STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS LEE PANTALONE,

Defendant-Appellant.

UNPUBLISHED
February 18, 1997

No. 181820
Ingham Circuit Court
LC No. 93-66231-FH

Before: McDonald, P. J., and Bandstra and C. L. Bosman*, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of possession with intent to deliver more than 225 but less than 650 grams of cocaine, MCL 333.7403(2)(a)(ii); MSA 14.15(7403)(2)(a)(ii). We affirm.

The Tri-County Metro Narcotics Squad received a communication from the Broward County Sheriff's Department in the state of Florida, indicating their officers had searched and seized a Federal Express package at the Fort Lauderdale airport containing a kilogram of cocaine. The package was addressed to "Joe Panta" at 515 South Butler, Apartment 10, Lansing, Michigan. After receiving a description of the package and a copy of the package's air bill, Metro officers requested the State Police crime lab to put together a "dummy" package, one that looked like the seized package. The dummy package, which contained a mixture of cocaine and other substances was ultimately delivered to the South Butler address. Defendant was arrested after attempting to purchase, during a controlled buy, a portion of the delivered package from Louise Lombardo, the occupant of the apartment and recipient of the package .

On appeal defendant contests the introduction of testimony regarding the package seized in Florida. Specifically defendant claims improper the admission of testimony by a metro officer that cocaine had been seized in Florida and by Lombardo that a portion of that package was intended for defendant. We agree with defendant that the evidence was improperly admitted by these witnesses. Had defendant been charged with conspiracy, or taken possession of the original package, the

* Circuit judge, sitting on the Court of Appeals by assignment.

contested evidence would have been relevant. However, defendant was charged with possessing with the intent to deliver the dummy package. The origin of the original package was irrelevant.[1] Although the evidence was improperly admitted, we find the error was harmless. For the same reason we found the evidence irrelevant, we find no undue prejudice to the defendant in its admission. *People v Price*, 214 Mich App 538; 543 NW2d 49 (1995). Whether there was a different package intended for defendant's acquisition had no bearing on defendant's ultimate possession and attempt to purchase the package of cocaine for which he was charged. Moreover, as is discussed in the next issue, similar evidence was properly introduced by another witness.

Defendant next contends the trial court erred in permitting the late endorsement of a Broward County Sheriff's Department officer. We disagree. A trial court's decision to allow late endorsement of a witness is reviewed for an abuse of discretion. *People v Kulick*, 209 Mich App 258; 530 NW2d 163 (1995) remanded for reconsideration of another issue, 449 Mich App 851; 535 NW2d 788 (1995). No abuse occurred here. As already noted, evidence of the original package was not relevant to the charges filed against defendant. However, once defense counsel made known his intent to present a defense including allegations the metro officers "concocted" a larger package of cocaine to deliver so they could bring more serious charges, evidence regarding the seizure and appearance of the original package became relevant. The Broward Officer testified to these facts. Defendant was offered a reasonable continuance to prepare for the deputies' testimony. No abuse occurred.

Additionally, the trial court properly rejected defendant's challenge to the validity of the search in Florida. An individual has no standing to contest the legality of a search and seizure absent a reasonable expectation of privacy in the object seized. *People v Jordan*, 187 Mich App 582; 468 NW2d 294 (1991). Defendant had no reasonable expectation of privacy in the package of contra band addressed to an alias and delivered to Lombardo at Lombardo's apartment.

Defendant next claims the prosecutor presented insufficient evidence of possession to support his conviction. *People v Wolfe*, 440 Mich 508; 489 NW2d 748 (1992). Our review of the record indicates otherwise.

Finally, defendant contends the criminal prosecution initiated against him placed him in double jeopardy because he had already been the subject of a forfeiture action, pursuant to MCL 333.7523; MSA 14.15(7523), stemming from the same incident. We disagree.

The United States Constitution prohibits placing a defendant twice in jeopardy for a single offense, US Const, Am V.[2] This protection extends to state prosecutions. *Benton v Maryland*, 395 US 784; 89 S Ct 2056; 23 L Ed 2d 707 (1969). However, although successive or multiple criminal punishments are prohibited by the Fifth Amendment, subjection to both criminal and civil sanctions for the same act are not. *United States v Halper*, 490 US 434; 109 S Ct 1892; 104 L Ed 2d 487 (1989). On appeal defendant argues the United States Supreme court's decisions in *Halper, supra, Austin v United States*, 509 US 602; 113 S Ct 2801; 125 L Ed 2d 488 (1993) and *Montana Dep't of Revenue v Kurth Ranch*, 511 US 767; 114 S Ct 1937; 128 L Ed 2d 767 (1994), mandate a

finding the forfeiture of defendant's money was punitive and thus should be considered a criminal sanction subject to the prohibition against multiple punishments. Although not addressed by either party, a similar position was adopted by a panel of this Court in *People v Hellis*, 211 Mich App 634; 536 NW2d 587 (1995). The panel in *Hellis* stated:

> The United States Supreme Court in three recent cases has altered hitherto accepted notions of the effect of monetary penalties for purposes of double jeopardy-based constitutional analysis.

After giving a brief analysis of the above cited Supreme Court cases the Hellis court concluded a balancing test was appropriate to determine whether the double jeopardy protection under the Fifth Amendment is triggered in forfeiture proceedings. The prohibition against double punishment is triggered only if the "total penalty is disproportionate to the offense committed". *Id* at 644. We decline to follow this rule. Since this court's decision in Hellis, the United States Supreme Court has addressed the issue in *United States v Ursery*, ____ US ____; 116 S Ct. 2135; ___ L Ed.2d ____; (1996). In *Ursery*, the Supreme Court, recognizing a movement away from the "hitherto accepted notions" of the effect of civil in rem forfeiture proceedings, made clear its decisions in *Halper*, *Austin*, and *Kurth Ranch*, did not alter the long line of precedent which indicates in rem civil forfeiture is a remedial civil sanction, distinct from potentially punitive in personam civil penalties such as fines, and does not constitute a punishment under the Double Jeopardy Clause. The Court stated:

> In sum, nothing in Halper, Kurth Ranch, or Austin, purported to replace our traditional understanding that civil forfeiture does not constitute punishment for the purpose of the Double Jeopardy Clause.

We therefore reject defendant's contention that the application of Michigan's forfeiture act, patterned after the federal forfeiture act, 21 USC 881(a)(b), *In re Forfeiture of $5,265*, 432 Mich 242, 439 NW2d 246 (1989), violates the prohibition against double punishment. See, also, *People v $25,500 and one 1986 Ford*, ___ Mich App ___ (Docket No. 173325, issued 12/20/96); *People v Levi Acoff*, ___ Mich App ___ (Docket No. 169966, issued 12/13/96).

Affirmed.

/s/ Gary R. McDonald
/s/ Richard A. Bandstra
/s/ Calvin L. Bosman

[1] We note defendant raised no claim of entrapment.

[2] Defendant does not claim a violation of Michigan's constitutional prohibition against placing a defendant twice in jeopardy.