

IN THE COURT OF APPEALS OF IOWA

No. 6-210 / 04-0936

Filed May 10, 2006

**IN THE MATTER OF PROPERTY
SEIZED FROM BRADLEY BEHMER,**

BRADLEY BEHMER,
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Sherman W. Phipps,
Judge.

Bradley Behmer appeals from the district court's order forfeiting property
found at the time of his arrest. **AFFIRMED.**

Eric Anderson, West Des Moines, for appellant.

Bradley Behmer, pro se.

Thomas J. Miller, Attorney General, Kristin Guddall, Assistant Attorney
General, John P. Sarcone, County Attorney, and Steve Bayes and Daniel C.
Voogt, Assistant County Attorneys, for appellee-State.

Considered by Sackett, C.J., and Vogel and Mahan, JJ.

VOGEL, J.

Bradley Behmer appeals the district court's order that forfeits to the State \$7,639.00 in cash found in his possession at the time of his arrest on drug charges. We affirm the district court's finding that the funds were properly subject to forfeiture as proceeds from illegal activity under Iowa Code chapter 809A (2003).

I. Background Facts and Proceedings.

A reasonable fact-finder could find the following facts from the record in this case. On December 8, 2003, three officers from the Polk County Sheriff's Office and Iowa State Patrol engaged in a health and welfare check on a residence following an incomplete 911 phone call. When they entered the trailer home where the 911 call originated, the officers found one person lying on the couch asleep or otherwise unresponsive and Behmer sitting fully-clothed on the bathroom toilet. Behmer likewise was either in a semi-comatose or unresponsive state, perspiring heavily. While assessing his condition, the officer's removed Behmer's coat and discovered in the coat pockets money, a powdery substance (later identified as 16.43 grams of methamphetamine), and digital scales. The money in Behmer's coat was folded in \$100 increments with a rubber band around each bundle. Behmer also had in his wallet Post-It notes with names, monetary amounts, and weight/quantity designations. Elsewhere on his person was a bindle of cocaine, 13.88 grams of methamphetamine in a vial, and a single-bundle of cash totaling \$580.00. Behmer was arrested and charged with various drug offenses.

On February 5, 2004, the State filed an in rem forfeiture complaint as to the \$7639 in cash seized from Behmer. Behmer answered the petition as claimant, through his attorney, by alleging that the money seized was legally obtained. The district court held a hearing on April 28, where the State provided the testimony of Detective Daniel Davis of the Polk County Sheriff's narcotics task force and federal Drug Enforcement Agency. Detective Davis testified that from his training and experience, the scales, bound \$100 bundles, and drug notes indicated that Behmer was engaged in drug distribution. Behmer presented the testimony of his girlfriend, Tracey Brown, and also offered limited testimony himself. Behmer never claimed ownership of the money, but instead presented documentation of his sources of income through employment in 2003 and gambling winnings from November and December 2003. The district court ruled on May 10, 2004, finding that the money in question met the requisite statutory nexus with the narcotics found to be presumed proceeds from illegal activity. Behmer now appeals the forfeiture order.

II. Scope of Review.

Our review of forfeiture proceedings is for correction of errors at law. *In re Property Seized From Williams*, 676 N.W.2d 607, 612 (Iowa 2004). The evidence is examined in the light most favorable to the district court judgment, and the findings are construed liberally to support the district court's decision. *In re Property Seized From Williams*, 646 N.W.2d 861, 863 (Iowa Ct. App. 2002). The conclusions of the trial court must be supported by substantial evidence, which entails whether, after viewing all the evidence in the light most favorable to the appellee, any rational trier of fact could have found the essential elements.

State v. Anderson, 517 N.W.2d 208, 211 (Iowa 1994). “An order of forfeiture will not be reversed unless the evidence is utterly wanting to support the conclusion of the trial court.” *In re Property Seized from Chiodo*, 555 N.W.2d 412, 414 (Iowa 1996) (quoting *State v. 1984 Monte Carlo SS*, 521 N.W.2d 723, 724 (Iowa 1994)).

III. Substantial Evidence.

Behmer argues that the State failed to prove the cash seized was proceeds from illegal activity. An act or omission which is a public offense and which is a serious or aggravated misdemeanor or felony may give rise to a forfeiture action, and any proceeds from such act are subject to forfeiture. Iowa Code §§ 809A.3(1), 809A.4(4). Money found in close proximity to any contraband giving rise to forfeiture establishes a presumption that the money was proceeds of or used to facilitate the illegal activity. Iowa Code § 809A.12(9). To uphold a forfeiture, the State must prove by a preponderance of the evidence a substantial connection between the property and a criminal offense. Iowa Code § 809A.13(7); *In re Property Seized from McIntyre*, 550 N.W.2d 457, 459 (Iowa 1996). Evidence is substantial if the findings may be reasonably inferred from the evidence. *In re Property Seized from Patrick*, 562 N.W.2d 192, 194 (Iowa Ct. App. 1997).

The State relied on the presumption stated in section 809A.12(9) that the cash was proceeds from illegal activity due to its proximity to the narcotics found in Behmer’s possession. In addition, Detective Davis stated that in his experience as a narcotics officer, the amount of drugs, the digital scales, and drug notes found on Behmer indicated he was engaged in the sale and

distribution of illegal substances. While Behmer attacks the reliability of Davis's testimony, he produced no evidence to deny or contradict it. The district court's finding that the State proved by a preponderance of the evidence the \$7639.00 seized was proceeds of illegal activity subject to forfeiture under chapter 809A is supported by substantial evidence.

Behmer claims that he rebutted the presumption that the cash seized was proceeds from illegal activity, as he presented evidence of legitimate sources of income. However, the district court did not reach the merits of Behmer's claimed exception to forfeiture, as it found that Behmer failed to make a threshold claim of ownership of the property as required under the statute.¹ See Iowa Code §§ 809A.1, 809A.11, 809A.13. Our Supreme Court has previously held that a claim of an ownership or proprietary interest in the forfeited property is a necessary threshold to establish standing to claim an exemption under the forfeiture statutes. See *In re Property Seized from Aronson*, 440 N.W.2d 394, 397-98 (Iowa 1989) (holding that the Fifth Amendment right against self-incrimination is not implicated in a contest of a forfeiture action to protect alleged claimants from asserting an ownership interest in the property).

Chapter 809A pertains to "owners" or "interest holder" as defined in subsections 809A.1(1) and (3) as well as being so referenced throughout the chapter. When a claimant seeks the return of seized property, section 809A.11 provides, "Only an owner of or an interest holder in property seized for forfeiture may file a claim, and shall do so in the manner provided in this section." When

¹ Behmer claims the State waived the issue of whether he complied with the pleading procedures of the statute. The district court raised and ruled on Behmer's compliance thereby preserving the issue for our review. *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002).

the prosecuting attorney files an in rem complaint, as was done in this case, section 809A.13 states: “Only an owner of or an interest holder in the property who has timely filed a proper claim pursuant to section 809A.11 may file an answer in an action in rem.” The only pleading Behmer filed was an “Answer to In Rem Forfeiture Complaint” signed by his attorney. He did not follow the statutory requirements of section 809A.11 or 809A.13, both requiring he be an “owner” or “interest holder” as defined in 809A.1. Moreover, Behmer’s testimony was extremely limited and only attested to his sources of income, but made no claim of right to or ownership of the cash. We agree with the district court that because Behmer did not establish or even claim ownership of the cash, and he did not follow the statutory mandates of a “claimant,” his assertion of a claim must fail. ²

We conclude that substantial evidence supports the district court’s finding that the State proved the money forfeited was proceeds from illegal activity by a preponderance of the evidence and that Behmer failed to prove he was an owner and therefore a claimant properly challenging the forfeiture action. We affirm the district court’s forfeiture order.

AFFIRMED.

² We also conclude that Behmer’s claim of ineffective assistance of counsel must fail as in an in rem civil forfeiture proceeding, he does not have a constitutional guarantee of effective assistance of counsel. See *Austin v. United States*, 509 U.S. 602, 607-08, 113 S. Ct. 2801, 2804, 125 L. Ed. 2d 488, 496 (1993) (stating “The protections provided by the Sixth Amendment are explicitly confined to ‘criminal prosecutions.’”); *Scott v. Illinois*, 440 U.S. 367, 373, 99 S. Ct. 1158, 1162, 59 L. Ed. 2d 383, 388-89 (1979) (adopting “actual imprisonment” as the line defining the constitutional right to appointment of counsel in holding that uncounseled misdemeanor conviction is constitutionally valid if the offender is not incarcerated); *United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (discussing *Austin* and *Scott* and holding that no Sixth Amendment right to counsel attached because imprisonment is not authorized by any of the civil forfeiture statutes invoked by the Government in its complaint).