STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0445

Daniel Garcia-Mendoza,
Appellant,

vs.

2003 Chevy Tahoe, Vin #1GNEC13V23R143453,
Plate #235JBM, et al.,
Respondents.

Filed November 25, 2013
Affirmed
Rodenberg, Judge

Hennepin County District Court
File No. 27-CV-12-10889

Kirk M. Anderson, Anderson Law Firm, PLLC, Minneapolis, Minnesota (for appellant)

Michael O. Freeman, Hennepin County Attorney, Julie K. Bowman, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Rodenberg, Judge; and Hooten, Judge.

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

RODENBERG, Judge

On appeal, appellant Daniel Garcia-Mendoza argues that the district court erred in granting Hennepin County's motion for summary judgment and ordering forfeiture of the respondent property. We affirm.

FACTS

On March 19, 2012, appellant was stopped by police in Minneapolis while driving respondent 2003 Chevrolet Tahoe. Police Officer Ryan Peterson noticed that appellant "had both hands on the steering wheel and was looking straight ahead." The Tahoe had been travelling 62 to 63 miles per hour in a 60-mile-per-hour zone, according to Officer Peterson. A registration check on the Tahoe revealed that it was owned by Ricardo Cervantes-Perez, a name used by appellant, and that no driver's license was associated with the vehicle's owner. Officer Peterson stopped appellant on suspicion that he was driving without a valid driver's license.

Neither appellant nor his passenger had a driver's license that was valid in Minnesota. As a result, Officer Peterson issued appellant a citation for driving without a license, and he decided to have the Tahoe towed. Prior to the tow, Northwest Drug Task Force Officer Casey Landherr conducted an inventory search of the Tahoe. During this inventory search, Officer Landherr found a plastic bag with 225.90 grams of methamphetamine inside a Pringles can "covered up in a bag of clothes." Appellant was arrested and respondent $611.00 in United States currency was seized from his person. Appellant was given a notice of seizure and intent to forfeit the Tahoe and the $611.00.

The state of Minnesota later charged appellant with first-degree possession of methamphetamine. On May 7, 2012, appellant timely filed a petition for judicial determination of forfeiture under Minn. Stat. § 609.5314, subd. 3 (2010). On May 21, appellant was charged in United States District of Minnesota with three counts of distribution of methamphetamine and one count of possession with intent to distribute

methamphetamine. Count 4, the count of possession, related to the methamphetamine seized in the March 19 traffic stop. The state of Minnesota dismissed its criminal case against appellant after the federal charges were filed. The forfeiture action in state court was stayed pending resolution of the federal criminal charges.

On July 21, a federal magistrate judge determined that the March 19 traffic stop was lawful and recommended denial of appellant's motion to suppress the evidence resulting from the search. A federal district court judge later adopted that recommendation. Shortly after the magistrate judge's report, appellant agreed to plead guilty to Count 2 of the federal indictment. Count 2 charged appellant with distribution of 50 grams or more of methamphetamine on or about December 22, 2011. Under the plea agreement, the federal government dismissed the other counts in the indictment and appellant agreed

> to forfeit any and all property constituting, or derived from, any proceeds [appellant] obtained, directly or indirectly, as the result of [appellant's] violation, as well as any and all of [appellant's] property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of [appellant's] violation.

The federal plea agreement set forth a factual basis for the guilty plea, stating that appellant distributed 180 grams of methamphetamine from November 3, 2011 to March 19, 2012. Appellant also admitted possessing 162 additional grams of methamphetamine with the intent to distribute during that same time period. It is unclear from the record whether the quantities of methamphetamine referenced in the factual basis include the 225.90 grams recovered in the March 19 stop.

After appellant's federal conviction, respondent Hennepin County moved for summary judgment in the state forfeiture action. On January 11, 2013, the district court granted the motion for summary judgment, reasoning that appellant agreed to forfeit the property under the federal plea agreement and that 21 U.S.C. § 853(a) (2006) requires forfeiture of the Tahoe and the money. The district court also determined, however, that "there was neither a reasonable or articulable suspicion for the [March 19] stop, nor a legitimate basis for the expansion of it." As a result, the district court stated that it "would have suppressed any evidence obtained" (in a criminal case), but the district court determined that the legality of the stop was not at issue in the forfeiture action. The only issue was "whether genuine issues of material fact exist as to whether the property is subject to forfeiture pursuant to the plea agreement and applicable statutes." The district court determined that "no issues of material fact exist as to whether the subject property is subject to forfeiture." It therefore granted summary judgment in favor of respondent Hennepin County. This appeal followed.

D E C I S I O N

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. "On appeal, we review a grant of summary judgment to determine (1) if there are genuine issues of material fact and (2) if the district court erred in its application of the law." *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 371 (Minn. 2008) (quotation omitted). "We view the evidence in the

light most favorable to the party against whom summary judgment was granted." *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002). But "when the nonmoving party bears the burden of proof on an element essential to the nonmoving party's case, the nonmoving party must make a showing sufficient to establish that essential element." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997).

"[F]orfeiture is a civil in rem action and is independent of any criminal prosecution." Minn. Stat. § 609.531, subd. 6a(a) (2012). Because a forfeiture action is punitive in nature and generally disfavored, a district court strictly construes the language of a forfeiture statute and resolves any doubts in favor of the party challenging forfeiture. *Riley v. 1987 Station Wagon*, 650 N.W.2d 441, 443 (Minn. 2002). Appellant argues that summary judgment was improper because the March 19 traffic stop was unconstitutional and, therefore, the evidence resulting from the search cannot be forfeited. The district court agreed with appellant that the stop and search were unlawful, but it determined that the legality of the stop was irrelevant to the forfeiture proceeding. We agree.

Article I, section 10, of the Minnesota Constitution protects against unreasonable searches and seizures. Minn. Const. art I, § 10. In a criminal case, "evidence discovered as a result of a violation of article I, section 10 must be excluded." *State v. Askerooth*, 681 N.W.2d 353, 370 (Minn. 2004). However, "forfeiture is a civil proceeding, and there is no exclusionary rule whereby an unlawful seizure impairs the state's ability to demonstrate its case. Even if the seizure was flawed, the cause for forfeiture was duly proven." *Rife v. One 1987 Chevrolet Cavalier*, 485 N.W.2d 318, 322 (Minn. App. 1992), *review denied* (Minn. June 30, 1992). In *Rife*, we applied the state forfeiture statutes

because the lawfulness of the seizure is "immaterial." *Id.* Appellant argues that we should now extend the exclusionary rule to civil forfeiture cases.

No Minnesota case applies the exclusionary rule to a civil forfeiture action. "This court, as an error correcting court, is without authority to change the law." *Lake George Park, L.L.C. v. IBM Mid-America Emps. Fed. Credit Union*, 576 N.W.2d 463, 466 (Minn. App. 1998), *review denied* (Minn. June 17, 1998). "[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court." *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987), *review denied* (Minn. Dec. 18, 1987). Therefore, we decline to change the law and extend the exclusionary rule to civil forfeiture actions. Because we decline to extend the exclusionary rule to this civil forfeiture case, we need not reach respondent Hennepin County's argument that appellant is collaterally estopped from relitigating the March 19 stop and search.

Having declined to extend the exclusionary rule to this civil forfeiture action, we next turn to the application of the state forfeiture statutes to the facts of the case to determine whether the district court's grant of summary judgment was appropriate. *See Rife*, 485 N.W.2d at 322 (applying forfeiture statute after rejecting exclusionary rule argument). Here, appellant filed a complaint seeking a judicial determination of forfeiture in state court before he was indicted in federal court. "Under the rule of exclusive jurisdiction, if a federal and state court each has the power to proceed against the res, the court first assuming jurisdiction over the property may maintain and exercise that jurisdiction to the exclusion of the other." *Strange v. 1997 Jeep Cherokee*, 597 N.W.2d 355, 357 (Minn. App. 1999) (quoting *Penn Gen. Cas. Co. v. Pennsylvania*, 294

U.S. 189, 195, S. Ct. 386, 389 (1935)) (other citations omitted). Therefore, the Minnesota state court maintains jurisdiction over the respondent property.

In granting summary judgment in favor of respondent Hennepin County, the district court relied on the federal forfeiture statute cited in appellant's plea agreement. 21 U.S.C. § 853(a). However, because the state court retained jurisdiction over the respondent property on account of appellant having sought judicial determination of forfeiture in state court before his federal indictment, *Strange*, 597 N.W.2d at 357-58, the district court should have applied the state forfeiture statutes. The federal statute authorizes forfeiture only "to the United States." 21 U.S.C. § 853(a). No provision of this federal statute permits forfeiture to any state or local government unit. The federal statute has no application to this action seeking forfeiture to respondent Hennepin County. Nevertheless, "we may affirm a grant of summary judgment if it can be sustained on any grounds." *Doe 76C v. Archdiocese of St. Paul*, 817 N.W.2d 150, 163 (Minn. 2012).

For controlled substances forfeitures in Minnesota, there is "an evidentiary presumption that all money 'found in proximity' to drugs is subject to forfeiture." *Jacobson v. $55,900 in U.S. Currency*, 728 N.W.2d 510, 519 (Minn. 2007) (quoting Minn. Stat. § 609.5314, subd. 1(a)(1)(i) (2006)). This evidentiary presumption also applies to "all conveyance devices containing controlled substances with a retail value of $100 or more if possession or sale of the controlled substance would be a felony." Minn. Stat. § 609.5314, subd. 1(a)(2) (2012). The party opposing forfeiture "bears the burden to rebut this presumption." *Id.*, subd. 1(c) (2012). "[A] claimant rebuts the statutory

presumption of forfeitability by producing evidence sufficient to justify a finding that (1) he or she owns the defendant property; and (2) the defendant property is not connected to drug trafficking." *Jacobson*, 728 N.W.2d at 522. If the claimant meets the burden to rebut the evidentiary presumption, "the prosecuting agency, in order to prevail, must meet its burden of persuasion by producing clear and convincing evidence that the defendant property is connected to drug trafficking." *Id.*

Appellant argues that he has never been convicted of any crime related to the March 19 traffic stop because he pleaded guilty only to Count 2 in the federal indictment. Although the plea agreement recites March 19 as included in the course of illegal conduct, whether the federal conviction included the March 19 incident is of no legal significance. Controlled substances forfeitures under Minnesota's statutes do not require a conviction before property is forfeited. *See* Minn. Stat. § 609.5311, subd. 2(a) (2012) (stating simply that such property is "subject to forfeiture" without requiring a prior conviction). Instead, property in proximity to controlled substances and vehicles used to transport controlled substances are presumed forfeited. Minn. Stat. § 609.5314, subd. 1 (2012).

Here, the evidentiary presumption applies to both the Tahoe and the $611.00. As a result, appellant bears the burden to rebut the presumption in favor of forfeiture. He must show that he owns the property and that it is not connected to drug trafficking. Appellant owns the property. But appellant has provided no evidence or argument that the respondent property is unconnected to drug trafficking other than that his federal felony-drug conviction is not specifically based on the March 19 incident. There is no

fact issue regarding whether the illegal drugs were in the Tahoe or whether the cash was on appellant's person when he was arrested for possessing and transporting the methamphetamine. In his federal plea agreement, appellant admitted possessing methamphetamine over a course of conduct that included March 19. Appellant has failed to raise any genuine fact issue sufficient to rebut the evidentiary presumption in favor of forfeiture. Therefore, the respondent property is properly subject to forfeiture, and the district court did not err in granting summary judgment in favor of respondent Hennepin County.

In sum, we decline to extend the exclusionary rule to forfeitures in Minnesota and conclude that there is no genuine issue of material fact as to whether the respondent property is subject to forfeiture under the Minnesota forfeiture statutes. Minn. Stat. § 609.5311, .5314 (2012). The district court did not err in granting summary judgment to respondent Hennepin County.

Affirmed.