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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1015**

Kevin Eric Janssen, petitioner,
Respondent,

vs.

2012 Harley Davidson Motorcycle,
Lic. No.: MN 19097MH, VIN: 1HD1LH318CC413719,
Appellant.

**Filed August 19, 2019
Reversed
Ross, Judge**

Dakota County District Court
File No. 19WS-CV-16-1497

Samuel A. McCloud, The Law Office of Samuel A. McCloud, Lindstrom, Minnesota
(for respondent)

Jeremy P. Knutson, Mendota Heights Prosecuting Attorney, Conor E. Tobin, Assistant City
Attorney, Grannis & Hauge, P.A., Eagan, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Ross, Judge; and Bratvold,
Judge.

U N P U B L I S H E D O P I N I O N

ROSS, Judge

The Minnesota State Patrol impounded Kevin Janssen’s motorcycle after he rode it
drunk, and the state charged him with second-degree driving while impaired. Janssen
offered to plead guilty to a different charge—one that would not subject the motorcycle to

forfeiture, but the prosecutor declined. The district court held that the state patrol's desire to keep the motorcycle constituted an unconstitutional conflict of interest, and it invalidated the forfeiture. The district court also reasoned that our now partially reversed decision in *Olson v. One 1999 Lexus MN License Plate No. 851LDV VIN: JT6HF10U6X0079461*, 910 N.W.2d 72 (Minn. App. 2018), *aff'd in part and rev'd in part*, 924 N.W.2d 594 (Minn. 2019), rendered the state's 15-month preconviction deprivation of Janssen's motorcycle unconstitutional on due-process grounds. We reverse because the supreme court partially invalidated *Olson* and because the district court improperly constructed an unsupported "conflict-of-interest" theory; the theory violated the separation of powers by invading the prosecutor's statutory and constitutional discretion to pursue forfeiture of a defendant's property seized in the commission of a crime while also prosecuting the defendant for committing the crime.

FACTS

A state trooper stopped Kevin Janssen's motorcycle in Mendota Heights, suspecting drunken driving. Janssen had bloodshot eyes, clumsily dismounted his motorcycle, and refused to perform field sobriety tests. The trooper arrested Janssen, who gave two breath samples that revealed a blood alcohol content of 0.166 and 0.163. The state charged him with second-degree driving while impaired. The state patrol exercised its forfeiture power over the motorcycle under Minnesota Statutes, section 169A.63 (2018).

Janssen tried unsuccessfully to persuade the prosecutor not to pursue forfeiture of the motorcycle. He wrote the prosecutor offering to pay \$1,000 and promising not to ride it for two years. He said he would plead guilty to a lesser impaired-driving offense that

would not trigger the state patrol's forfeiture power. The prosecutor explained that the state patrol wanted to pursue forfeiture, and it needed a conviction for the second-degree offense to do so. Janssen proceeded to a bench trial, and the district court found him guilty.

Janssen moved the district court to declare the forfeiture statute unconstitutional on its face or as applied in this case. He argued that the prosecutor's interest in forfeiting his motorcycle created a conflict of interest that violated his constitutional right to due process. The district court was persuaded by the argument, and it ordered the state to return the motorcycle and pay for its storage. It also considered the constitutionality of the forfeiture based on our decision in *Olson* and concluded that a 15-month delay between the motorcycle's seizure and the hearing on forfeiture constituted a violation of Janssen's due-process rights. The state appeals.

DECISION

The state argues that the district court erred by holding the forfeiture statute unconstitutional. We review de novo. *See Olson v. One 1999 Lexus MN License Plate No. 851LDV VIN: JT6HF10U6X0079461*, 924 N.W.2d 594, 601 (Minn. 2019).

The district court cited two theories under which it held the forfeiture statute unconstitutional as applied to Janssen. The first was a prosecutorial conflict-of-interest theory. The second arose from our decision in *Olson*, where we held that an 18-month delay between the state's seizure of a vehicle and a hearing on its forfeiture deprived the non-owner driver of due process. *Olson*, 910 N.W.2d at 74. The supreme court has since rejected that rationale. *Olson*, 924 N.W.2d at 608–12. Janssen

properly concedes that the district court’s decision cannot rest on our reasoning in *Olson*. We turn to the district court’s constitutional conflict-of-interest theory.

The state argues that the district court erred by holding essentially that the prosecutor was required to accept Janssen’s offer to plead guilty to a lesser charge and abandon its forfeiture of the motorcycle. An owner of forfeited property may petition the prosecutor to remit the forfeiture. Minn. Stat. § 169A.63, subd. 5a (2018). And the prosecutor may accept the petition if the forfeiture resulted from the owner’s innocent conduct or an extenuating circumstance. *Id.* The district court reasoned that this statutory arrangement violated Janssen’s due-process rights because it created “the appearance of a conflict of interest” in the prosecutor “and the potential for bias in the decision making process.” The district court elaborated, stating, “The State has an obligation to protect public safety and act in the interest of justice, not to act out of its own financial interest in the outcome of a criminal proceeding.” The district court cited no precedent supporting its apparent rule of law that the Due Process Clause prohibits the state from prosecuting a defendant fully while also exercising its discretion to pursue the statutorily forfeitable instruments of the defendant’s criminal conduct. It is true that the Supreme Court has said that ensuring neutrality in all governmental decision-making “is of particular importance . . . where the Government has a direct pecuniary interest in the outcome of the proceeding” and that the circumstance may prompt greater judicial scrutiny. *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 55–56, 114 S. Ct. 492, 502 (1993). But we have found no precedential case in Minnesota or in any federal appellate court invalidating either a forfeiture or conviction based on a supposed prosecutorial conflict of interest

arising from the relationship between the prosecutor's desire to pursue forfeiture and a forfeiture-based motive for prosecution.

Even if a federal or state constitutional doctrine authorized the judiciary to enjoin the executive branch from making discretionary forfeiture or prosecution decisions on conflict-of-interest grounds, the district court here identified no real conflict. The prosecutor's interest in seeking justice, prosecuting criminal behavior, and securing forfeitable property are not in *per se* "conflict" merely because the state has a pecuniary interest in the outcome. A conflict of interest arises when an attorney's ability to represent his client is materially limited as a result of other commitments or interests. See Minn. R. Prof. Conduct 1.7. We see no such conflict here. Both conviction and forfeiture serve the state's interest.

"The prosecutor's decision whom to prosecute and what charge to file is a discretionary matter which is not subject to judicial review" without evidence of some invidious motive to discriminate against a protected class. *State v. Herme*, 298 N.W.2d 454, 455 (Minn. 1980). The district court's suggestion that the prosecutor had a duty to bargain with Janssen encroaches on a prosecutorial decision that "rests entirely in his discretion." *Bordenkircher v. Hayes*, 434 U.S. 357, 364, 98 S. Ct. 663, 668–69 (1978). The district court's bright-line rule unconstitutionally interfered with the prosecutor's function and requires reversal.

The state argues that the district court also erred by requiring it to pay the costs of storing Janssen's motorcycle. No law enforcement, government, or state agency is responsible for any storage fees resulting from the impoundment of a vehicle driven by an

impaired driver. Minn. Stat. § 169A.42, subd. 4 (2018). The forfeiture statute similarly prevents the government from being held responsible for storage costs. Minn. Stat. § 169A.63, subd. 7(b) (2018) (providing that the appropriate agency deducts any storage costs from a remission to a secured party after a sale of forfeited property). Based on our decision that the district court erred in its constitutional holding and the fact that Minnesota law does not support the district court's order requiring the state to pay storage costs, we reverse the order requiring the state to pay the costs.

Janssen argues that the state waived its right to challenge the district court's storage-costs decision by failing to raise it in its motion for reconsideration. The state did not file a motion for reconsideration. The prosecutor filed a motion for relief from judgment because the district court held a nonparty (the City of Mendota Heights), responsible for returning the motorcycle and associated costs. The state did not waive its right to challenge the storage-costs order.

Reversed.