STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ONE 1988 FORD,

Defendant,

and

SHAY SATCHEL,

Appellant.

UNPUBLISHED
March 28, 1997

No. 175582
Kent Circuit Court
LC No. 92079380 CZ

Before: Marilyn Kelly, P.J., and Neff and J. Stempien,* JJ.

PER CURIAM.

Appellant appeals by leave granted from the forfeiture of his 1988 Ford Taurus automobile and its contents arising out of his use of the vehicle in the commission of a drug crime. Appellant argues that the trial judge was biased. He asserts that the judge should have granted his motion to postpone the forfeiture action until his criminal action had been decided by this Court. Finally, he argues that the forfeiture was excessive and that it violated the Double Jeopardy Clause of the United States Constitution. We affirm in part and remand.

Appellant failed to preserve the issue of judicial bias because he did not move for disqualification in circuit court. MCR 2.003(C)(3); *Feaheny v Caldwell*, 175 Mich App 291, 309; 437 NW2d 358 (1989). Regardless, there was no indication of bias. The court did not instruct the prosecutor regarding what evidence it should submit or where to procure such evidence. Instead, the court made a general request for information, appropriate for the fact finder, and the presumption of impartiality was not rebutted.

Next, defendant argues that the court failed to accommodate him after he invoked his privilege against self-incrimination. *In re Forfeiture of $111,144*, 191 Mich App 524, 532; 478 NW2d 718

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

(1991). In *In re Forfeiture of $111,144*, this Court held that a party should not be compelled to choose between the exercise of the Fifth Amendment privilege and the substantial sums of money subject to forfeiture. Therefore, the trial court must seek to accommodate both the individual's rights and the government's right to go forward with its case. *Id*. at 552-553.

Here, the record indicates that appellant asserted his right against self-incrimination and requested that the forfeiture hearing be adjourned until after resolution of his criminal case, on appeal at the time. The trial judge failed to address whether the interests of both parties could be accommodated. He did not ask appellant whether he would be able to submit other evidence in furtherance of his case, nor did he determine the feasibility of postponing the case until after the criminal case had been resolved. Therefore, we remand this matter to the trial court for an evidentiary hearing to determine the equities and to determine whether the parties were properly accommodated. See *State v Moceri*, 47 Mich App 116, 123; 209 NW2d 263 (1973).[1]

If it is determined that the parties were properly accommodated, we find that the forfeiture does not violate the Excessive Fines Clause of the Eighth Amendment. The amount of the forfeiture combined with the criminal sanctions did not create a total penalty disproportionate to the offense Therefore, the forfeiture was remedial or civil in nature and did not violate the Excessive Fines Clause. *People v Hellis*, 211 Mich App 634, 641-645; 536 NW2d 587 (1995).

Finally, appellant argues that the forfeiture violated the Double Jeopardy Clause of the Fifth Amendment. Recently, however, the United States Supreme Court held that in rem civil forfeiture is a remedial civil sanction, distinct from potentially punitive in personam civil penalties such as fines, and generally does not constitute a punishment under the Double Jeopardy Clause. *United States v Ursery*, 518 US ___; 116 S Ct 2135; 135 L Ed 2d 549 (1996). Therefore, appellant's claim must fail. See, also, *People v Acoff*, ___ Mich App ___ (Docket No. 169966, issued 12/13/96).

Affirmed in part and remanded for proceeding consistent with this opinion. We do not retain jursdiction.

/s/ Marilyn Kelly
/s/ Janet T. Neff
/s/ Jeanne Stempien

[1] We note that the trial court did not err by failing to grant use immunity to defendant. MCL 780.701 *et seq*.; MSA 28.1287(101) *et seq*., allows a prosecutor to petition a court for immunity for a witness who refuses to testify by claiming his right against self incrimination. *People v Schmidt*, 183 Mich App 817, 824; 455 NW2d 430 (1990). Even though the trial court grants immunity under the statute, it does not have inherent judicial authority to grant it if there has been no prosecutorial misconduct, absent a request from the prosecutor. *Id*. at 832. Here, there was no claim of prosecutorial misconduct and the prosecutor did not request use immunity for appellant. Therefore, appellant's argument is without merit.