

IN THE COURT OF APPEALS OF IOWA

No. 6-381 / 05-1511
Filed August 9, 2006

**IN THE MATTER OF PROPERTY SEIZED
FOR FORFEITURE FROM
WILLIAM THOMAS WIDMANN,
MARK GUSTAV WIDMANN and GAIL ANN WIDMANN**

GAIL ANN WIDMANN,
Respondent-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Jon C. Fister,
Judge.

A respondent appeals from the district court's order forfeiting property.

AFFIRMED.

Carter Stevens of Roberts & Stevens, P.L.C., Waterloo, for appellant.

Thomas J. Miller, Attorney General, Kristin Guddall, Assistant Attorney
General, Thomas J. Ferguson, County Attorney, and Brad Walz, Assistant
County Attorney, for appellee.

Considered by Vogel, P.J., and Zimmer and Vaitheswaran, JJ.

VOGEL, P.J.

Gail Widmann appeals the district court's order finding a 1999 Cadillac Seville STS sedan, jointly-owned by her and her husband, William, was used to facilitate marijuana trafficking, thereby subjecting the vehicle to forfeiture to the State pursuant to Iowa Code section 809A.4(2)(a)(2) (2005). Because we conclude forfeiture under the statutory standards is supported by substantial evidence, we affirm.

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). "An order of forfeiture will not be reversed unless the evidence is utterly wanting to support the conclusion of the trial court." *Matter of Property Seized from Chiodo*, 555 N.W.2d 412, 414 (Iowa 1996).

Widmann asserts that the State failed to prove the Cadillac was used to facilitate marijuana trafficking. To uphold a forfeiture, the State must prove by a preponderance of the evidence a substantial connection between the property seized 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).

After executing a search warrant on the Widmann's marital home, the Cedar Falls police obtained William's permission to search the Cadillac. They

found marijuana fragments in the spare-tire well of the trunk and in the middle console between the front seats. Officers on the scene testified at the forfeiture hearing that the amount of marijuana found in the Widmann home (over seven pounds), the manner in which it was packaged, and William's statements reflect that he was involved in mid-level trafficking that supplied marijuana to street-level dealers. The officers testified that, in their training and experience, large amounts of drugs involved in mid-level trafficking are often hidden in spare-tire wells or other concealed compartments of vehicles used to transport the contraband, making the drugs more difficult to access and less-likely to be discovered. The marijuana fragments found in the Cadillac were described as being consistent with this illegal activity.

Widmann argues that the fragments found in the Cadillac were not sufficient to connect the car to marijuana trafficking because the State did not test the substance to certify it was marijuana. This argument was neither asserted in Widmann's answer nor ruled on by the district court. Error has not been preserved and we will not address an issue raised for the first time on appeal. *Meier v. Senecaut III*, 641 N.W.2d 532, 537 (Iowa 2002).

Moreover, the parties stipulated at the forfeiture hearing to the admission of the minutes of testimony in the underlying criminal action against Widmann's husband, William, and brother-in-law, Mark. Without separating out the various stashes of marijuana seized, the minutes of testimony state "the substances found were marijuana or a marijuana derivative." William admitted to police that he had been selling marijuana and there was no contradictory evidence to account for the substance found in the Cadillac.

Widmann also claims that as joint-title holder, she was unaware of the illegal activity and her interest in the car is subject to exemption from forfeiture under section 809A.5. As claimant, she has the burden of proof to demonstrate the exemption. Iowa Code § 809A.12(7). While Widmann testified that she had not lived in the marital residence for three weeks and had no knowledge of any marijuana ever being in the vehicle she drove, the district court found both of her assertions to lack credibility. In addition, the court found that Widmann's failure to corroborate any of her assertions indicated that her assertions could not be corroborated. Once again, the evidence submitted at hearing showed that William was involved in mid-level marijuana trafficking and had marijuana or drug paraphernalia in the marital home that had that there "for a while." The police also found Widmann's coat and purse in the marital home next to marijuana and paraphernalia in the living room when executing a search warrant. Likewise, the district court found Widmann's testimony lacked credibility when she stated that William placed her belongings inside the house for her without her entering the home. While Widmann's version is plausible, the district court's credibility and factual findings, which are supported by substantial evidence, direct us to affirm the forfeiture of the Cadillac.

AFFIRMED.