

State of Minnesota  
In Court of Appeals

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DANIEL STEPHEN MYCKA,

*Appellant,*

vs.

2003 GMC ENVOY, MN PLATE RPG535  
VIN IGKDT13S432414651,

*Respondent.*

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**RESPONDENT'S BRIEF**

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## LEGAL ISSUE

1. Does Minn. Stat. § 169A.63, subd. 2 permit a vehicle seizure without process, when the seizure of the vehicle and service of the notice occurs one day after Appellant's lawful arrest and Appellant is not prejudiced by the brief delay?

The trial court ruled in the affirmative.

## STATEMENT OF THE CASE

On June 15, 2008, Appellant was arrested and charged with Third Degree DWI, Third Degree DWI with an alcohol concentration of .08 or more, Violation of a Restricted License, and No Proof of Insurance. Appellant's vehicle was subject to forfeiture based on Appellant's Violation of a Restricted License, prohibiting Appellant from possessing or consuming any amount of alcohol. Fridley Police Investigator Jennifer Markham served a Notice of Seizure and Intent to Forfeit Vehicle on Appellant and seized the vehicle one day after the arrest.

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

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

On April 7, 2009, the Honorable Spencer J. Sokolowski ruled that the vehicle was properly seized by the Fridley Police Department and, therefore, forfeited.

Appellant filed this appeal.

## STATEMENT OF THE FACTS

On June 15, 2008 at approximately 1:00 a.m., Police Officer Knutson was advised an intoxicated male was driving his 2003 GMC Envoy vehicle through the McDonalds drive-thru, in the City of Fridley, Anoka County, Minnesota. Upon arrival in the area, assisting Officer George observed said vehicle swerve across the center line and make a wide right turn into the left lane of traffic instead of the right lane.

Officer George conducted a stop of said vehicle and upon making contact with the driver, later identified as the Appellant, Officer George immediately smelled the odor of alcohol on Appellant's breath and observed his eyes were glassy and watery. Appellant's speech was slurred and he admitted to drinking six beers prior to driving. Appellant failed field sobriety tests. The result of the intoxilyzer test was .18 alcohol concentration.

Appellant was charged with two counts of Third Degree DWI, Violation of a Restricted License, and No Proof of Insurance. The vehicle was towed to Shorty's Towing and the license plates were impounded. Appellant was taken to the Anoka County Sheriff's Office for booking and then released. Appellant retrieved his vehicle upon his release.

On June 16, 2008, the following day, Investigator Jennifer Markham determined that Appellant's vehicle was subject to forfeiture due to the Violation of a Restricted License charge. Investigator Markham made contact with Appellant at his address and served the Notice of Seizure and Intent to Forfeit Vehicle on Appellant. The vehicle was towed to the Fridley City Garage.

## ARGUMENT

### STANDARD OF REVIEW

This 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).

#### **I. THE MISTAKE OF THE ARRESTING POLICE OFFICER IN NOT SEIZING THE VEHICLE INITIALLY DOES NOT NEGATE THE FACT THAT THE SEIZURE WAS INCIDENT TO THE ARREST.**

Appellant's motor vehicle was subject to forfeiture based on his violation of the restriction on his license, namely no possession or consumption of alcohol. Minn. Stat. § 169A.63, subd. 6. Minnesota Statutes § 169A.63, subd. 2 allows a vehicle to be seized without process when the seizure is incident to a lawful arrest.

First, the arrest was lawful. The arrest was based on several facts, including a report of an intoxicated driver at the McDonalds drive-thru, Appellant's driving conduct observed by the officer, the moderate odor of alcohol noted on Appellant, his admission to consuming six beers prior to driving, his poor balance, slurred speech, and failure on field sobriety tests.

Second, and more importantly, the seizure was *incident to* the lawful arrest of Appellant. Appellant argues that the seizure was not incident to the arrest because the vehicle was not seized immediately at the same time of Appellant's arrest. While it is true that Appellant's vehicle was not seized at his arrest, it was seized "incident to" his arrest.

The lawful arrest of Appellant occurred just one day prior to the seizure of the vehicle. While it is true that Appellant was no longer “under arrest” at the time the vehicle was seized, this does not change the fact that the seizure was conducted “incident to” that arrest. When Investigator Markham went to Appellant’s address to seize the vehicle, she was relying on the lawful arrest that had occurred just one day before. The honest and admitted mistake of the arresting officer, failing to impound Appellant’s vehicle on June 15, 2008, at the time Appellant was arrested, does not negate the fact that the seizure was incident to that arrest.

**II. THE VEHICLE WAS PROPERLY FORFEITED BECAUSE THE FRIDLEY POLICE DEPARTMENT’S BRIEF DELAY IN SEIZING THE VEHICLE AND SERVING NOTICE ON APPELLANT DID NOT PREJUDICE THE APPELLANT.**

The seizure of Appellant’s vehicle was incident to his lawful arrest and the brief delay did not prejudice the Appellant.

In Johnson v. 1996 GMC Sierra, 606 N.W.2d 455 (Minn. App. 2000), the court held that service of the seizure notice one day following the offense was lawful, while appellant was still in custody because it was reasonably prompt and the minimal delay did not prejudice appellant. In the instant case, Appellant argues Johnson is distinguishable because the appellant in that case was still in custody at the time the notice was served on him. It is true that the Appellant in this case had been released from custody when the police served the notice form on him. Had the officer not released Appellant with a future court date, but instead held him for a court appearance the following morning, under Johnson, the seizure would have undoubtedly been incident to

the arrest. However, the release of Appellant does not negate the fact that a lawful arrest took place and that this seizure occurred “incident to” that arrest. The arrest was the basis for the seizure and without it, a seizure without process would not have been lawful.

Furthermore, Appellant in this case has not demonstrated how the brief delay of the seizure prejudiced him. In Johnson, the appellant argued the failure of the County to serve him with the proper notice violated procedural due process. The Minnesota Court of Appeals held that argument was without merit.

[The appellant] did not show he was denied reasonable notice, a timely opportunity for a hearing, the right to representation of counsel, the opportunity to present evidence and argument or any other essential attribute of due process.

Id. at 458-59.

The delay in seizing the vehicle did not violate Appellant’s procedural or substantive due process. Appellant received notice at the exact same time his vehicle was seized. He filed a timely complaint for judicial determination of forfeiture. The matter went to trial on December 30, 2008. Appellant was able to present evidence, cross examine witnesses and argue his position. After considering briefs from both parties, the District Court ruled in favor of the City, affirming the forfeiture of Appellant’s vehicle. Appellant fails to argue how he would have handled his case any differently had the prosecuting attorney instead filed a complaint against the vehicle instead of the police seizing it without process.

Nowhere in Appellant’s brief does he allege prejudice from the fact that Investigator Markham seized the vehicle and served the notice one day after the lawful

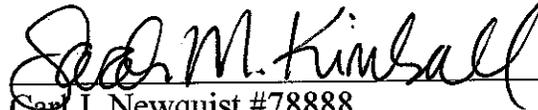
arrest. The Fridley Police Department made a mistake in not seizing the vehicle immediately at the time of arrest. However, the seizure still took place incident to the lawful arrest.

### CONCLUSION

Because the seizure of Appellant's vehicle was incident to his lawful arrest, the District Court properly ruled in favor of Respondent, and we respectfully request the District Court decision be affirmed and the Respondent vehicle remains forfeited.

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