APPENDIX

APPENDIX

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APPENDIX A

STATE OF MINNESOTA
IN SUPREME COURT

A20-0176

Court of Appeals **Hudson, J.**

[Filed: August 4, 2021]

State of Minnesota,	)
	)
Respondent,	)
	)
vs.	)
	)
Nathan Ernest Hatch,	)
	)
Appellant.	)
	)

Filed: August 4, 2021
Office of Appellate Courts

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-

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

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." *Adarand Constructors, Inc. v.*

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[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.

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.

APPENDIX B

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2018).

STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0176

[Filed: November 2, 2020]

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.

U N P U B L I S H E D O P I N I O N

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.

D E C I S I O N

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.

APPENDIX C

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Case type: Criminal

Judge Joseph R. Klein

Court File No. 27-CR-18-1074

[Dated: May 30, 2019]

State of Minnesota,	)
	)
Plaintiff,	)
	)
v.	)
	)
Nathan Ernest Hatch,	)
	)
Defendant.	)
	)

ORDER GRANTING IN PART AND DENYING IN PART MOTION TO SUPPRESS; AND

ORDER DENYING MOTION TO DECLARE STATUTE UNCONSTITUTIONAL

The above-entitled matter came before the Honorable Joseph R. Klein in Hennepin County District Court on March 18, 2019, pursuant to Defendant's Motion to Suppress and Motion to Strike Down Statute as Unconstitutional. Attorney Christopher Renz appeared for and on behalf of the State. Attorney Lynne Torgerson appeared for and on behalf of Defendant, Nathan Hatch.

The court received testimony from Metropolitan Airports Commission police officers Kyle Allia and Kristina Hansen, as well as from Defendant. The court finds credible the officers' testimony on all the facts and issues that are relevant to the charge against Defendant. Furthermore, the court finds that Defendant's testimony largely corroborated the officers' testimony and did not conflict with the officers' testimony on any of the relevant facts before the court.

Based on the files, records, and proceedings in this case, and consistent with Minnesota law and Rules of Criminal Procedure, the Court makes the following:

ORDER

1. Defendant's Motion to Suppress is hereby **GRANTED** in part and **DENIED** in part.

2. The motion to suppress the statements made while Defendant was in custody in Officer Allia's squad car is granted. The motion to suppress the statements made before Defendant was placed in the squad car and the statements Defendant made while inside the police headquarters interview room is denied.

3. Defendant's motion to declare Minnesota Statute section 624.714(1a) unconstitutional is **DENIED**.

4. The attached memorandum of law is incorporated herein.

Dated: May 30, 2019

BY THE COURT:

/s/ Joseph R. Klein
Joseph R. Klein
Judge of District Court

FACTUAL BACKGROUND

Defendant Nathan Hatch is charged with carrying a handgun without a permit under Minnesota Statutes § 624.714. On January 8, 2018 at approximately 7:48 p.m., Metropolitan Airports Commission (MCA) police officer Kyle Allia noticed a vehicle with its hazard lights on, parked on the shoulder of an on-ramp to Highway 5 West. Officer Allia pulled his squad car behind the vehicle in order to conduct a welfare check on the driver and vehicle. Upon stopping his squad car, Officer Allia approached the vehicle. Immediately upon approaching the vehicle, the driver, later identified as Defendant, opened the door and stuck his hands out of the door. When Officer Allia asked why he did that, Defendant stated, "because of the way things have been going lately." After observing Defendant's actions, Officer Allia asked Defendant if he had any weapons, and Defendant responded that he may have a gun in the vehicle. The officer then asked if Defendant had a permit for the gun, and Defendant stated that he did not. Officer Allia placed Defendant under arrest in the

backseat of his squad car after Defendant stated that he possessed a gun with no permit. The officer then searched the vehicle where Defendant was the sole occupant and found a handgun in Defendant's backpack. Once he uncovered the firearm, Officer Allia ran a check on Defendant and determined that he did not have a permit for the gun. Shortly after confirming that Defendant had a handgun in the vehicle without a permit, Officer Allia placed Defendant in handcuffs and transported him to the MCA police headquarters.

After arriving at headquarters, the officer placed Defendant in an interview room and read him a Miranda warning. The interview rooms contain audio and video recording equipment. Before conducting the interview, Officer Allia testified that he believed he turned on the recording equipment in the room as was his standard practice. MCA Officer Kristina Hansen assisted in interviewing Defendant. Both officers testified that it is their practice to record interviews and that they thought that the recording equipment was operating when they interviewed Defendant. When asked, Officer Nelson testified that she took no action to prevent the recording from being available. Nevertheless, a recording of the Defendant's in-custody interview at headquarters is not part of the record. Officer Allia testified that he does not know why the recording equipment failed to work.

Defendant has brought a motion to suppress the statements he made to Officer Allia at the scene of his arrest, first while he was with his vehicle, and then when he was in the squad car, on the grounds that he was not Mirandized prior to making those statements.

He also moves to suppress the statements he made in the interview room on the grounds that they are the fruits of the poisonous tree, and because they were not recorded in violation of *State v. Scales*. Finally, Defendant moves to "strike down" Minnesota Statutes § 624.714 on the grounds that it is unconstitutional.

CONCLUSIONS OF LAW

I. Defendant Was Not in Custody when He Told Officer Allia that He May Have a Weapon and that He Did Not Have a Permit for that Weapon.

The Fifth Amendment of the United States Constitution provides that no person "shall be compelled in any criminal case to be a witness against himself." U.S. Const. Amend. V. This protection has been extended to state court criminal proceedings through the Fourteenth Amendment, and is also guaranteed by the Minnesota Constitution. *See Malloy v. Hogan*, 378 U.S. 1, 11 (1964); Minn. Const, Art. 1, § 7. Statements made by an in-custody defendant in response to interrogation will be admissible only if the State can show that, prior to questioning, the defendant was informed of his right to consult with an attorney before and during questioning, informed of his right against self-incrimination, and that defendant understood those rights and voluntarily waived them. *See Miranda v. Arizona*, 384 U.S. 436 (1966); *State v. Ouk*, 516 N.W.2d 180, 184-85 (Minn. 1994). *Miranda* warnings are required only where there has been such a restriction on a person's freedom to render him "in custody." *Orego v. Mathiason*, 429 U.S. 492, 495 (1990). Custody occurs when a suspect is deprived of his

freedom of action in any significant manner. *Miranda*, 384 U.S. at 444. Defendant in this case moves to suppress his statements made at the scene because he had not received a *Miranda* warning prior to making those statements. When applying the custodial interrogation standard, the court must first determine whether Defendant was in custody at the time he made the statements, and then turn to the nature of the interrogation itself to determine whether the questioning was reasonably likely to elicit an incriminating response. *State v. Tibiatowski*, 590 N.W.2d 305, 309 (Minn. 1999).

Courts have generally used a "totality of the circumstances" standard for determining whether or not a person is "in custody." *U.S. v. Axsom*, 289 F.3d 496, 500 (8th Cir. 2002). For this test, a court will look at a number of factors and focus on the "physical and psychological restraints" on the person's freedom during the interview. *Id.* The question of whether a person is in custody for *Miranda* purposes is a mixed question of law and fact. *In re Welfare of G.S.P.*, 610 N.W.2d 651, 657 (Minn. Ct. App. 2000). In Minnesota, the test is an objective one and asks whether a reasonable person would have believed he was in custody. *State v. Walsh*, 495 N.W.2d 602, 605 (Minn. 1993). An interrogation is custodial if under all the circumstances, a reasonable person would believe that he was in police custody to the degree associated with formal arrest; it is not merely a question of whether the person felt "free to leave." *See State v. Thompson*, 788 N.W.2d 485, 491 (Minn. 2010); *State v. Scruggs*, 822 N.W.2d 631, 637 (Minn. 2012).

In this case, Defendant's initial statements were made from the driver's seat of his vehicle as Officer Allia approached. The officer testified that Defendant stuck his hands out the opened car door. The officer asked him why he did that, and Defendant responded, "because of the way things have been going lately." The officer then asked Defendant if he had any weapons, and Defendant stated that he may have a firearm in the vehicle. Finally, the officer asked if Defendant had a permit to carry the firearm, and Defendant responded that he did not have a permit to carry. After hearing these statements, Officer Allia placed Defendant under arrest and transferred him to the backseat of his squad car. The officer then preceded to search Defendant's vehicle, where he found a handgun in Defendant's backpack. Officer Allia also confirmed that Defendant did not have a permit to carry that firearm.

Under these circumstances, the court finds that Defendant was not in custody at the time he told Officer Allia that he may have a firearm in his vehicle and that he did not have a permit for that firearm. Pertinent to this case, the Supreme Court has held that routine traffic stops do not constitute custodial interrogation requiring a *Miranda* warning. *See Berkemer v. McCarty*, 468 U.S. 420, 436 (1984). This is because a traffic stop is usually brief, subjecting the defendant to a modest number of questions before arrest. *Id.* at 442. It also takes place in public as opposed to a private police station. *Id.* at 432. While such a stop may "significantly curtail the freedom of action" of the driver and passengers, it "cannot fairly be characterized as the functional equivalent of formal

arrest." *Id.* at 432, 436. As a result, the court concludes that Defendant was never in custody while he was in his own vehicle. In fact, Defendant was arguably less restricted then in a typical traffic stop because he was not actually pulled over by police. Instead the officer observed Defendant's vehicle on the side of an airport road in a location typically reserved for emergencies. The officer then travelled to Defendant's location as part of a welfare check. Officer Allia's questioning of Defendant was in a public space under non-threatening circumstances. Any restraint on Defendant's ability to leave the scene was due to his vehicle being inoperable, and not any action taken by the officer. Therefore, Defendant was not in custody at the time Officer Allia asked him whether he had a weapon and whether he had a permit for that weapon, these questions did not require a *Miranda* warning, and the motion to suppress Defendant's responses to these questions is denied.

II. Defendant Was in Custody at the Time He Made Statements from Inside Officer Allia's Squad Car.

Defendant also moves to suppress the statements he made while inside the squad car. As stated by Officer Allia, Defendant was under arrest at the time he was placed into the back seat of the squad car. Officer Allia provided the following testimony:

> Q. After the point that he said that he may have a gun in the car and he didn't have a permit to carry, at any point after that did you place the defendant under arrest?

A. Yeah, I did.

Q. Okay.

A. After that.

Q. After those statements were made?

A. Yes.

Q. And after placing defendant under arrest what did you do with the defendant? Where did you place him?

A. I placed him in the back of my squad car.

Q. Okay. Why do you do that?

A. Because he was under arrest.

Therefore, the court finds that Defendant was in custody for the purposes of *Miranda*, having been placed in the backseat of a squad car immediately after he made incriminating statements to a police officer. At that point, a reasonable person would have believed he was in custody and not free to leave. *See State v. Champion*, 517 N.W.2d 350, 356 (Minn. Ct. App. 1994) (holding that defendant was in custody once he was in squad car and had made significantly incriminating statements). The court also finds that while much of the conversation between the officer and Defendant in the squad car was irrelevant to the present charges, Officer Allia did ask some questions reasonably likely to elicit an incriminating response. Therefore, Defendant's statements made in the squad car are inadmissible without a prior *Miranda* warning. While these statements are excluded, the court notes that the

two incriminating statements made by Defendant—that he had a firearm in his truck and that he did not have a permit for the weapon—were made prior to him being placed under arrest and transferred to the squad car, and are admissible.

IV. Defendant's Statements Made in the Interview Room Are Admissible.

Defendant asks the court to suppress the statements he made in the interview room, even though these statements were made after receiving a *Miranda* warning. Defendant first bases this request on the exclusionary rule, or fruit of the poisonous tree doctrine. Evidence discovered by exploiting previous illegal conduct is inadmissible; such evidence is the fruit of the poisonous tree. *State v. Bergerson*, 659 N.W.2d 791, 797 (Minn. Ct. App. 2003). Here, the initial incriminating statements were made when Defendant was out of custody, and the court has deemed those statement admissible. The search of Defendant's vehicle followed directly from these admissible statements, as did his arrest. Defendant's incriminating statements that he had a firearm and that he did not have a permit to carry that firearm were not obtained in violation of the Constitution. Therefore, there is no illegal conduct to exploit, and the statements he made at police headquarters are not fruit from the poisonous tree.

Defendant's second basis for suppressing the statements he made in the interview room is that no recording of those statements is available. In *State v. Scales*, the Minnesota Supreme Court held that:

> [A]ll custodial interrogation including any information about rights, any waiver of those rights, and all questioning shall be electronically recorded where feasible and must be recorded when questioning occurs at a place of detention. If law enforcement officers fail to comply with this recording requirement, any statements the suspect makes in response to the interrogation may be suppressed at trial. The parameters of the exclusionary rule applied to evidence of statements obtained in violation of these requirements must be decided on a case-by-case basis. Following the approach recommended by the drafters of the Model Code of Pre-Arraignment Procedure, suppression will be required of any statements obtained in violation of the recording requirement if the violation is deemed "substantial." This determination is to be made by the trial court after considering all relevant circumstances bearing on substantiality.

518 N.W.2d 587, 592 (Minn. 1994). The primary purpose of the recording requirement is not to help criminal defendants or to help the State, rather it is to assist the trial court in resolving evidentiary disputes and determining facts. *State v. Thaggard*, 527 N.W.2d 804, 807-08 (Minn. 1995). In determining whether a failure to comply with the recording requirement is substantial, the court has several factors it may consider. To begin with, if the violation was gross, willful and prejudicial to the accused, it shall be deemed substantial by the court. *Scales*, 518 N.W.2d at 592 n. 5. Likewise, the violation shall be deemed

substantial if it was of a kind likely to lead the accused to misunderstand his position or legal rights in a way that influenced his decision to make the statement, or if the violation created a significant risk that the incriminating statement may have been untrue. *Id.* If the violation does not fall into one of the above categories, the court shall then consider all the circumstances in deciding substantiality including: (1) the extent of deviation from the recording requirement, (2) the extent to which the violation was willful, (3) the extent to which the violation likely led Defendant to misunderstand his legal rights, (4) the extent to which exclusion of the statements will tend to prevent future violations, (5) the extent to which the violation likely influenced Defendant's decision to make the statements, and (6) the extent to which the violation prejudiced Defendant's ability to support his motion, or to defend himself in the proceeding in which the statements are sought to be offered in evidence against him. *Id.*

In this case after examining the totality of the circumstances, the court finds that any *Scales* violation by the officers was not substantial. First, there is no evidence that the violation was willful. Second, there is no evidence that Defendant was even aware that the interrogation in the interview room was not being recorded. Therefore, no evidence exists that the violation led Defendant to misunderstand his legal rights, or that it created a risk of Defendant making a statement that was untrue. Similarly, no evidence exists that the violation influenced Defendant's decision to make a statement in the interview room. Third, the court finds that exclusion of the statements

is unlikely to prevent future violations because both officers testified that their usual practice is to record in-custody interviews, and they were unaware that a recording of this particular interview was not being generated. There is no indication that this violation was part of a pattern of behavior that would concern the court.

Finally, the court finds that the violation did not prejudice Defendant. "The rationale underlying the recording requirement is to avoid factual disputes underlying an accused's claims that the police violated his constitutional rights." *State v. Williams*, 535 N.W.2d 277, 289 (Minn. 1995). In *State v. Inman*, the Minnesota Supreme Court held that:

> A violation can be considered prejudicial to the accused if the accused alleges, contrary to the prosecution's assertions, that no *Miranda* warning was given or that he did not waive his *Miranda* rights. If it is undisputed that the *Miranda* warning was administered, or that the accused waived his or her right to remain silent, the lack of a recording creates no prejudice to the accused.

692 N.W.2d 76, 81 (Minn. 2005). Here, Defendant makes no claim that a *Miranda* warning was not issued before he made statements in the interview room. There is no dispute that Defendant was Mirandize in the interview room. Therefore, the violation caused no prejudice to Defendant. For all these reasons, Defendant's motion to suppress the statements he made in the interview room is denied.

V. Minnesota Statutes Section 624.714, subd. 1a is Constitutionally Permissible Under the Second Amendment.

In addition to his motion to suppress, Defendant moves the court to declare Minnesota's permit-to-carry statute unconstitutional. "Minnesota statutes are presumed constitutional and [a court should] exercise [its] power to declare a statute unconstitutional with 'extreme caution and only when absolutely necessary.'" *State v. Wenthe*, 839 N.W.2d 83, 87 (Minn. 2013) (quoting *In re Haggerty*, 448 N.W.2d 363, 364 (Minn. 1989). "A party challenging a statute on constitutional grounds must demonstrate, beyond a reasonable doubt, that the statute violates a provision of the constitution." *State v. Grossman*, 636 N.W.2d 545, 548 (Minn. 2001).

Minnesota's permit-to-carry statute requires that any person who carries, holds, or possesses a pistol in a motor vehicle or on or about the person's clothes or the person, or otherwise in possession or control in a public place must have a permit to carry the pistol, or else be guilty of a gross misdemeanor. Minn. Stat. § 624.714, subd. 1a. Defendant claims that Section 624.714, subd. 1a violates the Second Amendment of the United States Constitution as interpreted by the United States Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008). The Supreme Court enforced *Heller* against the states in *McDonald v. City of Chicago*. *See McDonald v. City of Chicago*, 561 U.S. 742 (2010) (plurality opinion). The Minnesota Supreme Court interprets these cases to "protect[ ] the rights of law-abiding, responsible citizens to possess a handgun

in the home for the purpose of self-defense." *State v. Craig*, 826 N.W.2d 789, 792 (Minn. 2013). However, these rights are "not unlimited." *Heller*, 554 U.S. at 626. In both *Heller* and *McDonald*, the Supreme Court 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 such as schools and government buildings." *Id.* at 626-27 & n.26; *see also McDonald*, 561 U.S. at 785. The Court considered this list of prohibitions to be "presumptively lawful." *Heller*, 554 U.S. at 626-27 & n.26.

In *State v. Craig*, the Minnesota Supreme Court considered this list of presumptively lawful prohibitions to be "well-reasoned and persuasive authority" and elected to follow it, stating that "[it] establishes persons or activities that categorically fall outside the scope of the Second Amendment's protection." *Craig*, 826 N.W.2d at 793-94. The Court then adopted the "historical approach applied by the Third Circuit in *Barton*" as the test for determining whether a statute violates the Second Amendment as it was the "most faithful to the Supreme Court's analysis in *Heller* and *McDonald*." *Id.* at 795 (citing *United States v. Barton*, 633 F.3d 168 (3d Cir. 2011)). Therefore, if a restriction was enumerated in *Heller*'s list of presumptively lawful, historical restrictions, it will be considered a valid restriction under the Second Amendment.

Regulating otherwise lawful citizens' ability to carry concealed weapons in public was not part of the

Supreme Court's list of presumptively lawful restrictions in *Heller*. *See Heller*, 554 U.S. 626–27. But, the *Heller* Court was clear that its list "d[id] not purport to be exhaustive" and the presumptively lawful regulatory measures were identified "only as examples." *Id.* at 627 n.26. Additionally, immediately before discussing the list of presumptive prohibitions, the *Heller* Court stated:

> From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right [secured by the Second Amendment] was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. For example, the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues.

Id. at 626 (citations omitted). Thus, the *Heller* Court's comment that prohibitions on carrying concealed weapons were constitutional for over a century suggests these restrictions may be grouped with the other presumptively lawful, longstanding regulations identified in the immediately following sentence.

In *Peruta v. County of San Diego*, the Ninth Circuit Court of Appeals, sitting en banc, considered a question similar to the one before this court: whether the Second Amendment protects, in any degree, the ability to carry concealed firearms in public, and consequently whether the Second Amendment permits California's requirement that a member of the general public have

a license to carry a concealed weapon, and make a showing of "good cause" to obtain such a license. 824 F.3d 919, 927 (9th Cir. 2016) (en banc). The *Peruta* Court engaged in a deep historical analysis of concealed weapon regulations to mirror that of the Supreme Court's "historical inquiry" in *Heller* and *McDonald*. *Id.* at 929. The Court summarized its inquiry as such:

> The historical materials bearing on the adoption of the Second and Fourteenth Amendments are remarkably consistent. Under English law, the carrying of concealed weapons was specifically prohibited since at least 1541. The acknowledged predecessor to the Second Amendment, the 1689 English Bill of Rights, protected the rights of Protestants to have arms, but only those arms that were "allowed by law." Concealed weapons were not "allowed by law," but were, instead, flatly prohibited. In the years after the adoption of the Second Amendment and before the adoption of the Fourteenth Amendment, the state courts that considered the question nearly universally concluded that laws forbidding concealed weapons were consistent with both the Second Amendment and their state constitutions. The only exception was Kentucky, whose court of appeals held to the contrary in a two-to-one decision based on its state constitution. Kentucky thereafter amended its constitution to overturn that result. In the decades immediately after the adoption of the Fourteenth Amendment, all of the state courts that addressed the question upheld the ability of their state legislatures to prohibit concealed

> weapons. Finally, the United States Supreme Court unambiguously stated in 1897 that the protection of the Second Amendment does not extend to "the carrying of concealed weapons." [*Robertson v. Baldwin*, 165 U.S. 275, 282 (1897)].[1]

Peruta, 824 F.3d at 939. The *Peruta* court found that the framers drafted the Second Amendment to codify "pre-existing right[s]." *Id.* at 928 (quoting *Heller*, 554 U.S. at 592). Based on its historical analysis, the *Peruta* court held that the Second Amendment permitted California's requirement that a person show "good cause" before he can obtain a concealed carry license. *Id.* at 939. Notably, the Supreme Court declined to review the Ninth Circuit's conclusion and denied certiorari. *Peruta v. California*, 137 S. Ct. 1995 (2017) (mem.). This court need not address whether a requirement to show "good cause" is appropriate in the

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[1] The Supreme Court in *Baldwin* specifically stated that

> [T]he first 10 amendments to the constitution, commonly known as the "Bill of Rights," were not intended to lay down any novel principles of government, but simply to embody certain guaranties and immunities which we had inherited from our English ancestors, and which had, from time immemorial, been subject to certain well-recognized exceptions, arising from the necessities of the case. In incorporating these principles into the fundamental law, there was no intention of disregarding the exceptions, which continued to be recognized as if they had been formally expressed. Thus . . . the right of the people to keep and bear arms (article 2) is not infringed by laws prohibiting the carrying of concealed weapons[.]

Baldwin, 165 U.S. at 281–82.

context of the Second Amendment because no such showing is required in Minnesota. Minnesota's permit requirement for carrying firearms is therefore less restrictive than California's. To the extent that the laws are analogous, the court finds that *Peruta*'s historical analysis is persuasive, and that under the "historical approach" adopted by the Minnesota Supreme Court in *Craig*, the permit statute does not violate the Second Amendment.

Additionally, other courts have found regulations on carrying a firearm to be constitutional. *See Woolard v. Gallagher*, 712 F.3d 865, 882 (4th Cir. 2013) (applying intermediate scrutiny, and finding that Maryland's permit to carry scheme which included a "good-and-substantial-reason" requirement was constitutionally permissible); *Hightower v. City of Boston*, 693 F.3d 61, 73 (1st Cir. 2012) (examining *Heller* and concluding that "[t]he government may regulate the carrying of concealed weapons outside of the home."); *Williams v. Puerto Rico*, 910 F.Supp.2d 386, 395 (D.P.R. 2012) (holding that licensing of weapons in Puerto Rico is constitutional and that under Second Amendment case law, "it is the complete ban of weapons—not the mere regulation by licensing or requiring permits—that is unconstitutional.").

Defendant urges this court to apply strict scrutiny and strike down the statute in question, but his argument for doing so is unpersuasive. First, the Minnesota Supreme Court has adopted an historical approach as the test to determine whether a statute violates the Second Amendment. *Craig*, 826 N.W.2d at 795. Second, as several courts have held, intermediate

scrutiny is the appropriate standard to apply when analyzing a permit-to-carry scheme like that found in Section 624.714. *See, e.g.*, *U.S. v. Booker*, 644 F.3d 12, 25 (1st Cir. 2011); *U.S. v. Masciandaro*, 638 F.3d 458, 471 (4th Cir. 2011) (holding that strict scrutiny is implicated when a fundamental right is at issue, but a lesser showing is necessary with respect to laws that burden the right to keep and bear arms outside of the home); *U.S. v. Reese*, 627 F.3d 792, 802 (10th Cir. 2010). After reviewing these decisions, the court is unmoved by Defendant's argument that it should apply strict scrutiny to Minnesota's permit to carry law. The court finds that Minnesota Statutes § 624.714, subd. 1a is reasonably adapted to substantially serve the State's significant interests in protecting public safety and preventing crime. Therefore, Defendant's motion to declare Minnesota Statute section 624.714(a) unconstitutional is denied.

JRK