

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

File No: 19HA-CV- [REDACTED]

[REDACTED]

Judge Joseph T. Carter

Plaintiff,

vs

**ORDER GRANTING MOTION
FOR SUMMARY JUDGMENT
ORDER FOR JUDGMENT
MEMORANDUM OF LAW**

One 2009 GMC Sierra

Vin. # [REDACTED]

License No. [REDACTED]

AND JUDGMENT

Defendant.

The above-entitled matter came on for hearing before Joseph T. Carter, Judge of District Court, on September 18, 2017, at the Dakota County Judicial Center in Hastings, Minnesota. Paul B. Ahern, Esq., represented Plaintiff, who did not appear in person. Benjamin Colburn, Esq., Assistant Rosemount City Attorney, appeared on behalf of Defendant, One 2009 GMC Sierra automobile. Plaintiff moved for summary judgment on the basis that the forfeiture statute is unconstitutional.

Based upon the file, record, and proceedings, including the arguments of counsel, the Court makes the following:

ORDER

1. Defendant's Motion for Summary Judgment is granted.
2. Defendant's due process rights under the United States and Minnesota Constitutions were violated as Minnesota Statute § 169A.63, subd. 9(d) was applied in this case.
3. The forfeiture action is dismissed.

FILED FIRST JUDICIAL DISTRICT
DAKOTA COUNTY, Court Administrator

NOV 16 2017

MEMORANDUM

On September 3, 2016, Plaintiff ██████████ was arrested and charged with several counts of driving while intoxicated (DWI). ██████████ a North Dakota resident, was eventually convicted of second degree DWI because he refused to take a breath test pursuant to the Minnesota Implied Consent law as provided under Minnesota Statute § 169A.51 et. seq. The Rosemount Police Officer who stopped ██████████'s car issued a Forfeiture Notice as prescribed under Minn. Stat. § 169A.63, but only after ██████████ declined to take a breath test. The police seized ██████████'s vehicle, a 2009 GMC Sierra, worth approximately \$22,000.00.

The seizure of the vehicle affected the plea negotiations in the criminal DWI matter. The State, through the Rosemount City Attorney's Office, has not refuted ██████████'s contention that a plea bargain to a third-degree conviction was *fair*, and does not refute that the Rosemount Police Department influenced the prosecutor by demanding that a plea or conviction to a second degree charge was more suitable because only then could they seize the vehicle for its full value. Under Minnesota law, the arresting police agency is entitled to 70% of any remaining value of a vehicle that is forfeited and the prosecutor's office is entitled to the remaining 30%. See *Minn. Stat. § 169A.63, Subd. 10(b)(1) & (2)*.

In October 2016, before his plea, ██████████ tried to negotiate the return of his vehicle. He sent the prosecuting authority a Petition for Mitigation pursuant to Minn. Stat. § 169A.63, Subd. 5a. As a follow up to the Petition for Mitigation, ██████████ proposed a buy-back agreement in which he offered to purchase his vehicle from the police for \$11,000.00. The police department advised the prosecuting authority to reject the offer.

Accordingly, Plaintiff █ has moved for summary judgment on the basis that the statute is unconstitutional beyond a reasonable doubt because his due process rights were violated.

Rule 56.03 of the Minnesota Rules of Civil Procedure provides that summary judgment is appropriate and judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law. The burden of establishing the existence of a material fact is upon the party opposing the motion for summary judgment. *Carlisle v. City of Minneapolis*, 437 N.W.2d 712 (Minn. Ct. App. 1989). A material fact has been defined by case law as a fact that will affect the outcome of the case. *Rathbun v. W.T. Grant Co.*, 300 Minn. 223, 219 N.W.2d 641 (1974).

Summary judgment is designed to secure the just, speedy, and inexpensive resolution of all actions through a procedure for summary relief in those cases where the moving party is entitled to judgment as a matter of law. *Johnson Bros. Wholesale Liquor v. Price Co.*, 293 Minn. 373, 195 N.W.2d 830 (1972). This procedure allows the Court to promptly dispose of an action, or any party thereof, on the merits if there exists no dispute regarding material facts of the lawsuit, and a determination of the applicable law will resolve the controversy.

The evidence is viewed in the light most favorable to the non-moving party. *Vieths v. Thorp Finance Co.*, 305 Minn. 522, 232 N.W.2d 776 (1975). However, a party opposing a motion for summary judgment cannot rely upon mere allegations of its pleadings, but must present specific facts showing genuine issues for trial. *Marose v.*

Hennameyer, 347 N.W.2d 509 (Minn. Ct. App. 1984). The existence of a genuine issue regarding material facts so as to preclude summary judgment must be established by "substantial evidence." *Murphy v. Country House, Inc.*, 307 Minn. 344, 351, 240 N.W.2d 507, 512 (1976). The mere existence of a factual dispute does not make summary judgment improper. *Pischke v. Kellen*, 384 N.W.2d 201 (Minn. Ct. App. 1986). Summary judgment may not be avoided simply because there is some metaphysical doubt as to a factual issue. *Bob Useldinger & Sons, Inc. v. Hangeleben*, 505 N.W.2d 323, 328 (Minn. 1993).

A Minnesota statute is presumed constitutional and will be declared unconstitutional "only when absolutely necessary." *In re Haggerty*, 448 N.W.2d 363, 364 (Minn. 1989) (citing *City of Richfield v. Local No. 1215*, 276 N.W.2d 42, 45 (Minn. 1979)). The party challenging a statute has the burden of showing beyond a reasonable doubt that a violation of some provision of the Minnesota Constitution exists. *Id.* (citing *McGuire v. C & L Restaurant, Inc.*, 346 N.W.2d 605, 611 (Minn. 1984)).

Due process guarantees a party "reasonable notice, a timely opportunity for a hearing, the right to be represented by counsel, an opportunity to present evidence and argument, the right to an impartial decisionmaker, and the right to a reasonable decision based solely on the record." *Humenansky v. Minnesota Bd. of Med. Exam'rs*, 525 N.W.2d 559, 565 (Minn. Ct. App. 1994), *review denied* (Minn. Feb. 14, 1995). "Procedural due process protections restrain government action which deprives individuals of 'liberty' or 'property' interests within the meaning of the due process clause of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 7 of the Minnesota Constitution." *Id.* "The due process protection

provided under the Minnesota Constitution is identical to the due process guaranteed under the Constitution of the United States." *Sartori v. Harnischfeger Corp.*, 432 N.W.2d 448, 453 (Minn. 1988).

To determine whether an individual's right to procedural due process has been violated, the Court must determine whether a protected liberty or property interest is implicated and then determine what process is due by applying a balancing test. *Mathews v. Eldridge*, 424 U.S. 319, 332, 335, 96 S.Ct. 893, 901, 903 (1976). In applying the *Mathews* test, three factors are considered:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest, through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Fosselman v. Comm'r of Human Servs., 612 N.W.2d 456, 462 (Minn. Ct. App. 2000).

The due process issues █████ challenges are *reasonable notice and the right to an impartial decision-maker*. In examining the first factor, █████'s protected interest in the use of his GMC Sierra automobile is unquestionably at stake.¹ █████ maintains that he had no notice that his refusal could result in the police taking his vehicle. While the procedural posture of this case is one for summary judgment, the State, in representing the GMC Sierra, has chosen not to contest whether the notice was adequate.² In fact,

¹ In cases involving pre-hearing suspension of a motorist driver's license, the United States Supreme Court in *Mackey v. Montrym*, 443 U.S. 1, 11-12, 99 S.Ct. 2612, 2618 (1979), has held that the weight given the first *Mathews* factor—the private interest factor—depends on three other factors: (1) the duration of the revocation, (2) the availability of hardship relief, and (3) the availability of prompt postrevocation review. *Id.*

² The State decided not to brief the issues Plaintiff presented.

no genuine issue of fact exists regarding whether ██████████ was informed or given *reasonable notice* that the State could confiscate his vehicle if he refused to take a test; otherwise, he may have taken a test.

██████████ also contends that he was not afforded the right to an impartial decision-maker as mandated under the due process clause upon his pursuing hardship relief. Under Minn. Stat. § 169A.63, Subd. 5a, “[t]he prosecuting authority may remit or mitigate the forfeiture upon terms and conditions the prosecuting authority deems reasonable....” To do so, the prosecutor must find either that “(1) the forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to violate the law; or (2) extenuating circumstances justify the remission or mitigation of the forfeiture.” Minn. Stat. § 169A.63, Subd. 5a. But the law creates a conflict for the prosecutor who stands to benefit from the vehicle being forfeited. The prosecutor’s office will receive 30% of the proceeds from the sale of ██████████’s vehicle, minus any cost in selling the vehicle. See Minn.Stat. § 169A.63, Subd 10(b)(2). No legal mechanism exists to appeal the prosecutor’s decision. Accordingly, no fact issue exists regarding the wording or intent of the statute, and ultimately the conflict created for the prosecutor who must decide whether to remit or mitigate the forfeiture of a vehicle.

Upon examining the second *Matthews* factor, ██████████ failed to show that the risk of erroneous deprivation of his property is significant. Under Minnesota law, after ██████████ was charged by a criminal complaint, a judicial review—Omnibus hearing—was conducted to determine whether probable cause exists to charge him with an offense that triggers the forfeiture statute. In fact, the Complaint in this case sets forth a

probable cause statement that demonstrates that it is more likely than not that ██████████ committed the offense of second degree DWI.

The third factor focuses on the State's interests. The State clearly has a compelling interest in maintaining highway safety by keeping intoxicated drivers off the road. See *Lukkason v. 1993 Chevrolet Extended Cab Pickup*, 590 N.W.2d 803, 808-09 (Minn. Ct. App. 1999). In this case, the State's interest would have been fulfilled if ██████████ had been told of the consequences of refusing to take a test. If ██████████ had taken a breath test, the State would have been able to actually determine whether he was driving while impaired. The goal should not be to win the case, to revoke a motor's license to drive, or to forfeit his vehicle, but to assure that the driver has not and will not put the public at risk while affording the driver due process of law.

In examining the *Matthews* factors, ██████████ has shown beyond a reasonable doubt that his due process rights were violated, which resulted in his suffering a harm. To summarize, ██████████ was not notified that his refusal to take a test could result in his vehicle being forfeited. Moreover, he was not provided an impartial decision-maker upon filing a Petition for Mitigation; therefore, he had no meaningful opportunity to apply for hardship relief. Accordingly, ██████████ has shown that no genuine issue of material fact exists that his due process rights under the Minnesota Constitution were violated.

J.T.C.