IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
SEPTEMBER SESSION, 1996

FILED

December 6, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,	)	
	)	No. 03C01-9604-CR-00173
Appellant	)	
	)	KNOX COUNTY
vs.	)	
	)	Hon. Ray L. Jenkins, Judge
CHUCKEY R. KING, Alias,	)	
	)	(Poss. of Cocaine to sell and deliver;
Appellee	)	Poss. of Marijuana; Possession of controlled substance Diazepam, Poss. of Drug Paraphernalia)

STATE APPEAL

For the Appellee:

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AT TRIAL:
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OPINION FILED: _____

REVERSED; INDICTMENT REINSTATED

David G. Hayes
Judge

OPINION

The State appeals, pursuant to Tenn. R. App. P. 3(c), the Knox County Criminal Court's dismissal of an indictment charging the appellee, Chuckey R. King, with one count of possession of cocaine with the intent to sell and deliver, one count of possession of marijuana, one count of possession of diazepam, and one count of possession of drug paraphernalia. The State contends that the trial court erred in ruling that the appellee's constitutional right against double jeopardy was violated based upon the forfeiture to the State of his Toyota Celica and $196.00 in currency. Specifically, the State argues that the seizure and forfeiture of the appellee's personal property to the State does not constitute "punishment" within the meaning of the double jeopardy clauses of the United States Constitution or the Constitution of the State of Tennessee.

Consistent with the holdings of the United States Supreme Court and courts of this state, we reverse the trial court's dismissal of the indictment.

I. Background

On February 17, 1994, Officer Russell Saylor of the Knoxville Police Department arrested the appellee for possession of cocaine, marijuana, diazepam, and drug paraphernalia. At the time of the arrest, Saylor confiscated the controlled substances found on the appellee as well as those located in his vehicle[1]. Additionally, pursuant to the Tennessee Drug Control Act, Saylor seized the appellee's 1983 Toyota Celica and $196.00 in U.S. currency.

On January 31, 1995, an administrative law judge, sitting for the

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[1]Pursuant to a search of the appellee and his vehicle, Saylor discovered a bag containing 31.4 grams of cocaine on the floorboard of the car; four blue pills, diazepam, in the appellee's right front pocket; and 8.6 grams of marijuana in the vehicle's glove box.

Commissioner of the Tennessee Department of Safety, found, by a preponderance of the evidence, that the appellee had violated provisions of the Tennessee Drug Control Act. Specifically, the judge found that the appellee drove the vehicle to its location, that the vehicle contained a felony amount of narcotics, and that the $196.00 were proceeds from previous narcotics sales. Tenn. Code Ann. § 53-11-451(a)(4); -451(a)(6)(A). Accordingly, the judge ordered that the personal property seized from the appellee be forfeited to the State.

After this order became final, the appellee filed a motion to dismiss the indictment on the ground that prosecuting him for these offenses violated his constitutional right against twice being placed in jeopardy for the same offense. The Knox County Criminal Court, upon hearing the motion, entered an order granting the appellee's motion to dismiss the indictment.

II. Analysis

In this appeal, the State argues that double jeopardy protections do not prohibit criminal prosecutions because of prior civil forfeitures. The double jeopardy clause of both the United States and Tennessee Constitutions prevents successive punishments and successive prosecutions, i.e. there may not be a second prosecution for the same offense after acquittal; there may not be a second prosecution for the same offense after conviction; and there may not be multiple punishments for the same offense.[2] State v. Grapel Simpson, No. 02C01-9508-CC-00239 (Tenn. Crim. App. at Jackson, Aug. 2, 1996) (citing North Carolina v. Pearce, 395 U.S. 711, 89 S.Ct. 2072 (1969)). The appellee contends

[2]The courts of this state have consistently held that the Tennessee Constitutional provision against double jeopardy provides no greater protection than that afforded by the United States Constitution. State v. Simpson, No. 02C01-9508-CC-00240 (Tenn. Crim. App. at Jackson, Sept. 30, 1996); State v. Vance, No. 03C01-9601-CC-0026 (Tenn. Crim. App. at Knoxville, Sept. 9, 1996); State v. Bradley, No. 03C01-9510-CC-0318 (Tenn. Crim. App. at Knoxville, Sept. 4, 1996); State v. Simpson, No. 02C01-9508-CC-00239 (Tenn. Crim. App. at Jackson, Aug. 2, 1996).

that civil forfeiture is a punishment, or in the alternative, the same offense, and, therefore, imposes successive punishments for the same crime.

The Supreme Court of the United States and the courts of this State have resolved this issue. In United States v. Ursery, -- U.S. --, 116 S.Ct. 2135, 2140-42 (1996), the Supreme Court held that a civil *in rem* forfeiture is neither "punishment" nor criminal for double jeopardy consideration. See Simpson, No. 02C01-9508-CC-00239; see also Simpson, No. 02C01-9508-CC-00240; Vance, No. 03C01-9601-CC-0026; Bradley, No. 03C01-9510-CC-0318. Accordingly, the forfeiture of property as a result of a civil complaint does not bar a subsequent criminal prosecution.[3] Id.

Nonetheless, the Supreme Court, in Ursery, -- U.S.--, 116 S.Ct. at 2142, restated the two-step analysis employed in United States v. One Assortment of 89 Firearms, 465 U.S. 354, 104 S.Ct. 1099 (1984), to determine whether forfeiture is punishment for double jeopardy purposes. This two-step analysis inquires, first, whether Congress intended a particular forfeiture to be a remedial civil sanction or a criminal penalty. Id. And, second, whether the proceeding is so punitive in fact as to establish that they cannot legitimately be viewed as civil in nature. Id. When applying this analysis to the legislation at issue in the present case, the courts of this state have determined that our legislature designed forfeiture under Tenn. Code Ann. § 53-11-201-204 and Tenn. Code Ann. § 53-11-451 as a remedial civil sanction.[4] Bradley, No. 03C01-9510-CC-0318. Additionally, Tennessee courts have held that forfeiture proceedings

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[3]The Tennessee forfeiture provisions are virtually identical to the federal provisions considered in Ursery. Simpson, No. 02C01-9508-CC-00240.

[4]See also Tenn. Code Ann. § 39-11-102, which provides in part,

> Conduct does not constitute an offense unless it is defined as an offense. . .. This title does not bar, suspend, or otherwise affect any right or liability to damages, penalty, forfeiture, or other remedy authorized by law to be recovered or enforced in a civil suit for conduct the criminal code defines as an offense, and the civil injury is not merged in the offense.

(emphasis added).

under our code are not so punitive in form and effect as to render them criminal. Id. Accordingly, we conclude that the civil forfeiture of the appellee's 1983 Toyota Celica and the $196.00 in United States currency does not preclude his criminal prosecution on the basis of double jeopardy. See Ursery, -- U.S. at --, 116 S.Ct. at 2149; Simpson, No. 02C01-9508-CC-00240; Vance, No. 03C01-9601-CC-0026; Bradley, No. 03C01-9510-CC-0318; Simpson, No. 02C01-9508-CC-00239.

For the reasons stated herein, the judgment of the trial court dismissing the indictment in this case is reversed. This cause is remanded to the trial court for further proceedings.

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DAVID G. HAYES, Judge

CONCUR:

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JOHN H. PEAY, Judge

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WILLIAM M. BARKER, Judge