

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

State of Minnesota,
Plaintiff,

Judge Leonardo Castro
Case Type: Major Criminal

v.

Kyaw Be Bee,

File No.: 62-CR-22-5290

Defendant.

ORDER

DISMISSAL FOR LACK OF PROBABLE CAUSE

This matter came before the Honorable Leonardo Castro, Chief Judge of District Court, Second Judicial District, on August 14, 2023, for an Omnibus Hearing. John A. Salazar, Assistant Public Defender, appeared on behalf and with Defendant. Caroline Radmacher, Assistant St. Paul City Attorney, appeared on behalf of the State. Upon review of the record the Court met with counsel in chambers prior to the hearing and expressed concerns regarding the sufficiency of probable cause to bind this matter over for trial. The Court informed the parties that because Defendant was charged with Carrying a BB Gun in a Public Place, in violation of Minn. Stat. § 624.7181, subd. 2, the Court was bound by the definition of “public place” found in Minn. Stat. § 624.7181, subd. 1(c), and consequently may not be able to conclude that probable cause exists in this matter. The Court provided counsel with a copy of *State v. Serbus*, 957 N.W.2d 84 (Minn. 2021), and asked counsel to please review the definition of “public place” in the statute and also review *Serbus*, then make arguments on the record in support of their respective positions. Upon completion of arguments, the Court concluded that the facts and circumstances in this matter, as presented in the complaint, were insufficient to find probable cause. Counsel for the State

requested that the Court delay its decision for five days and provide its reasoning in writing. The Court agreed to do so.

Based upon the record and arguments, this Court issues the following:

ORDER

1. This matter is **DISMISSED** for lack of probable cause.
2. The memorandum of law attached, outlining the Courts reasoning, is incorporated as part of this Order.

Dated: August 18, 2023

BY THE COURT

Leonardo Castro
Judge of District Court

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Memorandum

Facts As Alleged

The facts of this case as alleged in the complaint are as follows:

On May 16, 2022, at approximately 2:05 a.m., a deputy with the Ramsey County Sheriff's Department was near 319 Larpenteur in the City of Saint Paul, Ramsey County. The deputy observed two people standing near a vehicle in the parking lot with tools and a jack. When the people saw the deputy, they walked away from that vehicle and got into another vehicle and drove out of the parking lot. The deputy believed the people were involved in stealing the vehicle's catalytic converter. The deputy stopped the vehicle. The driver was identified as KYAW BE BEE (DOB 7-19-1988), Defendant herein. Defendant had a revoked license. Stuffed under the driver's seat was a BB Gun. Defendant did not have a permit to carry a firearm in public.

Complaint, p. 2, Index #1. Minn. Stat. § 624.7181, subd. 2, provides that “[w]hoever carries a BB gun . . . on or about the person¹ in a public place is guilty of a gross misdemeanor.” The statute defines public place as:

Property owned, leased, or controlled by a governmental unit and *private property that is regularly and frequently open to or made available for use by the public in sufficient numbers to give clear notice of the property's current dedication to public use* but does not include: a person's dwelling house or premises, the place of business owned or managed by the person, or land possessed by the person; a gun show, gun shop, or hunting or target shooting facility; or the woods, fields, or waters of this state where the person is present lawfully for the purpose of hunting or target shooting or other lawful activity involving firearms.

Minn. Stat. § 624.7181, subd. 1(c) (emphasis added). To establish probable cause, this Court must decide whether a BB gun, that is not in plain view, and is “stuffed under the driver's seat” of a vehicle in a parking lot, is in a “public place.” This Court looked to the language of the statutory definition of “public place,” as defined in the applicable statute, to determine whether the language is clear and unambiguous.

¹ The issue of whether the BB gun was “on or about the person” of the Defendant was not raised during the hearing.

The Law

A district court “must determine whether probable cause exists to believe an offense has been committed and the defendant committed it.” Minn. R. Crim. P. 2.01, subd. 4. “[T]he test of probable cause is whether the evidence worthy of consideration . . . brings the charge against the [defendant] within reasonable probability.” *State v. Florence*, 306 Minn. 442, 446, 239 N.W.2d 892, 896 (1976) (quotation omitted). In determining questions of probable cause, the district court “must exercise an independent and concerned judgment addressed to this important question: Given the facts disclosed by the record, is it fair and reasonable . . . to require the defendant to stand trial?” *Id.* at 457, 239 N.W.2d at 902.

When interpreting statutes, we seek “to ascertain and effectuate the intention of the legislature.” *A.A.A. v. Minn. Dep’t. of Human Servs.*, 832 N.W.2d 816, 828 (Minn. 2013); *see* Minn. Stat. § 645.16 (2018) (“The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature.”). The first step in interpreting a statute is to determine whether the language is clear and unambiguous. *A.A.A.*, 832 N.W.2d at 819. If the legislature’s intent is clearly discernable from plain and unambiguous language, statutory construction is neither necessary nor permitted and [we] apply the statute’s plain meaning.” *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001). A statute is ambiguous if, as applied to the facts of the case, it is susceptible to more than one reasonable interpretation. *Staab v. Diocese of St. Cloud*, 813 N.W.2d 68, 72-73 (Minn. 2012). If the statute is ambiguous, then we may look beyond the statutory language to determine legislative intent. *A.A.A.*, 832 N.W.2d at 819; *see generally* Minn. Stat. § 645.16 (“When the words of a law are not explicit, the intention of the legislature may be ascertained by considering,” for example, “occasion and necessity for the law.”).

This Court is further guided by *State v. Serbus*, 957 N.W.2d 84 (Minn. 2021). In *Serbus*, the Minnesota Supreme Court found that for the purposes of Minn. Stat. § 624.7142, subd. 1(4), a vehicle is a public place and the driver of the vehicle who is under the influence of alcohol is prohibited from carrying a firearm within the vehicle on a public highway. The statute in question in *Serbus* did not define “public place.” Neither did the relevant definitions section in the same chapter. See Minn. Stat. § 624.712 (providing definitions for Minn. Stat. §§ 624.711–.717). Because the statute did not define “public place,” the court looked “to dictionary definitions of those words and appl[ied] 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). Ultimately the court determined that the statute was ambiguous and looked beyond the statutory language to determine legislative intent. Unlike *Serbus*, the applicable statute in this case provides a detailed and unambiguous definition of “public place.” See Minn. Stat. § 624.7181, subd. 1(c). Therefore, this Court is forbidden from exploring legislative intent.

Application of the Law to the Facts

The only question before this Court is whether a BB gun found stuffed under the driver’s seat of a car on parking lot is in a “public place” as defined by Minn. Stat. § 624.7181, subd. 1(c). This Court answers the question in the negative. First, the automobile in this case is private property. There is no evidence in the record to suggest the parked car was owned, leased, or controlled by a governmental unit. The private property status of the car remains with it regardless of where it is located. Second, there is no evidence in the record to suggest that the vehicle in this case was “regularly and frequently open to or made available for use by the public in sufficient numbers to give clear notice of the property’s current dedication to public use.” See Minn. Stat. § 624.7181, subd. 1(c). If the vehicle was being used as commercial transport (e.g., Lyft or Uber),

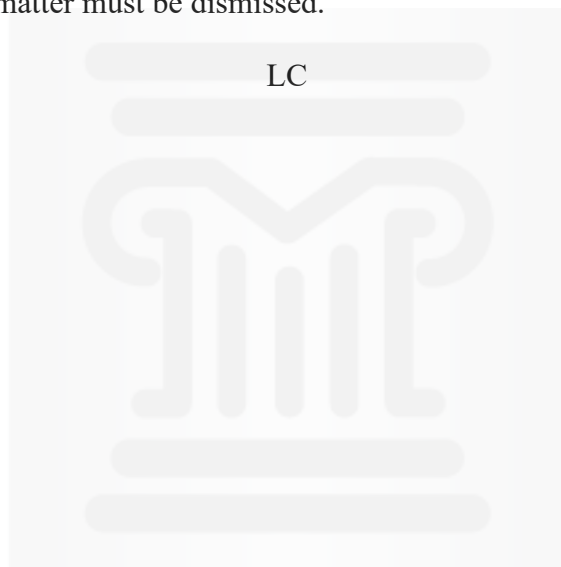
perhaps an argument could be made that the inside of the car was a “public place,” but those are not the facts in this case. Therefore, this Court must conclude that a BB gun stuffed under a driver’s seat is not a “public place,” for the purposes of Minn. Stat. § 624.7181.

This Court recognizes the potential negative consequences associated with the finding that under Minn. Stat. § 624.7181, a gun stuffed under a driver’s car seat is in not in a “public place.” But more importantly, this Court recognizes that it is not the place of the judiciary to amend or interject its own interpretation of an otherwise clear and unambiguous constitutional statute. To do so would be a gross violation of the separation of powers doctrine this country is in large part built upon, and we all depend upon to maintain a structure of checks and balances. “The legislature has the power to declare what acts are criminal and to establish the punishment for those acts as part of the substantive law.” *State v. Lindsey*, 632 N.W.2d 652, 658 (Minn. 2001) citing *State v. Olson*, 325 N.W.2d 13, 17–18 (Minn. 1982). In contrast, the court regulates the process by which the guilt or innocence of one who is accused of violating a criminal statute is determined. *See State v. Wingo*, 266 N.W.2d 508, 513 (Minn. 1978). Our courts must proceed cautiously when invoking its authority because of the separation of powers concerns present when a court uses that authority to enforce, restrain, interpret or amend acts which lie within executive and legislative jurisdictions. The legislature has the power to amend the statute to include private vehicles as a “public place².” However, this Court does not.

² In *State v. White*, our court of appeals was required to ascertain the intent of the legislature when they ruled that the interior of a car is not a public place in the context of a prostitution statute. *See State v. White*, 692 N.W.2d 749, 753 (Minn. Ct. 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). The legislature then amended Minn. Stat. § 609.321 to provide a detailed definition of “public place.: *See id.*, subd. 12 (A “public place” means a public street or sidewalk, a pedestrian skyway system as defined in section [469.125, subdivision 4](#), a hotel, motel, steam room, sauna, massage parlor, shopping mall and other public shopping areas, or other place of public accommodation, a place licensed to sell intoxicating liquor, wine, nonintoxicating malt beverages, or food, or a motor vehicle located on a public street, alley, or parking lot ordinarily used by or available to the public though not used as a matter of right and a driveway connecting such a parking lot with a street or highway.) (Emphasis added).

Conclusion

Because the BB gun stuffed under the car seat was not in a public place, as defined by Minn. Stat. § 624.7181, subd. 1(c), the complaint lacks probable cause to believe an offense has been committed, and this matter must be dismissed.



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