STATE OF MINNESOTA
IN COURT OF APPEALS
A10-733

Dennis Dale Borgquist,
Appellant,

vs.

2002 Ford F350, MN License #YAR8957,
VIN #1FTSW31F92ED46677,
Respondent.

Filed September 7, 2010
Affirmed
Toussaint, Chief Judge

Hubbard County District Court
File No. 29-CV-09-744

Mark E. Berglund, John J. Berglund, Berglund & Berglund, Ltd., Anoka, Minnesota (for appellant)

Donovan D. Dearstyne, Hubbard County Attorney, Park Rapids, Minnesota (for respondent)

Considered and decided by Klaphake, Presiding Judge; Toussaint, Chief Judge; and Schellhas, Judge.

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

TOUSSAINT, Chief Judge

Appellant Dennis Dale Borgquist challenges the district court's order denying his demand for the return of his vehicle. Because we conclude that the district court properly

applied the law, we affirm.

D E C I S I O N

I.

Appellant argues that the forfeiture of his vehicle for alcohol-related convictions that occurred prior to the enactment of the forfeiture statute constitutes an improper retroactive application of the forfeiture statute. The district court's application of statutory criteria to the facts is a question of law subject to de novo review. *State v. Bunde*, 556 N.W.2d 917, 918 (Minn. App. 1996).

Appellant's driving privileges were cancelled on September 10, 1982, after two driving while impaired (DWI) convictions. His driving privileges were reinstated a month later, and he was issued a B Card license containing a no-alcohol-use restriction. In 1992 the legislature enacted Minn. Stat. § 169A.63, the vehicle-forfeiture statute. In relevant part, the current statute states that a "motor vehicle is subject to forfeiture . . . 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 (2008). A designated offense includes driving while impaired by a person who is subject to a restriction on his driver's license, which provides that he may not use or consume any amount of alcohol. Minn. Stat. § 169A.63, subd. 1(e)(2)(ii) (2008).

On May 9, 2009, appellant was arrested for suspicion of DWI. He was driving with a B Card restricted driver's license at the time of the arrest. Accordingly, law enforcement seized appellant's vehicle for forfeiture following his arrest. On August 17, 2009, appellant pleaded guilty to DWI under Minn. Stat. § 169A.20, subd. 1(5) (2008),

and driving in violation of the no-alcohol restriction in a restricted driver's license under Minn. Stat. § 171.09, subd. 1(d)(1) (2008). He subsequently demanded that his vehicle be returned. The district court denied appellant's demand.

Appellant correctly states: "No law shall be construed to be retroactive unless clearly and manifestly so intended by the legislature." Minn. Stat. § 645.21 (2008). But the relevant offense is the DWI that appellant pleaded guilty to on August 17, 2009, while driving with a B Card license. In 1982 when appellant opted to have his driving privilege reinstated with a B Card license, he permanently gave up his right to consume alcohol in order for the license to remain valid. *See State v. Rhode*, 628 N.W.2d 617, 619 (Minn. App. 2001) (stating that B card restriction "invalidates a driver's license if the holder of the license uses alcohol or drugs"). Appellant's vehicle was not forfeited for previously committed offenses but was forfeited solely based on the DWI that appellant pleaded guilty to in 2009. Just as any driver is held accountable for all of the current driving laws, appellant is accountable for the legal consequences associated with his plea of guilty for DWI in accordance with the laws in effect at the time of the relevant offense.

II.

Appellant contends that the forfeiture statute should, as a matter of public policy, contain a decay factor for the term "designated offense." But "the 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, it is not for us to decide whether or not public policy warrants an amendment to the existing law. Further, because appellant did not argue this issue to the

district court, the issue is waived and cannot be considered on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

III.

Appellant argues that the forfeiture of his vehicle for alcohol-related convictions that occurred prior to the enactment of the forfeiture statute violates his constitutional rights under the federal and Minnesota constitutions because he was not afforded due process and that the imposition of fines was excessive. U.S. Const. amend. XIII; Minn. Const. art. I, § 5. The constitutionality of a statute presents a question of law that this court reviews de novo. *State v. Wolf*, 605 N.W.2d 381, 386 (Minn. 2000).

Appellant asserts that his due process rights were violated because he was not advised of the possibility that his vehicle would be forfeited when he pleaded guilty to two separate DWI charges nearly 30 years ago, since the forfeiture statute had not yet been enacted. A party's due process rights depend on the circumstances of the case and the party's knowledge of possible consequences. *Link v. Wabash R.R. Co.*, 370 U.S. 626, 632, 82 S. Ct. 1386, 1389-90 (1962). Appellant had a restricted license because of his 30-year-old DWI convictions, but his vehicle was forfeited because of his 2009 DWI conviction. Appellant does not argue that he was not notified of the consequences accompanying a plea of guilty with regard to the 2009 incident. Appellant's due process argument is without merit.

Appellant contends that he was fined $400 as punishment for his DWI, but his forfeited vehicle is worth $18,000, a difference that is grossly disproportionate and excessive. Appellant relies on *Miller v. One 2001 Pontiac Aztek*, 669 N.W.2d 893, 895

(Minn. 2003), which articulates the analysis for determining whether a forfeiture constitutes an excessive fine. *Miller* uses the *Solem* test, which includes comparing (1) "the gravity of the offense and the harshness of the penalty," (2) "the contested fine with fines imposed for the commission of the other crimes in the same jurisdiction," and (3) "the contested fine with fines imposed for commission of the same crime in other jurisdictions." *Miller*, 669 N.W.2d at 897-98; (citing *Solem v. Helm*, 463 U.S. 277, 290-92, 103 S. Ct. 3001, 3009-11 (1983)).

First, the gravity of the offense is consistent with the harshness of the penalty imposed in this instance. Although appellant's prior DWI convictions were nearly 30 years ago, he was clearly a repeat and unreconstructed drunk driver. *See City of New Brighton v. 2000 Ford Excursion*, 622 N.W.2d 364, 371 (Minn. App. 2001) (stating that vehicle forfeiture law is designed for repeat and unreconstructed drunk drivers), *review denied* (Minn. Apr. 17, 2001). Second, a forfeiture is not excessive simply because the value of a car is higher than the maximum fines a defendant might receive for committing similarly classified offenses. *Id.*; *see Lukkason v. 1993 Chevrolet Extended Cab Pickup*, 590 N.W.2d 803, 808 (Minn. App. 1999) (holding that although value of forfeited vehicle is approximately $12,000, amount substantially higher than $3,000 maximum fine, forfeiture is constitutional), *review denied* (Minn. May 18, 1999). Finally, it is well established that other jurisdictions impose similar fines for the same crimes. *See City of New Brighton*, 622 N.W.2d at 371-72 (detailing fines imposed for same crime in other jurisdictions). Therefore, because appellant was aware of the consequences when he pleaded guilty to the 2009 DWI and his fine is not excessive, forfeiture of appellant's

vehicle does not violate the federal or state constitutions.

Even if appellant were able to show that his constitutional rights have been violated, the issue would be waived for failure to argue it to the district court. *Thiele*, 425 N.W.2d at 582.

Affirmed.