IN THE COURT OF APPEALS OF IOWA

No. 6-371 95-651

FILED
DEC 20 1996
CLERK SUPREME COURT

STATE OF IOWA,
Appellee,

vs.

$20,000 SEIZED FROM ERIC G. ORTIZ,

ERIC G. ORTIZ,
Appellant.

Appeal from the Iowa District Court for Polk County, Gene L. Needles, Judge.

Eric Ortiz appeals a district court order forfeiting $20,000 in cash seized from him to the State of Iowa. **AFFIRMED.**

Ronald L. Wheeler, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney General, John P. Sarcone, County Attorney, and Jamie Bowers, Assistant County Attorney, for appellee.

Heard by Sackett, C.J., and Habhab and Vogel, JJ.

PER CURIAM.

Eric Ortiz appeals from a district court order forfeiting $20,000 in cash, seized from him at the Des Moines Airport, to the State of Iowa. Ortiz contends: (1) the forfeiture is not supported by substantial evidence because nothing connects the money to criminal activity, and (2) the money belonged to his mother, Diana, who was not involved in and had no knowledge of any criminal activity.

At the forfeiture hearing, the State presented evidence Ortiz's activities were consistent with the behavior of drug traffickers. Ortiz argues the State failed to show by a preponderance of the evidence any of the grounds as set forth in Iowa Code sections 809.1(2)(a), (b), (c), and (d) (1993).

> '*Forfeitable property*' means any of the following:
> a. Property which is illegally possessed.
> b. Property which has been used or is intended to be used to facilitate the commission of a criminal offense or to avoid detection or apprehension of a person committing a criminal offense.
> c. Property which is acquired as or from the proceeds of a criminal offense.
> d. Property offered or given to another as an inducement for the commission of a criminal offense.

Iowa Code § 809.1. The district court found the State had carried the burden showing the property was forfeitable under both (b) and (c).

We review forfeiture proceedings for errors of law. *In re Property of Daniels*, 478 N.W.2d 622, 623 (Iowa 1991). The State has the burden of proving, by a preponderance of evidence, that the forfeiture is valid. *State v. One 1964 Olds.*

Cutlass Convert., 521 N.W.2d 721, 722 (Iowa 1994). The district court's findings will be upheld if supported by substantial evidence. *Id.* An order of forfeiture will not be reversed unless the evidence is utterly wanting to support the conclusion of the trial court. *State v. 1984 Monte Carlo SS*, 521 N.W.2d 723, 724 (Iowa 1994). The possibility of drawing inconsistent conclusions from the same body of evidence does not prevent a finding from being unsupported by substantial evidence. *In re Property of Rush*, 448 N.W.2d 472, 477 (Iowa 1989). We view the evidence in the light most favorable to sustaining the district court judgment. *Id.*

The State presented, among other things, the following evidence indicative of drug trafficking: Erik Ortiz, then age seventeen, went to the Des Moines Airport accompanied by his sixteen-year-old cousin, Alejandro. Ortiz paid cash for one round-trip ticket to Los Angeles for himself and one one-way ticket for his cousin. He claimed was going to buy his cousin a bus ticket home to save money. The round-trip ticket had a return date just two days later. The tickets were purchased within a couple of hours of departure. The ticket agent, alerted by the nature of the purchase and aware of drug trafficking patterns, alerted a police officer at the airport. The officer followed the boys into a restroom. Erik was in a stall, and the cousin appeared to be signaling Erik, by coughing, that someone else had entered the restroom. The officer could tell by the shuffling and positioning of Erik's feet that he was not using the facility. Later, the boys waited in a waiting area close by but not the one designated for their flight.

Before boarding the airplane, an officer asked the boys for some form of identification. They had none. The boys consented to a search of their carry-on bags. The officer asked Ortiz if he was carrying any weapons, drugs, or a large amount of cash. Ortiz answered he had some "change". Upon further questioning, Ortiz stated he had about $10,000 in his shorts. He removed the money and stated he had earned the money from odd jobs and saving birthday and holiday money over the years. The officer seized the money and the boys boarded the airplane. When the money was counted, it amounted to $20,000, mostly in $100 bills. The metal strips woven into all of the bills had been removed. Ortiz later admitted to removing each strip to prevent detection in the airport metal detectors.

The agent testified this scenario is typical of drug traffickers. Tickets are bought at the last minute, in cash, at the airport. Money is carried on the person with the round-trip ticket. The person less likely to attract suspicion, usually a younger teenager or elderly person, is given a one-way ticket and travels home by alternate means, usually by bus, carrying the drugs after the purchase. The bus is usually used as the bus depots in this area have fewer agents looking for drugs than the Des Moines Airport.

When officers went to the airport to meet Ortiz's return flight, he was not on the plane. He did arrive on a later flight that evening. When the officers re-interviewed Ortiz, he changed his story as to the origins of the money and said he received most of it from his father, who was serving time in a federal prison for drug

trafficking. Over $600,000 had been seized from his father's business, which had been a front for his drug trafficking trade. Phone calls from Ortiz's father, Ramon, to Ortiz were taped at the prison. On one call, Ramon asked Ortiz if he had received the "money that was sent in the mail." In another conversation, Ramon told Ortiz, in Spanish, that he did not want to talk business as the prison authorities were taping the conversations.

The State argued the money was both proceeds of drug trafficking and also used to facilitate the crime of drug trafficking. It was undisputed that the $20,000 came from Ramon Ortiz. Based on the taped telephone conversations between Ramon Ortiz and Erik Ortiz, the district court, citing the State's proposed findings of fact, conclusions of law and ruling, found the cash was acquired as proceeds from drug trafficking in connection with Ramon Ortiz's drug trafficking business. *See In re Property of Kaster*, 454 N.W.2d 876, 879 (Iowa 1990) (there must be a substantial nexus between the property forfeited and the crime). The court further found the cumulative effect of Erik Ortiz's behavior, in attempting to take the money to California, was consistent with the modus operandi of drug smugglers. Both findings supported the forfeiture. The burden of proof in a forfeiture case is not beyond a reasonable doubt but a lesser standard, preponderance of the evidence. We find there is substantial evidence to support the district court's ruling and affirm.

Ortiz's mother, Diana, presented evidence that the money belonged to her. She claimed the money was given to her for child support, $10,000 from her ex-husband,

Ramon, in 1988 and $10,000 in 1990 from Ramon's brother who liquidated Ramon's assets when he was incarcerated in federal prison. Diana testified she kept the money under the dresser in her bedroom for the children's education and clothes. This is the third explanation of who the money belonged to and how it was obtained. However, Diana offered no evidence to support her claim of ownership. There was no record indicating the money was for payment of child support. Nor was there any evidence or receipt that the money came from the liquidation of any of Ramon's property. Ramon's brother, who Diana claimed sold Ramon's property for him and then gave her money, did not testify to support her claim. There was no support for Diana's claim for the money other than her own assertion that it was hers. As the district court found the money belonged to Erik Ortiz, received from his father, we find no error in rejecting Diana's claim.

AFFIRMED.

Habhab and Vogel, JJ., concur; Sackett, C.J., dissents.

SACKETT, C.J. (dissenting)

I dissent.

I agree there are suspicions that arise when an eighteen-year-old appears at the Des Moines airport with $20,000 in cash. But suspicions, conjecture, and speculation are not substantial evidence to support a forfeiture of property. *See In re Property Seized from Daniels*, 478 N.W.2d 622, 623 (Iowa 1991). The majority has found there is substantial evidence to support a forfeiture by putting together a collection of circumstances, all with innocent explanations.

Forfeiture of property under Iowa Code chapter 809 requires a "substantial connection" between the property seized and the underlying criminal offense. *In re Property Seized from Doolin*, ___ N.W.2d ___ (Iowa 1996); *In re Property Seized from DeCamp*, 511 N.W.2d 616, 620 (Iowa 1994); *In re Kaster*, 454 N.W.2d 876, 879 (Iowa 1990).

The State, before forfeiting property, must establish by a preponderance of the evidence legal grounds for forfeiture. *State v. Dykes*, 471 N.W.2d 846, 847 (Iowa 1991).

I review the evidence in the light most favorable to the State. *See In re Rush*, 448 N.W.2d 472, 477 (Iowa 1989). Forfeiture statutes are not favored and are strictly construed. *Dykes*, 471 N.W.2d at 847; *Kaster*, 454 N.W.2d at 877; *Jamison v. Knosby*, 423 N.W.2d 2, 5 (Iowa 1988). I look at the evidence in the light most favorable to sustaining the trial court judgment. *Dykes*, 471 N.W.2d at 847.

In pursuing the forfeiture, the State contended (1) the money was used or intended to be used to facilitate the commission of a crime or to avoid detection of a person committing a crime; (2) the money was the proceeds of a crime; and (3) property was given as an inducement to commit a crime.

The State contends the evidence supports a finding the money was used to facilitate drug trafficking and was the proceeds of drug trafficking. The trial court found the money was used to facilitate drug trafficking and the money was the proceeds of drug trafficking.

For the property to be forfeitable, it is necessary to show Eric was connected to drug trafficking or that the money was the result of drug trafficking by another. The evidence must clearly tie to these two charges and must not be evidence that also could well be connected with persons engaged in lawful activity. *See generally United States v. Jones*, 759 F.2d 633, 643 (8th Cir.), *cert. denied*, 474 U.S. 837 (1985); *State v. Property Seized from Rios*, 478 N.W.2d 870, 783 (Iowa App. 1991).

To forfeit property on the ground it was used to facilitate a crime, the State must establish a substantial connection between the property and the crime. *Kaster*, 454 N.W.2d at 879. No criminal charges were filed, but this does not preclude forfeiture. *See* Iowa Code § 809.11(1) (1991).

Possession of a large amount of money alone is not sufficient for forfeiture. *Rush*, 448 N.W.2d at 477-78; *Rios*, 478 N.W.2d at 873.

There is not substantial evidence any specific crime or crimes were committed. There were no drugs. There is no evidence of any proposed sale or purchase of drugs. There is no evidence of a specific drug transaction tied to the money.

I would reverse.