STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DONALD ADGER WILSON,

Defendant-Appellant.

UNPUBLISHED
April 22, 1997

No. 182287
Recorder's Court
LC No. 93009799

Before: Hoekstra, P.J., and Marilyn Kelly and J.B. Sullivan,* JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial conviction for possession with intent to deliver between 50 and 224 grams of cocaine. MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2) (a)(iii). The trial judge sentenced him to seven to twenty years' imprisonment.

Defendant argues that his criminal prosecution violated the Double Jeopardy Clause of the United States Constitution. US Const, Am V. He asserts that his arrest was unlawful, because the police officers failed to exercise their discretion to give him a ticket instead of arresting him. He argues that his motorcycle was impounded and inventoried in violation of state police rules. Finally, he argues that the trial court erred in failing to determine whether the impoundment and inventory search were a pretext for a criminal investigation. We affirm.

First, defendant argues that his criminal prosecution violated double jeopardy protections afforded under the United States Constitution, because he had already been subject to a civil forfeiture stemming from the same incident. Recently, the United States Supreme Court rejected a challenge similar to the one brought here. It held that a civil forfeiture generally does not constitute punishment for purposes of the Double Jeopardy Clause. *United States v Ursery*, ___ US ___; 116 S Ct 2135; 125 L Ed 2d 549 (1996). Defendant has failed to present the "clearest proof," indicating that the forfeiture is "so punitive in purpose or effect" that it is equivalent to a criminal proceeding. *People v Acoff*, 220 Mich App 396; 559 NW2d 103 (1966). In accord with *Ursery*, we conclude that defendant's claim must fail.

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

Next, defendant asserts that, because under certain circumstances an officer may release a reckless driving detainee with an "appearance ticket" rather than arresting the detainee, the troopers' failure to do so in this case was unlawful. We disagree.

Under MCL 257.727(3); MSA 9.2427(3), troopers can release a detainee with an appearance ticket if "under the existing circumstances it does not appear that releasing the person pending the issuance of a warrant will constitute a public menace." This statute does not *require* issuance of an appearance ticket under any given set of circumstances, but rather gives the officers the option to forego arrest at their discretion. Evidence presented at the evidentiary hearing established that the troopers believed defendant posed a threat to the public, and arrested him accordingly.

Next, we find that the impoundment and inventory of defendant's motorcycle pursuant to his arrest were reasonable. An inventory search that is conducted pursuant to standardized police procedure is considered reasonable. *People v Toohey*, 438 Mich 265, 275-276; 475 NW2d 16 (1991). Defendant failed to demonstrate a violation of state police rules which could warrant suppression of evidence yielded from the inventory. The state police's written policy for removing, reporting and inventorying vehicles states that if *immediate removal* of an illegally parked vehicle cannot be arranged, it shall be inventoried and impounded. Even if defendant had been allowed to call a friend to retrieve his vehicle, such would not have constituted immediate removal. Finally, we find that defendant's arrest was not pretextual. In determining whether a stop is pretextual, two factors must be considered. First, did the arresting officer have probable cause to believe that the defendant had committed or was committing an offense? Second, was the arresting officer authorized to effect a custodial arrest for the offense? If both factors are present, the arrest was reasonable. *People v Haney*, 192 Mich App 207, 209-210; 480 NW2d 322 (1991).

The troopers in the instant case observed defendant driving in a reckless manner and thus had probable cause to believe he was committing an arrestable offense. Under the reckless driving statute, the troopers had the authority to take defendant into custody. MCL 257.727; MSA 9.2427. No relevant evidence was submitted establishing that the arrest was a pretext for a criminal investigation.

Affirmed.

/s/ Joel P.Hoekstra
/s/ Marilyn Kelly
/s/ Joseph B. Sullivan