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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS**

A18-0483

A18-0707

Shogun Mankato Inc.,
Appellant (A18-0483),
Shogun Burnsville, Inc.,
Appellant (A18-0707),

vs.

Commissioner of Revenue,
Respondent.

Filed December 31, 2018

Affirmed

Reyes, Judge

Blue Earth County District Court

File No. 07-CV-17-4941

Dakota County District Court

File No. 19HA-CV-17-4563

Eric Johnson, St. Paul, Minnesota (for appellants)

Lori Swanson, Minnesota Attorney General, John M. O'Mahoney, Michael Goodwin,
Assistant Attorneys General, St. Paul, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Reyes,
Judge.

UNPUBLISHED OPINION

REYES, Judge

Appellants challenge the denial of their petitions under Minn. Stat. § 626.04 (2018) seeking the return, without retention, of property seized during a civil tax audit and subsequent execution of search warrants on appellants' premises, asserting that their Fourth Amendment rights were violated. We affirm.

FACTS

Appellants Shogun Mankato, Inc. and Shogun Burnsville, Inc. (the Shoguns) operate sushi and hibachi restaurants in Mankato and Burnsville. The Minnesota Department of Revenue (the department) conducted a civil tax audit of the Shoguns beginning in September 2016 through its sales-and-use-tax division. As part of the audit, the department sent staff to the Shoguns' restaurants to make observation purchases, where they posed as customers, made purchases, and retained their receipts. In addition, the department asked the Shoguns to provide their point-of-sale (POS) system data, which they agreed to. Upon inspection, the POS system did not show records of the observation purchases. Eight out of the eleven purchases made at the Mankato restaurant and two out of the four purchases made at the Burnsville restaurant were missing from the POS system data.

The missing purchases led the department to suspect that the Shoguns were using an electronic-sales-suppression device. The sales-and-use-tax division referred the matter to the department's criminal-investigation division in May 2017, which subsequently obtained and executed search warrants on the Shoguns' premises. The criminal-

investigation division seized computers, data, records, and other materials from the Shoguns. At the Shoguns' request, the department later returned some of the property, including POS terminals, copies of the POS hard drives, a laptop, a smartphone, and an iPad, to allow the Shoguns to continue operation while the investigation continued.

The Shoguns brought petitions against respondent Commissioner of Revenue (the commissioner) under Minn. Stat. § 626.04(a) in Blue Earth and Dakota County district courts seeking the return of their property without retention of copies, alleging violations of their Fourth Amendment rights. Both district courts denied the petitions. This consolidated appeal follows.

D E C I S I O N

I. The district courts properly denied the Shoguns' petitions to return the property without retention under Minn. Stat. § 626.04.

The Shoguns argue that because their property was illegally seized, it should be returned under Minn. Stat. § 626.04(a), and any copies that have been retained should be destroyed. We are not persuaded.

We generally review a district court's findings of fact for clear error and conclusions of law de novo. *See Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013). The application of a statute to the undisputed facts is a legal conclusion that we review de novo. *City of Morris v. Sax Invs., Inc.*, 749 N.W.2d 1, 5 (Minn. 2008).

Any property seized with or without a warrant "shall be safely kept by direction of the court as long as necessary for the purpose of being produced as evidence on any trial." Minn. Stat. § 626.04(a). The person whose property has been seized can file a petition in

district court seeking its return. *Id.* The district court shall not order the return of the property if “(1) the property is being held in good faith as potential evidence in any matter, charged or uncharged; (2) the property may be subject to forfeiture proceedings; (3) the property is contraband or may contain contraband; or (4) the property is subject to other lawful retention.” *Id.*

Retention of seized property for the purpose of introducing it at a future trial is proper under Minn. Stat. § 626.04. *State v. Ture*, 632 N.W.2d 621, 630 (Minn. App. 2001) (holding state’s retention of property for 22 years proper when criminal investigation ongoing); *C.f. State v. Sutterfield*, 347 N.W.2d 295, 296 (Minn. App. 1984) (holding seized property must be returned when charges against appellant were dropped and state no longer had use for property). Further, a sales-suppression device is subject to forfeiture, and its use is a felony. Minn. Stat. § 289A.63, subd. 12 (a)-(b) (2018).

The Blue Earth County district court declined to order the return of the property, finding that the criminal investigation was ongoing in this case and concluding that the property was “being held in good faith as potential evidence in an ongoing criminal investigation by the Minnesota Department of Revenue.” Similarly, after conducting an ex parte hearing, the Dakota County district court found that the commissioner held the property in good faith as potential evidence in any matter, the property may be subject to a forfeiture proceeding, and it may contain contraband.

We have reviewed the records and conclude that they support the district courts’ findings. The criminal investigation is ongoing, and the commissioner suspects that the Shoguns may have used sales-suppression software, which is contraband. The statute

provides that the district court *shall not* order the return of the property if it meets any of the criteria in the statute. Minn. Stat. § 626.04(a). Because the record shows that the property is being held as potential evidence in any matter, that it may be subject to a forfeiture proceeding, or that it may contain contraband, the district courts appropriately denied the Shoguns' petitions to return the property without retention of any copies by the commissioner.

II. The Shoguns are not entitled to relief under the Fourth Amendment.

The Shoguns argue that their Fourth Amendment rights have been violated by the commissioner's tax audit and subsequent execution of the search warrants the commissioner obtained. The Shoguns contend that their consent to provide information in the audit was vitiated because the commissioner failed to disclose the "fundamentally criminal nature of the overall operation." We disagree.

The Blue Earth County district court expressly declined to address the Shoguns' Fourth Amendment claims, finding that these claims could be brought if and when a criminal case is filed. The Dakota County district court did not mention the Shoguns' Fourth Amendment claims in its order. An appellate court generally will not consider matters not considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). "[A]n undecided question is not usually amenable to appellate review." *Hoyt Inv. Co. v. Bloomington Commerce & Trade Ctr. Assocs.*, 418 N.W.2d 173, 175 (Minn. 1988). Therefore, we decline to address the Shoguns' Fourth Amendment claims.

Moreover, Minn. Stat. § 626.04 does not provide a cause of action for Fourth Amendment claims. The statute concerns lawful retention of property seized and does not

expressly permit constitutional challenges to the seizure of the property at issue. Minn. Stat. § 626.04(a). The statute further provides that the petition asking for the return of property shall be determined by a “simple and informal procedure.” Minn. Stat. § 626.04(a). “A statute does not give rise to a civil cause of action unless the language of the statute is explicit or it can be determined by clear implication.” *Becker v. Mayo Found.*, 737 N.W.2d 200, 207 (Minn. 2007); *see also Bruegger v. Faribault Cty. Sheriff’s Dep’t*, 497 N.W.2d 260, 262 (Minn. 1993) (concluding that principles of judicial restraint preclude judicial creation of additional causes of action outside those evident in a statute’s express or implied terms). Further, the rules of statutory construction forbid adding words or meaning to a statute that were left out. *Phelps v. Commonwealth Land Title Ins. Co.*, 537 N.W.2d 271, 274 (Minn. 1995). In contrast, Minn. Stat. § 626.21 (2018), provides a cause of action for a person aggrieved by an unlawful search and seizure. The district courts properly disregarded the Shoguns’ constitutional claims under Minn. Stat. § 626.04(a).¹

Affirmed.

¹ The Shoguns raise an additional issue in which they argue that the district courts have jurisdiction to return the property seized, independent of any criminal proceedings. This argument is premised on the property being seized unlawfully under the Fourth Amendment. Because we conclude that the Shoguns’ Fourth Amendment claims are not viable under Minn. Stat. 626.04(a), we need not address this issue.