistol in a motor vehicle, snowmobile, or boat, or 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." Minn. Stat. § 624.714, subd. 1a. A second or subsequent conviction is a felony. *Id.*

To receive a permit to carry, a person is required to submit an application to the sheriff in the county where the person resides. *Id.*, subd. 2(a). "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 by law from possessing a firearm, and is not listed in the Minnesota Bureau of Criminal Apprehension's criminal gang investigative data system. *Id.*, subds. 2(b)(1)–(5) (emphasis added). The only reason that a sheriff may deny a permit application (aside from failing to satisfy the statutory criteria) is if "there exists a

substantial likelihood that the applicant is a danger to self or the public if authorized to carry a pistol under a permit." *Id.*, subd. 6(a)(2)–(3). If a sheriff denies a permit application, the applicant has a right to appeal the denial by filing a petition with the district court. *Id.*, subd. 12.

The permit-to-carry statute also provides for certain circumstances where a person may lawfully carry or possess a pistol *without* a permit. No permit is required to possess a pistol in one's home, place of business, or on land that a person owns. *Id.*, subd. 9(1). Nor is a permit required to carry a pistol in public for the purpose of repair. *Id.*, subd. 9(2). A pistol may be carried without a permit between one's home and place of business. *Id.*, subd. 9(3). A permit is not required to carry a pistol "in the woods or fields or upon the waters of this state" for hunting or target shooting. *Id.*, subd. 9(4). And an unloaded pistol secured in a "closed and fastened case" may be transported in a vehicle without a permit. *Id.*, subd. 9(5).

The statutory requirements to receive a permit to carry are not substantially broader than necessary to ensure public safety. As we have stated before, "it is not difficult to obtain a permit to carry a pistol" in Minnesota. *See State v. Ndikum*, 815 N.W.2d. 816, 821 (Minn. 2012) (noting the "minimal requirements for eligibility" to receive a permit to carry). Indeed, it is hard to imagine a less restrictive firearm permitting scheme than the one provided by the permit-to-carry statute and its related provisions. Law-abiding citizens over the age of 21 need only show that they have passed a gun safety course and that they are not a danger to themselves or others to receive a permit to carry a handgun in public. In addition, the statute creates a presumption in favor of the applicant receiving the permit,

further demonstrating the ease by which an individual seeking to exercise their Second Amendment rights can do so. *See* Minn. Stat. § 624.714, subd. 2 (stating that the sheriff "must issue a permit" if the applicant meets the statutory requirements). In short, the minimally burdensome requirements of Minnesota's firearm permitting statute are sufficiently close to the government's interest in ensuring public safety to satisfy the narrow tailoring requirement.

Considering the undisputed compelling governmental interest in ensuring public safety and the narrowly tailored provisions of the statute to achieve that interest, we conclude that the permit-to-carry statute withstands strict scrutiny. We therefore hold that the permit-to-carry statute does not violate the Second Amendment to the United States Constitution.

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.