

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0627**

Ramsey County Attorney,
Respondent,

vs.

\$139,630.00,
Appellant.

**Filed December 27, 2021
Affirmed
Reyes, Judge**

Dakota County District Court
File No. 19HA-CV-18-284

John J. Choi, Ramsey County Attorney, James A. Mogen, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

Charles S. Clas, Jr., Caplan & Tamburino Law Firm, P.A., Minneapolis, Minnesota (for
appellant)

Considered and decided by Reyes, Presiding Judge; Segal, Chief Judge; and
Bratvold, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

In this forfeiture action, claimant argues that the district court committed legal error by improperly relieving respondent-county of its burden under Minn. Stat. § 609.531, subd. 6a(d) (2020), and, alternatively, that the district court improperly determined that the county had met its burden. We affirm.

FACTS

In September 2017, law-enforcement officers received information of synthetic marijuana (K2) being sold out of a Dollar Plus store located in a high drug-crime area. During its investigation, law enforcement discovered that a clerk at the store, claimant Jalal Mouine, was the individual selling K2 at that location. Law enforcement arrested Mouine, and he pleaded guilty in Ramsey County district court to selling a synthetic cannabinoid.

Law enforcement executed search warrants at several locations connected to Mouine and seized items of property connected to his drug activities. While searching the Dakota County residence belonging to Mouine's sister, law enforcement discovered \$139,630 in currency hidden away. They seized the currency, and respondent Ramsey County initiated a forfeiture action based on the currency's connection to Mouine's drug activities.

At trial on the forfeiture, the county entered into evidence investigatory reports detailing Mouine's drug activity, including evidence that Mouine made frequent trips to the Dollar Plus store, a storage locker where law enforcement discovered K2 and drug-related items, and his sister's residence. Mouine challenged the county's right to seize the currency and testified that the currency represented his life savings and had been innocently obtained. The district court found Mouine's testimony to be entirely not credible and concluded that the currency seized from Mouine's sister's house was proceeds from Mouine's drug activities. The district court ordered forfeiture of the currency to the county. This appeal follows.

DECISION

I. The district court did not relieve the county of its burden of proof.

Mouine argues that the district court relieved the county of its burden to establish a nexus between the forfeited property and the underlying illicit activity forming the basis for Mouine's conviction. Instead, Mouine argues that the district court improperly required him to first show that the currency had innocent origins. We are not persuaded.

The county seeking forfeiture of property "bears the burden of proving by clear and convincing evidence that the property is an instrument or represents the proceeds of the underlying offense." Minn. Stat. § 609.531, subd. 6a(d); *see also* Minn. Stat. § 609.531, subds. 2(a), 4(b) (2020) (allowing for forfeiture of proceeds derived from distribution of controlled substances). We review the application of a statute to undisputed facts de novo. *Sprinkler Warehouse, Inc. v. Systematic Rain, Inc.*, 859 N.W.2d 527, 529 (Minn. App. 2015), *aff'd*, 880 N.W.2d 16 (Minn. 2016).

Here, the record reflects that the district court did not relieve the county of its burden. The district court had the county present its case first and admitted evidence the county argued connected the currency to Mouine's drug activities. The district court then asked Mouine if he would be testifying to present a defense, which he did. At the conclusion of trial, the district court stated on the record that the county "does carry the burden of proof."

This understanding is reflected in the district court's order. The district court cited the correct legal standard and concluded that the county satisfied its burden. Only then did the district court analyze Mouine's argument that the currency had innocent origins.

Mouine appears to argue that although the district court cited the correct legal standard, its reliance on evidence provided by Mouine, and not the county, constituted an impermissible shifting of the burden to Mouine. But Mouine cites to no caselaw for this proposition. In fact, caselaw suggests the opposite is true. *See Manahan v. Halloran*, 69 N.W. 619, 620 (Minn. 1896) (finding evidence introduced after plaintiff rested their case to be sufficient to sustain verdict in their favor); *Danielson v. St. Paul Fire & Marine Ins. Co.*, 98 N.W.2d 72, 78 (Minn. 1959) (commenting that jury could consider evidence as adverse against the party who submitted it). Therefore, the district court did not relieve the county of its burden, even if it also relied on evidence presented by Mouine to make its determination.

II. The district court did not abuse its discretion by determining that the seized currency was proceeds of Mouine’s drug activities.

Mouine argues that even if the district court did not impermissibly shift the burden, it erred by determining and applying the facts under the applicable legal standard. We disagree.

When reviewing mixed questions of law and fact, we correct erroneous applications of the law and review the district court’s ultimate conclusions for an abuse of discretion. *In re Estate of Sullivan*, 868 N.W.2d 750, 754 (Minn. App. 2015). We review findings of fact for clear error and give due regard to the district court’s credibility determinations. Minn. R. Civ. P. 52.01. “If there is reasonable evidence to support the [district] court’s findings of fact, a reviewing court should not disturb those findings.” *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999).

The county had the burden to show by clear and convincing evidence that the currency seized by law enforcement was proceeds of Mouine's drug activity. *See* Minn. Stat. § 609.531, subd. 6a(d). Clear and convincing evidence is shown when the "truth of the facts asserted is highly probable." *Christie v. Estate of Christie*, 911 N.W.2d 833, 839 (Minn. 2018) (quotation omitted). Clear and convincing evidence may include circumstantial evidence which "is entitled to as much weight as any other evidence." *Rogers v. Moore*, 603 N.W.2d 650, 657 (Minn. 1999).

Here, the county presented circumstantial evidence connecting the currency seized by law enforcement to Mouine. As part of their investigation, law enforcement put a tracking device onto Mouine's vehicle. The tracking data revealed that Mouine would make daily trips between the Dollar Plus store, where law enforcement had conducted several controlled buys, and a storage locker where law enforcement discovered K2, cash, marijuana, a handgun, and documents belonging to Mouine. The tracking data also revealed that Mouine would routinely travel from the storage locker to his sister's residence where law enforcement seized the currency. He would often then return to the storage locker. Mouine's sister also told law enforcement that Mouine had been storing cash at her house for around a year. This correlated with the same time that law enforcement first became aware that drugs were being sold out of the Dollar Plus store and is consistent with Mouine's testimony that he had been selling K2 for around a year before his arrest.

The county presented clear and convincing evidence that the currency seized by law enforcement at Mouine's sister's residence was proceeds of Mouine's drug activity. The tracking data showed a habitual pattern of Mouine traveling between the location where he

sold K2, the storage locker where they found K2, and the residence where law enforcement seized the currency. Mouine’s depositing of cash at his sister’s residence also began approximately at the same time he began selling K2. The district court also relied on Mouine’s testimony to conclude that the county had met this burden. As noted previously, this is permissible. *See Manahan*, 69 N.W. at 620. Therefore, the record supports the district court’s determination that the state met its burden of establishing a nexus between the seized funds and the underlying illicit activity.

Mouine argues that his testimony tends to show that the seized currency had innocent origins¹ and that it would have been logistically impossible for Mouine to sell enough K2 in a one-year span to acquire the amount of money seized, \$139,630. Mouine specifically points to his testimony regarding the sale of several businesses and the small amount of K2 he sold for profit to support this argument. We are not persuaded.

¹ Both appellant and the county seem to believe that the “innocent-owner defense” applies to the seized currency. Minn. Stat. § 609.5311, subd. 3(d) (2020) (restricting forfeiture of property “only if its owner was privy to the use or intended use described in subdivision 2, or the unlawful use or intended use of the property otherwise occurred with the owner’s knowledge or consent”); *see also Jacobson v. \$55,900 in U.S. Currency*, 728 N.W.2d 510, 520-21 (Minn. 2007) (explaining innocent-owner defense). However, the innocent-owner defense only applies to the *uses* described in subdivision 2, not the proceeds derived from or traceable to those uses. The legislature recently amended subdivision 3 to clarify in which situations money can be subject to forfeiture. 2021 Minn. Laws 1st Spec. Sess. ch. 11, art. 5, § 12, at 121-22 (to be codified at Minn. Stat. § 609.5311, subd. 3(h)). The addition of this provision to subdivision 3, without modifying the innocent-owner defense in subdivision 3(d), suggests that the legislature intended to limit the situations in which money can be forfeited. *See Washington County v. Am. Fed’n of State, Cnty. & Mun. Emps., Council No. 91*, 262 N.W.2d 163, 168 (Minn. 1978) (“When the legislature amends a statute, it is usually presumed that it intends some change in the law.”). In any case, appellant’s innocent-owner defense would have failed even if it did apply to this case.

Mouine's argument relies nearly entirely on his own testimony. But the district court explicitly found Mouine not to be credible and discounted a majority of his testimony. We must give due regard to the district court's ability to judge the credibility of the witnesses. *Novack v. Nw. Airlines, Inc.*, 525 N.W.2d 592, 598 (Minn. App. 1995).

Mouine claimed to have owned several businesses that he sold for large amounts of cash but struggled to provide details related to the finances of those businesses. Mouine also provided testimony that the district court rejected related to his personal expenses, including testimony regarding his lack of knowledge as to how much he paid in taxes because he was always paid in cash. Mouine also did not provide any financial documentation to corroborate his testimony.

The district court also did not find credible Mouine's testimony related to the sale of K2, including the number of bags Mouine would sell and the amount for which he would sell each bag. Although the county did provide evidence that Mouine sold one bag of K2 for \$25 and at one time had no K2 to sell, these isolated instances, without more, are not enough to overturn the district court's credibility determination.

We defer to the district court's credibility determinations rejecting Mouine's testimony regarding his financial history and his sales of K2. The record contains enough evidence to support the district court's determinations that the seized currency were the proceeds of Mouine's drug activities, and it was within the district court's discretion to order the currency forfeited to the county.

Affirmed.