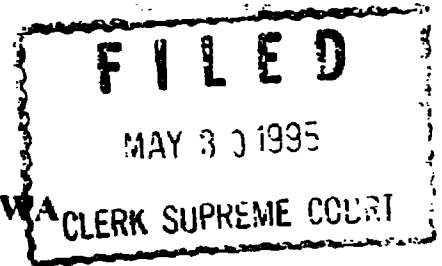


IN THE COURT OF APPEALS OF IOWA

No. 5-001 / 92-2079



IN THE MATTER OF PROPERTY SEIZED FROM MATTHEW BERGMANN

MATTHEW BERGMANN,

Appellant.

Appeal from the Iowa District Court for Black Hawk County, Joseph Moothart,
Judge.

Matthew Bergmann appeals from an adverse ruling in a forfeiture of seized
property proceeding. **AFFIRMED.**

David R. Zellhoefer of Zellhoefer Law Offices, Waterloo, for appellant.

Bonnie J. Campbell, Attorney General, Ann E. Brenden, Assistant Attorney
General, Thomas J. Ferguson, County Attorney, and Ray Walton, Assistant County
Attorney, for appellee-State.

Considered by Habhab, P.J., and Cady and Huitink, JJ.

CADY, J.

On January 31, 1992, law enforcement officials obtained a search warrant to search a residence at 87 Lafayette Street in Waterloo. In the search they found over \$2,000 in cash, dice, and drugs. Matthew Bergmann was among the persons present at the house. Police seized \$6.30 from his pocket and an earring from his ear. He was convicted of being in a disorderly house, in violation of a Waterloo city ordinance.

The State filed a notice of forfeiture for the items seized at 87 Lafayette Street claiming the items had been used in connection with illegal drug activity and gambling. Bergmann filed a claim for the return of \$398 and the earring.

At a forfeiture hearing held on September 30, 1993, Bergmann testified he went to 87 Lafayette Street merely to borrow some clippers. While there he started talking to some people he knew and stayed at the house for about thirty to forty-five minutes. He testified he had about \$390 in a jacket pocket. He stated he took the money out of his pocket to count it and then placed it on a table while he was getting out a cigarette. He testified he was getting ready to leave when the police showed up. According to Bergmann, when the police arrived the table tipped over and his money fell onto the floor. Bergmann denied participating in any gambling activities, although he admitted he knew gambling was going on.

Thornton Gary, who lived at 87 Lafayette Street, testified that Bergmann had been gambling. On cross-examination, he stated Bergmann may not have been gambling. On redirect Gary testified he thought Bergmann had been gambling. Elliot Wise testified he had not seen Bergmann gambling while he was at the residence. However, Wise left the house about one-half hour before the raid. Amos Deering testified he could not remember whether Bergmann was gambling or not.

The district court found that the earring and the \$6.30 found in Bergmann's pocket were not forfeitable property. The court concluded, however, that the

remainder of the money claimed by Bergmann "was either property acquired from illegal gambling or property used or intended to be used in illegal gambling" and was, therefore, forfeitable. The court found Bergmann's explanation that he had his money out merely to count it was not credible.

Bergmann has appealed. He contends the State failed to present sufficient evidence to show a substantial connection between the property and the crime of gambling. He states there is insufficient evidence to show he was gambling or that the money he is claiming was connected with illegal gambling. He points out that he was only at 87 Lafayette Street for a short period of time. He also points out that only Gary testified he had been gambling.

Under Iowa Code section 809.11(1) (1993) forfeiture proceedings are ordinary civil proceedings. Our review in forfeiture proceedings is for correction of errors at law. *In re Property Seized from DeCamp*, 511 N.W.2d 616, 619 (Iowa 1994).

The State has the burden to prove by a preponderance of the evidence that the property is forfeitable. I.C. §809.11(1). We must view the evidence in the light most favorable to the State. *In re Property Seized from Rush*, 448 N.W.2d 472, 477 (Iowa 1989). The district court's findings in a forfeiture action will be upheld if supported by substantial evidence. *In re Property Seized from Daniels*, 478 N.W.2d 622, 623 (Iowa 1991). Evidence is substantial if a reasonable mind would accept it as adequate to reach a conclusion. *DeCamp*, 511 N.W.2d at 619. The possibility of drawing inconsistent conclusions from the same evidence does not prevent a finding from being supported by substantial evidence. *In re Property Seized from Rios*, 478 N.W.2d 870, 872 (Iowa App. 1991).

Under section 809.1, there must be a substantial connection between the property seized and the crime. *DeCamp*, 511 N.W.2d at 620. Whether the seized property has such a nexus with the criminal activity is a fact question. *Id.* In order to

uphold a forfeiture, there must, therefore be substantial evidence of this connection. *Rios*, 478 N.W.2d at 872.

We find there is substantial evidence to support the district court's conclusion in this case that there was a substantial connection between the money claimed by Bergmann and the illegal gambling activity which had been taking place when the police arrived. The testimony of at least one witness, Gary, was that Bergmann had gambled. The testimony of Wise and Deering cannot be dispositive on this issue because Wise could not know what happened after he left the house and Deering testified he did not remember whether Bergmann had gambled.

Additionally, as the district court found, the close proximity between the main table where gambling was taking place and the location where Bergmann testified he put down his money indicates that the money was used or intended to be used for gambling. Furthermore, Bergmann offered no explanation as to why he brought \$398 with him when he planned to only borrow some clippers.

We also note that the district court found Bergmann's testimony was not credible. The court found Bergmann's testimony that he had taken his money out only to count it was not believable. The credibility of witnesses is a matter within the unique competence of the trial court. *Rush*, 448 N.W.2d at 477.

We conclude there is substantial evidence in the record to show a nexus between the money claimed by Bergmann and illegal gambling. We affirm the district court's conclusion that the \$392 claimed by Bergmann is forfeitable. Costs of this appeal are assessed to Bergmann.

AFFIRMED.