

**STATE OF MINNESOTA
IN COURT OF APPEALS**

A19-1112

A19-1113

A19-1115

A19-1116

State of Minnesota,
Appellant,

vs.

Dmitry Suspitsyn,
Respondent (A19-1112),

Michael John Mehr,
Respondent (A19-1113),

Ahmed Hassen Ahmed,
Respondent (A19-1115),

Ayanle Mohamoud Iman,
Respondent (A19-1116).

Filed March 16, 2020

Affirmed

Reilly, Judge

Kandiyohi County District Court
File No. 34-CR-19-216

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Shane D. Baker, Kandiyohi County Attorney, Aaron P. Welch, Assistant County Attorney,
Willmar, Minnesota (for appellant)

Cathryn Middlebrook, Chief Appellate Public Defender, Drake D. Metzger, Metzger Law
Firm, LLC, Minneapolis, Minnesota (for respondents)

Considered and decided by Connolly, Presiding Judge; Hooten, Judge; and Reilly,
Judge.

S Y L L A B U S

A person violates Minnesota Statutes section 609.324, subdivision 2(2) (2018), only if, while in a public place, the person hires, offers to hire, or agrees to hire another person to engage in sexual penetration or sexual contact.

O P I N I O N

REILLY, Judge

In these pretrial appeals, the State of Minnesota challenges the district court's orders dismissing charges of soliciting prostitution for lack of probable cause. Because the plain language of Minnesota Statutes section 609.324, subdivision 2(2), requires a showing that the solicitation occurred in a public place and the state failed to make such a showing, we affirm.

F A C T S

Between January and March 2019, law enforcement agents conducted a sting operation in Willmar, targeting the demand for human trafficking. Officers created a fictional "prostitute" identified as "Brittany" for the operation. Brittany posted online advertisements on electronic marketplaces offering to perform sexual services at a location selected by Brittany. The advertisement included a phone number to contact Brittany by text message. Respondents Michael John Mehr, Ahmed Hassen Ahmed, Ayanle Mohamoud Iman, and Dmitry Suspitsyn each responded to Brittany seeking sexual contact in exchange for money.

On January 24, Mehr texted Brittany seeking sexual contact. Brittany and Mehr agreed that Mehr would pay \$80 for half an hour of sexual contact from Brittany. Brittany

provided Mehr with the address of a Willmar hotel and instructed him to meet her there. Police officers observed Mehr stop at a gas station to pick up a requested item for Brittany and then drive to the hotel parking lot.¹ Officers arrested Mehr in the hotel parking lot and the state charged him with soliciting prostitution.

On February 16, Ahmed texted Brittany seeking sexual contact. Ahmed and Brittany agreed that he would pay her \$100 for one hour of sexual contact. Brittany also texted Ahmed the hotel room number and requested that he pick up an item for her at a gas station. Officers observed Ahmed stop at a gas station to pick up the requested item for Brittany. Officers arrested Ahmed after he arrived at the hotel parking lot. The state charged Ahmed with soliciting prostitution and fifth-degree possession of a controlled substance.

On February 20, Iman texted Brittany seeking sexual contact. Iman agreed to pay \$140 in exchange for one hour of sexual contact with Brittany. Officers observed Iman stop at a gas station to pick up a requested item for Brittany. Brittany provided the name of a hotel and a room number at the hotel, and Iman drove to the hotel parking lot. Iman was arrested in the hotel parking lot and charged with soliciting prostitution.

On March 7, Suspitsyn texted Brittany seeking sexual contact. Brittany agreed to provide Suspitsyn one hour of sexual contact in exchange for \$120. Police officers saw Suspitsyn visit a gas station in Willmar. Brittany then sent a text message to Suspitsyn

¹ Pursuant to their investigative protocol, Brittany asked each respondent to stop at a gas station to pick up an item, such as a can of soda or a candy bar. Law enforcement agents conducted surveillance at the gas station and identified each respondent before he arrived at the hotel to meet Brittany.

directing him to go to a hotel room in Willmar. Officers observed Suspitsyn enter the hotel and arrested him at the hotel-room door. The state charged Suspitsyn with soliciting prostitution and with providing a false name.

Each respondent was charged with soliciting prostitution pursuant to Minn. Stat. § 609.324, subd. 2(2), a gross misdemeanor. Respondents moved to dismiss the charges for lack of probable cause. The district court issued an order dismissing the soliciting-prostitution charges against each respondent for lack of probable cause on the ground that the record did not establish that respondents were in a public place when they solicited prostitution. The district court reasoned that although the sexual acts themselves were intended to take place in a hotel, which qualifies as a public place, there was no evidence that the solicitation of those sexual acts occurred in public. Accordingly, the district court determined that there was “no probable cause to find that the solicitation was public” and dismissed the soliciting-prostitution charges. The state appeals the district court’s dismissal order.²

ISSUES

- I. Does the district court’s dismissal order have a critical impact on the state’s ability to prosecute?
- II. Does Minn. Stat. § 609.324, subd. 2(2) require a showing that the solicitation of prostitution occurred in a public place?

² The state also moved to consolidate the appeals. We agreed and consolidated the appeals for judicial economy.

ANALYSIS

I.

We first consider as a threshold issue whether the state is entitled to appellate review. *State v. Lugo*, 887 N.W.2d 476, 481 (Minn. 2016). The state’s ability to appeal in a criminal case is limited. *Id.* (citation omitted). The state must demonstrate that unless the district court’s ruling is reversed, the alleged error will have a “critical impact” on the outcome of the trial. *State v. Trei*, 624 N.W.2d 595, 597 (Minn. App. 2001). Dismissal of the charges satisfies the critical-impact requirement. *State v. Stavish*, 868 N.W.2d 670, 674 (Minn. 2015). Because the district court dismissed the soliciting-prostitution charges, the state has satisfied the threshold requirement that the district court’s ruling has a critical impact on the state’s ability to prosecute. *See id.*

II.

A.

When a probable-cause dismissal is based on statutory construction or another legal issue, a question of law is presented for appeal. *State v. Tice*, 686 N.W.2d 351, 353 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004). “[T]he test of probable cause is whether the evidence worthy of consideration . . . brings the charge against the [defendant] within reasonable probability.” *State v. Dunson*, 770 N.W.2d 546, 552 (Minn. App. 2009) (citing *State v. Florence*, 239 N.W.2d 892, 896 (Minn. 1976)). Probable cause exists if “the facts appearing in the record, including reliable hearsay, would preclude the granting of a motion for a directed verdict of acquittal if proved at trial.” *Florence*, 239 N.W.2d at 903. Probable cause is required for every element of the crime charged. *State v. Lopez*, 778

N.W.2d 700, 704 (Minn. 2010). On appeal from a district court’s pretrial probable-cause ruling, an appellate court reviews factual findings for clear error and reviews the application of the probable-cause standard to the facts de novo. *Id.* at 703. A charge should not be dismissed for lack of probable cause if there is a fact question on an element of the offense. *Id.* at 704.

B.

The facts here are undisputed and the only question presented is one of statutory interpretation. Statutory interpretation is a question of law reviewed de novo. *State v. S.A.M.*, 891 N.W.2d 602, 604 (Minn. 2017). “The objective of statutory interpretation is to ascertain and effectuate the Legislature’s intent.” *State v. Haywood*, 886 N.W.2d 485, 488 (Minn. 2016) (quotation omitted). “If the Legislature’s intent is clear from the statute’s plain and unambiguous language, then [a court] interpret[s] the statute according to its plain meaning” without engaging in further construction. *Id.*; see Minn. Stat. § 645.16 (2018) (articulating canons of statutory construction). A reviewing court presumes that the legislature does not intend absurd or unreasonable results, Minn. Stat. § 645.17(1) (2018), and we “give a reasonable and sensible construction to criminal statutes,” *State v. Greenman*, 825 N.W.2d 387, 390 (Minn. App. 2013) (quotation omitted).

The state charged respondents with gross misdemeanor soliciting prostitution in a public place in violation of Minn. Stat. § 609.324, subd. 2(2). The statute provides:

Whoever, while acting as a patron, intentionally does . . . the following while in a public place is guilty of a gross misdemeanor: . . . hires, offers to hire, or agrees to hire an individual 18 years of age or older to engage in sexual penetration or sexual contact.

Id.

A “patron” is “an individual who engages in prostitution by hiring, offering to hire, or agreeing to hire another individual to engage in sexual penetration or sexual contact.” Minn. Stat. § 609.321, subd. 4 (2018). “Sexual contact” includes “the intentional touching by an individual of a prostitute’s intimate parts” or “the intentional touching by a prostitute of another individual’s intimate parts” for the purpose of satisfying the actor’s sexual impulses. *Id.*, subd. 10 (2018). A “public place” is defined as:

a public street or sidewalk, a pedestrian skyway system . . . , 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.

Id., subd. 12 (2018).

The district court dismissed the gross misdemeanor soliciting-prostitution charges on the ground that “the record does not provide facts supporting probable cause that [respondents were] soliciting prostitution ‘while in a public place.’” We agree. The plain and unambiguous language of the statute criminalizes the acts of hiring, offering to hire, or agreeing to hire a person for sexual contact when done in a public place. The statute does not define the phrase “hires, offers to hire, or agrees to hire.” In the absence of an applicable statutory definition we “generally give statutory terms their common meaning.” *State v. Rick*, 835 N.W.2d 478, 483 (Minn. 2013). We may also “look to dictionary definitions to determine the plain meaning of words.” *Haywood*, 886 N.W.2d at 490.

“Hire” means “[t]o engage the labor or services of another for wages or other payment,” or “[t]o grant the temporary use of services.” *Black’s Law Dictionary* 847 (10th ed. 2014). In *State v. Kelly*, we held that an act of soliciting prostitution is complete when the original offer is made. 379 N.W.2d 649, 652 (Minn. App. 1986). The defendant in *Kelly* was charged with prostitution under an older version of the statute for offering to engage in sex with an undercover police officer for \$50. *Id.* at 650-51. The defendant later became suspicious and told the officer that he did not need to pay for sex. *Id.* at 651. On appeal, the defendant argued that she could not be found guilty of prostitution because she withdrew her offer to have sex with the police officer. *Id.* at 652. We rejected this argument, determining that prostitution is an “inchoate offense” such that the defendant’s “criminal act was complete when she offered sexual services for pay.” *Id.* Here, similarly, the solicitation activity occurred entirely on-line and via text messages. Respondents’ criminal acts of soliciting prostitution were complete when they sent their initial text messages offering to pay Brittany for sexual contact. Each respondent’s location during these initial exchanges is unknown. There are no facts alleged in the record demonstrating that respondents were in a public place when the solicitation occurred. Accordingly, the district court properly determined that the criminal charges were not supported by probable cause.³

³ The state argued in its appellate brief that the statute criminalizes sexual activity occurring in a public place, regardless of the patron’s location when the patron initially solicited for sex. The state abandoned this position at oral argument.

The district court's decision was further guided by *State v. White*, which involved the 2002 version of Minn. Stat. § 609.324 (2002). 692 N.W.2d 749, 750 (Minn. App. 2005), *review dismissed* (Minn. June 14, 2005). In that case, White entered an undercover officer's vehicle and negotiated a price for a sexual act. *Id.* The state charged White with gross-misdemeanor prostitution. *Id.* The district court dismissed the charge for lack of probable cause and we affirmed the district court, determining that the inside of a motor vehicle on a public street was not a "public place" for purposes of the gross-misdemeanor prostitution statute. *Id.* at 750, 753. The state appealed to the supreme court, but the appeal was dismissed after the Minnesota Legislature amended Minn. Stat. § 609.321, subd. 12, to include the phrase "or a motor vehicle located on a public street," effectively resolving the issue raised on appeal. See 2005 Minn. Laws ch. 136, art. 17, § 23, at 1134. Here, the district court reasoned that given the analysis in *White*, "the phrase 'agreeing to hire' is narrowly construed to concern the actual solicitation and negotiation of prostitution." We discern no error in the district court's determination, which is consistent with the *Kelly* and *White* decisions.

The state urges us to construe the gross misdemeanor soliciting-prostitution statute broadly to allow for better targeting of human-trafficking-related offenses. While we do not rely on legislative history to determine the meaning of Minn. Stat. § 609.324, the history of this statute supports our view that the district court did not err by determining that the plain language of the statute required dismissal of the charges, despite the state's public policy arguments. See *City of Cloquet v. Crandall*, 824 N.W.2d 648, 653 (Minn. App. 2012) (noting that while court does not review legislative history when statutory

language is unambiguous, a review of statute’s history may “confirm[] [the court’s] understanding, which we derive from the statute’s plain and unambiguous language”). Here, the legislature enacted section 609.324 in 1979. *See* 1979 Minn. Laws ch. 255, § 4, at 541. The *White* court addressed the legislative intent of this section and concluded that “the intent behind this gross-misdemeanor prostitution statute was to further discourage the solicitation and negotiation of prostitution in open view of the public.” 692 N.W.2d at 751. The Minnesota Court of Appeals noted that although the prostitution statute does not include a statement of intent, it can be inferred from the language that “it is the publicly visible nature of much prostitution activity that prompts criminal enforcement.” *Id.*; *see also State v. Peery*, 28 N.W.2d 851, 854 (Minn. 1947) (stating in context of indecent-exposure case that an act is “indecent” when it is “open to the observation of others”).

The legislature has not substantially changed the language or express intent of the statute in its forty-year history.⁴ If the legislature intended to prohibit a patron from soliciting prostitution in an effort to curb human trafficking, it could redraft the language of the statute to reflect that intent. But it is not the prerogative of this court to “add language that is not present in the statute or supply what the legislature purposely omits or inadvertently overlooks.” *Kutscheid v. Emerald Square Props., Inc.*, 770 N.W.2d 529, 533 (Minn. App. 2009) (quotation omitted). The state’s argument urging us to expand section

⁴ The text of the 1979 law provided: “Whoever solicits or accepts a solicitation to engage for hire in sexual penetration or sexual contact while in a public place may be sentenced to imprisonment for not more than one year or to payment of a fine . . . or both.” Minn. Stat. § 609.324, subd. 2 (1979) (current version at Minn. Stat. § 609.324, subd. 2(2) (2020)). Subdivision 2(2) was last amended in 2011 to clarify that a patron who solicits prostitution is guilty of a gross misdemeanor. *See* 2011 Minn. Laws ch. 1, art. 5, § 4, at 21.

609.324, subd. 2(2), is more properly directed to the legislature. *See State v. Richmond*, 730 N.W.2d 62, 70 (Minn. App. 2007) (cautioning that it is not for appellate courts to “fix” a statutory scheme by adding or removing language), *review denied* (Minn. June 19, 2007); *see also State v. Anderson*, 159 N.W.2d 892, 894 (Minn. 1968) (recognizing that definition of crimes lies within exclusive province of legislature).⁵

By our decision today, we do not intend to minimize the seriousness of human trafficking. Nevertheless, we are obligated to follow the law. Given the record before us and the plain language of the statute, we determine that the district court did not err by granting respondents’ pretrial motions to dismiss for lack of probable cause.

DECISION

Under the plain language of Minnesota Statutes section 609.324, subdivision 2(2), a violation of the statute occurs only if a person engages in the prohibited solicitation while in a public place. Because the state did not allege that respondents’ solicitation for sexual

⁵ The district court noted that the communications between respondents and Brittany occurred entirely via text messages and “such electronic communication is unlikely public.” We recognize that “[t]echnological advances such as the Internet and mobile smart phones have made sex trafficking . . . a more convenient worldwide marketing channel” and “heighten[] the dangers and risks associated with sexual exploitation.” Sona Movsisyan, *Human Trafficking in A Digital Age: Who Should Be Held Accountable?*, 27 Mich. St. Int’l L. Rev. 539, 547 (2019) (citations and quotation omitted). Further, “the lack of prosecution of johns, combined with the uncertainty of treating adults in prostitution as victims, has allowed commercial sex to continue to flourish in Minnesota.” Erinn B. Valine, *The Demand Side of Sex Trafficking in Minnesota: The Who, Where, and Why—And What We Can Do About It*, 45 Mitchell Hamline L. Rev. 79, 115 (2019). We are sensitive to the state’s argument that Minnesota’s public policy has evolved from prohibiting visible prostitution to combating human trafficking, and that the law has not kept up with technological changes. But it is for the legislature—not this court—to make any appropriate statutory amendments.

services occurred in a public place, the district court did not err by dismissing the state's charges for lack of probable cause.

Affirmed.