**IN THE COURT OF APPEALS OF IOWA**

No. 3-977 / 13-0327
Filed January 9, 2014

**IN THE MATTER OF PROPERTY SEIZED FOR FORFEITURE FROM KENDLE BOUGHTON**

**KENDLE BOUGHTON,**
Defendant-Appellant.

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Appeal from the Iowa District Court for Cerro Gordo County, Colleen D. Weiland, Judge.

Claimant appeals the district court's order forfeiting her vehicle and its title to the State. **REVERSED AND REMANDED.**

Colin Murphy of Colin Murphy, P.C., Clear Lake, for appellant.

Thomas J. Miller, Attorney General, Tyler J. Buller, Assistant Attorney General, Carlyle D. Dalen, County Attorney, and Mathias Robinson, Student Legal Intern, for appellee.

Considered by Danilson, C.J., and Vaitheswaran and Potterfield, JJ.

**DANILSON, C.J.**

Kendle Boughton appeals the forfeiture of her vehicle and its title to the State. She contends the district court erred in determining the vehicle constituted forfeitable proceeds of criminal conduct. She also contends the State failed to meet its burden in showing the vehicle was used, or intended to be used, to facilitate marijuana trafficking. We hold substantial evidence only supports a finding that $5800 of the money used to purchase Boughton's vehicle constituted forfeitable proceeds of criminal conduct. We further hold the evidence does not support a finding the vehicle was used, or intended to be used, to facilitate marijuana trafficking. Because the State has only shown $5800 of the vehicle's value is forfeitable, we reverse the district court's forfeiture order and remand for further proceedings.

**I. Background Facts and Proceedings.**

After receiving information that Cory Sadler was involved in selling marijuana, the North Central Iowa Narcotics Task Force began surveillance on the Mason City residence he shared with his girlfriend, Kendle Boughton. The task force executed a warrant on the residence on January 31, 2012, and discovered approximately 320 grams of marijuana, guns and ammunition, drug paraphernalia, a digital scale, and approximately $4000 in cash. As a result of the search, Sadler was indicted and pled guilty to federal drug and weapons charges. Boughton was not charged with any drug offense.

During the search, the task force seized a Chrysler 300 that was parked in a detached garage on the property. The Chrysler was not listed in the search

warrant, and there was no contraband or cash discovered inside or near the vehicle. Although the vehicle was registered to Boughton, Sadler had been seen driving it during the surveillance period; however, no criminal activity was observed.

On July 21, 2012, Boughton filed an application for the return of seized property, requesting the return of the Chrysler and its title.[1] The State filed an in rem forfeiture complaint, seeking to have those items forfeited to the State. Specifically, the State alleged the vehicle constituted proceeds of illegal drug activity or was used to facilitate illegal drug activity. Boughton answered the complaint, denying the vehicle was forfeitable.

At the November 21, 2012 forfeiture hearing, Boughton testified the Chrysler was purchased in November 2011 for approximately $17,000.[2] Boughton did not know the exact purchase price, which was negotiated by Sadler. She further testified the money used to purchase the Chyrsler was comprised of both money she and Sadler saved over the years and money earned from fixing up and selling vehicles for a profit—a venture she and Sadler enjoyed. The sale of Boughton's Nissan 350Z comprised $11,200 of the purchase money for the Chrysler.

Matt Klunder, a lieutenant with the Cerro Gordo County Sheriff's Office, testified Sadler admitted to selling marijuana. Klunder estimated Sadler earned

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[1] Boughton also sought the return of $465 in cash that was discovered inside her purse, which the State claimed was proceeds of criminal conduct. The district court found the State failed to show the money was proceeds of criminal conduct and ordered it returned to Boughton.

[2] The registration, which is in Boughton's name, lists a purchase price of $12,000.

roughly $30,000 from marijuana trafficking. Klunder testified that when asked how the Chrysler was paid for, "[Sadler] said that a portion of the money was from selling the Nissan. And I don't really—he didn't really get into detail about where the rest of the money came from as far as I recall." However, Sadler "did not admit to [the purchase] being with drug money." Klunder further testified, "It's my experience through many investigations that I've done that drug dealers will often shelter either cash or property in another's person's name, especially a girlfriend or maybe their mother or grandmother or something like that, to try to avoid us seizing it."

On January 31, 2013, the court entered a forfeiture order. It found the State had shown by a preponderance of the evidence that the Chrysler constitutes the proceeds of criminal conduct, and that it was used or intended to be used for criminal conduct. Accordingly, the court ordered the Chrysler be forfeited to the State, but ordered the State to return the $465 seized from Boughton's purse to her.

**II. Standard of Review.**

We review forfeiture proceedings for errors at law. *In re Young*, 780 N.W.2d 726, 727 (Iowa 2010). We examine the evidence in the light most favorable to the judgment and construe the district court's findings liberally to support its decision. *In re Chiodo*, 555 N.W.2d 412, 414 (Iowa 1996). "An order of forfeiture will not be reversed unless the evidence is utterly wanting to support the conclusion of the trial court." *Id*.

## III. Discussion.

Boughton contends the district court erred in finding the Chrysler is forfeitable property. She argues there is insufficient evidence the vehicle is the forfeitable proceeds of criminal conduct, or that the vehicle was used for, or was intended to be used for, criminal conduct.

### A. Was the Chrysler forfeitable proceeds of criminal conduct?

Under Iowa Code section 809A.4(3) (2011), all proceeds of conduct giving rise to forfeiture are subject to forfeiture. Proceeds are defined as "property acquired directly or indirectly from, produced through, realized through, or caused by an act or omission and includes any property of any kind without reduction for expenses incurred for acquisition, maintenance, production, or any other purpose." Iowa Code § 809A.1(4). Conduct giving rise to forfeiture includes a serious or aggravated misdemeanor, or felony. *Id.* § 809A.3(1). If the State proved by a preponderance of the evidence that the Chrysler was purchased with money from drug trafficking, *see id.* § 809A.13(7) ("The prosecuting attorney shall have the initial burden of proving the property is subject to forfeiture by a preponderance of the evidence."), the vehicle is subject to forfeiture. *See also State v. 1984 Monte Carlo SS*, 521 N.W.2d 723, 725 (Iowa 1994) (finding substantial evidence to support forfeiture where vehicle was purchased with a down payment from drug proceeds and the balance of the purchase price paid by a loan).

In determining whether there is sufficient evidence to support the court's finding that the Chrysler was forfeitable property, we are mindful that we are to

liberally construe the court's findings to support its result. *In re Rush*, 448 N.W.2d 472, 477 (Iowa 1989). A finding is supported by substantial evidence if it may be reasonably inferred from the evidence. *Id.* Where a finding is supported by substantial evidence and justified under the law, the judgment will not be disturbed on appeal. *Id.*

We find substantial evidence supports the court's finding that the Chrysler was paid with, in part, by proceeds from criminal conduct. Although Boughton was never charged with any criminal conduct, Sadler was charged with, and pled guilty to, marijuana trafficking. Boughton testified part of the purchase was funded from the sale of the Nissan and the remainder of the cash for the purchase came from money she and Sadler had saved over the years. Given Sadler's involvement in marijuana trafficking and the estimated $30,000 he earned from selling marijuana, as compared to the $8000 Boughton made while employed in 2011, it is reasonable to infer this money was the proceeds of criminal conduct. Although the evidence of Boughton's income may have allowed the court to reach a different conclusion, "[t]he possibility of drawing inconsistent conclusions from the same body of evidence does not prevent a finding from being supported by substantial evidence." *Id.*

While substantial evidence supports the conclusion the difference in the proceeds from the sale of the Nissan and the Chrysler's purchase price was the proceeds of criminal conduct, the evidence shows the Nissan's sale funded the majority of the Chrysler's purchase. Boughton testified she and Sadler enjoyed purchasing and making improvements to vehicles before reselling them for profit.

She provided a detailed list of trades and purchases that led to the Nissan's sale.[3] The State provided no evidence that proceeds from criminal conduct were used to purchase the Nissan in February 2011. With nothing more than speculation tying the money received for the Nissan to marijuana trafficking, the evidence clearly shows the majority of the money used to purchase the Chrysler—$11,200—was not forfeitable.

Where property subject to forfeiture has been commingled with other property not subject to forfeiture, the court shall order forfeiture of the commingled property and its fruits "to the extent of the property subject to forfeiture." Iowa Code § 809A.12(12). Here, the Chrysler may be described as the fruit of the commingled property. Therefore, the Chrysler is only subject to forfeiture to the extent that proceeds of criminal conduct comprised the difference between the purchase price and the $11,200 received from sale of the Nissan. The evidence shows the vehicle was purchased for $17,000.[4] Therefore, only $5800 of the funds used to purchase the Chrysler—a "fruit" of commingled property—is subject to forfeiture.

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[3] Boughton testified to the following chain of events that led to the purchase of the Chrysler: The couple owned a 2001 Impala that they traded for a white Chevy 1500 pickup. The pickup was sold for approximately $2500, which was used to purchase a 1997 Tahoe. After repairing the alternator, the Tahoe was sold to a car dealer in Manly for $3400. The proceeds of that sale were used to purchase a 1979 Malibu, which was eventually traded for a 1999 Blazer. The Blazer was sold some time later for $2500, which was used to purchase a 2002 Dodge Ram. Boughton testified they "did a lot of work" to the Ram, making repairs and cosmetic improvements to it before trading it for the Nissan 350Z. Boughton also testified to purchasing and selling a 1999 GMC pickup and a 1997 Acura during this timeframe.

[4] When asked what the Chrysler was purchased for, Boughton replied, "17 sounds approximately right." She testified "[i]t could have" been less than $16,000, but that she believed it was around $17,000. Lieutenant Klunder testified Sadler stated he purchased the vehicle for $17,500. The previous owner told Klunder he sold the vehicle for $17,000.

**B. Was the Chrysler used, or intended to be used, for criminal conduct?**

The district court also found the Chrysler was used, or was intended to be used, to facilitate marijuana trafficking. In order to find property was used to facilitate criminal conduct, there must be a "substantial connection between the property and the crime"; our supreme court has rejected a standard that would allow forfeiture of property used "in any manner" connected with an unlawful drug transaction. *In re Kaster*, 454 N.W.2d 876, 879 (Iowa 1990). For instance, property merely used to transport a person to the scene of criminal activity does not facilitate a drug sale. *Id.* But where evidence establishes the vehicle was used to transport marijuana from one location to another for its sale, a substantial connection is shown. *In re Scott*, 508 N.W.2d 653, 656 (Iowa 1993).

Here, the only evidence to support this finding is Officer Klunder's testimony that Sadler was observed driving the vehicle in town. The officer was unable to provide details as to Sadler's activities while driving the vehicle or if they were consistent with drug dealing. *See id*. (holding substantial evidence supported the finding a vehicle was used to facilitate drug dealing where evidence regarding specific incidents of the vehicle's use and other attendant circumstances led to a reasonable inference vehicle was used to purchase marijuana at one location and transport it to a buyer in another location). Here, Klunder simply testified, "I had seen him driving the Chrysler 300" and "I would see him driving it." Additionally, no marijuana or drug paraphernalia was discovered in the vehicle. *See State v. Dykes*, 471 N.W.2d 846, 848 (Iowa 1991) (holding a substantial connection between vehicle and crime of possession with

intent to deliver where drugs were found in the vehicle along with a "cutting agent"). This evidence is insufficient to rise to the level of substantial evidence.

We recognize if a person has engaged in conduct giving rise to forfeiture, a presumption arises that any of that person's property is subject to forfeiture. *See* Iowa Code § 809A.12(10). The district court made no finding that Sadler owns the Chrysler. But even if the presumption is given, the State has not met its burden of showing a substantial connection under the facts presented. The State must show some nexus between the property to be forfeited and the criminal conduct. This could have been done by presenting evidence—gleaned from the surveillance or Sadler's own admission—that a vehicle was used to facilitate Sadler's drug-dealing activities. Despite months of surveillance on Sadler, the State presented no evidence as to the manner in which Sadler sold marijuana to show any vehicle was used. From the facts presented—or lack thereof—we do not know if the marijuana was delivered to Sadler's residence and sold at that location without Sadler personally transporting it or if the Chrysler was used in some fashion. After all, marijuana was discovered in the residence, but none was found in the vehicle. Here the State has shown no nexus to the vehicle and the criminal conduct other than a portion of the purchase price was obtained from drug proceeds.

**IV. Conclusion.**

We reverse the district court's forfeiture order. The State failed to show a substantial connection between Sadler's drug activities and the Chrysler.

Substantial evidence only supports a finding that $5800 of the commingled property used and exchanged to purchase the Chrysler is forfeitable.

Where forfeitable property has been commingled with other property "that cannot be divided without difficulty," the court shall order forfeiture "of any other property . . . up to the value of that person's property found by the court to be subject to forfeiture." Iowa Code § 809A.15(1)(e). Because the Chrysler cannot be divided, we remand to the district court. On remand, the court shall set a hearing to determine if Boughton is able to provide a suitable substituted asset. *See* Iowa Code § 809A.15. If not, the court may order the vehicle sold via a commercially reasonable public sale and a pro-rata portion of the proceeds shall serve as the substitute asset.[5]

**REVERSED AND REMANDED.**

[5] Based on the vehicle's purchase price of $17,000, of which $5800 was derived from drug sale proceeds, the net proceeds of any sale should be divided 5.8/17 to the State and 11.2/17 to Boughton.