

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

TIMOTHY BAIN,

Defendant-Appellee.

UNPUBLISHED

January 20, 2011

No. 294987

Wayne Circuit Court

LC No. 09-013105-FH

Before: O'CONNELL, P.J., and SAAD and BECKERING, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion to dismiss a charge of operating a motor vehicle while intoxicated (OWI), third offense, MCL 257.625(1), (9). The trial court concluded that double jeopardy protections barred defendant's prosecution. We reverse and remand for further proceedings.

The Allen Park police arrested defendant in January 2009 for OWI and impounded defendant's truck. The prosecutor subsequently obtained a judicial order to hold the truck pursuant to MCL 257.625n. Before adjudication of the criminal charges, defendant and the prosecutor's office entered into an agreement whereby defendant agreed to pay \$1,800 to the prosecutor's office in exchange for return of the truck and for the prosecutor's agreement to forego a forfeiture action.

Defendant thereafter filed a motion to dismiss his criminal case, arguing that the double jeopardy protections precluded prosecution. The trial court concluded that the actions by the prosecutor's office amounted to a penalty and granted defendant's motion. We review de novo the trial court's decision. *People v Garland*, 286 Mich App 1, 4; 777 NW2d 732 (2009).

The United States and Michigan Constitutions prohibit placing a defendant twice in jeopardy for the same offense. US Const, Am V; Const 1963, art 1, § 15; *People v Herron*, 464 Mich 593, 599; 628 NW2d 528 (2001). The double jeopardy clause protects defendants from

multiple punishments and from multiple prosecutions for the same offense.¹ *Herron*, 464 Mich at 599. In the multiple-punishment context, the purpose of the double jeopardy protection is to prevent a court from imposing a greater sentence than that intended by the Legislature. *Hawkins v Dep't of Corrections*, 219 Mich App 523, 526; 557 NW2d 138 (1996).

Plaintiff contends that the trial court erred in finding that double jeopardy protections barred prosecution of defendant. In *People v Garland*, 286 Mich App 1, 4-5; 777 NW2d 732 (2009), this Court explained:

To determine whether a defendant has been subjected to multiple punishments for the “same offense,” we must first look to determine whether the Legislature expressed a clear intention that multiple punishments be imposed. *People v Smith*, 478 Mich 292, 316; 733 NW2d 351 (2007). Where the Legislature clearly intends to impose such multiple punishments, there is no double jeopardy violation. *Id.* Where the Legislature has not clearly expressed an intention to impose multiple punishments, the elements of the offenses must be compared using the *Blockburger*² test. *Id.* at 316-318.

Plaintiff argued below that the forfeiture proceedings under MCL 257.625n were civil in rem proceedings. With respect to civil in rem forfeiture proceedings, the protection against multiple punishments generally does not apply because civil in rem forfeitures are not “punishment” for purposes of a double jeopardy analysis. See *People v Acoff*, 220 Mich App 396, 398-399; 559 NW2d 103 (1996). “[T]he fact that a forfeiture is designated as civil and proceeds in rem establishes a presumption that [it] is not subject to double jeopardy analysis unless the ‘clearest proof’ indicates that the in rem forfeiture is ‘so punitive either in purpose or effect’ as to be equivalent to a criminal proceeding.” *Id.* at 398, quoting *United States v Ursery*, 518 US 267, 289 n 3; 116 S Ct 2135; 135 L Ed 2d 549 (1996).

The trial court determined that the forfeiture proceedings at issue here were not in rem proceedings. Plaintiff does not challenge that determination on appeal. Instead, plaintiff now assumes that the proceedings were a “punishment” for purposes of the double jeopardy analysis

¹ At the motion hearing, defendant acknowledged that this case involves a single proceeding. In the absence of a second prosecution or proceeding, there is no basis for a claim of a violation of the “multiple prosecution” strand of double jeopardy protection. See *Dawson v Secretary of State*, 274 Mich App 723, 730-731; 739 NW2d 339 (2007), and *United States v Jones*, 111 F3d 597, 599 (CA 8, 1997) (“[a] single coordinated prosecution involving both civil forfeiture proceedings and criminal proceedings does not violate the double jeopardy clause, as the civil and criminal proceedings in such a situation are ‘merely different aspects of a single prosecution’”) (citation omitted). Defendant has not filed a brief on appeal, and defendant did not argue in the trial court that there were multiple prosecutions. We analyze this appeal according to the multiple punishments strand of the double jeopardy protections.

² *Blockburger v United States*, 284 US 299; 52 S Ct 180; 76 L Ed 306 (1932).

on appeal. Plaintiff contends, however, that because MCL 257.625n indicates that the Legislature intended multiple punishments, further prosecution of defendant for OWI does not implicate the double jeopardy protection against multiple punishments for the same offense.

MCL 257.625n states in pertinent part:

(1) Except as otherwise provided in this section and *in addition to any other penalty provided for in this act*, the judgment of sentence for a conviction for a violation of section 625(1) described in section 625(9)(b) or (c) . . . may require 1 of the following with regard to the vehicle used in the offense if the defendant owns the vehicle in whole or in part or leases the vehicle:

(a) Forfeiture of the vehicle if the defendant owns the vehicle in whole or in part.

* * *

(4) Within 14 days after the defendant's conviction for a violation described in subsection (1), the prosecuting attorney may file a petition with the court for the forfeiture of the vehicle or to have the court order return of a leased vehicle to the lessor. [Emphasis added.]

We agree with plaintiff that MCL 257.625n clearly indicates that the Legislature intended the forfeiture process to be in addition to a defendant's prosecution for a criminal offense. Therefore, even assuming the trial court correctly concluded that the proceedings were a "punishment," a point not contested by plaintiff on appeal, there is no violation of the "multiple punishments" strand of double jeopardy because the Legislature clearly intended to impose multiple punishments. *Garland*, 286 Mich App at 4-5.

Accordingly, we reverse the trial court's order granting defendant's motion to dismiss on the basis of double jeopardy, and we remand for further proceedings.

Reversed and remanded. We do not retain jurisdiction.

/s/ Peter D. O'Connell
/s/ Henry William Saad
/s/ Jane M. Beckering