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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0964**

Jamey Ryan Williams
Respondent,

vs.

Pine County Sheriff's Department,
Appellant.

**Filed April 9, 2018
Affirmed
Klaphake, Judge*
Dissenting, Johnson, Judge**

Pine County District Court
File No. 58-CV-17-48

Samuel J. Edmunds, Sieben Edmunds PLLC, Mendota Heights, Minnesota (for respondent)

Reese Frederickson, Pine County Attorney, Christopher T. Nippoldt, Assistant County Attorney, Pine City, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Kirk, Judge; and Klaphake, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant Pine County Sheriff's Department claims that the district court erred in returning to the respondent a pistol that had been seized and retained by appellant. Because we conclude the trial court did not err, we affirm.

DECISION

Appellant argues that the 9mm Beretta pistol it seized from respondent as evidence in his criminal case is contraband and was forfeited by operation of law under Minnesota's forfeiture statutes. *See generally* Minn. Stat. §§ 609.531-.5318 (2016). Interpretation of a statute is subject to de novo review, *Riley v. 1987 Station Wagon*, 650 N.W.2d 441, 443 (Minn. 2002), but a district court's factual findings "are given great deference, and shall not be set aside unless clearly erroneous," *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999).

The legislature has declared that the forfeiture statutes are to be "liberally construed." Minn. Stat. § 609.531, subd. 1a. "Yet, the United States Supreme Court has stated that 'forfeiture generally and statutory *in rem* forfeiture in particular historically have been understood, at least in part, as punishment.'" *Riley*, 650 N.W.2d at 443 (quoting *Austin v. United States*, 509 U.S. 602, 618, 113 S. Ct. 2801, 2810 (1993)). As such, Minnesota courts strictly construe our forfeiture statutes, and resolve "any doubt in favor of the party challenging it." *Id.*

The district court is prohibited from ordering the return of seized property if it finds that the property is contraband. Minn. Stat. § 626.04(a)(3) (2016). Contraband is "property

which is illegal to possess under Minnesota law,” Minn. Stat. § 609.531, subd. 1(d), and “the legislature intended ‘contraband’ to include property which is illegal for the particular offender in question to possess,” *Johnson v. Multiple Miscellaneous Items Numbered 1–424*, 523 N.W.2d 238, 240 (Minn. App. 1994) (emphasis omitted).

It is not illegal for respondent to possess the pistol. His crime was not the possession of the pistol, but the failure to have the required permit. He is not a felon, for example, and even without a permit he may possess the pistol on private property, or transport it in his vehicle if the pistol is unloaded and either properly cased or transported in a closed trunk. See Minn. Stat. §§ 97B.045, subd. 1, 624.713, subd. 1(10), 624.714, subd. 1a (2016).

Appellant argues that, after respondent’s conviction for possessing a pistol without a permit, the pistol became contraband by operation of law under Minn. Stat. § 609.5316, subd. 3. That statute provides: “Weapons *used* are contraband and must be summarily forfeited to the appropriate agency upon conviction of the weapon’s owner or possessor for a controlled substance crime; for any offense of [chapter 609] or chapter 624, or for a violation of an order for protection.” *Id.* (emphasis added). An object is a “weapon used” if it is a dangerous weapon, defined in Minn. Stat. § 609.02, subd. 6 (2016), “that the actor used or had in possession in furtherance of a crime.” Minn. Stat. § 609.531, subd. 1(b). In order for a weapon to be used or possessed in furtherance of a crime, the dangerous weapon must be more than merely present, the use or possession of the weapon must have played a significant part in committing the crime. *Cf. City of Worthington Police Dep’t v. One 1988 Chevrolet Berreta*, 516 N.W.2d 581, 584–85 (Minn. App. 1994) (interpreting “used or intended for use to commit or facilitate” a crime under Minn. Stat. § 609.5312, subd. 1

(1992), and holding that “if the use of property plays a significant part in committing an offense, then the property may be forfeited, no matter what its value”).

The use or possession of a dangerous weapon plays a significant part in committing the crime if it increases the danger to the public from the commission of the crime. Throughout Minnesota’s criminal code, the use or possession of a dangerous weapon enhances a criminal penalty when that use or possession increases the risk of harm to the public. For example, simple robbery becomes aggravated robbery in the first degree if committed while “armed with a dangerous weapon,” and the maximum sentence doubles. *Compare* Minn. Stat. § 609.24 (2016) *with* Minn. Stat. § 609.245, subd. 1 (2016). Possessing a dangerous weapon while depriving another of parental or custodial rights also doubles the maximum penalty for that offense. *See* Minn. Stat. § 609.26, subd. 6(a)(1)–(2)(i) (2016). Engaging in criminal sexual conduct and using or threatening to use a dangerous weapon to cause submission to the criminal sexual conduct at least doubles the maximum sentence. *Compare* Minn. Stat. §§ 609.342, .343 (2016), *with* Minn. Stat. §§ 609.344, .345 (2016). And violating a restraining order, an order for protection, or committing a stalking crime, is enhanced to a felony if committed while possessing a dangerous weapon. *See* Minn. Stat. §§ 518B.01, subd. 14, 609.748, subd. 6 (2016). In all of these instances, possession of the weapon enhances the criminality of the conduct and the threat to the public.

And, in the only case analyzing the summary forfeiture of a firearm under Minn. Stat. § 609.5316, subd. 3, our analysis similarly focused on the relationship between the appellant’s possession of the firearms and the danger to the public from the combined effect

of his possession and his crime. See *Tveit v. Connecticut Valley Arms Black Powder .58 Cal. Rifle*, No. C4-98-392, 1998 WL 727735 (Minn. App. Oct. 20, 1998). In *Tveit*,¹ the appellant was convicted for making terroristic threats. *Id.* at *3. We reasoned that the appellant’s possession of the firearms furthered his crime because his victims felt terrorized by knowing he had the ability to carry out the threats. *Id.* Here, respondent’s having an unloaded pistol in the center console of his vehicle does not enhance the danger to the public from his not having a permit for the pistol, and the pistol is therefore not a “weapon used” under Minn. Stat. § 609.531, subd. 1(b). Because the pistol is not a weapon used, and respondent is legally allowed to possess the pistol, it is not contraband and the district court did not err in ordering appellant to return the pistol to respondent.²

Affirmed.

¹ While *Tveit* is unpublished and not precedential, Minn. Stat. § 480A.08, subd. 3 (2016), we find its analysis helpful.

² Based on our decision on the contraband issue, we need not and therefore decline to address the balance of the arguments raised by the parties.

JOHNSON, Judge (dissenting)

I respectfully dissent from the opinion of the court. Appellant argues that the district court erred in three ways. The opinion of the court rejects appellant's first argument, but I respectfully disagree with the court's resolution of that issue. Appellant's second and third arguments present issues for which there is a lack of precedent, but I believe that appellant's arguments have merit. Therefore, I would conclude that the district court erred by granting relief to Williams.

Williams was charged with unlawful possession of a pistol in a motor vehicle without a permit to carry. *See* Minn. Stat. § 624.714, subd. 1(a) (2016). After pleading guilty, Williams petitioned the district court for the return of the pistol, which was seized when he was arrested. *See* Minn. Stat. § 626.04 (2016). In the memorandum of law accompanying his petition, he essentially conceded that the pistol is "contraband" pursuant to section 609.5316, subdivision 3, of the Minnesota Statutes. He presented only two arguments to the district court: first, that the Pine County Sheriff violated his right to procedural due process by not giving him notice of intent to seek the forfeiture of the pistol and, second, that the sheriff violated a forfeiture statute by not giving him a receipt after seizing the pistol. At the brief hearing on the petition, counsel confined their oral arguments to the two issues raised in Williams's memorandum.

Notwithstanding the limited scope of counsel's arguments, the district court determined that the pistol is *not* contraband on the ground that the pistol is not within the definition of "contraband" in section 609.531, subdivision 1(d). The district court also determined that Williams "was never served with a property receipt or summary forfeiture

notice indicating that Pine County intended to forfeit the firearm as required by Minn. Stat. § 609.531.” The district court’s order concludes by stating, “The Plaintiff’s petition is, hereby, GRANTED.”

I.

Appellant argues that the district court erred by determining that the pistol is not “contraband.” Appellant contends that, upon Williams’s conviction, the pistol became contraband by operation of law pursuant to section 609.5316, subdivision 3. Appellant’s contention is consistent with the assumption that was shared by the parties during district court proceedings.

In the relevant statutes, there are two means by which a firearm may be deemed “contraband.” The first means is reflected in section 609.531, which this court has described as “the repository of ‘general rules’ governing various forfeiture proceedings.” *Gaertner ex rel. Minnesota State Patrol v. One 1999 Dodge Pickup Truck*, 668 N.W.2d 25, 29 (Minn. App. 2003). The second means is reflected in section 609.5316, which specifically concerns “summary forfeiture.” Appellant relies on the latter statute, which provides, in relevant part, as follows: “*Weapons used* are contraband and must be summarily forfeited to the appropriate agency upon conviction of the weapon’s owner or possessor for a controlled substance crime; for any offense of this chapter or chapter 624, or for a violation of an order for protection under section 518B.01, subdivision 14.” Minn. Stat. § 609.5316, subd. 3 (2016) (emphasis added). The term “weapon used” is defined by the general forfeiture statute to mean “a dangerous weapon as defined under section 609.02,

subdivision 6, that the actor [1] *used or* [2] *had in possession in furtherance of a crime.*” Minn. Stat. § 609.531, subd. 1(b) (2016) (emphasis added).

The district court did not determine whether the pistol is contraband under section 609.5316, subdivision 3. This court acknowledges appellant’s argument based on section 609.5316, subdivision 3, but applies only the first prong of the statutory definition of “weapons used.” *See supra* at 3-5. Regardless whether the first prong of the statutory definition is satisfied, the second prong of the statutory definition plainly is satisfied. Williams pleaded guilty to a charge of unlawful possession of a pistol in a motor vehicle without a permit to carry, in violation of Minn. Stat. § 624.714, subd. 1a. Accordingly, it is undisputed that Williams “had [the pistol] in [his] possession.” *See* Minn. Stat. § 609.531, subd. 1(b). And because he was charged with a possession crime, his possession naturally was “in furtherance of” the crime of which he was convicted. *See id.*

In considering appellant’s argument based on the summary-forfeiture statute, section 609.5316, subdivision 3, it is inappropriate to apply this court’s opinions in *Johnson v. Multiple Miscellaneous Items Numbered 1-424*, 523 N.W.2d 238 (Minn. App. 1994), and *City of Worthington Police Dep’t v. One 1988 Chevrolet Berreta*, 516 N.W.2d 581 (Minn. App. 1994). Neither *Johnson* nor *City of Worthington* are concerned with section 609.5316. The *Johnson* opinion applied a different definition of “contraband” that is in the general forfeiture statute. *See* 523 N.W.2d at 239-41 (citing Minn. Stat. § 609.531, subd. 1(d) (1988)). The *City of Worthington* opinion applied a statute that has not been invoked by either party in this case. *See* 516 N.W.2d at 584 (citing Minn. Stat. § 609.5312, subd. 1 (1992)).

Thus, I would conclude that the pistol is “contraband” pursuant to section 609.5316, subdivision 3. In light of that conclusion, it is unnecessary to consider whether the pistol also is “contraband” pursuant to the statutory definition in section 609.531, subdivision 1(d).

II.

Appellant argues that the district court erred by determining that the pistol may not be summarily forfeited on the ground that the sheriff did not give Williams notice of intent to seek the forfeiture of the pistol. In response, Williams argues that the lack of notice violated his right to procedural due process.

Summary forfeiture of a “weapon[] used” under section 609.5316 occurs “upon conviction of the weapon’s owner or possessor.” Minn. Stat. § 609.5316, subd. 3. In Minnesota, summary forfeiture is, in essence, criminal in nature. *See Briles v. 2013 GMC Terrain*, 892 N.W.2d 525, 531 (Minn. App. 2017) (referring to Minn. Stat. § 609.5312 (2016) as “criminal-forfeiture statute”), *aff’d*, 907 N.W.2d 628 (Minn. 2018); *cf.* Minn. Stat. § 609.531, subd. 6a(a) (“An action for forfeiture is a civil in rem action and is independent of any criminal prosecution . . .”). Criminal forfeiture of contraband is a consequence of a criminal conviction, much like a prison sentence or a fine. *See Libretti v. United States*, 516 U.S. 29, 41, 49, 116 S. Ct. 356, 364, 367-68 (1995).

The district court did not cite a legal basis for its conclusion that a lack of notice precludes summary forfeiture. In light of Williams’s argument, the question presented is whether such notice is required by principles of due process. In a criminal case, due process requires the state to inform a defendant of the nature of the charges against him and the

conduct that is alleged to be criminal. *State v. Chauvin*, 723 N.W.2d 20, 29 (Minn. 2006) (citing U.S. Const. amends. VI & XIV). But due process does *not* require the state to inform a defendant of the potential criminal penalties that may be imposed upon a conviction. *McCollum v. State*, 640 N.W.2d 610, 618-19 (Minn. 2002). Furthermore, if a defendant is represented by counsel, we presume that counsel has apprised the defendant of the nature of the charges and the consequences of pleading guilty. *State v. Lorentz*, 276 N.W.2d 37, 38 & n.2 (Minn. 1979); *State v. Stellmach*, 307 Minn. 359, 360, 240 N.W.2d 820, 821 (1976); *State v. Propotnik*, 299 Minn. 56, 58, 216 N.W.2d 637, 638 (1974). Moreover, the Fourth, Fifth, and Sixth Amendments provide numerous procedural protections to a criminal defendant throughout a criminal proceeding, which collectively ensure that no conviction is obtained without due process of law. *See, e.g., Sweet v. Commissioner of Human Services*, 702 N.W.2d 314, 321 (Minn. App. 2005) (affirming administrative disqualification based on criminal conviction in part because person “has already been afforded the full panoply of rights in the criminal proceedings”), *review denied* (Minn. Nov. 15, 2005). Accordingly, there is no legal basis for the district court’s reasoning that the county was required to give Williams notice that his conviction of the charged offense would result in the summary forfeiture of the pistol.

Thus, I would conclude that the absence of notice of intent to seek summary forfeiture is not a valid basis for setting aside the summary forfeiture of the pistol.

III.

Appellant argues that the district court erred by determining that the pistol may not be summarily forfeited on the ground that the county did not give Williams a receipt upon

seizing it. The district court's order is based on the following statute: "When property is seized, the officer must provide a receipt to the person found in possession of the property; or in the absence of any person, the officer must leave a receipt in the place where the property was found, if reasonably possible." Minn. Stat. § 609.531, subd. 4(b).

Appellant's argument has two parts. First, appellant contends that a receipt, though required by section 609.531, is not a prerequisite of summary forfeiture. Second, appellant contends that the county actually provided Williams with a receipt in the form of Evidence Report 160, which reflects that the pistol was seized from Williams's vehicle and is being held by the sheriff's office. Yet the district court found that Williams was not "provided a receipt for the firearm." It is unclear whether the district court did not consider Evidence Report 160 to be a "receipt" or did not believe that Evidence Report 160 had been given to Williams.

With respect to its first contention, appellant asserts that it seized the pistol as evidence for purposes of investigating and proving a crime, not solely for the purpose of forfeiture. The text of the statute does not support appellant's argument that the receipt requirement depends on the purpose of the seizure. *See id.* But the text of the statute also does not provide any particular remedy for the absence of a receipt. *See id.* Similarly, there is no caselaw for the district court's premise that the absence of a receipt is a valid reason to set aside a summary forfeiture. There is no logical reason why the absence of a receipt should nullify a summary forfeiture. The purpose of the receipt in this context presumably is to provide a "written acknowledgement of the receipt of money or goods to be accounted for by the receiver." *See Black's Law Dictionary* 1460 (10th ed. 2014). A

receipt would help ensure that seized property is returned to the person to whom it belongs. But if a criminal defendant has been convicted of a crime that triggers the summary-forfeiture provisions of section 609.5316, he no longer is entitled to the return of the property. *See United States v. Jeffers*, 342 U.S. 48, 52-53, 72 S. Ct. 93, 96 (1951). In that event, the absence of a receipt is inconsequential.

Thus, I would conclude that the absence of a receipt is not a valid basis for setting aside the summary forfeiture of the pistol.

For the reasons stated above, I would reverse the judgment of the district court.