

*This opinion is nonprecedential except as provided by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
A23-0152**

Lucas Paul Gilbertson,
Appellant,

vs.

One 2019 GMC Yukon, MN License Plate No. ENS673, VIN: 1GKS2CKJ9KR291322,
Respondent.

**Filed September 11, 2023
Affirmed
Bryan, Judge**

Polk County District Court
File No. 60-CV-21-305

Charles A. Ramsay, Daniel J. Koewler, Ramsay Law Firm, P.L.L.C., Roseville, Minnesota
(for appellant)

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Crookston, Minnesota (for respondent)

Considered and decided by Bryan, Presiding Judge; Johnson, Judge; and Smith, T.,
Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

Appellant raises both a legal and a factual challenge to the district court's decision to forfeit his ownership interest in a vehicle driven by a person arrested for and convicted of driving while impaired (DWI). We affirm.

FACTS

On February 1, 2021, Polk County Sheriff's Deputy Lee Tate responded to a report of a vehicle in a ditch north of East Grand Forks, Minnesota. Tate discovered Kari Marie Rivard unconscious inside of respondent 2019 GMC Yukon SUV (the Yukon).¹ Tate suspected Rivard of a DWI offense and eventually arrested Rivard, who was later charged with two counts of second-degree DWI and one count of driving after revocation. At the time of her arrest, Rivard had one prior DWI conviction and a revoked driver's license. Rivard later pleaded guilty to second-degree DWI as a result of this incident.

Following Rivard's arrest, the Polk County Sheriff's Office seized the Yukon for forfeiture under Minnesota's DWI vehicle forfeiture statute, Minnesota Statutes section 169A.63 (2020).² On February 24, 2021, appellant Lucas Paul Gilbertson filed this demand for judicial determination of forfeiture,³ arguing that the Yukon should be returned to him because he was an innocent owner. The matter proceeded to a court trial. Gilbertson testified on his own behalf and did not call any other witnesses. Respondent called two witnesses: Tate and D.K., a forfeiture coordinator with the Minnesota State Patrol. Both

¹ In a civil forfeiture action, "[t]he property seized becomes the defendant based on the legal fiction that it is the inanimate object itself, not its possessor or owner, that is guilty of wrongdoing." *Riley v. 1987 Station Wagon*, 650 N.W.2d 441, 443 (Minn. 2002).

² The legislature substantively amended section 169A.63 effective January 1, 2022. 2021 Minn. Laws 1st Spec. Sess. ch. 11, art. 5, § 1-8, at 110-19; *see also* 2023 Minn. Laws ch. 52, art. 19, § 10, at 309-10 (enacting amendments to forfeiture procedure). Because the sheriff's office seized the Yukon prior to January 1, 2022, we apply the former version of the statute.

³ A person with an ownership interest in a forfeited vehicle may file a demand for judicial determination of forfeiture to contest the forfeiture. *Olson v. One 1999 Lexus*, 924 N.W.2d 594, 598 (Minn. 2019); *see also* Minn. Stat. § 169A.63, subd. 8(e)-(f).

parties introduced various exhibits, including a recording of a phone conversation between Tate and Gilbertson that occurred on February 2, 2021, the day after Rivard's arrest. Gilbertson testified that he was truthful during that phone call. The following fact summary is taken from the testimony and exhibits at trial.

Gilbertson testified regarding his relationship with Rivard, explaining that she was "a friend of [his] for quite some time" and a former romantic partner to whom he was previously engaged. They had been living together from at least December 2019 until the time of trial. Gilbertson testified that they were "just friends" on February 1, 2021, the day of Rivard's arrest. During the February 2, 2021 phone call, however, Gilbertson told Tate that he and Rivard were currently engaged.

Gilbertson testified that Rivard used to own a 2019 Chevrolet Traverse (the Traverse) that was seized in December 2019. He acknowledged that he helped Rivard acquire "whiskey plates" and retrieve the Traverse from the Minnesota State Highway Patrol Office. He stated that he did not remember who drove the Traverse away from the office, but that it was not Rivard because she had a pending DWI. D.K. testified that she was there when Gilbertson and Rivard came to get the Traverse in February 2020, and that she explained to them at that time that Rivard did not have a valid license and could not drive the Traverse.

The Yukon was purchased approximately one week after Gilbertson and Rivard retrieved the Traverse from impound. Gilbertson testified that he was the sole owner of the Yukon. He introduced a certificate of title for the vehicle that listed him as the only owner. He also introduced a bill of sale for \$66,970.87 that listed him as the only buyer.

However, Gilbertson also testified at one point that his “memory [was] a little bit cloudy as to exactly when *we* got it—when *I* got it.” (Emphasis added.) Further, although Gilbertson initially stated that he paid the entire purchase price, he conceded during cross-examination that Rivard gave him “maybe \$10,000” on the day of the purchase. In addition to this amount, Gilbertson admitted on cross-examination that Rivard sold her Traverse to the dealership for \$32,000, and Gilbertson used this sum to buy the Yukon.

Gilbertson testified that, after they purchased the Yukon, Rivard “didn’t drive anything . . . [b]ecause she had gotten in trouble with the Traverse,” and that she had no way to get around, although he “recall[ed] maybe a couple of times she took [the Yukon].” He also testified that he “didn’t want her driving it . . . [b]ecause she had a prior DUI,” but Gilbertson conceded that he allowed Rivard to use the Yukon a couple of times. In addition, although Gilbertson testified that he did not know whether Rivard was insured, this testimony conflicted with Gilbertson’s statements during the February 2, 2021 phone call with Tate, in which Gilbertson stated: “I drive [the Yukon] the majority of the time, but . . . I have her insured and under my policy, that way she can drive it if she needs to.”

Gilbertson also testified that he remembered Rivard was involved in an accident while driving the Yukon in North Dakota in July 2020. Gilbertson acknowledged that he “believe[d]” Rivard was charged with driving after revocation following that accident but was not sure if she was convicted. Gilbertson explained that when Rivard was arrested in February 2021, he had been in North Dakota for two weeks for work. He claimed that the key fob for the Yukon was with him in North Dakota, and that he did not know how Rivard could have started the Yukon without it.

Based on this record, the district court rejected Gilbertson's innocent owner defense. Initially, the district court found that, although Gilbertson testified that he was the sole owner of the Yukon, "the greater weight of the evidence indicates that either: (1) [Rivard] was the sole owner of the [Yukon]; or (2) [Rivard] and [Gilbertson] were joint owners of the [Yukon]." The district court made a general determination that Gilbertson's testimony was "simply not credible when compared to the entire record available to and considered by the Court." The district court then reached a legal conclusion that a joint owner of a vehicle cannot assert the innocent owner defense if another joint owner is also the offender whose actions led to the forfeiture.

Despite concluding that Gilbertson could not assert the innocent owner defense, however, the district court proceeded to make alternative findings addressing the merits of the defense. The district court found that Gilbertson "not only had actual or constructive knowledge" that Rivard would use the Yukon contrary to law, but "actually enabled and encouraged the use or operation of the [Yukon] by unlicensed/revoked driver [Rivard]." The district court reasoned that Gilbertson knew about Rivard's revoked driver's license given (1) his "close and intimate relationship" with Rivard; (2) his involvement in helping Rivard retrieve the Traverse; (3) the events stemming from Rivard's July 2020 accident while driving the Yukon; and (4) his statement to Tate that Rivard was insured to drive the Yukon so "she [could] drive it if she needs to." The district court also found that "Gilbertson did not take any steps whatsoever to prevent the use of the [Yukon] by [Rivard]," that he "went out of his way to guarantee that [Rivard] had a motor vehicle to drive," and that Rivard had "unfettered access" to the Yukon. Based on these findings, the

district court found that Gilbertson had “failed to establish by clear and convincing evidence that he is an ‘innocent owner.’”⁴ Gilbertson appeals.

DECISION

Gilbertson raises two distinct challenges to the district court’s forfeiture order. First, Gilbertson argues that the district court erred as a matter of law when it considered Rivard’s prior driving record. Second, Gilbertson argues that the district erred as a factual matter when it determined that Gilbertson knew Rivard would drive the Yukon. We conclude that Gilbertson’s legal challenge lacks merit because it is unsupported by any legal authority and is contrary to the plain language of the statute. We also conclude that the district court did not clearly err in making its factual findings.⁵

“Civil forfeiture is a process by which a law enforcement agency . . . obtains legal title to property connected with criminal activity.” *Jensen v. 1985 Ferrari*, 949 N.W.2d 729, 734 (Minn. App. 2020). The Minnesota Legislature has established that when a person is arrested for certain designated offenses, such as DWI, the vehicle used may be seized and forfeited to the state. Minn. Stat. § 169A.63, subds. 1(e) (defining “[d]esignated offense” to include second degree DWI), 2(b)(1) (providing for seizure); *see generally Jensen*, 949 N.W.2d at 734-35 (describing forfeiture process); *Olson*, 924 N.W.2d at 598-99 (same). A person may challenge the forfeiture, as Gilbertson did here, by asserting “a

⁴ The district court also rejected Gilbertson’s claim that forfeiture was constitutionally disproportionate to the offense. Gilbertson does not challenge this decision on appeal.

⁵ Portions of Gilbertson’s brief appear to dispute the factual finding that Gilbertson knew Rivard had a previous accident while driving the Yukon. Although Gilbertson initially denied knowing about the accident, he later corrected himself and stated that he knew about the accident. Based on this testimony, the district court did not clearly err.

so-called ‘innocent owner’ defense.” *Olson*, 924 N.W.2d at 599.⁶ Under the version of section 169A.63 in effect at the time of seizure here, a vehicle owner must “demonstrate by clear and convincing evidence that the petitioning owner did not have actual or constructive knowledge that the vehicle would be used or operated in any manner contrary to law *or* that the petitioning owner took reasonable steps to prevent use of the vehicle by the offender.” Minn. Stat. § 169A.63, subd. 7(d) (emphasis added). Driving while impaired and driving without a valid license both constitute “[v]ehicle use contrary to law.” *Id.* The legislature also mandated that district courts presume that an owner has knowledge that a person is driving the owner’s vehicle contrary to law when the driver of the vehicle is a member of the owner’s household and has “three or more prior impaired driving convictions.” *Id.*

This court reviews a district court’s factual findings for clear error, including a finding that a petitioning owner had actual or constructive knowledge of the use of a vehicle contrary to law. *Woodruff v. 2008 Mercedes*, 831 N.W.2d 9, 13, 16 (Minn. App. 2013); Minn. R. Civ. P. 52.01. When reviewing findings for clear error, appellate courts defer to

⁶ Gilbertson also challenges the district court’s conclusion that a joint owner of a vehicle cannot assert the innocent owner defense. *See Laase v. Chevrolet Tahoe*, 776 N.W.2d 431 (Minn. 2009) (holding that the innocent owner defense was not separately applicable to each joint owner of a vehicle). Gilbertson argues—and respondent agrees—that after the *Laase* decision, the legislature amended the statute, allowing joint owners to raise the innocent owner defense. *See* 2017 Minn. Laws ch. 12, § 1 (amending the statute to allow “any of [a vehicle’s] owners” to raise the defense instead of simply a vehicle’s “owner”); *see also Olson*, 924 N.W.2d at 599, n.1 (referencing this amendment). We need not address whether the district court erred in concluding that Gilbertson could not raise the innocent owner defense given our decision to affirm the district court’s alternative determination that Gilbertson did not establish the elements of the innocent owner defense.

the district court’s credibility determinations and will not “reweigh the evidence,” “engage in fact finding anew,” or “reconcile conflicting evidence.” *In re Civil Commitment of Kenney*, 963 N.W.2d 214, 221-23 (Minn. 2021) (quotations omitted). This court will only reverse for clear error when, “on the entire evidence, we are left with a definite and firm conviction that a mistake has been committed.” *Id.* at 221 (quotation omitted). Questions of law, however, are reviewed de novo. *Patino v. One 2007 Chevrolet*, 821 N.W.2d 810, 813 (Minn. 2012).

We first address Gilbertson’s contention that the district court erred as a matter of law. Gilbertson argues that the statute precludes consideration of Rivard’s prior driving record because she had fewer than three prior impaired driving convictions. We are not convinced by this argument, however, because the statute contains no language precluding consideration of a household member’s driving record. Instead, it mandates that, when the driver is a member of the owner’s household and has three or more DWI convictions, district courts must presume the owner has knowledge that the driver is using the vehicle contrary to law. Gilbertson directs us to no binding authority—and we are aware of none—to support his argument that the statutory mandate to presume the owner’s knowledge when the driver has three or more DWI convictions also acts as a silent bar to the consideration of a driver’s first and second prior DWI convictions. Absent any such authority, we decline to graft this language onto the statute.

We now turn to Gilbertson’s factual challenge to the forfeiture order. The district court found that Gilbertson “not only had actual or constructive knowledge” that Rivard would drive the Yukon contrary to law, but “he actually enabled and encouraged” Rivard’s

use of the Yukon. As stated above, we note initially that Gilbertson—and not the state—carries the burden to establish a lack of constructive and actual knowledge by clear and convincing evidence. Minn. Stat. § 169A.63, subd. 7(d). We also emphasize that the district court disbelieved Gilbertson’s testimony, stating that “the testimony and representations of [Gilbertson] [were] simply not credible.” In short, because Gilbertson was the only witness in support of his petition and because we defer to the credibility determination of the district court, there is no credible evidence presented that could clearly and convincingly establish Gilbertson’s lack of knowledge—actual or constructive—that Rivard was using the Yukon contrary to the law.⁷

Moreover, we conclude the district court’s finding is supported by evidence presented. For instance, D.K. told Gilbertson that Rivard could not drive when Gilbertson helped Rivard retrieve the Traverse from impound in February 2020, and Gilbertson knew that Rivard had a pending DWI at that time. Further, Gilbertson admitted that he knew Rivard had not only driven the Yukon in July 2020, but he knew that she was involved in an accident while driving the Yukon at that time and had been charged with driving after revocation in connection with this accident. In addition, Gilbertson told Tate during the February 2, 2021 phone call—on the day after Rivard’s arrest—that Rivard was insured

⁷ On appeal Gilbertson argues that there may be some theoretical circumstances in which Rivard could have lawfully driven the Yukon. For example, Gilbertson contends that if Rivard was enrolled in the ignition interlock program, she could lawfully drive the Yukon. *See generally* Minn. Stat. § 171.306 (2022) (establishing ignition interlock program). Gilbertson, however, did not make this argument below, and we therefore decline to consider it. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (“A reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it.” (quotation omitted)).

under his policy so “she can drive [the Yukon] if she needs to.” Given this evidence, we conclude that the district court did not clearly err in making its factual findings regarding Gilbertson’s knowledge.

Affirmed.