

*This opinion is nonprecedential except as provided by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
A23-1638**

Jon Peter Smith,
Appellant,

vs.

\$17,554.00 in U.S. Currency and
All Physical Property Listed on Property Receipt
(Vizio Flat Screen TV, Vizio FlatScreen TV, Nightowl DVR,
Six VideoSurveillance Cameras and Associated Cords,
and Cassida Tiger Money Counter),
Respondent.

**Filed September 3, 2024
Affirmed
Larson, Judge**

Isanti County District Court
File No. 30-CV-20-318

Jon Peter Smith, Faribault, Minnesota (self-represented appellant)

Jeffrey R. Edblad, Isanti County Attorney, Nicholas J. Colombo, Assistant County
Attorney, Cambridge, Minnesota (for respondent)

Considered and decided by Larson, Presiding Judge; Segal, Chief Judge; and
Klaphake, Judge.*

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

NONPRECEDENTIAL OPINION

LARSON, Judge

Appellant Jon Peter Smith challenges a district court decision ordering forfeiture of \$17,554 and certain items of personal property¹ to the Isanti County Sheriff's Office on the ground that he presented evidence that he earned the money through legitimate means. Because we conclude the district court did not clearly err when it found the forfeited money was not legitimately gained, we affirm.

FACTS

The State of Minnesota charged Smith with first-degree sale of a controlled substance, first-degree possession of a controlled substance, and first-degree storage of methamphetamine paraphernalia in the presence of a child. Following Smith's arrest, \$17,554 and certain items of personal property were seized and forfeited. Smith pleaded guilty to first-degree possession, and the state dismissed the other two charges. On July 2, 2020, Smith filed a demand for judicial determination of forfeiture. The following facts are taken from the evidence submitted during the forfeiture trial.

"[S]ometime before noon" on May 12, 2020, a drug task force conducted a controlled buy of \$2,800 worth of methamphetamine from Smith. Around 4:00 p.m., the task force executed a search warrant on Smith's residence. When the task force executed the search warrant, Smith was alone in the detached garage.

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). Thus, the seized property is the respondent in this matter.

Upon searching the property, the task force recovered around a pound and a half of methamphetamine from the garage. They also seized two televisions, six surveillance cameras, a digital-video recorder (DVR), and a money-counting machine. The task force found the televisions, DVR, and money-counting machine in the garage, and the surveillance cameras around the property. The televisions were connected to the DVR, which recorded video footage from the surveillance cameras. The Isanti County sheriff testified that the electronics “provide . . . safety and security for an individual who could potentially be selling drugs.”

Task-force officers arrested Smith and searched his person. The officers found more than \$17,000 in cash on Smith’s person. The money was arranged in rubber-banded bundles, and the sheriff testified that, in his experience, this was consistent with the sale of controlled substances. The officers found the \$2,800 from the controlled buy among the money confiscated from Smith’s person.²

Following Smith’s arrest, an officer tested samples swabbed from the money for the presence of methamphetamine. The testing officer took three samples, which contained 41%, 57%, and 73% methamphetamine, with two samples also testing positive for high amounts of cocaine. The testing officer testified that, in his experience, most samples from seized currency contain less than 20% of a particular drug, so these results were “more than usual.” By comparison, the testing officer stated that money in regular circulation normally

² Although the sheriff testified that the \$2,800 was “commingled” with the other money, on cross-examination he admitted that the first time he saw the money was when it was being counted on the hood of a squad car. The sheriff further testified that the officers commingled money from different bundles as it was counted.

will not “alarm” for any controlled substance, although they will occasionally set off a “lower alarm[.]” at 2-5% cocaine. The sheriff similarly testified that the test results were the highest he had seen in his career.

At trial, Smith did not dispute that he was selling drugs in his home but claimed the seized money “was different money” from the money related to his drug sales. Smith presented evidence to support his argument that he obtained the money through legitimate means.

First, Smith entered two purchase agreements into evidence showing that he had sold two cars for a combined total of \$8,250 on May 8, 2020. Smith testified that he was paid cash for both cars, he kept the money on his person, and the money was in his pocket when he was arrested on May 12, 2020. Smith further testified that he did not put the money in the bank because, per the social-security rules, his bank account must not exceed \$2,000, or he must return the money he receives from social security.

Second, Smith entered into evidence several W-2G tax forms from 2019 and 2020, showing gambling winnings he received from various casinos. The W-2G winnings totaled \$43,920.69. Smith testified that he received these winnings in cash. Smith explained that he would typically use these winnings to continue gambling, but that he stopped doing so because the pandemic made it difficult to go to the casinos. Smith testified that he won around \$17,200 in December 2019, and he kept essentially all of that money in his jacket pocket because, due to the social-security rules, he did not want to bring it to a bank. Smith also said he did not put the money in a safe or other secure location because it “made [him] feel good,” to have the money in his pocket.

At the conclusion of trial, the district court ordered the property forfeited to the Isanti County Sheriff's Office. The district court found that the seized money "tested positive for high levels of methamphetamine and cocaine," and that the controlled-buy money was comingled with the other money confiscated from Smith's pockets. The district court further noted that Smith "admitted to drug-related offenses, including the sale of drugs." Given these facts, the district court found that it was "highly probable . . . that the currency was involved in drug transactions and was representative of proceeds of illegal drug activity." The district court also addressed Smith's evidence that he obtained the money legitimately. The district court explicitly found that "it [was] not credible that [Smith] would keep over \$17,000.00 on his person into mid-2020 from gambling in 2019 and the sale of the vehicles, particularly when the money was tainted with high levels of methamphetamine and cocaine and was mixed in with the drug buy money." Based on these findings, the district court determined the state had proven "by clear and convincing evidence" that the money and other seized assets were proceeds or "instrumentalities of a controlled substance offense."

Smith appeals.

DECISION

Smith challenges the district court's decision that the money was subject to forfeiture after he pleaded guilty to first-degree possession of a controlled substance. Specifically, Smith argues the district court's findings regarding the source of the seized

money were clearly erroneous because he presented evidence at trial establishing that the money was legitimately gained.³

We review a district court’s factual findings for clear error. *Woodruff v. 2008 Mercedes*, 831 N.W.2d 9, 13 (Minn. App. 2013); Minn. R. Civ. P. 52.01. “A district court’s findings of fact are not to be disturbed if they are supported by reasonable evidence.” *Woodruff*, 831 N.W.2d at 13. When reviewing factual findings for clear error, we defer to 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). We 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).

Forfeiture “is a civil *in rem* action, generally independent of any criminal prosecution.” *Jacobson v. \$55,900 in U.S. Currency*, 728 N.W.2d 510, 519 (Minn. 2007). Under Minn. Stat. § 609.5314, subd. 1(a)(1) (2018),⁴ all money found in proximity to a controlled substance is “presumed to be subject to administrative forfeiture.” Under Minn. Stat. § 609.5311, subd. 2(a) (2018), personal property “that has been used, . . . or has in

³ Smith also argues that the legislature amended the forfeiture statutes in 2021 to “elevate[] the burden of proof” required in forfeiture cases. We agree that the 2021 amendments modified the statutory framework for civil forfeitures, but the applicable amendments only apply to seizures that took place “on or after” January 1, 2022. *See* 2021 Minn. Laws 1st Spec. Sess. ch. 11, art. 5, §§ 11, at 2072-73 (amending Minn. Stat. 609.5311, subd. 2(a) (2020)); 14, at 2074-75 (amending Minn. Stat. 609.5314, subd. 1(a)) (2020)). Here, the seizures took place on May 12, 2020.

⁴ The legislature also amended Minn. Stat. § 609.5314, subd. 1, in 2023. *See* 2023 Minn. Laws, ch. 63, art. 4, § 46 at 2847-48. Like the 2021 amendments, these changes are not applicable to the seizure at issue in this case.

any way facilitated, . . . exchanging of . . . a controlled substance . . . is subject to forfeiture.” “Certain law enforcement agencies may seize such property without judicial process if the seizure is incident to a lawful search. A person claiming an interest in the property may then demand a judicial determination as to whether the property is connected to drug trafficking and therefore subject to forfeiture.” *Jacobson*, 728 N.W.2d at 519 (citations omitted). “The appropriate agency handling the judicial forfeiture 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) (2018).

Here, the district court found that: Smith admitted to “drug-related offenses, including the sale of drugs”; the money was seized “in Smith’s garage, in close proximity to the methamphetamine”; samples from the money “tested positive for high levels of methamphetamine and cocaine”; and the money from the controlled buy was commingled with the other money on Smith’s person. With respect to Smith’s claim that he obtained the money through legitimate means, the district court explicitly found “that it [was] not credible that [Smith] would keep over \$17,000.00 on his person” for noncriminal purposes “when the [money] was tainted with high levels of methamphetamine and cocaine and was mixed in with the drug buy money.” Given these facts, the district court determined, “by clear and convincing evidence,” that the money and other assets seized were proceeds or “instrumentalities of a controlled substance offense.”

We conclude that the record amply supports the district court’s finding that Smith did not obtain the money through legitimate means. The district court’s finding is

supported by testimony from the sheriff and testing officer, Smith's admission that he engaged in the sale of methamphetamine, and the high positive test results for methamphetamine and cocaine on the money. Further, the district court explicitly found Smith's testimony that he kept the money from his gambling winnings and the sale of the vehicles on his person "not credible." *See Rife v. One 1987 Chevrolet Cavalier*, 485 N.W.2d 318, 321 (Minn. App. 1992) (noting that we give due regard to a district court's credibility determinations), *rev. denied* (Minn. June 30, 1992). Because we are not left with a definite and firm conviction that the district court made a mistake when it found Smith did not obtain the money through legitimate means, the district court's finding that the forfeited money was involved in drug transactions or represented the proceeds of illegal drug activity was not clearly erroneous. We, therefore, affirm the district court's forfeiture order.

Affirmed.