

A09-1025

**STATE OF MINNESOTA
IN COURT OF APPEALS**

Daniel Stephen Mycka,

Appellant,

Vs.

**2003 GMC Envoy, MN Plate RPG535
VIN 1GKDT13S432414651,**

Respondent.

APPELLANT'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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LEGAL ISSUES

1. Does Minn.Stat. §169A.63, subd. 2 permit a vehicle seizure, Without process, when the state fails to prove that the seizure of the vehicle was incident to a lawful arrest?

The Trial Court Ruled in the Affirmative

STATEMENT OF THE CASE

On June 15, 2008, Appellant was arrested and charged with Third Degree Driving While Impaired, Violation of a Restricted License and No Proof of Insurance. Because of the restricted violation charge, the state sought to seize and forfeit the vehicle driven by Appellant. However, by the time the state decided to seek forfeiture of the vehicle, Appellant had regained possession of his vehicle and was no longer under arrest.

On June 27, 2008, a demand for judicial determination of said vehicle was served on the appropriate parties, and filed in Anoka County District Court.

On December 30, 2008, a trial was held with respect to the forfeited vehicle, The Honorable Spencer J. Sokolowski, Presiding. The parties agreed to submit written memoranda of law in support of their respective positions.

On April 7, 2009, The Honorable Spencer J. Sokolowski rejected Appellant's arguments, and ruled that the vehicle was properly seized and, therefore, forfeited.

A timely appeal was filed.

STATEMENT OF THE FACTS

On June 15, 2008, Appellant was operating a motor vehicle in Anoka County. After being stopped, Appellant was arrested and charged with Third Degree Driving While Impaired, in violation of Minn.Stat. §169A.20, No Proof of Insurance, in violation of Minn.Stat. § , and Violation of a Restricted License, in violation of Minn.Stat. §171.09, subd. 1(d)(1). The vehicle was towed to Shorty's Towing and the license plates were impounded. After Appellant was released from jail, he retrieved his vehicle from the towing company.

The next day, on June 16, 2008, Fridley Police Investigator Jennifer Markham determined that Appellant's arrest for a Violation of a Restricted License qualified for forfeiture of his vehicle under Minn.Stat. §169A.63, subd. 6. Later that same day, Investigator Markham made contact with Appellant at his address. She served a notice of seizure and intent to forfeit the vehicle form, and then seized the vehicle without process by a court of jurisdiction. The vehicle was then towed to the Fridley City garage.

On June 27, 2008, a demand for judicial determination of said vehicle was served on the appropriate parties, and filed in Anoka County District Court.

On December 30, 2008, a trial was held with respect to the forfeited vehicle, The Honorable Spencer J. Sokolowski, Presiding. The parties agreed to submit written memoranda of law in support of their respective positions.

On April 7, 2009, The Honorable Spencer J. Sokolowski rejected Appellant's arguments, and ruled that the vehicle was properly seized and, therefore, forfeited.

The Appellant filed a timely appeal.

ARGUMENT

I. Standard of Review:

Resolution of this issue presented in the case requires interpretation of the vehicle forfeiture statute. Statutory interpretation is a question of law, subject to de novo review. State v. Stevenson, 656 N.W.2d 235,238 (Minn.2003).

II. Minn.Stat.§169A.63, subd. 2 Does Not Permit a Vehicle Seizure, Without Process, When the Seizure is not Incident to a Lawful Arrest:

Under Minn.Stat.§169A.63, a motor vehicle is subject to forfeiture under certain circumstances. One such circumstance is when a driver is subject to an alcohol restriction on his driver's license, and violates that restriction.

Under the forfeiture statute, “[a] motor vehicle subject to forfeiture under this section may be seized by the appropriate agency upon **process issued by any court having jurisdiction over the vehicle**”. Minn.Stat.§169A.63, subd. 2(a), *Emphasis Added*. Moreover, “[p]roperty may be seized **without process** if: (1) the seizure is **incident to a lawful arrest or a lawful search**; (2) the vehicle subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under this section; or (3) the appropriate agency has probable cause to believe that the delay occasioned by the necessity to obtain process would result in the removal or destruction of the vehicle”. Minn.Stat.§169A.63, subd. 2(b), *Emphasis Added*.

In this case, process was not sought by the police prior to seizing the vehicle. The state relied on the “incident to lawful arrest” exception. Therefore, the provisions in Minn.Stat.§169A.63, subd. 2(a) is inapplicable. Therefore, the only valid and legally enforceable manner in which the state can seize Appellant's vehicle is under

Minn.Stat. §169A.63, subd. 2(b).

First, Appellant's vehicle was not the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding. Therefore, the provisions of Minn.Stat. §169A.63, subd. 2(b)(2) do not apply. Second, the provision of Minn.Stat. §169A.63, subd. 2(b)(3) do not apply because no evidence was presented that there was probable cause to believe that, "...the delay occasioned by the necessity to obtain process would result in the removal or destruction of the vehicle". Id. Therefore, the only basis to seize Appellant's vehicle is under Minn.Stat. §169A.63, subd. 2(b)(1).

Under Minn.Stat. §169A.63, subd. 2(b)(1), Appellant's vehicle may be seized without process if "...the seizure is incident to a lawful arrest or a lawful search". Id.

It is well settled that "incident to arrest" means either directly after the individual is arrested or "contemporaneous" thereto. See: State v. White, 489 N.W.2d 792 (Minn.1992). In Rawlings v. Kentucky, 448 U.S. 98, 100 S.Ct. 2556 (1980), the United States Supreme Court adopted the definition of "contemporaneous" when it wrote that, "...where formal arrest is followed **quickly on the heels** of the challenged search....", the search is proper. Id. 448 U.S. at 111, 100 S.Ct. at 2564. And the Merriam-Webster dictionary defines "contemporaneous" as "existing, occurring or originating during the same time". Id. It is clear that "incident to arrest" must either be directly after the arrest, or occurring during the same time period as the arrest itself.

In this case, the seizure of Appellant's vehicle was not incident to his arrest. On

June 15, 2008, Appellant was arrested for driving while impaired. On that same day, Appellant was released from custody, and retrieved his vehicle from the impound lot without incident. On June 16, 2008, while Appellant was at home and in possession of his vehicle, Investigator Markham appeared at Appellant's residence, served Appellant with the notice of seizure and intent to forfeit, and seized Appellant's vehicle. Investigator Markham seized Appellant's vehicle the day after his arrest, after Appellant was released from custody and no longer under arrest, and after Appellant took possession of his vehicle from the impound lot. To suggest that the seizure of Appellant's vehicle was incident to his arrest is simply absurd.

The District Court cited Minn.Stat. §169A.63, subd. 8(b) in support of its decision that Appellant's vehicle was seized properly. Subdivision 8(b) states in relevant part that, "[w]hen a motor vehicle is seized under subdivision 2, or within a reasonable time after seizure, the appropriate agency shall serve the driver or operator of the vehicle with a notice of seizure and intent to forfeit the vehicle". *Id.* The District Court completely misapplied the law. The plain language of subdivision 8 makes it clear that it only applies to situations where the vehicle is already seized, and notice has not yet been served. The law clearly states that notice of seizure and intent to forfeit shall be served upon the operator of the seized vehicle either at the time of seizure, or within a reasonable period of time after said seizure. Nothing in this subdivision permits actual seizure of the motor vehicle within a reasonable time after the driver has been released from custody and taken possession of the vehicle in question. Subdivision 8 must be read in conjunction with subdivision 2(b). In other words, the actual "seizure" of the motor

vehicle is controlled by the later. Service of the notice of seizure and intent to forfeit is controlled by the former. It is clear by the language of the statute that there is no “reasonable time” exception to the actual seizure of a motor vehicle subject to forfeiture under the DWI law. The seizure must be by process issued by a court with jurisdiction.

The Respondent argued in the District Court, that Johnson v. 1996 GMC Sierra, 606 N.W.2d 455 (Minn.App.2000) is controlling. The Respondent’s reliance on this case is a misapplication of the law. In Johnson, the defendant was arrested for driving while impaired and his vehicle was seized. The next day, and while still incarcerated, the defendant was served with a notice of seizure and intent to forfeit the defendant’s vehicle. It is clear from the facts of the case that the defendant in Johnson did not have possession of his vehicle when he was served with notice and the vehicle was still in the custody and possession of the police since the vehicle had been seized at the time of his arrest. Moreover, and more importantly, the Court stated that when a vehicle is seized and notice must be served, the language “[w]hen a motor vehicle is seized” doesn’t mean that **notice** must be served immediately. The Court stated that the statute permits a reasonable time to serve **the notice**, and doesn’t require **notice** to be served immediately. Id. at 458, *Emphasis Added*. This language was codified in Minn.Stat. §169A.63, subd. 8(b).

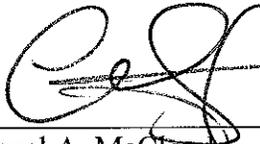
The one common factor in both the statute and Johnson is that once a motor vehicle has already been seized incident to the arrest of the driver, notice of seizure and intent to forfeit must be served either immediately or within a reasonable period of time. The underlying mistake both Respondent and the District Court made in analyzing

the statute was that both confused the actual “**seizure**” requirements of the statute with the “**notice**” requirements contained therein. There is no ambiguity in the statute. The language is clear. Seizure must be incident to arrest. Otherwise the state needs process issued by a court with jurisdiction. Service of the notice only needs to be accomplished within a reasonable time **after the seizure** has already taken place.

CONCLUSION

Because Appellant’s vehicle was seized without process, and because Appellant’s vehicle was not seized incident to his arrest, the District Court erred as a matter of law in finding in favor of Respondent, and we respectfully request that the District Court be reversed and the Respondent vehicle be returned to Appellant.

Dated: 11/13/09



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