

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

APRIL SESSION, 1997

FILED
December 23, 1997
Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)

Appellee,)

VS.)

DONNIE LAMAR CARDEN,)

Appellant.)

C.C.A. NO. 03C01-9610-CR-00378

HAMILTON COUNTY

HON. GARY D. GERBITZ
JUDGE

(Certified Question of Law)

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OPINION FILED _____

AFFIRMED PURSUANT TO RULE 20

JERRY L. SMITH, JUDGE

OPINION

A Hamilton County grand jury indicted Appellant, Donnie Carden, with charges of Driving Under the Influence and Possession of Marijuana. Appellant filed a motion to dismiss based upon his contention that prosecution of these charges was barred by double jeopardy. After a hearing, Appellant's motion was denied. Appellant pled guilty to D.U.I. - 3rd offense and Possession of Marijuana, but reserved the right to appeal based on a certified question of law. Appellant raises the issue whether the policy of the Hamilton County jail of holding someone in custody for a period of six hours to "sober" them up is punitive in nature and whether the Fifth Amendment protection against double jeopardy barred subsequent prosecution of Appellant on the charges for which he was arrested after confinement under this policy .

After a review of the record, we affirm the judgment of the trial court pursuant to Court of Criminal Appeals Rule 20.

Hamilton County law enforcement arrested Appellant on November 4, 1995, for driving under the influence, possession of marijuana, and for possession of drug paraphernalia. Appellant refused to submit to a breath alcohol test and was incarcerated in the Hamilton County jail. Appellant was held in custody for nine and one half hours before being released on bail into his father's custody.

The Hamilton County jail has a policy requiring that anyone arrested for Driving Under the Influence must be detained in that facility for at least six hours. The county sheriff testified that this policy is based upon public safety considerations. In Appellant's case, Appellant's father posted bond for Appellant approximately five hours before

Appellant was released. After the denial of Appellant's motion to dismiss, Appellant pled guilty while reserving this question of law.

With respect to Appellant's double jeopardy issue, Appellant relies upon this Court's decision in State v. Pennington, C.C.A. No. 0101-937-PB-00219, Davidson County (Tenn. Crim. App. , Nashville, Feb.1, 1996) to support his contention that detention pursuant to a policy of detaining arrestees after arrest for D.U.I. makes subsequent prosecution for D.U.I. violative of double jeopardy. However, the Supreme Court recently released State v. Pennington, S.Ct. No. 01-S-01-9607-PB-00133, Davidson County (Tenn., Sept. 8, 1997) overturning this Court's decision in that matter. In that opinion, the Supreme Court specifically held that detention policies such as the one at issue in this case do not invoke the protections of double jeopardy.

In this case, the parties stipulated that one of the purposes of the detention policy was to keep suspected drunk drivers off the road for a period of time after their arrest. In other words, the policy was intended, at least in part, to protect the public from individuals who had been arrested on suspicion of driving under the influence. This is a remedial purpose, not a punitive one, and therefore, the defendant's initial appearance before the judicial commissioner does not constitute an essentially criminal proceeding brought to "vindicate public justice."

Pennington, Id.

Accordingly, we affirm the trial court's judgment pursuant to Court of Criminal Appeals Rule 20.

JERRY L. SMITH, JUDGE

CONCUR:

JOE G. RILEY, JUDGE

CHRIS CRAFT, SPECIAL JUDGE