STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1927

Gary Allen Jensen,
Appellant,

vs.

1985 Ferrari - plt 391-957 - VIN# ZFFUA12A9F0057043,
Respondent.

Filed August 31, 2020
Affirmed
Jesson, Judge

Dakota County District Court
File No. 19HA-CV-18-3660

James M. Ventura, Wayzata, Minnesota (for appellant)

David S. Kendall, Alina Schwartz, Campbell Knutson P.A., Eagan, Minnesota (for respondent)

Considered and decided by Jesson, Presiding Judge; Worke, Judge; and Hooten, Judge.

S Y L L A B U S

A driver participating in the ignition-interlock program under Minnesota Statutes section 171.306 (2018) must be enrolled in the program with the vehicle that is the subject of the forfeiture proceedings in order to stay forfeiture of that vehicle under Minnesota Statutes section 169A.63, subdivision 13 (Supp. 2019).

O P I N I O N

JESSON, Judge

After being convicted of driving his 1985 red Ferrari while intoxicated, appellant Gary Allen Jensen contests its judicial forfeiture on three grounds. First, he contends that his participation in the ignition-interlock program entitled him to stay his Ferrari's forfeiture. He also argues that he did not commit a designated offense justifying forfeiture. Finally, according to Jensen, forfeiture of his Ferrari violated his constitutional rights to be free from excessive fines and to procedural due process. Because Jensen did not meet the requirements for the statutory stay, but he did commit a designated offense, and because his constitutional rights were not violated, we affirm.

FACTS

In August 2018, a state patrol officer responded to a report about a stalled car blocking an intersection in Burnsville, Minnesota. Upon arrival, the officer observed a 1985 red Ferrari stopped in a traffic lane. The officer approached the driver, later identified as appellant Gary Allen Jensen. Jensen was slurring his speech and mumbling, smelled like alcohol, and was unable to explain why his car had been stopped in the traffic lane. Believing that Jensen was intoxicated, the officer put him in the back of a squad car.

A second officer arrived on the scene to assist the first officer. That officer spoke with Jensen and observed that his speech was slurred, he had watery eyes, and he smelled strongly of alcohol. Officers also realized that Jensen was subject to a driver's license restriction that invalidated his license if Jensen consumed any alcohol. After administering field sobriety tests and a preliminary breath test to Jensen—which he failed—officers

arrested him. Jensen submitted to a breath test and his alcohol concentration measured 0.20.

The state charged Jensen with four criminal offenses: third-degree driving while impaired (DWI), second-degree DWI, driving after consuming alcohol with a restricted license, and careless driving. Jensen pleaded guilty to third-degree DWI (a gross misdemeanor), and the remaining counts were dismissed. The court sentenced Jensen to about a year in jail stayed for two years, with supervised probation, 60 days of electronic home monitoring, a $900 fine, and various other conditions.

When he was arrested, police impounded Jensen's Ferrari and provided him a notice of seizure and intent to forfeit the car. Jensen challenged the forfeiture, and the district court held a bench trial.

At trial, the respondent Minnesota State Patrol presented testimony from the two officers involved with Jensen's arrest, as well as various exhibits, including evidence of the estimated value of the Ferrari, Jensen's driving and criminal records, and his participation in the ignition-interlock program. This valuation evidence—based on an internet search—estimated a value between $44,900 to $92,300. In response, Jensen testified that he believed his Ferrari was worth $75,000, although likely in need of some repair. He described the Ferrari's typical maintenance needs and what repairs he would expect it might need after being in law-enforcement custody for nearly a year. For example, Jensen noted that he would replace the fluids and some belts in the engine, and that he would want to have the Ferrari detailed and, depending on its condition, possibly

repainted. Jensen estimated the Ferrari would need about $4,000 or $5,000 in maintenance if he got it back.[1]

Jensen also testified that he had previously participated in the ignition-interlock program beginning in 2012. At the time of this DWI, however, he had completed the program and no longer had interlock devices on his vehicles. But two months after the DWI from which this case stems, Jensen was arrested for another impaired driving offense in a rental car. After that incident, in October 2018, Jensen again enrolled in the ignition-interlock program with one of his other vehicles, his Range Rover. Jensen provided no evidence that he installed or attempted to install interlock devices on his other two vehicles, including the Ferrari.

In its order following the trial, the district court ordered the Ferrari forfeited to the Minnesota State Patrol. It concluded that Jensen had committed an offense in the Ferrari, which subjected the car to forfeiture (a "designated offense"), and that Jensen did not qualify for the statutory stay for participants in the ignition-interlock program. The court also reasoned that forfeiture did not offend Jensen's rights to procedural due process or to be free from excessive fines.

Jensen appeals.

ISSUES

I. Did Jensen's participation in the ignition-interlock program with a different vehicle stay the forfeiture of his Ferrari?

II. Did Jensen commit a designated offense justifying forfeiture?

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[1] Jensen did not testify that the Ferrari was inoperable or unable to be driven.

III. Was the forfeiture of Jensen's Ferrari an excessive fine?

IV. Did the forfeiture process violate Jensen's right to procedural due process?

ANALYSIS

To place the entangled legal issues before us in context, we begin with a broad overview of forfeiture law. Civil forfeiture is a process by which a law enforcement agency (like the Minnesota State Patrol here), obtains legal title to property connected with criminal activity. This practice predates the founding of the United States. Early forfeiture opinions, for example, involved ownership of pirate ships. *See Leonard v. Texas*, 137 S. Ct. 847, 848 (2017) (recalling that the first United States Congress passed laws permitting the forfeiture of pirate ships); *United States v. 92 Buena Vista Ave.*, 507 U.S. 111, 119, 113 S. Ct. 1126, 1132 (1993) (describing historic forfeiture of pirate ships).

But whether a pirate ship or a car driven by a repeat drunk driver, the taking of a person's private property by the government—while protecting the public—raises the specter of overzealous abuse.[2] In constitutional terms, those concerns most often translate

[2] Minnesota courts have recognized the importance of protecting personal property. *See Olson v. One 1999 Lexus*, 924 N.W.2d 594, 601 (Minn. 2019) (noting that due-process protections in forfeiture proceedings exist to protect the public from erroneous or arbitrary deprivation of property). Certainly, criticism of civil forfeiture exists, particularly when the process is abused. *See, e.g.*, Vanita Saleema Snow, *From the Dark Tower: Unbridled Civil Asset Forfeiture*, 10 Drexel L. Rev. 69, 122-23 (2017) (referring to national attention paid to civil forfeiture, including critical "HBO specials and newspaper articles"); Michael van den Berg, *Proposing a Transactional Approach to Civil Forfeiture Reform*, 163 U. Pa. L. Rev. 867, 906 (2015) (discussing widespread "perverse" profit incentives for law enforcement to use and abuse civil forfeiture); *see also United States v. James Daniel Good*

into claims of due-process violations and imposition of excessive fines. *See* U.S. Const. amends. V, VIII, XIV. To balance these individual rights against the overarching goal of protecting the public from impaired drivers, the legislature adopted Minnesota Statutes section 169A.63 (2018 & Supp. 2019) (the Act).[3]

The DWI-forfeiture process designed by the Act typically begins when law enforcement arrests an individual for violating Minnesota's DWI laws.[4] If that individual is arrested for a "designated offense"—including first-degree or second-degree DWI, or any level of DWI if committed by a person whose driving privileges were cancelled or whose license is restricted when the person consumes alcohol—the vehicle may be seized as part of the arrest process. Minn. Stat. § 169A.63, subds. 1(e) (defining "[d]esignated offense"), 2(b)(1). Seizure is also permitted if the vehicle is "used in conduct resulting in a designated license revocation." *See id.*, subds. 1(d) (defining "[d]esignated license revocation"), 6(a).

Once a vehicle is seized, law enforcement must notify a driver[5] of its intent to seek forfeiture based on one of the two circumstances described above: a "designated offense"

Real Prop., 510 U.S. 43, 81, 114 S. Ct. 492, 515 (1993) (Thomas, J., concurring in part and dissenting in part) ("I am disturbed by the breadth of new civil forfeiture statutes.").

[3] Minnesota law permits forfeiture for a number of non-DWI offenses as well. *See, e.g.*, Minn. Stat. §§ 84.89 (snowmobiles used in burglary), 97A.225 (motor vehicles or boats used to illegally fish or illegally transport animals or minnows), 609.531, subds. 1, 6a (controlled substances, weapons, and contraband), 609.762 (gambling devices, prizes, and proceeds) (2018).

[4] If the driver's vehicle is not seized at the time of an arrest, law enforcement may seize it later. *See* Minn. Stat. § 169A.63, subd. 2(a)-(b).

[5] If the driver of the vehicle is not its owner, the owner must also be notified. *See* Minn. Stat. § 169A.63, subd. 8(b). Generally, the notice of seizure and intent to seek forfeiture

or “designated license revocation.” *Id.*, subd. 8(a)-(d). To challenge the forfeiture, the driver may file a demand for judicial determination.[6] *Id.*, subd. 8(e). This “judicial determination” is, in legal parlance, a civil lawsuit against the vehicle itself.[7] *Id.*, subd. 8(f).

Regarding the timing of this judicial determination, the Act both grants—and removes—certainty. It mandates that the necessary hearing take place no later than 180 days following a driver’s demand for a judicial determination. *Id.*, subd. 9(d). Yet, it bars a judicial hearing on the forfeiture until any criminal proceedings against the driver have concluded. *Id.*; *see also Olson v. One 1999 Lexus*, 924 N.W.2d 594, 11 (Minn. 2019).

During this interim period between an initial seizure and the final judicial determination, the legislature established four provisions aimed at alleviating hardship. First, a vehicle owner may have the vehicle returned if the owner posts a bond of appropriate value or provides security in exchange for the vehicle. Minn. Stat. § 169A.63, subd. 4. Second, an owner may file a request for remission or mitigation, which the

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must be provided within 60 days or a reasonable time after law enforcement seized the vehicle. *Id.*

[6] If the driver does not contest the forfeiture, the administrative forfeiture of the vehicle is complete and ownership of the vehicle is automatically transferred to the authorities. Minn. Stat. § 169A.63, subd. 8(c)(3).

[7] Statutory forfeiture is a civil *in rem* cause of action, and the property being forfeited is treated as though it were a guilty offender. *Lukkason v. 1993 Chevrolet*, 590 N.W.2d 803, 806 n.2 (Minn. App. 1999), *review denied* (Minn. May 18, 1999). Accordingly, consistent with this legal fiction, forfeiture actions are directed against the “guilty property,” and not the offender. *Id.* In reality, the party pursuing forfeiture in DWI cases is often a law enforcement agency—here, the Minnesota State Patrol. *See* Minn. Stat. § 169A.63, subd. 1(b) (defining “[a]ppropriate agency”).

prosecuting authority has sole discretion to grant, according to statutory factors.[8] *Id.*, subd. 5a. Third, if the owner of the vehicle was not the driver who committed the DWI in the vehicle, the owner may assert the "so-called innocent owner defense" to retrieve the vehicle. *Olson*, 924 N.W.2d at 599; *see* Minn. Stat. § 169A.63, subd. 7(d). None of these first three provisions is at issue in this case.

The fourth protection, which is central here, is a new addition to the DWI-forfeiture scheme. In 2019, the Minnesota legislature enacted an exception to the DWI-forfeiture process to promote participation in the state's ignition-interlock program. Minn. Stat. § 169A.63, subd. 13; *see generally* Minn. Stat. § 171.306 (describing the ignition-interlock-device program). Under this exception, if the driver becomes a program participant before the driver's vehicle is ordered forfeited, forfeiture is stayed and the vehicle is returned pending the driver's successful completion of the program. Minn. Stat. § 169A.63, subd. 13(a). But to become a program participant in the ignition-interlock program, a device—which measures the driver's breath for the presence of alcohol–must be installed in every vehicle the person intends to drive. Minn. Stat. § 171.306, subd. 3(d). And, for the duration of the program, the participant must abide by several program requirements, as outlined in statute, or the vehicle may be taken again by law enforcement. *See* Minn. Stat. §§ 169A.63, subd. 13(b), (c), (f), 171.306, subds. 3, 5.

[8] We acknowledge that the supreme court has described the first two protections as "largely illusory forms of hardship relief." *Olson*, 924 N.W.2d at 614. But we include them here to illustrate the statutory procedures available to drivers facing forfeiture.

These four hardship provisions—applicable to the interim period following seizure of the vehicle—end with a hearing and a judicial determination. In that decision, the district court determines whether the vehicle is subject to forfeiture under the statutory circumstances or whether the driver is entitled to the return of the vehicle. Minn. Stat. § 169A.63, subd. 9.

Overall, the DWI-forfeiture process set forth in the Act reflects the legislature's intent to balance protection of the public from impaired drivers while appropriately safeguarding vehicle owners' personal interests in their private property. Recognizing this delicate balance, the Minnesota Supreme Court has upheld the DWI-forfeiture process embodied in the Act (prior to its most recent amendment), concluding that it does not violate procedural due process on its face.[9] *Olson*, 924 N.W.2d at 608; *see Miller v. One 2001 Pontiac Aztek*, 669 N.W.2d 893, 895 (Minn. 2003) ("[L]arge discretion is necessarily vested in the legislature to impose penalties sufficient to prevent the commission of an offense." (quotation omitted)).

With this precedent and statutory framework in mind, we turn to Jensen's case. We consider first whether Jensen's participation in the ignition-interlock program with a different vehicle entitled him to stay the forfeiture of his Ferrari. Second, we determine whether Jensen committed a designated offense authorizing forfeiture. Next, we analyze

[9] The supreme court continued to analyze this portion of the Act to determine if it was unconstitutional as applied to the driver and the vehicle owner. *Olson*, 924 N.W.2d at 611-12, 615-16. The court concluded that the statute was constitutional as applied to the driver but unconstitutional as applied to the owner. *Id.* at 612, 616.

whether, as he asserts, forfeiture of his Ferrari constitutes an excessive fine. Finally, we assess Jensen's procedural-due-process claim.

I. Jensen's participation in the ignition-interlock program with a different vehicle did not stay the forfeiture of his Ferrari.

We begin with the central issue before us: whether Jensen's participation in the ignition-interlock program insulated him from forfeiture of his Ferrari. The district court concluded it did not.[10] Because this issue involves statutory interpretation, our review is de novo. *Laase v. 2007 Chevrolet Tahoe*, 776 N.W.2d 431, 433 (Minn. 2009).

The goal of statutory interpretation is to determine and accomplish the legislature's intent. Minn. Stat. § 645.16 (2018). When interpreting statutes, we give words and phrases their plain and ordinary meanings. *Patino v. One 2007 Chevrolet*, 821 N.W.2d 810, 813 (Minn. 2012). If the language of the statute is free of ambiguities, our role is to apply the language of the statute. Minn. Stat. § 645.16. But if the language is ambiguous—susceptible to more than one reasonable interpretation—then we may look beyond the plain language to determine the legislative intent. *Id.*

We begin with the plain language of the statute. It states:

> If the driver who committed a designated offense or whose conduct resulted in a designated license revocation becomes a program participant in the ignition interlock program under section 171.306 at any time before *the motor*

[10] The Minnesota State Patrol argued in its brief that this issue is not properly before us because Jensen failed to raise this claim to the district court. *See Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988). However, the district court's order concluded that the statutory stay did not apply. And during oral argument, counsel for the state patrol conceded that the district court did address this issue in its order. Accordingly, we address the substance of Jensen's argument regarding the statutory stay.

> *vehicle* is forfeited, the forfeiture proceeding is stayed and *the vehicle* must be returned.

Minn. Stat. § 169A.63, subd. 13(a) (emphasis added).

Here, Jensen's Ferrari was taken by law enforcement, but not yet forfeited, between August 2018 and November 2019. The record establishes that, after a subsequent DWI, Jensen began participation in the ignition-interlock program with one of his *other* vehicles—a Range Rover—from October 2018 through the time of trial. Consequently, the key question is whether the statute requires Jensen to be participating in the program with the to-be-forfeited car, as opposed to any car.

This statutory section does not define the key phrase—"the vehicle."[11] Consequently, to determine its plain meaning, we read the entire forfeiture section and construe it as a whole, interpreting each word in the context of the whole statute to give effect to all of its parts. *See In re Civil Commitment of Breault*, 942 N.W.2d 368, 375-76 (Minn. App. 2020).

Under Minnesota Statutes section 169A.63, subdivision 6(a), "*[a] motor vehicle* is subject to forfeiture" when it is used to commit a designated offense or when its use results in a designated license revocation. (Emphasis added.) Subdivision 13(b) describes the consequences if an interlock-program participant fails to abide by the program rules. In that instance, "*the vehicle whose forfeiture was stayed* . . . may be seized and the forfeiture action may proceed." Minn. Stat. § 169A.63, subd. 13(b) (emphasis added). And the

[11] The statute only defines the terms "motor vehicle" and "vehicle" in the negative, noting that they "do not include a vehicle which is stolen or taken in violation of the law." Minn. Stat. § 169A.63, subd. 1(g).

subsequent provisions of subdivision 13—all enacted at the same time—repeatedly refer to the vehicle being forfeited as "the vehicle." *See id.*, subd. 13(g)-(i).

We acknowledge that when reading this section—which pertains to driving while impaired—an earlier provision defines "vehicle" more generally, as any device that transports people or property on a highway. *See* Minn. Stat. §§ 169.011, subd. 92, 169A.03, subd. 25 (2018). But in the provision at issue here, the statute refers to "*the* vehicle." Minn. Stat. § 169A.63, subd. 13(a). The rules of common usage and grammar tell us that "the" denotes "a definite article that refers to a particular noun." *Patino*, 821 N.W.2d at 816. Accordingly, "the vehicle" means *a particular* vehicle, not *any* vehicle. Applying this reasoning to the statute as a whole, we conclude that the plain meaning of Minnesota Statutes section 169A.63, subdivision 13, generally requires the driver to be participating in the program with "the vehicle" that is to be forfeited, not just any vehicle.[12]

To attempt to persuade us otherwise, Jensen argues that the exception to forfeiture attaches to the driver, rather than to the to-be-forfeited vehicle. He points to the statutory language which states that, "[i]f the driver . . . becomes a program participant in the

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[12] We recognize that there might be rare situations where the vehicle involved in the DWI was totally inoperable but the driver was nonetheless able to meet the program-participation requirements set out in sections 169A.63, subdivision 13, and 171.306, subdivision 3, which would call for additional analysis. But here, no one testified that the Ferrari was completely inoperable. Jensen speculated that it may need certain routine maintenance based on the length of time that it had not been driven, but because the vehicle was in law-enforcement custody for nearly a year, he would not have personal knowledge of its actual physical condition. In any event, that situation is not before us.

ignition-interlock program under section 171.306 at any time before the motor vehicle is forfeited, the forfeiture proceeding is stayed and the vehicle must be returned." Minn. Stat. § 169A.63, subd. 13(a). But even if we read this isolated phrase outside the context of the overall forfeiture statute, the most it introduces is statutory ambiguity.

And in the presence of any ambiguity, we look to the legislative history to inform our interpretation. Minn. Stat. § 645.16. Here, one sentence captures that history.[13] When summarizing the to-be-enacted exception to forfeiture on the senate floor just before its passage, the bill's author described the language as prohibiting "forfeiture of a vehicle *if the person installs [an] ignition interlock system in it.*" S. Floor Deb. on S.F. No. 8 (May 24, 2019) (statement of Sen. Limmer).[14] Although the legislative history is limited due to this bill's swift passage, Senator Limmer's description of this exception confirms that our reading of the statute—as attaching to the to-be-forfeited vehicle—is correct.

Imagine if we were to adopt Jensen's interpretation. A person with several vehicles could commit multiple impaired driving offenses in multiple vehicles without risk of forfeiture. Such an interpretation would result in a boon to those who can afford multiple

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[13] The bill that would later be codified (in part) as subdivision 13 was introduced on the floor of the Minnesota Senate during the 2019 spring special legislative session. S.F. 8, 2019 1st Spec. Sess., art. 6, § 4. It did not go through the typical committee process, but was included as part of an omnibus budget bill concerning the judiciary and public safety. State of Minnesota, *Journal of the Senate*, 91st Leg., 1st Spec. Sess. 12-13, 17-18 (May 24, 2019).

[14] After the bill unanimously passed the Minnesota Senate, the Minnesota House considered and adopted the senate's bill. State of Minnesota, *Journal of the House*, 91st Leg., 1st Spec. Sess. 34 (May 24, 2019). It passed in the house and the governor signed it into law just a few days later. State of Minnesota, *Journal of the House*, 91st Leg., 1st Spec. Sess. 42 (May 24, 2019); 2019 Minn. Laws ch. 5, art. 7, § 17 at 76.

cars. *See* Minn. Stat. § 645.17 (2018) (establishing that reviewing courts presume the legislature favors the public interest over any private interest and does not intend a result that is absurd or unreasonable). And that, as Senator Limmer's description illustrates, was not the legislature's intent.

Having established that the Act requires a driver to be enrolled in the ignition-interlock program with the to-be-forfeited vehicle, we turn to the facts involving Jensen's Ferrari. The record contains no evidence that Jensen attempted to install an ignition-interlock device on his Ferrari.[15] Nor does the record establish that Jensen did not intend to drive the Ferrari. And as we discussed earlier, ignition-interlock participants must install "an ignition interlock device on *every motor vehicle* that the participant operates or intends to operate." Minn. Stat. § 171.306, subd. 3(d) (emphasis added).

In sum, a driver participating in the ignition-interlock program must be enrolled in the program with the vehicle that is the subject of the forfeiture proceedings in order to stay forfeiture of that vehicle under Minnesota Statutes section 169A.63, subdivision 13. Jensen did not meet this requirement. As a result, the district court did not err by concluding that the forfeiture of Jensen's Ferrari did not qualify for the statutory stay of the forfeiture proceeding.

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[15] We note that even though the Ferrari was in the possession of the Minnesota State Patrol, the statute permits installation. It requires that the entity holding the vehicle—the impound or storage-lot-operator—permit access to a vehicle for installation of an ignition-interlock-device. Minn. Stat. § 169A.63, subd. 13(e). And the owner seeking to reclaim their vehicle must pay the costs—for example, of towing and storage—before their vehicle will be released under this exception. *Id.*, subd. 13(f). There is no evidence that Jensen did any of the above to try to reclaim his Ferrari and invoke this exception.

II. Jensen committed a designated offense justifying forfeiture.

Second, Jensen argues that because he pleaded guilty to *third-degree* DWI, instead of first or second degree, he was not convicted of a "designated offense" and the forfeiture of his Ferrari was therefore contrary to statute. This issue also requires this court to interpret a statute, which presents legal questions that we consider de novo. *See City of New Hope v. 1986 Mazda*, 546 N.W.2d 300, 302 (Minn. App. 1996).

As noted earlier, when used to commit a "designated offense," a vehicle is subject to forfeiture. Minn. Stat. § 169A.63, subd. 6(a). A "[d]esignated offense" includes first-degree and second-degree DWI, or *any level of DWI* if the offense is *committed by a person with a driver's license restricted when the person consumes alcohol*. *Id.*, subd. 1(e)(2)(ii).

Here, it is undisputed that Jensen pleaded guilty to third-degree DWI and that Jensen's driver's license was subject to an alcohol restriction at the time of the incident. *See* Minn. Stat. § 171.09 (2018); *see also State v. Rhode*, 628 N.W.2d 617, 619 (Minn. App. 2001) (explaining that a "B card" license restriction "invalidates a driver's license if the holder of the license uses alcohol or drugs"). Therefore, Jensen's conduct meets the statutory definition of a "designated offense" under Minnesota Statutes section 169A.63, subdivision 1(e)(2)(ii).

Jensen acknowledges that he was charged with, but not convicted of, driving after consuming alcohol with a restricted license. But he argues that the lack of a conviction on this count prevents his violation of his restricted license from supporting forfeiture. Our plain reading of the statute reveals otherwise. No conviction for driving in violation of a

restricted license is necessary. All that is required is a DWI violation by someone who has an alcohol-related restriction on his or her license. *See* Minn. Stat. § 169A.63, subd. 1(e)(2)(ii).[16]

Because he was convicted of third-degree DWI while he was subject to a restricted license, Jensen's conduct falls squarely under subdivision 1(e)(2)(ii). Thus, Jensen committed a "designated offense" that justified forfeiture, and the district court did not err.

III. The forfeiture of Jensen's Ferrari did not constitute an excessive fine.

Next, Jensen contends that forfeiture of his Ferrari constitutes an excessive fine. Both the United States and Minnesota Constitutions prohibit the government from imposing excessive fines. *See* U.S. Const. amends. VIII, XIV; Minn. Const. art. 1, § 5; *see also Timbs v. Indiana*, 139 S. Ct. 682, 687 (2019) ("The Excessive Fines Clause is therefore incorporated by the Due Process Clause of the Fourteenth Amendment."). This prohibition applies to the vehicle-forfeiture statute. *See City of New Brighton v. 2000 Ford Excursion*, 622 N.W.2d 364, 370 (Minn. App. 2001), *review denied* (Minn. Apr. 17, 2011). We review this question of constitutional interpretation de novo. *Fedziuk v. Comm'r of Pub. Safety*, 696 N.W.2d 340, 344 (Minn. 2005); *see also State v. Rewitzer*, 617 N.W.2d 407, 412 (Minn. 2000).

For nearly 20 years, Minnesota courts have applied the same standard for evaluating the constitutionality of a fine under the Excessive Fines Clause: the standard of "gross

[16] To support his argument, Jensen relies on *Patino*, 821 N.W.2d at 817. But *Patino* is easily distinguished because, while the driver there was also convicted of third-degree DWI, the driver in *Patino* did not have a restricted license. 821 N.W.2d at 811.

disproportionality."[17] *New Brighton*, 622 N.W.2d at 370-71 (quotation omitted). To assess proportionality, courts use three factors:

> (i) the gravity of the offense and the harshness of the penalty;
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> (ii) the sentences imposed on other criminals in the same jurisdiction; and
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> (iii) the sentences imposed for commission of the same crime in other jurisdictions.

Solem v. Helm, 463 U.S. 277, 292, 103 S. Ct. 3001, 3011 (1983). These factors were adapted to apply in an excessive-fine context in Minnesota in *Rewitzer*, 617 N.W.2d at 414.[18] We consider each factor in turn.

Gravity of the Offense Compared to the Severity of the Fine

First, we consider the gravity of Jensen's offense with the severity of the fine. *Rewitzer*, 617 N.W.2d at 414. Impaired drivers undoubtedly pose a dangerous risk to public safety. *Lukkason v. 1993 Chevrolet*, 590 N.W.2d 803, 806, 808 (Minn. App. 1999),

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[17] The United States Supreme Court first articulated this standard in *Solem v. Helm*, 463 U.S. 277, 290, 103 S. Ct. 3001, 3009 (1983), holding that a criminal sentence is unconstitutionally excessive if it is disproportionate to the gravity of the offense. While the issue in *Solem* was whether a criminal sentence was cruel and unusual under the Eighth Amendment, the United States Supreme Court applied the same test to excessive fines in *United States v. Bajakajian*, 524 U.S. 321, 336, 118 S. Ct. 2028, 2037 (1998). And the Minnesota Supreme Court adopted the so-called *Solem* factors in *Rewitzer*, 617 N.W.2d at 414. A few years later, the court applied *Solem* to a DWI forfeiture that was alleged to be an unconstitutional excessive fine. *Miller*, 669 N.W.2d at 896-97.

[18] While we refer to this framework as the "*Solem* factors," the specific wording we subsequently apply in this opinion is the language articulated in *Rewitzer*, 617 N.W.2d at 414, because that language was specifically adopted by the Minnesota Supreme Court, and it was adapted from the punishment context in *Solem* to the excessive-fine context applicable here.

review denied (Minn. May 18, 1999). Jensen was discovered in his car, stalled in the left lane on a highway, with a 0.20 alcohol concentration. This was his third DWI offense within ten years—and his fifth total. Jensen's history of DWI offenses demonstrates that he is an example of the type of offender the legislature sought to deter when enacting these laws.

On the other hand, this fine is admittedly severe. Jensen testified that he believed his Ferrari was worth $75,000, and the Minnesota State Patrol submitted evidence of a value ranging from $44,900 to $92,300. In short: the value of the Ferrari far exceeds the maximum fine for a gross misdemeanor.[19] But Minnesota courts have declined to adopt any per se measure of disproportionality. "Under prior cases, forfeitures have not been deemed excessive simply because the value of the car forfeited was higher than the fines authorized for similarly ranked offenses." *New Brighton*, 622 N.W.2d at 371.

Comparison with other Minnesota Fines

Second, we compare the contested fine here with fines imposed for the commission of other crimes in the same jurisdiction. *Miller*, 669 N.W.2d at 897. Minnesota cases compare fines based on the severity level of the offenses. *See, e.g.*, *id.* at 898. But here, the offense is a gross misdemeanor, and only felonies are categorized by severity level. In similar situations, however, courts have compared the fines to other offenses at the same and higher levels. *See New Brighton*, 622 N.W.2d at 371 (comparing the forfeiture value to felony fines in a gross misdemeanor DWI case). Accordingly, we observe that a gross

[19] Pursuant to Minnesota Statutes section 609.0341, subdivision 1 (2018), the maximum fine is $3,000.

misdemeanor has a maximum fine for the criminal penalty set by statute at $3,000, but other felony offenses in Minnesota permit fines as high as $50,000. *See* Minn. Stat. § 609.0341, subds. 1-2 (2018). And Minnesota courts have considered the maximum felony fine even when assessing the proportionality of a fine in gross-misdemeanor cases. *See New Brighton*, 622 N.W.2d at 371.

Comparison with Fines in other Jurisdictions

Third, we consider the sentences imposed for commission of the same crime in other jurisdictions.[20] *Id.* These comparisons have been "extensively analyzed" in previous cases. *Miller*, 669 N.W.2d at 898. In this analysis, Minnesota courts have determined that other states also subject a person's vehicle to forfeiture when he or she has committed several impaired-driving offenses. *Id.* As in Minnesota, other jurisdictions do not place a monetary limit on vehicles subject to forfeiture. *New Brighton*, 622 N.W.2d at 372.

When considering all three factors together, we conclude that they weigh in favor of forfeiture. The standard is not one of mere harshness, but *gross* disproportionality. And no one factor is dispositive in this analysis. *State v. Kujak*, 639 N.W.2d 878, 883 (Minn. App. 2002), *review denied* (Minn. Mar. 25, 2002). When considering the gravity of Jensen's conduct, comparing this fine with others in Minnesota and surrounding areas, and

[20] In other cases, courts have compared the severity level of the relevant crime to severity levels assigned in federal and other states' sentencing guidelines. *See Borgen v. 418 Eglon Ave.*, 712 N.W.2d 809, 814-15 (Minn. App. 2006); *State v. Kujak*, 639 N.W.2d 878, 885 (Minn. App. 2002), *review denied* (Minn. Mar. 25, 2002). Because this offense is not assigned a severity level, this comparison is not possible.

while taking into account the harshness of this penalty, we conclude that the forfeiture of Jensen's Ferrari was not grossly disproportionate.

In an attempt to persuade us otherwise, Jensen urges us to not apply the *Solem* factors but, instead, to rely on the recent United States Supreme Court decision in *Timbs*, 139 S. Ct. at 687. But we read *Timbs* as consistent with existing Minnesota precedent on this matter. *Timbs* decided that the Eighth Amendment's Excessive Fines Clause is an "incorporated" protection applicable to the states through the Fourteenth Amendment. *Id.* at 686-87, 689. This incorporation was already in practice in Minnesota and does not alter our precedent.[21]

In sum, it requires "an extreme case to warrant" a conclusion that a fine is unconstitutionally excessive. *Rewitzer*, 617 N.W.2d at 412 (quotation omitted). We acknowledge that the forfeiture of a vehicle valued at a minimum of $44,900 is many times more than the maximum $3,000 gross-misdemeanor fine. But we have previously affirmed

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[21] Jensen further attempts to persuade this court to "be guided" by *Austin v. United States*, 509 U.S. 602, 113 S. Ct. 2801 (1993), instead of *Solem*. But in *Austin*, the Supreme Court explicitly declined to establish a test to determine whether a forfeiture was excessive under the Eighth Amendment, instead leaving it up to each state to decide. 509 U.S. at 622-23, 113 S. Ct. at 2812 ("Prudence dictates that we allow the lower courts to consider that question in the first instance."). Jensen also correctly points out that the Court in *Austin* did not adopt or apply the *Solem* factors, and it could have. But, a few years later, the Supreme Court *did* adopt a grossly disproportional standard in the excessive fine context, relying on *Solem*. *See Bajakajian*, 524 U.S. at 336-37, 118 S. Ct. at 2037-38. Ultimately, contrary to Jensen's assertion, the *Solem* factors are good law in Minnesota.

Jensen also comments that Minnesota courts have been misapplying United States Supreme Court precedent and improperly using the *Solem* factors in analyzing this issue. We note that, as an error-correcting court, we apply existing precedent. *Lake George Park, L.L.C. v. IBM Mid-Am. Emps. Fed. Credit Union*, 576 N.W.2d 463, 466 (Minn. App. 1998) (stating that "[t]his court, as an error correcting court, is without authority to change the law"), *review denied* (Minn. June 17, 1998).

the forfeiture of a $40,000 vehicle following a gross-misdemeanor DWI. *See New Brighton*, 622 N.W.2d at 367, 371. The value of Jensen's Ferrari is not much different from this or other vehicles. *See Miller*, 669 N.W.2d at 898 (comparing the value of appellant's vehicle with the value of other vehicles and other fines for crimes of similar severity). Considering this context, we cannot conclude that the forfeiture of Jensen's Ferrari is significantly more severe than others we have affirmed in the past. While these facts may present a close case, the forfeiture of Jensen's Ferrari under these circumstances does not present us with an extreme case. This forfeiture was not an unconstitutionally excessive fine.

IV. The forfeiture process did not violate Jensen's right to procedural due process.

Finally, Jensen points to the 14-month time lapse between when he filed his complaint and when his Ferrari was forfeited, arguing that this lengthy delay violated his right to procedural due process. Both the United States and Minnesota Constitutions provide that a person shall not be deprived of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. When considering a procedural-due-process challenge, this court must first "identify whether the government has deprived the individual of a protected life, liberty, or property interest," and if so, "whether the procedures followed . . . were constitutionally sufficient." *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 632 (Minn. 2012) (quotation omitted). Here, it is undisputed that Jensen was deprived of his property interest in his Ferrari. Accordingly, we must determine whether the procedures followed were sufficient. We consider this question de novo. *Id.*

To do so, we begin with the recent Minnesota Supreme Court case: *Olson v. One 1999 Lexus*, 924 N.W.2d at 608. There, the supreme court affirmed the constitutionality of the DWI-forfeiture statutory scheme, on its face, following a due-process challenge. *Olson*, 924 N.W.2d at 608. It did conclude, however, that various as-applied challenges might succeed based on their individual facts and circumstances. *See id.* at 608, 611-16. To assess these claims, the court applied the three-factor test articulated by the United States Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 903 (1976). Under this test, courts must consider the following:

> First, the *private interest* that will be affected by the official action; second, the *risk of an erroneous deprivation* of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, *the Government's interest*, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews, 424 U.S. at 335, 96 S. Ct. at 903 (emphasis added). Because Jensen's claim is that he was not given proper procedural due process, which is an as-applied challenge, following the supreme court's lead in *Olson*, we assess his claim under the *Mathews* test.

We turn first to Jensen's private interest affected by the forfeiture. *Id.* Here, Jensen undoubtedly has a strong private interest. *See Olson*, 924 N.W.2d at 604 ("[A] person's interest in possessing and driving his or her vehicle is a significant, although not necessarily paramount, private interest."). Jensen owned the Ferrari for nearly thirty years and testified that he hoped to sell it to support himself or possibly use it as collateral for a loan. *See id.* at 605 ("The economic value of a vehicle as property that can be sold, loaned, or used as collateral must also be considered."). We observe, however, that Jensen does own two

other vehicles—a Range Rover and an Austin Healy—so the Ferrari is not his only means of transportation.

When considering this first factor, we also "weigh (1) the duration of the [deprivation of property]; (2) the availability of hardship relief; and (3) the availability of prompt postrevocation review." *Id.* at 602 (quotation omitted). Here, Jensen was deprived of his Ferrari for approximately 14 months before it was ultimately forfeited. The reason for that significant wait, however, was due to the delay in the resolution of Jensen's criminal matter, not any misfeasance by the state. *See id.* at 611-12 (concluding that an 18-month delay in a judicial forfeiture proceeding was not unconstitutional when the delay was attributable to the related criminal matter).

Second, returning to the *Mathews* test, we weigh "the risk of an erroneous deprivation" of Jensen's property "through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards." 424 U.S. at 335, 96 S. Ct. at 903. Here, Jensen first availed himself of due process in his related criminal matter, where the state was required to prove beyond a reasonable doubt that he committed the alleged offenses. Minnesota courts have acknowledged that the risk of erroneous deprivation under the DWI statute is lessened due to the protections necessary in the corresponding criminal matters. *See Olson*, 924 N.W.2d at 610. Jensen also had a forfeiture trial with counsel and an impartial decision-maker. He presented evidence and challenged the state's evidence. In short, Jensen had a meaningful opportunity to be heard on this issue.

Finally, we turn to the government's interest, including "the fiscal and administrative burdens that the additional or substitute procedural requirement would

entail." *Mathews*, 424 U.S. at 335, 96 S. Ct. at 903. The government has a strong interest in vehicle forfeiture in DWI cases because "drunken drivers pose a severe threat to the health and safety of the citizens of Minnesota." *Bendorf v. Comm'r of Pub. Safety*, 727 N.W.2d 410, 416-17 (Minn. 2007) (quotation omitted). And the administrative burden would be enormous if the government held immediate trials for every vehicle seized in relation to a DWI proceeding. *See Olson*, 924 N.W.2d at 609 ("If courts were required to hold a prompt hearing shortly after a vehicle is seized in every single case of DWI forfeiture, it would add substantially to the cost and administrative burden of courts and prosecutors."). Accordingly, the government's interest here is strong.

When weighing all three factors, we conclude that Jensen was not unconstitutionally deprived of his procedural due-process rights. While his interest in his Ferrari is admittedly great, so too is the government's interest in protecting the public. Much of the delay was due to Jensen's related criminal proceeding. And when considering that proceeding, we note that Jensen was sentenced in late May 2019 and his forfeiture trial took place about two months later. Ultimately, this case does not present us with facts that demonstrate there was an unreasonable delay in resolving the forfeiture proceedings.

In sum, Jensen's right to procedural-due-process was adequately protected in this matter. The procedure here was not unconstitutional as applied to Jensen. Just as the supreme court concluded in *Olson* that an 18-month delay in a judicial forfeiture

proceeding—attributable to a related criminal matter—did not violate due process, 924 N.W.2d at 611-12, neither does the 14-month delay here.[22]

DECISION

Our conclusion here is simple: Jensen's 1985 red Ferrari was properly forfeited. While Jensen was participating in the ignition-interlock program with his Range Rover, he was not participating with his Ferrari, which was the vehicle subject to forfeiture. And a driver participating in the ignition-interlock program must be enrolled in the program with the vehicle that is the subject of the forfeiture proceedings in order to stay forfeiture of that vehicle under Minnesota Statutes section 169A.63, subdivision 13. Because Jensen did not meet the requirements for the statutory stay, the district court did not err by determining his vehicle was subject to forfeiture. In addition, because Jensen committed a designated offense and his constitutional rights were not violated, the forfeiture of his Ferrari was not erroneous.

Affirmed.

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[22] Jensen also argues that his due-process rights were violated when the state failed to provide him notice of the basis for its forfeiture claim. But this argument is unavailing. "To satisfy due process, notice must be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Van Note v. 2007 Pontiac*, 787 N.W.2d 214, 218 (Minn. App. 2010) (quotation omitted). Jensen was notified that the forfeiture claim was broadly based in Minnesota Statutes section 169A.63. And he argued before the trial began that his restricted license could not be the basis for forfeiture, indicating that he was aware of the state's argument. Ultimately, Jensen had sufficient notice of the state's arguments under section 169A.63.