IN THE COURT OF APPEALS OF IOWA

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CLERK SUPREME COURT
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No. 7-226 / 96-918

IN THE MATTER OF PROPERTY SEIZED FROM GEORGE GRAVES

CYNTHIA L. GRAVES,
Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, Jon Stuart Scoles, Judge.

Cynthia Graves appeals the district court's refusal to order the return of all of the weapons requested in her application for the return of seized property. **AFFIRMED.**

Richard N. Tompkins, Jr., Mason City, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, Paul L. Martin, County Attorney, and Gregg R. Rosenbladt, Assistant County Attorney, for appellee State.

Heard by Sackett, P.J., Vogel, J., and Schlegel, S.J.*

*Senior judge from the Iowa Court of Appeals serving by order of the Iowa Supreme Court.

VOGEL, J.

Cynthia Graves appeals the district court's refusal to order the return of all of the weapons requested in her application for the return of seized property. She argues the district court erred in finding substantial evidence existed that she knew or should have known the property was used for a criminal purpose and her rights therein were forfeitable.

Facts. George Graves operated the Circle G Gunsmithing Service. He repaired, bought, and sold new and used weapons. The business was located in a garage behind the family home. In April 1993 George was convicted of a felony offense. A prison term was suspended and he was placed on probation. As a result of his conviction and probation, George was prohibited from owning, transporting, or possessing any firearms. Iowa Code § 724.26 (1995). George was aware of this prohibition and verbally transferred ownership of all of his guns to his wife, Cynthia, prior to his sentencing.

George surrendered his federal firearms permit and a license was issued to Cynthia doing business as C & G Gunsmithing Service. George continued to operate the business as before except that Cynthia signed the documents required for the sale of weapons. George's probation officer approved of this arrangement and granted George permission to attend gun shows as long as Cynthia accompanied him. The probation officer apparently believed George could work with weapons and remain in compliance with his probation as long as Cynthia owned the guns. Other local law

officers were also aware George continued to operate the gunsmith business and they utilized his services.

On January 1, 1995, George and Cynthia separated and Cynthia moved out of the family home. Cynthia did not take any of the guns. In March 1995, two Cerro Gordo assistant county attorneys and a deputy sheriff attended a gun show. They observed George, alone, at a table of guns. They reported what they had seen to the Cerro Gordo sheriff, and the Iowa Division of Criminal Investigation (DCI) was contacted. The DCI conducted an undercover investigation. Graves told the undercover officer that various guns in the shop belonged to him, and he accepted $100 from the officer as a down payment on a purchase of a gun.

On March 20, 1995, the sheriff's office and the DCI seized 114 guns from the Graves' residence and adjoining business. Iowa Code § 809.7. The State served George with a notice of forfeiture pursuant to Iowa Code section 809.8. The notice indicated the weapons were seized because they were property which was illegally possessed. Iowa Code § 809.1(2)(a).

Cynthia filed a claim for the return of the property raising an ownership interest in the guns. Iowa Code § 809.9.

Scope of review. In a forfeiture case, our review is for corrections of error at law; we will affirm the district court's findings if supported by substantial evidence. *State v. One 1964 Oldsmobile Cutlass Convertible*, 521 N.W.2d 721, 722 (Iowa 1994); *State v. 1984 Monte Carlo*, 521 N.W.2d 723, 724 (Iowa 1994). The state has

the burden of proving, by a preponderance of the evidence, that the forfeiture is valid. Iowa Code § 809.11(1) (1995).

Forfeiture of property. Cynthia contends the district court erred in finding substantial evidence existed indicating she "knew or should have known" that her property was used for a criminal purpose. In order to have standing in contesting a forfeiture, one must be a "claimant." *In re Aronson*, 440 N.W.2d 394, 397 (Iowa 1989). "A 'claimant' is one who claims to own the article or merchandise or to have an interest therein." *Id.* Cynthia claimed an interest in only two of the guns at issue and testified she didn't feel comfortable saying the other guns were hers. She retreated from this somewhat in stating she "guessed" the other guns were hers. The trial court ordered that the two guns Cynthia claimed ownership in be returned to her and denied her application for return of the other guns.

Even if we determined Cynthia was the owner of the eighteen firearms in dispute, and therefore had standing with respect to her claim, we find the State has met its burden: A preponderance of the evidence establishes Cynthia allowed George to possess the guns in violation of the criminal code and in contravention of the terms of his probation. We agree with the district court when it noted:

> After Cynthia moved from the house on January 1, 1995, the weapons were clearly in the sole possession of George. . . Accordingly, the court concludes that on March 20, 1995, George was in illegal possession of firearms and the weapons constituted forfeitable property within the meaning of the code.

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Moreover, the record establishes Cynthia did know George had been convicted of a felony and that he was placed on probation. She was informed and understood George was not permitted to own, transport, or possess any firearms, nor was he permitted to buy or sell any weapons. When Cynthia moved out, she should have realized the gravity of leaving the weapons behind as George could easily access them. We therefore agree with the trial court that Cynthia knew or should have known George was left in possession of the firearms, in violation of his probation and Iowa Code section 724.26.

We find the district court's findings were supported by substantial evidence and we accordingly affirm its decision.

AFFIRMED.