

A11-309

STATE OF MINNESOTA
IN COURT OF APPEALS

Laura Patino,

Appellant,

vs.

One 2007 Chevrolet
VIN # 1GNFC16017J255427
Texas License Plate # 578VYH,

Respondent.

RESPONDENT'S BRIEF

ANDERSON & MCCORMICK, P.A.

Kirk M. Anderson, #338175
7000 Flour Exchange Building
310 Fourth Avenue South
Minneapolis, MN 55415
Telephone: (612) 355-2787

ATTORNEY FOR APPELLANT

LORI SWANSON

Attorney General
State of Minnesota
75 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, Minnesota 55155

**NICOLLET COUNTY
ATTORNEY'S OFFICE**

Michael K. Riley, Sr., #91790
Nicollet County Attorney
Angela B. Forsythe, #31710X
Assistant Nicollet County Attorney
Paul H. Tanis, #153394
Assistant Nicollet County Attorney
326 South Minnesota Avenue
P.O. Box 360
St. Peter, MN 56082-0360
Telephone (507) 934-3430

ATTORNEY FOR RESPONDENT

TABLE OF CONTENTS

| | PAGE |
|---|-------------|
| TABLE OF CONTENTS..... | i |
| TABLE OF AUTHORITIES | ii |
| PROCEDURAL HISTORY..... | 1 |
| STATEMENT OF LEGAL ISSUES | 3 |
| STATEMENT OF THE CASE AND THE FACTS | 4 |
| ARGUMENT | 7 |
| I. THE DISTRICT COURT PROPERLY DETERMINED THAT CONVICTION OF THE DESIGNATED OFFENSE IS NOT REQUIRED IN ORDER TO SUBJECT A VEHICLE TO FORFEITURE..... | 7 |
| II. APPELLANT IS NOT AN “INNOCENT PERSON” AS DEFINED BY MINN. STAT. §169A.63 | 10 |
| CONCLUSION..... | 14 |
| APPENDIX..... | 16 |
| 1. District Court Order, dated December 22, 2010..... | RA-1 |

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).

TABLE OF AUTHORITIES

CASES

Minnesota Supreme Court Cases

| | |
|--|-------|
| <i>Am. Family Ins. Group v. Schroedl</i> , 616 N.W.2d 273, 277 (Minn. 2000)..... | 8 |
| <i>Amaral v. St. Cloud Hosp.</i> , 598 N.W.2d 379, 384 (Minn. 1999) | 8 |
| <i>Laase v. 2007 Chevrolet Tahoe</i> , 776 N.W.2d 431, 433 (Minn. 2009) | 7, 11 |

Minnesota Court of Appeals Cases

| | |
|--|------|
| <i>Mastakoski v. 2003 Dodge Durango</i> , VIN No. 1D8HS78Z13F53764, 738 N.W.2d 411, 415 (Minn.Ct.App. 2007), review denied (Minn. Nov. 21, 2007)..... | 8, 9 |
| <i>Mycka v. 2003 GMC Envoy</i> , MN Plate RPG535, VIN 1GKDT13S432414651, 783 N.W.2d 234, 236 (Minn.Ct.App. 2010) | 7 |
| <i>State v. Ahmed</i> , 791 N.W.2d 296, 298 (Minn.Ct.App. 2010) | 10 |
| <i>State v. Bunde</i> , 556 N.W.2d 917, 918 (Minn.Ct.App. 1996)..... | 10 |

MINNESOTA STATUTES

| | |
|-----------------------------|-------------|
| Minn. Stat. § 169A.63 | 7-8, 11, 13 |
|-----------------------------|-------------|

A11-309

STATE OF MINNESOTA

IN COURT OF APPEALS

Laura Patino,

Appellant,

vs.

RESPONDENT'S BRIEF

One 2007 Chevrolet
VIN # 1GNFC16017J255427
Texas License Plate # 578VYH,

Respondent.

PROCEDURAL HISTORY

1. April 24, 2010: Date of underlying impaired driving offense; [REDACTED] [REDACTED] drove Appellant's vehicle while he was under the influence of alcohol, while his Texas driver's license was revoked and while Appellant's 10-year-old daughter was a passenger in the vehicle.
2. April 24, 2010: [REDACTED] was served with an Impaired Operation Notice of Seizure and Intent to Forfeit Vehicle at the Nicollet County Jail at 20:43. Appellant was served with an Impaired Operation Notice of Seizure and Intent to Forfeit Vehicle at her place of business in St. Peter, MN at 20:59.
3. April 26, 2010: Complaint was filed against [REDACTED] in Nicollet County, Court File Number 52-CR-10-74, charging [REDACTED] as follows:
 - Count I: Second Degree Driving While Impaired, Gross Misdemeanor DWI: Endangerment of a Child
 - Count II: Third Degree Driving While Impaired, Gross Misdemeanor DWI: Endangerment of a Child
 - Count III: Fourth Degree Driving While Impaired (Alcohol Concentration of .08 or more)

Count IV: Fourth Degree Driving While Impaired

Count V: Driving After Revocation

4. May 12, 2010: Appellant filed Demand for Judicial Determination with the Nicollet County District Court.
5. June 15, 2010: [REDACTED] pled guilty to Count II: Third Degree Driving While Impaired, Gross Misdemeanor DWI: Endangerment of a Child. The remaining charges were dismissed.
6. August 24, 2010: [REDACTED] was sentenced to 365 days in the Nicollet County Jail, with 335 days stayed for 2 years.
7. November 4, 2010: Appellant filed an Amended Demand for Judicial Determination.
8. December 13, 2010: Nicollet County District Court, Honorable Judge Todd W. Westphal presiding, hears and denies Appellant's summary judgment motion and conducts a court trial on the forfeiture of Respondent vehicle.
9. December 22, 2010: Nicollet County District Court issued an Order approving the forfeiture of Respondent vehicle to the Minnesota State Patrol.
10. February 18, 2011: Notice of Appeal filed with the Clerk of Appellate Court.
11. March 15, 2011: Transcript Delivered.
12. April 19, 2011: Appellant's Brief filed with the Clerk of Appellate Court.

STATEMENT OF LEGAL ISSUES

- I. Is conviction of a designated offense required in order to forfeit Appellant's vehicle?

The district court held:

Appellant did not contest the issue of whether Mr. [REDACTED] committed a designated offense, but the evidence presented indicated conduct constituting a 2nd Degree DWI. Even if he had not, however, precedent recognizes that conviction on the designated offense is not required in order to subject the vehicle to forfeiture.

Most apposite authority: Minn. Stat. § 169A.63, subd. 6(a); Minn. Stat. § 169A.63, subd. 1(e); *Mastakoski v. 2003 Dodge Durango, VIN No. 1D8HS78Z13F53764*, 738 N.W.2d 411, 415 (Minn.Ct.App. 2007), *rev. denied* (Minn. Nov. 21, 2007).

- II. Was Appellant an "innocent owner" as defined by Minnesota law such that her vehicle would not be subject to forfeiture when driven by [REDACTED]

The district court held:

Appellant is not an "innocent owner" because her relationship status with Mr. [REDACTED] at the time of his illegal driving conduct created a presumption of knowledge held by Appellant, including that Appellant would know Mr. [REDACTED] did not have a valid driver's license.

Most apposite authority: Minn. Stat. § 169A.63, subd. 7(d); *Laase v. 2007 Chevrolet Tahoe*, 776 N.W.2d 431, 433 (Minn. 2009).

STATEMENT OF THE CASE AND THE FACTS

Appellant is appealing the December 22, 2010 Order issued by the Honorable Todd W. Westphal, Fifth Judicial District, Nicollet County (attached at Respondent's Appendix RA-1 and hereinafter referred to as "December 22, 2010 Order") in which her petition for the return of Respondent vehicle, taken through the forfeiture process, was denied. The underlying criminal case to this file is Minnesota District Court File Number 52-CR-10-74.

On April 24, 2010, Mr. [REDACTED] drove Respondent vehicle, which at all relevant times has been owned solely by Appellant, to Worthington for business and pleasure purposes, taking Appellant's 10- year-old daughter with him. Appellant gave [REDACTED] permission to drive her vehicle. (Transcript of proceedings occurring on December 13, 2010, Reporter's Certificate dated March 12, 2011 (hereinafter "Transcript") at p. 27 (Patino)).

At approximately 8:26 p.m., dispatch received a citizen reported driving complaint in regard to a white Chevrolet Tahoe bearing Texas License Plate Number 578-VYH, later identified as Respondent vehicle. The citizen reported Respondent vehicle was all over the road, crossing center and fog line. This erratic driving behavior was investigated and witnessed by Corporal Mark Fahning of the Minnesota State Patrol, in addition to unsignaled lane changes. Corporal Fahning activated his emergency lights and conducted a traffic stop of the vehicle. Corporal Fahning found [REDACTED] to have a strong odor of intoxicants on his breath, red and watery eyes, and fumbled when asked for license and insurance. (Transcript at p. 5-6 (Fahning)), (Criminal Complaint in

Minnesota Court File 52-CR-10-74, dated April 26, 2010 (hereinafter referred to as “April 26, 2010 Complaint”). Corporal Fahning spoke to the young female in the vehicle, who identified herself as J.P., dob [REDACTED], daughter of [REDACTED]. (April 26, 2010 Complaint). After [REDACTED] failed a number of field sobriety tests, [REDACTED] took a PBT, which resulted in a reading of .11. [REDACTED] was placed under arrest and went through the Minnesota Motor Vehicle Implied Consent Advisory, after which he agreed to provide a breath test. His Intoxilyxer result was .08 at approximately 9:38 p.m. (April 26, 2010 Complaint).

Corporal Fahning determined [REDACTED] had a prior impaired driving related loss of license in connection with a Fourth Degree DWI he received in Nobles County on October 5, 2006. The Fourth Degree DWI resulted in [REDACTED]’ license revocation of November 3, 2006, as well as his present revocation. (April 26, 2010 Complaint). Based on his driving conduct and his history, [REDACTED] was charged with the following crimes:

- Count I: Second Degree Driving While Impaired, Gross Misdemeanor DWI: Endangerment of a Child
- Count II: Third Degree Driving While Impaired, Gross Misdemeanor DWI: Endangerment of a Child
- Count III: Fourth Degree Driving While Impaired (Alcohol Concentration of .08 or more)
- Count IV: Fourth Degree Driving While Impaired
- Count V: Driving After Revocation

¹ It was subsequently determined that J.P. is Appellant’s daughter, not [REDACTED] daughter.

On April 24, 2010: [REDACTED] was served with an Impaired Operation Notice of Seizure and Intent to Forfeit Vehicle at the Nicollet County Jail at 8:43 p.m. Also on April 24, 2010, Appellant was served with an Impaired Operation Notice of Seizure and Intent to Forfeit Vehicle at her place of business in St. Peter, MN at 8:59 p.m.

On May 12, 2010, Appellant filed a Demand for Judicial Determination with the Nicollet County District Court. This Demand for Judicial Determination contained incorrect vehicle information, listing the vehicle as a 2004 Chevrolet, VIN # 2GCEC19T541177881, Texas License Plate # 578-VTH, rather than a 2007 Chevrolet, VIN # 1GNFC16017J255427, Texas License Plate # 578-VYH. Appellant filed an Amended Demand for Judicial Determination on November 4, 2010.

On June 15, 2010, [REDACTED] pled guilty to Count II: Third Degree Driving While Impaired, Gross Misdemeanor DWI: Endangerment of a Child. The remaining charges were dismissed. On August 24, 2010, [REDACTED] was sentenced to 365 days in the Nicollet County Jail, with 335 days stayed for 2 years.

A court trial on Appellant's Demand for Judicial Determination was scheduled for, and took place on, December 13, 2010. Subsequent to this court trial, the district court entered the December 22, 2010 Order approving forfeiture of the vehicle to the Minnesota State Patrol. This appeal follows.

ARGUMENT

I. THE DISTRICT COURT PROPERLY DETERMINED THAT CONVICTION OF THE DESIGNATED OFFENSE IS NOT REQUIRED IN ORDER TO SUBJECT A VEHICLE TO FORFEITURE.

A. Standard of Review

The Court of Appeals reviews issues of statutory interpretation de novo. *Mycka v. 2003 GMC Envoy, MN Plate RPG535, VIN 1GKDT13S432414651*, 783 N.W.2d 234, 236 (Minn.Ct.App. 2010) citing *Laase v. 2007 Chevrolet Tahoe*, 776 N.W.2d 431, 433 (Minn. 2009).

B. Applicable Law and Analysis

According to Minn. Stat. § 169A.63,

A motor vehicle is subject to forfeiture under this section if it was used in the commission of a designated offense or was used in conduct resulting in a designated license revocation.

Minn. Stat. § 169A.63, subd. 6(a). The Minnesota legislature has provided the following definition:

“Designated offense” includes:

(1) a violation of section 169A.20 (driving while impaired) under the circumstances described in section 169A.24 (first-degree driving while impaired), or 169A.25 (second-degree driving while impaired); or

(2) a violation of section 169A.20 or an ordinance in conformity with it:

(i) by a person whose driver's license or driving privileges have been canceled as inimical to public safety under section 171.04, subdivision 1, clause (10), and not reinstated; or

(ii) by a person who is subject to a restriction on the person's driver's license under section 171.09 (commissioner's license restrictions), which provides that the person may not use or consume any amount of alcohol or a controlled substance.

Minn. Stat. § 169A.63, subd. 1(e).

On June 15, 2010, ██████████ pled guilty to Count II: Third Degree Driving While Impaired, Gross Misdemeanor DWI: Endangerment of a Child. The remaining charges were dismissed. The State does not contend that the conviction entered into is for a “designated offense” under Minn. Stat. § 169A.63, subd. 1(e).

It is not necessary that the conviction obtained against a driver be for a designated offense, however. *Mastakoski v. 2003 Dodge Durango, VIN No. 1D8HS78Z13F53764*, 738 N.W.2d 411, 415 (Minn.Ct.App. 2007), *rev. denied* (Minn. Nov. 21, 2007). As this Court recognized in *Mastakoski*, it is charged with interpreting statutes in such a way that “no word, phrase, or sentence should be deemed superfluous, void, or insignificant.” *Mastakoski*, 738 N.W.2d at 414 (citing *Am. Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (quoting *Amaral v. St. Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999))). As this Court held in *Mastakoski*, a vehicle is subject to forfeiture if it is used in the commission of a designated offense; there is no longer a requirement that the driver be convicted of a designated offense. *Mastakoski*, 738 N.W.2d at 415. This significant change is the result of a 2004 amendment; prior to the amendment a conviction was necessary for the vehicle to be forfeited. As this Court stated, “We assume that such a change in language was not inadvertent.” *Id.* In giving each word and phrase meaning, this Court determined that a vehicle used in the commission of a designated offense, even if no conviction was obtained, was still subject to forfeiture.

██████████ was charged with five offenses, one of them 2nd Degree Driving While Impaired, Gross Misdemeanor DWI, Endangerment of a Child. This qualifies as a

“designated offense” under the statute. In the December 22, 2010 Order, Judge Westphal stated, “the evidence presented indicates that two aggravating factors existed (a prior DWI conviction and the presence of a child under the age of 16 in the vehicle), which would constitute the offense of 2nd degree DWI.” It is undisputed that [REDACTED] has a prior DWI conviction, did not have a license at the time of the offense and had Appellant’s daughter in the vehicle at the time he was stopped. As in *Mastakoski*, [REDACTED] used Respondent vehicle in the commission of a designated offense, even if he was not convicted of that offense, and it was undisputed that [REDACTED] committed a designated offense. Therefore, following the precedent set in *Mastakoski*, the vehicle was lawfully forfeited.

Appellant attempts to differentiate the decision in *Mastakoski* on two levels. First, Appellant attempts to differentiate the decision in *Mastakoski* from the present matter on the basis of a different category of vehicle owner in the two cases, such a differentiation is merely a red herring. The precedent set by *Mastakoski* does not vary depending on whether it is the driver, a relative or a stranger who holds title to the vehicle. The law is related to the driver’s conduct, past and present, not the vehicle owner.

Second, Appellant attempts to argue that *Mastakoski* should not apply because this matter follows the procedures outlined for judicial determinations whereas *Mastakoski* should only apply in cases of uncontested forfeitures. Appellant fails to note that *Mastakoski* was a contested forfeiture; that a Demand for Judicial Determination was filed. *Mastakoski*, 738 N.W.2d at 412-413. *Mastakoski* was not intended to be limited to solely administrative or noncontested forfeiture proceedings.

Case and statutory law clearly provide that a vehicle used in the commission of a designated offense is subject to forfeiture, even if the driver is not convicted of said designated offense. The district court correctly determined Appellant's vehicle should be forfeited to the Minnesota State Patrol.

II. APPELLANT IS NOT AN "INNOCENT PERSON" AS DEFINED BY MINN. STAT. § 169A.63.

A. Standard of Review

A district court's application of statutory criteria to the facts is a question of law and, therefore, the Court of Appeals engages in de novo review. *State v. Ahmed*, 791 N.W.2d 296, 298 (Minn.Ct.App. 2010) citing *State v. Bunde*, 556 N.W.2d 917, 918 (Minn.Ct.App. 1996).

B. Applicable Law and Analysis

Appellant contends that the district court erred as a matter of law in determining that Appellant was not an "innocent owner" pursuant to Minnesota Statute § 169A.63. It is the State's contention that the district court engaged in the proper analysis in making its determination that Appellant is not an "innocent owner" and that the evidence provided in this case supports a determination that Appellant is not an "innocent owner" under Minnesota Statute § 169A.63.

The "innocent owner" provision of the Minnesota forfeiture law states:

A motor vehicle is not subject to forfeiture under this section if its owner can demonstrate by clear and convincing evidence that the owner did not have actual or constructive knowledge that the vehicle would be used or operated in any manner contrary to law or that the owner took reasonable steps to prevent use of the vehicle by the offender. If the offender is a family or household member of the owner and has three or more prior

impaired driving convictions, the owner is presumed to know of any vehicle use by the offender that is contrary to law.

“Vehicle use contrary to law” includes, but is not limited to, violations of the following statutes:

- (1) section 171.24 (violations; driving without valid license);
- (2) section 169.791 (criminal penalty for failure to produce proof of insurance);
- (3) section 171.09 (driving restrictions; authority, violations);
- (4) section 169A.20 (driving while impaired);
- (5) section 169A.33 (underage drinking and driving); and
- (6) section 169A.35 (open bottle law).

Minn. Stat. § 169A.63, subd. 7(d). By enacting Minn.Stat. § 169A.63, subd. 9, the Minnesota legislature provided a judicial process by which the forfeiture can be challenged. This judicial process places the burden on the party claiming the forfeiture was unauthorized. *Laase*, 776 N.W.2d 434.

Appellant has the burden of showing the forfeiture of Respondent vehicle was unauthorized; she must demonstrate by clear and convincing evidence that she, as owner of Respondent vehicle, did not have actual or constructive knowledge that the vehicle would be used or operated in any manner contrary to law or that she took reasonable steps to prevent use of the vehicle by [REDACTED].

It is undisputed that at all relevant times, Appellant was the sole owner of Respondent vehicle; she received full ownership of the vehicle from her former husband in their divorce. (Transcript p. 25 (Patino)). It is also undisputed that Appellant did not take any steps to prevent use of the vehicle by [REDACTED]; when [REDACTED] asked

to use the vehicle on April 24, 2010, Appellant granted him permission. (Transcript p. 27 (Patino)). Further, Appellant allowed [REDACTED] to use her vehicle on multiple occasions, including approximately every two weeks when he would go to Worthington. (Transcript p 30-31 (Patino)).

The primary issue of contention is whether Appellant, as sole owner of Respondent vehicle, can demonstrate by clear and convincing evidence that she did not have actual or constructive knowledge that the vehicle would be used or operated in any manner contrary to law. It is the State's position that Appellant cannot meet this burden.

Appellant testified that she never checked whether [REDACTED] had a valid license, nor did she ask to see his license, despite the fact that [REDACTED] drove with her 10-year-old daughter in the vehicle. *Id.* at 31. While this is unquestionably foolish, it holds a modicum of believability.

The reasonable extent of Appellant's ignorance is not infinite, however. On March 31, 2010, Respondent vehicle was stopped while [REDACTED] was driving and Appellant was a passenger. To assist with any language barrier, Detective Matthew Grochow of the St. Peter Police Department testified that Officer Paulus spoke Spanish to both [REDACTED] and Appellant. (Transcript p. 12-14 (Grochow)). This stop resulted in charges for driving after revocation (a violation of Minn. Stat. § 171.24) and failure to provide proof of insurance. Detective Grochow testified that the citation was done in the presence of Appellant. (Transcript p. 13 (Grochow)) Appellant was required to drive home, as [REDACTED] did not have a valid license.

Appellant claims she was not aware that [REDACTED] did not have a valid license until he was arrested on April 24, 2010. This assertion is illogical. First, although Officer Paulus does not speak fluent Spanish, [REDACTED] clearly understood that he was receiving a citation for driving after revocation and failure to provide proof of insurance. This is an indication that Officer Paulus' Spanish skills were adequate to convey the specific violations to [REDACTED]. Appellant was present when [REDACTED] was cited; it is reasonable to assume that Appellant was also present when [REDACTED] was told of the violations he was being cited for. As Officer Paulus was speaking with [REDACTED] in Spanish, Appellant should have had minimal difficulty understanding the violations listed on the citation.

Even if Appellant did not hear and/or understand the violations [REDACTED] was facing through Officer Paulus, the totality of circumstances would lead a reasonable person to question what the citation was for and, specifically, would create an exchange of information between significant others. This point was particularly relevant to the district court's analysis of whether Appellant was an "innocent owner". The district court did not believe Appellant's claim of ignorance of [REDACTED] invalid license, and stated:

[T]he Court concludes that [Appellant] became aware of the fact that [REDACTED] did not have a valid license and could not legally drive a vehicle as a result of the prior stop of [REDACTED] that occurred on March 31, 2010. [REDACTED] was the driver during that stop, and Petitioner was the passenger. At the conclusion of the stop, Petitioner was required to drive the vehicle from the scene as [REDACTED] driving privileges had been revoked. ... Although Petitioner claims she did not become aware of [REDACTED] license status or inability to legally drive a vehicle through that incident, the Court finds that explanation to not be

credible, especially considering there (sic) then existing boyfriend-girlfriend relationship. It is not credible to assert that a boyfriend-girlfriend would not discuss why the boyfriend received a citation from law enforcement or why the girlfriend had to drive the vehicle home.

(December 22, 2010 Order). This analysis by the district court was proper; the facts of this situation simply do not allow for an assertion that Appellant did not know [REDACTED] [REDACTED] had an invalid license.

Appellant cannot demonstrate by clear and convincing evidence that she did not have, at least, constructive knowledge that her vehicle would be operated in a manner contrary to law. Because she cannot meet her burden, Appellant does not qualify as an “innocent owner” and Respondent vehicle must be subject to forfeiture.

CONCLUSION

[REDACTED] committed a designated offense when he drove while intoxicated on April 24, 2010. The mere fact that [REDACTED] entered into plea negotiations and obtained a conviction on a lesser charge does not alter the fact that [REDACTED] use of the vehicle in the commission of the designated offense subjects it to forfeiture.

Further, Appellant is not entitled to the relief provided by the “innocent owner” affirmative defense. Appellant is unable to demonstrate by clear and convincing evidence that she did not have actual or constructive knowledge that the vehicle would be used or operated in any manner contrary to law.

The State respectfully requests the decision allowing forfeiture of Respondent vehicle to the Minnesota State Patrol be affirmed.

Dated: May 18, 2011

MICHAEL K. RILEY, SR.
NICOLLET COUNTY ATTORNEY



Angela B. Forsythe, #031710X
Assistant Nicollet County Attorney
Paul H. Tanis, #153394
Assistant Nicollet County Attorney
326 South Minnesota Avenue
P.O. Box 360
St. Peter, Minnesota 56082
(507) 934-3430 telephone
(507) 934-2988 facsimile