

2000

# Criminal Law—Expanding the Open Bottle Law to a Strict Liability Offense

Daryl Hennen

Follow this and additional works at: <http://open.mitchellhamline.edu/wmlr>

## Recommended Citation

Hennen, Daryl (2000) "Criminal Law—Expanding the Open Bottle Law to a Strict Liability Offense," *William Mitchell Law Review*: Vol. 27: Iss. 2, Article 49.

Available at: <http://open.mitchellhamline.edu/wmlr/vol27/iss2/49>

This Note is brought to you for free and open access by the Law Reviews and Journals at Mitchell Hamline Open Access. It has been accepted for inclusion in William Mitchell Law Review by an authorized administrator of Mitchell Hamline Open Access. For more information, please contact [sean.felhofer@mitchellhamline.edu](mailto:sean.felhofer@mitchellhamline.edu).

© Mitchell Hamline School of Law

**CRIMINAL LAW—EXPANDING THE OPEN BOTTLE LAW  
TO A STRICT LIABILITY OFFENSE**

*State v. Loge*, 608 N.W.2d 152 (Minn. 2000)

Daryl Henchen<sup>†</sup>

I. INTRODUCTION .....1287

II. HISTORY .....1288

    A. *General History* ..... 1288

    B. *Minnesota History* ..... 1290

III. THE *LOGE* DECISION .....1296

    A. *The Facts* ..... 1296

    B. *The Court’s Analysis* ..... 1297

IV. THE ANALYSIS .....1299

V. CONCLUSION .....1304

I. INTRODUCTION

Minnesota adopted Minnesota Statute section 169.122, the “Open Bottle Law,” in 1959.<sup>1</sup> Since that time, there has been some

<sup>†</sup> J.D. Candidate 2002, William Mitchell College of Law; B.A., St. Cloud State University.

1. MINN. STAT. § 169.122 (1998 & Supp. 1999); *State v. Loge*, 608 N.W.2d 152, 154 (Minn. 2000). Since the *Loge* decision, the legislature has amended section 169.122. The amended form of section 169.122 had no affect on the Court’s analysis. *Infra* note 18 and accompanying text. At the time of the *Loge* decision, section 169.122 read as follows:

Subdivision 1. Act prohibited. No person shall drink or consume intoxicating liquors or nonintoxicating malt liquors in any motor vehicle when such vehicle is upon a public highway.

Subdivision 2. Possession prohibited. No person shall have in possession while in a private motor vehicle upon a public highway, any bottle or receptacle containing intoxicating liquor or 3.2 percent malt liquor which has been opened, or the seal broken, or the contents of which have been partially removed. For purposes of this section, “possession” means either that the person had actual possession of the bottle or receptacle or that the person consciously exercised dominion and control over the bot-

question as to whether subdivision 3 of the statute established that the owner, or driver of the vehicle if the owner is not present, must have knowledge of an open bottle to be convicted under the law. In March of 2000, the Minnesota Supreme Court finally addressed this issue in *State v. Loge*.<sup>2</sup> The Minnesota Supreme Court affirmed a Minnesota Court of Appeal's holding that section 169.122, subdivision 3, makes a driver of a vehicle liable for unknowingly keeping an open bottle of intoxicating liquor in the vehicle while driving on a public highway.<sup>3</sup> In ruling on this issue, the Minnesota Supreme Court correctly interpreted section 169.122 as creating a strict liability offense for an owner or driver who violates the Open Bottle Law.

## II. HISTORY

### A. General History

Legislatures generally began enacting Open Bottle Laws "in an effort to promote highway safety by decreasing the opportunity for alcohol consumption and drunken driving that an open container of alcohol anywhere in the vehicle creates."<sup>4</sup> Allowing a driver to

---

tle or receptacle. This subdivision does not apply to a bottle or receptacle that is in the trunk of the vehicle if it is equipped with a trunk, or that is in another area of the vehicle not normally occupied by the driver and passengers if the vehicle is not equipped with a trunk.

Subdivision 3. Liability of nonpresent owner. It shall be unlawful for the owner of any private motor vehicle or the driver, if the owner be not then present in the motor vehicle, to keep or allow to be kept in a motor vehicle when such vehicle is upon the public highway any bottle or receptacle containing intoxicating liquors or 3.2 percent malt liquors which has been opened, or the seal broken, or the contents of which have been partially removed except when such bottle or receptacle shall be kept in the trunk of the motor vehicle when such vehicle is equipped with a trunk, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the motor vehicle is not equipped with a trunk. A utility compartment or glove compartment shall be deemed to be within the area occupied by the driver and passengers.

Subdivision 4. Whoever violates the provisions of subdivisions 1 to 3 is guilty of a misdemeanor.

Subdivision 5. Exceptions. This section does not apply to the possession or consumption of alcoholic beverage by passengers in: (1) a bus that is operated by a motor carrier of passengers, as defined in section 221.011, subdivision 48; or (2) a vehicle providing limousine service as defined in section 221.84, subdivision 1.

MINN. STAT. § 169.122.

2. *Loge*, 608 N.W.2d at 153.

3. *Id.* at 158-159.

4. *Id.* at 156.

consume alcohol in a vehicle gives that individual an opportunity to become intoxicated while driving.<sup>5</sup> As an individual's blood alcohol concentration increases so does their probability of being involved in an accident.<sup>6</sup> Specifically, the "most dangerous form of alcohol consumption from the viewpoint of drunk driving is that which occurs in cars."<sup>7</sup> For example, a study involving San Diego drivers who had been arrested for drinking and driving found that more than half had consumed alcohol in their cars soon after purchasing it from the store.<sup>8</sup> As a result, several laws have been passed through the legislature, such as the Open Bottle Law, which seek to reduce and prosecute drunk driving offenders.<sup>9</sup> However, not all

---

5. 2 MARTIN J. COSTELLO ET AL., MINNESOTA MISDEMEANORS AND MOVING TRAFFIC VIOLATIONS 221 (3rd ed. 1999).

6. DONALD H. NICHOLS ET AL., THE DRINKING DRIVER IN MINNESOTA: CRIMINAL AND CIVIL ISSUES, 2 (1982). "The higher a driver's blood alcohol concentration, the disproportionately greater is the likelihood that he will crash, the greater is the likelihood that he himself will have initiated any crash in which he is involved, and the greater is the likelihood that the crash will have been severe." *Id.* The author also states that "[r]oughly half of all traffic deaths in the United States involve heavy use of alcohol on the part of drivers or pedestrians." *Id.* at 1. Similarly, "[d]rivers identified by police as having been drinking (but not necessarily legally drunk) are at least eight times more likely to cause a fatal crash than are drivers with no reported alcohol involvement." STEVEN D. LEVITT & JACK PORTER, ESTIMATING THE EFFECT OF ALCOHOL ON DRIVER RISK USING ONLY FATAL ACCIDENT STATISTICS 4 (National Bureau of Econ. Research Working Paper No. 6944, 1999). "Drivers above the blood-alcohol limit of 0.10 are at least 14 times more likely to be the cause of fatal crashes." *Id.*

7. HUGH LAURENCE ROSS, CONFRONTING DRUNK DRIVING: SOCIAL POLICY FOR SAVING LIVES 99 (1992); *see also* LEVITT & PORTER, *supra* note 6, at 1 (stating that the "death toll in motor vehicle accidents roughly equals the combined number of suicides and homicides, and motor vehicle deaths are thirty times as frequent as accidental deaths due to firearms."); Christina J. Nielsen, *The Foreclosure Of Double Jeopardy In Administrative License Suspension And Civil Asset Forfeitures Following United States v. Ursery*, 65 U.M.K.C. L. REV. 104, 122 (1996) (stating that that the problem of driving while intoxicated is so wide spread that approximately 1.6 million drivers are arrested each year for driving under the influence of alcohol or narcotics and two in five Americans will find themselves in an alcohol-related crash at some point in their lives); Sean P. Sweeney, *Murphy's Law: Be Mindful Of 'Social Host Liability' During Holidays*, THE PATRIOT LEDGER, Dec. 11, 1999, at 4F (stating that "in the past decade, four times as many Americans have died in drunk driving accidents as were killed in the Vietnam War"). Mr. Sweeney also notes that, in 1997 alone, there were two alcohol-related traffic deaths per hour. *Id.* "This rate of death is the equivalent of two jetliners crashing every week." *Id.*

8. ROSS, *supra* note 7, at 99.

9. NICHOLS, *supra* note 6, at 3. The forms of criminal charges for drunk driving violations range from driving while under the influence (DWI), to aggravated DWI (for a person who has had a previous offense), to criminal negligence (where a death has occurred). *Id.* In addition to regulations such as the Open Bottle Law, many municipalities have passed local ordinances to prohibit alcohol con-

states prohibit the consumption of alcohol while driving.<sup>10</sup> Federal Law now provides highway traffic incentive grants for states that adopt open-bottle and in-vehicle consumption laws.<sup>11</sup>

### B. Minnesota History

Minnesota adopted the Open Bottle Law, section 169.122, in 1959.<sup>12</sup> Section 169.122 was amended in 1986<sup>13</sup>, 1990<sup>14</sup>, 1991<sup>15</sup>, 1993<sup>16</sup>, 1994<sup>17</sup>, and 1999.<sup>18</sup> The statute, like other sections of the

sumption and possession in private parking lots or public areas in an effort to control the disorderly conduct associated with drinking near vehicles in parks. COSTELLO, *supra* note 5, at 223.

10. COSTELLO, *supra* note 5, at 221; see also Jennifer E. Dayok, *Administrative Driver's License Suspension: A Remedial Tool That Is Not In Jeopardy*, 45 AM. U. L. REV. 1151, 1184 n.9 (1996) (stating that at least twenty-five states have open container laws).

11. COSTELLO, *supra* note 5, at 221.

12. MINN. STAT. § 169.122 (1998 & Supp. 1999).

13. *Id.* (removing gender specific references applicable to human beings throughout Minnesota Statutes). These amendments did not change the substance of the amended statutes. *Id.*

14. *Id.* (defining possession in subdivision 2 and providing "that the subdivision does not apply to bottles or receptacles in trunks or other areas of vehicles not normally occupied by drivers and passengers").

15. *Id.* (substituting "3.2 percent malt liquor" for "nonintoxicating malt liquor").

16. *Id.* (adding subdivision 5, which created an exception to this statute in the case of a "limousine or a bus operated under a charter").

17. *Id.* (replacing "a limousine as defined in section 168.011, subdivision 35" with "a vehicle providing limousine service as defined in section 221.84, subdivision 1").

18. Currently, section 169.122, as amended, reads as follows:

Subdivision 1. Act prohibited. No person shall drink or consume an alcoholic beverage, distilled spirit, or 3.2 percent malt liquor in any motor vehicle when the vehicle is upon a public highway.

Subdivision 2. Possession prohibited. (a) No person shall have in possession while in a private motor vehicle upon a public highway, any bottle or receptacle containing an alcoholic beverage, distilled spirit, or 3.2 percent malt liquor that has been opened, or the seal broken, or the contents of which have been partially removed. (b) For purposes of this section, "possession" means either that the person had actual possession of the bottle or receptacle or that the person consciously exercised dominion and control over the bottle or receptacle. This subdivision does not apply to a bottle or receptacle that is in the trunk of the vehicle if it is equipped with a trunk, or that is in another area of the vehicle not normally occupied by the driver and passengers if the vehicle is not equipped with a trunk.

Subdivision 3. Liability of nonpresent owner. (a) It is unlawful for the owner of any private motor vehicle or the driver, if the owner is not then present in the motor vehicle, to keep or allow to be kept in a motor vehi-

same chapter, is designed to regulate and promote highway safety.<sup>19</sup> Section 169.122 prohibits both the consumption of liquor or beer and the possession of open bottles or other receptacles containing those substances by persons in motor vehicles<sup>20</sup> on public highways.<sup>21</sup> Violation of this statute is a misdemeanor.<sup>22</sup> This section

---

cle when the vehicle is upon the public highway any bottle or receptacle containing an alcoholic beverage, distilled spirit, or 3.2 percent malt liquor that has been opened, or the seal broken, or the contents of which have been partially removed. (b) This subdivision does not apply to a bottle or receptacle that is in the trunk of the motor vehicle when the vehicle is equipped with a trunk, or that is in some other area of the vehicle not normally occupied by the driver or passengers if the motor vehicle is not equipped with a trunk. (c) A utility compartment or glove compartment is deemed to be within the area occupied by the driver and passengers.

Subdivision 4. Whoever violates the provisions of subdivisions 1 to 3 is guilty of a misdemeanor.

Subdivision 5. Exceptions. This section does not apply to the possession or consumption of alcoholic beverages by passengers in: (1) a bus that is operated by a motor carrier of passengers, as defined in section 221.011, subdivision 48; or (2) a vehicle providing limousine service as defined in section 221.84, subdivision 1.

*Id.*

19. *State v. Loge*, 589 N.W.2d 491, 494 (Minn. Ct. App. 1999). Section 169.122 is located next to other Minnesota laws dealing with alcohol and driving. *E.g.*, MINN. STAT. § 169.121 (1999) (addressing DWIs); MINN. STAT. § 169.123 (1999) (stating that any person who drives, operates, or is in physical control of a motor vehicle consents to a chemical test for intoxication); *see also* *Abeln v. Commissioner of Pub. Safety*, 413 N.W.2d 546, 547-548 (Minn. Ct. App. 1987) (stating that the physical control requirement of section 169.123 subd. 2 is designed to deter intoxicated individuals from entering their vehicles, except as passengers).

20. MINN. STAT. § 169.01, subd. 3 (1998 & Supp. 1999) (defining "motor vehicle" as "every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires," but not including a vehicle moved solely by human power).

21. MINN. STAT. § 169.122 (1998 & Supp. 1999); *see also* *State v. Tungland*, 281 N.W.2d 646, 649 (Minn. 1979) (holding that it is not a violation of Minnesota Statute 169.122 for a person to keep an open bottle in a car on private land); Sept.-Dec. 1961 Minn. Op. Att'y Gen. 218h-2 (Nov. 8, 1961) (stating that an unopened beer can taken from a six-pack would not constitute a violation under section 169.122). The opinion, issued by Attorney General Walter F. Mondale and Assistant Attorney General Henry H. Feikema, was in response to a situation where a motorist was apprehended for a traffic offense and was in possession of an unopened can of 3.2 beer. *Id.* The opinion stated the following:

It is the opinion of this office that it was the intention of the legislature in adding subd. 3 to c. 255 to give strength to subd. 1 which prohibits the consumption of intoxicating liquors or non-intoxicating malt liquors while such motor vehicles are on public highways. The act in its enabling clause reads "...prohibiting the carrying of *open bottles or receptacles* in motor vehicles...." It is apparent, therefore, that it is the open can of beer itself, rather than the opened package or carton in which the beer is sold,

does not require that the driver consumes any alcohol or that he or she is intoxicated.<sup>23</sup> Not only can this statute be enforced on public highways, but Minnesota's Open Bottle Law may also be enforced against tribal members on Indian reservations.<sup>24</sup>

Most of the historical controversy that has surrounded section 169.122 dealt with the reasonableness of searches involving open containers. Once the police lawfully stop a vehicle and observe an open bottle in plain view, they have the right to search any other part of the vehicle where keeping an open bottle would be a violation of the statute.<sup>25</sup> An officer may continue searching a vehicle

---

that is sought to be reached. The fact that the package or carton has been broken does not lend the intoxicating liquor or non-intoxicating malt beverage readily consumable. Thus, it is our opinion that the legislature did not create a distinction between purchasing beer or other such items by the carton or case as opposed to its purchase by the single bottle or can.

*Id.*

22. MINN. STAT. § 169.122, subd. 4.

23. *State v. Collard*, 414 N.W.2d 733, 735 (Minn. Ct. App. 1987) (citing MINN. STAT. § 169.122, subd. 3).

24. *State v. Robinson*, 572 N.W.2d 720, 722-724 (Minn. 1997) (holding the prohibition against underage consumption of alcohol is designed to protect minors and the public and applying this analysis to the Open Bottle Law would result in the same conclusion: the law is designed to protect the driver, passenger, and the public and, therefore, it is enforceable on the Indian reservation).

25. *State v. Ellanson*, 198 N.W.2d 136, 137 (Minn. 1972) (holding that an officer who observed a vehicle being driven erratically by the defendant had a right to stop the defendant and then arrest the individual for a violation of section 169.122 when an open bottle was observed in plain sight on the floor of the back seat; also holding that the officer then had a right to search any part of the vehicle where keeping an open bottle would constitute a violation, the fact that the officer found marijuana and not an open bottle did not affect the reasonableness aspect of the search). There is a vehicle or automobile exception to the search warrant requirement. 79 C.J.S. *Searches and Seizures* § 84 (1995); *see also State v. DeWald*, 463 N.W.2d 741, 748 (Minn. 1990) (holding that it was constitutionally permissible for officers to search a vehicle without a warrant because they had probable cause to believe that the vehicle contained evidence of a crime). Once there is probable cause for a search, a warrantless search may be conducted on a vehicle under the general motor vehicle exception to the warrant requirement. *State v. Armstrong*, 291 N.W.2d 918, 918-919 (Minn. 1980) (holding that the search of the defendant's car was justified by the motor vehicle exception to the warrant requirement when the defendant was arrested for the petty misdemeanor of possessing a small amount of marijuana); *see also State v. Johnson*, 277 N.W.2d 346, 350 (Minn. 1979) (holding that an officer's seizure of a paper bag found in the trunk of the defendant's vehicle was a lawful part of a search incident to the defendant's arrest after the officer observed marijuana plants in plain view in the open trunk of the defendant's vehicle); *State v. Schultz*, 271 N.W.2d 836, 837 (Minn. 1978) (holding that an officer who smelled the scent of marijuana coming from the defendant's vehicle properly conducted a warrantless search of the passenger compartment for

marijuana pursuant to the motor vehicle exception to the warrant requirement). The justification for a search often stems from a plain-view sighting of an item that suggests criminal activity. DONALD H. NICHOLS, *THE DRINKING DRIVER IN MINNESOTA*, § 4.06, at 63-5 (2d ed. 1999); *see, e.g.*, *State v. Schuette*, 423 N.W.2d 104, 106 (Minn. Ct. App. 1988) (holding that after a vehicle had been lawfully stopped, which led to the defendant failing a field sobriety test, an officer who observed in open view an empty bottle on the floor of the vehicle and a six-pack containing one empty and one full beer bottle between the two front seats had probable cause to search the car, including a rolled up grocery bag next to the six-pack, for additional bottles, even though the officer had already obtained the open bottles necessary to charge the driver with an open-bottle violation); *Collard*, 414 N.W.2d at 735-736 (holding that an officer who witnessed an open beer bottle standing upright in the defendant's vehicle had a valid reason to seize the bottle as evidence of a violation of section 169.122, and that the police officer who observed the violation of section 169.122 had probable cause for a warrantless search of the remainder of the passenger compartment); *State v. Krech*, 381 N.W.2d 898, 899 (Minn. Ct. App. 1986) (holding that the officers' observance of the defendant sitting behind the wheel of parked car holding a can of beer gave them probable cause to believe the defendant had violated section 169.122); *State v. Pierce*, 347 N.W.2d 829, 833 (Minn. Ct. App. 1984) (holding that the search of a car driven by the defendant, which was originally stopped for a noisy muffler, was proper after the officer recognized that the defendant was on probation and was not being allowed to drink or possess beer, recognized the scent of alcohol coming from the car as the defendant got out of the vehicle, and observed an open case of beer in the car with cans missing and a metal can tab on the floor; also holding that once the officer was properly inside the defendant's car searching for open bottles, the officer had the right to search the glove compartment because it is a prohibited place to store alcohol under section 169.122 and also because this area is a natural place to hide alcohol). Generally, an officer who is in a place where he has a right to be may look into a vehicle which has been lawfully stopped, and may bend down at an angle or use a flashlight while looking in the vehicle. 79 C.J.S. *Searches and Seizures* § 81 (1955); *e.g.*, *State v. McKenzie*, 392 N.W.2d 345, 347 (Minn. Ct. App. 1986) (stating that an officer may use a flashlight to illuminate the interior of a vehicle that has been properly stopped). A person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another. *Id.* Once there has been a proper stop, a plain-view sighting gives the officer the right to undertake a complete search of the vehicle pursuant to the automobile exception to the warrant requirement. *State v. Vohnoutka*, 292 N.W.2d 756, 757 (Minn. 1980). Once an officer has the right to search a vehicle, the officer may also search closed containers if there is probable cause to believe that the containers could hold the substance suspected. COSTELLO, *supra* note 5, at 225; *see also State v. Nace*, 404 N.W.2d 357, 361 (Minn. Ct. App. 1987) (holding that a warrantless search of a container inside a vehicle is permissible if the container could reasonably hold the substance suspected); *State v. Cameron*, No. C8-96-2111, 1997 WL 206811, at \*1-2 (Minn. Ct. App. Apr. 29, 1997) (unpublished) (holding that it was not permissible for an officer to search a small plastic bowl because the object could not reasonably be concluded to hold alcohol). However, an inventory search of the defendant's vehicle is justified only in the case where impoundment is necessary and only after the state's interest in impounding is found to outweigh the individual's fourth amendment right to be free from unreasonable searches and seizures. *State v. Goodrich*, 256 N.W.2d 506, 510 (Minn. 1977). Similarly,



after an open container has been found because this gives the officer probable cause to believe additional violations may exist.<sup>26</sup> Once an officer undertakes a search for open containers, the defendant may be charged with any other types of violations that are discovered.<sup>27</sup> However, a passenger's mere presence in a vehicle in which another possesses an open container does not present probable cause to search the passenger.<sup>28</sup>

Approximately one year after the statute was enacted, the

---

[w]arrantless searches of luggage or other property seized at the time of an arrest, whether taken from the inside or the outside of an automobile, are impermissible once the property is physically disassociated from the defendant and there is no danger that the defendant could gain access to dangerous or otherwise disposable objects contained within the suitcase or other property.

NICHOLS, *supra* note 25, at 64.

In Minnesota, the right to search an individual stopped for a traffic offense is more limited. *Id.* at 63-2 (citation omitted). Under these limitations, a driver cannot be searched "unless it is demonstrated that (a) he is habitually armed, (b) he has a prior record of assaultive behavior, (c) he has assumed a hostile or threatening attitude, or (d) after the stop, a cursory examination gives the peace officer reasonable grounds to believe the person is engaged in a more serious crime." *Id.* at 62-3 to 63-2 (citing *State v. Curtis*, 190 N.W.2d 631, 636 (Minn. 1971)); *see also* *Terry v. Ohio*, 392 U.S. 1, 27 (1968) (holding that an officer may conduct a pat-down or frisk search if there is reason to believe the individual he is dealing with may be armed).

26. *Schuetz*, 423 N.W.2d at 106.

27. *Ellanson*, 198 N.W.2d at 137; *see also* *United States v. Parham*, 458 F.2d 438, 439 (8th Cir. 1972) (holding (1) that officers who saw a car driving slowly down a road with a beer can on its roof were justified in stopping the car to question the driver and passengers with respect to a possible violation of section 169.122, and (2) that the officers who observed the defendant hiding something in the back seat had probable cause to believe the defendant was in violation of section 169.122 and, therefore, it was not unreasonable to conduct a limited search under the clothing for an open bottle that, instead, revealed a sawed-off shotgun); *State v. Schinzinger*, 342 N.W.2d 105, 109 (Minn. 1983) (holding that an officer, after detecting the odor of alcohol coming from the vehicle, had the right to search all areas of the passenger compartment where open bottles or cans might be found and that marijuana found during that search that was in plain view was properly discovered; however, the court also held that the officer was not entitled to search the trunk for open bottles or receptacles because it is not illegal to keep open bottles or receptacles in the trunk); *State v. Veigel*, 304 N.W.2d 900, 901 (Minn. 1981) (holding that the officer's view of an open beer bottle in the car led to the lawful search of the passenger compartment that disclosed a balance beam scale, a roach clip, and a pipe).

28. *State v. Eggersgluess*, 483 N.W.2d 94, 97 (Minn. Ct. App. 1992); *see also* *State v. Slifka*, 256 N.W.2d 90, 91 (Minn. 1977) (holding that an officer who stopped a vehicle for an equipment violation had probable cause to arrest and search the driver for violation of section 169.122 and could reasonably search the glove compartment, which yielded marijuana, but the officer did not have probable cause to arrest the passenger of the vehicle).

Minnesota Attorney General issued an opinion stating that “the language of the statute does not require that the alleged violator should have had knowledge that there was in the automobile of which he was the driver, an opened bottle or receptacle containing intoxicating liquors.”<sup>29</sup> This began a debate over the inclusion of the knowledge element in subdivision 3.<sup>30</sup> Subdivision 3 creates open bottle criminal liability for the owner of a motor vehicle, or the driver if the owner is not present, that is substantially more broad than for the passengers.<sup>31</sup> This debate is further illustrated by a comment in the Minnesota Jury Instructions.<sup>32</sup> The instructions include an optional portion in brackets which reads, “[This means that defendant knew the (bottle) (receptacle) was in the vehicle].”<sup>33</sup> In spite of the debate, since the statute’s enactment in 1959, subdivision 3 has not had any substantive changes.<sup>34</sup> The Minnesota Supreme Court has only reviewed the statute regarding

---

29. Jan.-Mar. 1960 Minn. Op. Att’y Gen. 989a-25 (1960). The opinion, issued by Attorney General Miles Lord and Special Assistant Attorney General Henry H. Feikema, was in response to the following scenario:

At approximately 3:00 o’clock A.M., a 20 year old minor, driving a motor vehicle owned by his father, had stopped at a semaphore signal, being still in operation, and which was located at an intersection of several state and U.S. highways within the limits of the City of Benson, Minnesota. A Benson City police officer, on his regular patrol noticed the vehicle stopped in its proper lane and at the proper point at the controlled intersection. However, the vehicle remained in such stopped position through several changes of the lights of the semaphore. Upon investigation, the officer found the 20 year old driver asleep in the driver’s seat of the vehicle and the motor was running. The officer further discovered a bottle of liquor (whiskey) in the rear seat of the vehicle, the seal of which had been broken, and which had been opened and the contents of which had been partially removed. The said bottle had been covered with an article of clothing. Investigation has shown the driver borrowed the vehicle to take a friend home, that his parents had placed the bottle in the vehicle and that the 20 year old driver was the sole occupant of the vehicle at the time the officer investigated the vehicle and that said driver had absolutely no knowledge of the presence of the ‘open bottle’ within the vehicle.

*Id.*

30. MINN. STAT. § 169.122, subd. 3 (1998 & Supp. 1999).

31. *Id.*

32. 10a Minn. Dist. Judges Ass’n, *Minnesota Practice-Jury Instruction Guides, Misdemeanor and Gross Misdemeanor*, M-JIG 3.17 Comment (1989 ed.).

33. *Id.* The comment noted that trial judges were divided as to whether knowledge was an element of the statute. *Id.* The comment stated that the question of knowledge had not been ruled on and the trial judge could include the knowledge element at his or her own discretion. *Id.*

34. State v. Loge, 608 N.W.2d 152, 154 (Minn. 2000).

the aforementioned search and seizure issues.<sup>35</sup>

### III. THE *LOGE* DECISION

#### A. *The Facts*

On September 2, 1997, Steven Mark Loge borrowed his father's pick-up truck.<sup>36</sup> On his way home from work, two Albert Lea police officers stopped Loge for speeding.<sup>37</sup> While one officer was talking to Loge, the other officer observed a bottle of beer, which was open and had foam on the inside, in a brown paper bag underneath the front passenger seat.<sup>38</sup> The officer searched the rest of the truck and found one full, unopened can of beer and one empty beer can.<sup>39</sup> The first officer asked Loge if he had been drinking and Loge stated that he had two beers while working.<sup>40</sup> Loge was charged with keeping an open bottle containing intoxicating liquor in an automobile in violation of Minnesota Statute section 169.122, subdivision 3.<sup>41</sup>

At trial on January 29, 1998, Loge testified that the open bottle did not belong to him and he did not know it was in the car.<sup>42</sup> The trial court requested memoranda from the city attorney and Loge's counsel on the question of whether knowledge was an element of Minnesota Statute section 169.122, subdivision 3.<sup>43</sup> Both parties concluded that knowledge was a required element.<sup>44</sup> However, the trial court concluded that subdivision 3 created absolute liability and found Loge guilty.<sup>45</sup> Loge appealed the verdict.<sup>46</sup> The court of

---

35. *Id.* at 155.

36. *Id.* at 153.

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.* Loge passed all field sobriety tests. *Id.*

41. *Id.*; MINN. STAT. §169.122, subd. 3 (1998 & Supp. 1999). No probable cause challenge was raised to either the stop or the officer's actions in discovering the open bottle under the passenger seat. *Loge*, 608 N.W.2d at 153. Loge was also cited for having no proof of insurance, although this charge was later dismissed. *Id.*

42. *Loge*, 589 N.W.2d at 492. Loge testified that the car he was driving when the officers stopped him belonged to his father. *Id.* Loge also testified that others had driven the car during the two weeks he had borrowed it from his father. *Id.*

43. *Id.* at 153; MINN. STAT. §169.122, subd. 3 (1998 & Supp. 1999).

44. *Loge*, 608 N.W.2d at 153.

45. *Id.* (holding that subdivision 3 creates "absolute liability" on a driver/owner to "inspect and determine...whether there are any containers" in the motor vehicle in violation of the open bottle law...). At the bench trial, Loge was

appeals affirmed, holding that proof of knowledge of the open bottle was not required to sustain a conviction.<sup>47</sup> The Minnesota Supreme Court granted Loge's petition for further review.<sup>48</sup>

### B. The Court's Analysis

The Minnesota Supreme Court affirmed the Appellate Court.<sup>49</sup> The Minnesota Supreme Court reviewed Minnesota Statute section 169.122, subdivision 3, as it related to a vehicle having a sole occupant.<sup>50</sup> The majority noted that their decision does not address the interpretation of the statute when two or more individuals are present in a vehicle.<sup>51</sup> Specifically, the majority stated that a situation with a single individual in the vehicle requires only the interpretation of the phrase "keep[s]"...any open bottle containing intoxi-

---

sentenced to five days in jail, execution stayed, placed on probation for one year, and fined \$150 plus costs of \$32.50. *Id.* at 153-54.

46. *Id.* at 154. The city attorney did not file a respondent's brief, but instead sent a letter to the Clerk of Appellate Court stating that he concurred with the Appellant's brief. *Id.*

47. *Id.* On appeal, Loge also raised the question of whether enforcement of section 169.122 without a knowledge requirement violated the due process clause by imposing strict criminal liability for a common omission. *Loge*, 589 N.W.2d at 492. The U.S. Supreme Court has stated that the exercise of police power is limited by due process. *Lambert v. California*, 355 U.S. 225, 228 (1957). However, the knowledge requirement is not mandated and states are allowed to create strict liability for a number of criminal offenses. *Smith v. California*, 361 U.S. 147, 150 (1959). In *Loge*, the defendant failed to make the constitutional challenge at trial court and, therefore, both the appellate court and the Minnesota Supreme Court properly declined to address the issue. *Loge*, 608 N.W.2d at 154; *Loge*, 589 N.W.2d at 493; see also *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating a reviewing court generally will not consider issues not raised in the lower court). The question of the constitutionality of a statute must be raised at trial court; the constitutionality of a statute cannot be raised for the first time on appeal. *State v. Engholm*, 290 N.W.2d 780, 784 (Minn. 1980).

48. *Loge*, 608 N.W.2d at 154. The Attorney General then assumed the case and filed a respondent's brief, contrary to the state's position, stating that knowledge is not a requirement under subdivision 3. *Id.*

49. *Id.* at 159.

50. *Id.* at 156.

51. *Id.* at 155. The majority noted that a situation with more than one individual would require the interpretation of the phrase "allows to be kept," which the court declined to address. *Id.* at n.3. The court explained that since the statute presented two alternate concepts separated by "or," the language made a distinction between two factual situations. *Id.* The court stated that, "We have long held that in the absence of some ambiguity surrounding the legislature's use of the word 'or,' we will read it in the disjunctive and require that only one of the possible factual situations be present in order for the statute to be satisfied. Accordingly, we limit our opinion to the word 'to keep.'" *Id.* (citations omitted).

cating liquor....<sup>52</sup> The court held that "to keep," as stated in subdivision 3, must encompass more than a conscious possession because such activity is already stated as illegal by subdivision 2.<sup>53</sup> Interpreting a knowledge requirement into subdivision 3 would create a restatement of subdivision 2 and would violate the presumption that the legislature intends an entire statute to be effective.<sup>54</sup> The court also noted that if knowledge were necessary to sustain a conviction under the open bottle law, it would represent a substantial obstacle.<sup>55</sup>

The Minnesota Supreme Court noted that the legislature had specifically stated the knowledge requirement in other traffic statutes.<sup>56</sup> Therefore, if the legislature had meant to include a knowledge element into section 169.122 it could have added such language when the statute was amended.<sup>57</sup> In addition, other traffic provisions use similar language and are interpreted as creating strict liability offenses.<sup>58</sup> Finally, the court acknowledged the idea that while a person need not intend his act to be criminal, he must intend to do the act that is criminal.<sup>59</sup> The court explained that in this case, even though Loge may have been unaware of the bottle, he intended to proceed forward in the truck.<sup>60</sup> Therefore, Loge assumed the responsibility of checking for the open bottle's presence when he decided to drive the vehicle upon a public highway.<sup>61</sup>

52. *Id.*

53. *Id.* at 158 (holding any other interpretation would render subdivision 3 as mere surplusage) (citing MINN. STAT. § 645.17, subd. 2 (1998); *State v. Orsello*, 554 N.W.2d 70, 75-76 (Minn. 1996)).

54. *Loge*, 608 N.W.2d at 158.

55. *Id.* at 157.

56. *Id.* (citing MINN. STAT. § 152.027, subd. 3 (1998) where the word knowingly is used to modify the same language that is contained in subdivision 3 of section 169.122).

57. *Id.* Section 169.122 was amended in 1990, 1991, 1993, and 1994. MINN. STAT. § 169.122.

58. *Loge*, 608 N.W.2d at 157 (citing MINN. STAT. § 169.14 (1998) (speeding)).

59. *Id.* at 158 (citing *State v. Kremer*, 114 N.W.2d 88, 89 (1962)).

60. *Id.* at 158. The Court cites to dicta in *Kremer* stating:

If the defendant . . . went through a stoplight that he did not , and was defending on the ground that he did so without any criminal intent, a court could be justified in finding him guilty of a violation of the ordinance involved. When the driver intends to proceed forward, or is negligent in any way, he can be held liable for his acts.

*Id.* (citing *Kremer*, 114 N.W.2d at 89).

61. *Id.*

## IV. THE ANALYSIS

The Minnesota Supreme Court properly interpreted Minnesota Statute section 169.122 when they held that subdivision 3 does not require proof that a driver has knowledge of an open bottle.<sup>62</sup> Specifically, the Appellate Court's analysis of the entire section helped to illustrate the legislature's intent.<sup>63</sup> The distinction between subdivisions 2 and 3 shows the legislature's intent to hold the owner or driver to a broader standard of strict liability versus holding a passenger liable only if they have possession of an open bottle.<sup>64</sup>

The Supreme Court's position is further strengthened by the statute's construction. Once again, the basis of such an interpretation is to ascertain the legislative intent. In this case, if the knowledge element were not removed from subdivision 3, it would simply be a restatement of subdivision 2.<sup>65</sup> Such a construction would violate the presumption that "the legislature intends the statute as a whole to be effective and certain, with no surplusage."<sup>66</sup> In addition, the Minnesota Court of Appeals also notes that the other provisions in chapter 169 demonstrate intent.<sup>67</sup> Specifically, there are several other provisions that seek to promote highway safety that do not require knowledge by the driver.<sup>68</sup>

Furthermore, the legislature has included an express knowledge requirement when it has intended to include such an element.<sup>69</sup> For example, the legislature has included express language

---

62. *Id.* at 158-159 (construing MINN. STAT. § 169.122, subd. 3).

63. *Loge*, 589 N.W.2d at 493-94.

64. *Id.* at 493 (construing MINN. STAT. § 169.122, subd. 2 & 3 (1998 & Supp. 1999)). The Minnesota Court of Appeals accurately stated that:

[by] carving out a special rule for the owner and driver of a private motor vehicle, rather than including them within the general prohibition in subdivision 2, the legislature intended, in the exercise of the police power for the protection of the public at large, to distinguish between the liability of occupants, who do not have charge of the automobile, and the liability of the owner and driver, who do.

*Id.*

65. *Loge*, 608 N.W.2d at 155; MINN. STAT. § 169.122.

66. *Loge*, 608 N.W.2d at 155 (citing MINN. STAT. § 645.16 (1998); MINN. STAT. § 645.17, subd. 2 (1998)); *State v. Orsello*, 554 N.W.2d 70, 75-76 (Minn. 1996).

67. *Loge*, 589 N.W.2d at 494.

68. See, e.g., MINN. STAT. § 169.14 (1996) (forbidding drivers from exceeding speed restrictions); MINN. STAT. § 169.34 (1996) (prohibiting drivers from parking a vehicle in certain specified locations); MINN. STAT. § 169.48 (1996) (requiring vehicles to display specific lighted lamps and illuminating devices).

69. *Loge*, 608 N.W.2d at 157.

of knowledge in Minnesota Statute section 152.027.<sup>70</sup> The use of the word “knowingly” was used to modify the word “keep,” further demonstrating that the legislature does not identify a conscious or knowledge element into the word “keep” when used alone.<sup>71</sup> Similarly, the legislature does not normally use the words “keep” or “allow” to indicate the existence of a knowledge element.<sup>72</sup>

The majority’s opinion was also consistent with the Attorney General’s opinion.<sup>73</sup> Approximately one year after the statute was enacted, the Attorney General issued an opinion, in response to a request of a local prosecutor, stating that a driver’s knowledge of an open bottle was not necessary to violate subdivision 3.<sup>74</sup> This opinion has remained unchanged for approximately forty years.<sup>75</sup> Such long-standing opinions are given careful consideration by the courts.<sup>76</sup> Similarly, the Minnesota Supreme Court has held:

[T]he fact that shortly after the Attorney General rendered an opinion stating that the provisions of § 192.39 were mandating, the legislature dealt with that section and left it unchanged except for the amendment referred to, strongly supports plaintiffs’ position that the legislature intended to adopt the Attorney General’s interpretation of the statute.”<sup>77</sup>

Section 169.122 had been amended five times between the time of the Attorney General’s opinion and the appellate court’s

---

70. MINN. STAT. § 152.027, subd. 3 (1998 & Supp. 1999) (stating that a driver is guilty of a misdemeanor if he “knowingly keeps or allows to be kept” marijuana in a motor vehicle); *see also* MINN. STAT. § 609.321, subd. 7, subp. 3 (1996) (stating that someone who knowingly keeps a place of prostitution promotes prostitution).

71. *Id.*; *Loge*, 608 N.W.2d at 157.

72. *Loge*, 589 N.W.2d at 493; *see, e.g.*, MINN. STAT. § 609.02, subd. 9, subp. 1 (1996) (stating that “when criminal intent is an element of a crime in this chapter, such intent is indicated by the term ‘intentionally,’ the phrase ‘with intent to,’ or some form of the verbs ‘know’ or ‘believe.’”).

73. Jan.-Mar. 1960 Minn. Op. Att’y Gen. 989a-25 (Jan. 5, 1960).

74. *Id.*

75. *Id.*

76. *Billigmeier v. County of Hennepin*, 428 N.W.2d 79, 82 (Minn. 1988); *see also Loge*, 608 N.W.2d at 157; *Village of Blaine v. Indep. Sch. Dist. No. 12, Anoka County*, 138 N.W.2d 32, 39 (Minn. 1965) (stating careful consideration should be given to an Attorney General’s opinion regarding a school district’s action to contract for the construction of a gas line); *Country of Poland v. Wegrzyn*, 517 N.W.2d 81, 84 (Minn. Ct. App. 1994) (acknowledging an Attorney General’s opinion upholding the existence of reciprocal actions between the United States and Poland).

77. *Stoecker v. Moeglein*, 129 N.W.2d 793, 796 (Minn. 1964).

holding in the *Loge* case.<sup>78</sup> The fact that the legislature never took the opportunity to add an express knowledge requirement into subdivision 3 lends credence to their acceptance of the Attorney General's opinion.<sup>79</sup> Similarly, the statute was again amended in 2000, after the appellate court's decision in *Loge*.<sup>80</sup> Therefore, if the legislature had disagreed with the appellate court's decision in *Loge*, it could have overridden the judicial decision by including an express knowledge requirement in subdivision 3.

In determining the legislative intent behind section 169.122, the dissenting judges seem to get hung-up on minor variations of definitions.<sup>81</sup> Specifically, the dissenting opinion focuses on the number of different definitions of the word "keep."<sup>82</sup> This causes the dissenting judges to lose sight of the public policy that guides the enactment of Open Bottle Laws. The intent of the Open Bottle Law is to promote highway safety by decreasing the opportunity for drunken driving,<sup>83</sup> not to protect drivers who have failed to inspect a vehicle before driving on a public highway. As the Minnesota Court of Appeals noted, "[t]he burden subdivision 3 imposes on the owner and the driver of an automobile is minimal compared to the mischief the legislature intended to prevent, namely, drinking intoxicated beverages while driving."<sup>84</sup>

The great social harm that the imposition of strict liability would seek to protect would outweigh any burden that such a policy would impose.<sup>85</sup> Specifically, in 1998, 15,935 people died from alcohol-related accidents in the United States.<sup>86</sup> That same year, 38.4 percent of fatal accidents were attributed to alcohol.<sup>87</sup> Alcohol

78. MINN. STAT. § 169.122 (1998 & Supp. 1999).

79. *State v. Loge*, 608 N.W.2d 152, 157 (Minn. 2000).

80. MINN. STAT. § 169.122.

81. *Loge*, 608 N.W.2d at 154, 160 (Anderson, J. dissenting). The majority and dissenting opinions are at odds over whether the words "keep" and "allow" imply some degree of conscious effort or knowledge as used in section 169.122. *Id.*

82. *Id.* at 160.

83. *Loge*, 589 N.W.2d at 494.

84. *Id.*

85. *Id.*; see also *United States v. Balint*, 258 U.S. 250, 254 (1922) (stating that "Congress weighed the possible injustice of subjecting an innocent seller to a penalty against the evil of exposing innocent purchasers to danger from the drug, and concluded that the latter was the result preferably to be avoided.").

86. Patrick J. Stapleton, Editorial, *Off-Target: Focus Crackdown on Heavy Drinkers, Repeat Offenders to Reduce DUI Deaths*, THE HARRISBURG PATRIOT, Mar. 24, 2000, at A18. 1998 was the last year of available statistics on alcohol-related deaths. *Id.*

87. *Id.*; see also Stephen Fuzesi, *Drunk Driving Arrests Dropping Safely: Study shows that stiffer penalties and societal changes are having effect nationwide*, LOS ANGELES



has been identified as the "single most important factor yet identified in traffic fatalities."<sup>88</sup> Alcohol-related traffic injuries are a persistent problem that has existed for a long period of time.<sup>89</sup> Therefore, the affirmative duty placed on an owner or driver of a motor vehicle to check for open containers is an acceptable burden in light of "the substantial physical, emotional, and monetary damage

---

TIMES, June 14, 1999, at A6 (stating that as drunk-driving arrests dropped from 1986 to 1997, the number of people behind bars or on probation for driving while intoxicated increased by ninety percent, an indication that drunk drivers are receiving tougher sentences).

88. NICHOLS, *supra* note 6, at 1 (citation omitted). For Americans between the ages of six and twenty-seven, car accidents are the leading cause of death. LEVITT & PORTER, *supra* note 6, at 1. In over forty percent of fatal crashes, one of the drivers has been found to have alcohol in their system. *Id.* Between 1 a.m. and 3 a.m. (when an estimated twenty-five percent of drivers are estimated to have been drinking), the percentage of drinking drivers who are involved in fatal crashed rises to sixty percent. *Id.* at 1, 4.

89. NICHOLS, *supra* note 6, at 1. The author quotes an editorial from 1904 that states the following:

We have received a communication containing the history of 25 fatal accidents occurring to automobile wagons, 15 persons occupying these wagons were killed outright, 5 more died 2 days later, and 3 other persons were killed. 14 persons were injured, some of them seriously. A careful inquiry showed that in 19 of these accidents drivers had used spirits within an hour or more of the disaster. The other 6 drivers were all moderate drinkers, but it was not ascertained whether they had used spirits preceding the accident. The author of this communication shows very clearly that the management of automobile wagons is far more dangerous for men who drink than the driving of locomotives on steel rails. Inebriates and moderate drinkers are the most incapable of all persons to drive motor wagons. The general palsy and diminished power of control of both the reason and senses are certain to invite disaster in every attempt to guide such wagons. The precaution of railroad companies to have only total abstainers guide their engines will soon extend to the owners and drivers of these new motor wagons. The following incident illustrates this new danger: A recent race between the owners of large wagons, in which a number of gentlemen took part, was suddenly terminated by one of the owners and drivers, who persisted in using spirits. His friends deserted him, and in returning to his home his wagon ran off a bridge and was wrecked. With the increased popularity of these wagons, accidents of this kind will rapidly multiply, and we invite our readers to make notes of disasters of this kind.

*Id.* at 1-2 n.3 (citation omitted). Individuals driving under the influence of alcohol have a much higher chance of being involved in a serious accident. *Id.* at 2. The author explains that of the drivers with a blood alcohol concentrations at or above 0.10 (one to four percent of all drivers on the road) cause 50-55% of all fatal single-vehicle crashes. *Id.* In Minnesota, forty-six percent of fatal two-vehicle crashes involve a driver with a positive blood alcohol reading. *Id.* Similarly, "a full 61% of drivers killed during typical drinking hours—from 9:00 P.M. through 6:00 A.M.—have blood alcohol concentrations of 0.10 or more." *Id.*

caused by drunk driving.”<sup>90</sup>

In relation to the policy analysis, the dissenting judges fail to see the problems that proof of knowledge would create.<sup>91</sup> If the element of knowledge were required for a conviction under subdivision 3, evasion would seriously limit the applicability of the statute.<sup>92</sup> Specifically, a driver could deny knowledge of the open bottle and avoid conviction and, in the process, defray the policy objectives behind the statute. The Minnesota Supreme Court correctly stated that inclusion of an element of knowledge would present “a substantial, if not insurmountable, difficulty of proof.”<sup>93</sup>

Many of the dissenting judges’ arguments become irrelevant due to the fact that the majority made only a limited interpretation of section 169.122.<sup>94</sup> The court interpreted the statute under the facts presented.<sup>95</sup> Specifically, the majority’s decision only dealt with a situation where there was a sole occupant in the vehicle.<sup>96</sup> In addition, this scenario allowed the court to produce a holding that dealt with only one of the two disjunctive alternatives in subdivision 3.<sup>97</sup> Therefore, the court only ruled on whether knowledge was implied by the words “to keep” in the statute.<sup>98</sup> In light of this distinction, much of the dissent’s analysis regarding situations with more than one individual in the vehicle become baseless.

Additionally, many of the dissenting judges’ other arguments seem implausible. Specifically, the dissent argues that a driver with no knowledge of an open bottle should not be held liable because he or she does not intend to do the act that constitutes the crime.<sup>99</sup>

---

90. Nielsen, *supra* note 7, at 121. The author further illustrates by explaining that, in 1994 alone, 17,000 people were killed, 1,000,000 people were injured and billions of dollars were spent on health, medical, and economic costs due to drunk driving. *Id.* “In 1994, the United States spent \$6 billion in medical expenses, \$25 billion in lost wages and \$79 billion as a result of the pain and suffering endured by individuals, a total of over \$110 billion.” *Id.* Drunk drivers also cause an estimated \$5 billion in property damages each year. *Id.* at 122.

91. State v. Loge, 608 N.W.2d 152, 159 (Minn. 2000).

92. *Id.* at 157 (discussing MINN. STAT. §169.122 (1998 & Supp. 1999)).

93. *Id.*

94. *Id.* at 155.

95. *Id.*

96. *Id.* at 156.

97. Loge, 608 N.W.2d at 155; MINN. STAT. § 169.122, subd. 3 (establishing liability if a driver “keeps” any open bottle containing intoxicating liquor within the areas normally occupied by the driver and passengers or, in the alternative, “allows” to be kept any bottle containing intoxicating liquor within the areas normally occupied by the driver and passengers).

98. Loge, 608 N.W.2d at 155.

99. *Id.* at 159.

The dissent neglects to realize that the point behind the statute is to prevent alcohol from being accessible to individuals within a vehicle.<sup>100</sup> The driver, as operator of the vehicle, is in the best position to discover open containers and, therefore, should have an affirmative duty to make sure that there are no open bottles in violation of section 169.122.<sup>101</sup> In general, the driver intends to drive the vehicle on public highways and, therefore, must do so in accordance with applicable laws.

Finally, the dissent notes that under the Minnesota Jury Instructions the trial judge may include the knowledge element in the instruction according to his or her interpretation of section 169.122.<sup>102</sup> However, the comment states that such a discretionary decision is allowed because the appellate courts have not ruled on the question of proof of knowledge.<sup>103</sup> In this case, the Appellate Court has decided the question<sup>104</sup> and, therefore, the argument becomes irrelevant.

## V. CONCLUSION

The *Loge* decision correctly affirmed the Minnesota Court of Appeals' interpretation of Minnesota Statute section 169.122 as creating a strict liability offense for an owner or driver of a vehicle who violates the Open Bottle law.<sup>105</sup> The limited opinion of the Minnesota Supreme Court, with regard to a sole individual in the vehicle, was consistent with the Attorney General's opinion issued forty years ago.<sup>106</sup> Such an interpretation was also in line with the legislative intent when analyzed with regard to similar statutory construction.<sup>107</sup> Additionally, the legislature indirectly gave its approval by amending the statute in the spring of 2000 and keeping the debated language unaltered.<sup>108</sup> Finally, such a decision supports the important public policy behind the statute. In other words, the Supreme Court's affirmation of the court of appeals'

---

100. COSTELLO, *supra* note 5, at 221.

101. *Loge*, 608 N.W.2d at 158.

102. *Id.* at 161-62; see also 10a Minn. Dist. Judges Ass'n, *Minnesota Practice-Jury Instruction Guides, Misdemeanor and Gross Misdemeanor*, M-JIG 3.17 Comment (1989 ed.).

103. *Loge*, 608 N.W.2d at 161-62.

104. *State v. Loge*, 589 N.W.2d 491, 494 (Minn. Ct. App. 1999).

105. *Loge*, 608 N.W.2d at 153.

106. Jan.-Mar. 1960 Minn. Op. Att'y Gen. 989a-25 (Jan. 5, 1960).

107. *E.g.*, MINN. STAT. § 169.14, § 169.34, § 169.48.

108. MINN. STAT. § 169.122 (2000).

decision helps expand liability for the deadly combination of drinking and driving.

\*\*\*