

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
September 9, 2014

v

ADNAN EDDI BEYDOUN,
Defendant-Appellant.

No. 311821
Wayne Circuit Court
LC No. 07-004130-FH

Before: RIORDAN, P.J., and DONOFRIO and BOONSTRA, JJ.

PER CURIAM.

Defendant appeals as of right his conviction of possession of tobacco products for sale without a license, MCL 205.428. Defendant was sentenced to five years' probation and ordered to pay \$54,566 in restitution subject to a credit of \$25,000 from the Department of Treasury auction of the seized tobacco. We affirm.

I. FACTUAL BACKGROUND

In September of 2005, Michigan State Police officers seized approximately 2,400 cases of molasses tobacco from defendant, who did not have the proper state license to possess the product. The Department of Treasury conducted an administrative hearing, and concluded that the tobacco was properly seized. The tobacco was sold at a public auction for \$25,000.¹

In a prior appeal, this Court reversed the trial court's orders granting defendant's motion to suppress evidence of the tobacco and to dismiss the case. *People v Beydoun*, 283 Mich App 314, 335; 770 NW2d 54 (2009). Contrary to the trial court's finding, this Court held that the seizure of the tobacco did not violate the Fourth Amendment nor Article 1, § 11 of the Michigan Constitution. *Id.*

¹ At trial, evidence was submitted that the wholesale value would have been somewhere between \$180,000 and \$190,000, and that a 32% tax on that amount would be significantly higher than on the \$25,000 amount obtained at the auction. See MCL 205.427(g) (providing that the tax collected should have been "32% of the wholesale price" of the tobacco at issue in this case).

On remand, defendant was convicted of possession of tobacco products contrary to MCL 205.428. At sentencing, the trial court ordered defendant to pay restitution of \$54,566, representing the tax on the seized tobacco, subject to a credit of \$25,000, representing the amount the state received in the forfeiture proceeding. Defendant now appeals.

II. DOUBLE JEOPARDY

A. STANDARD REVIEW

Defendant argues that the trial court's restitution order for the amount of taxes owed after a civil forfeiture of the tobacco violates the double jeopardy protection. "A double jeopardy challenge presents a question of constitutional law that this Court reviews de novo." *People v Nutt*, 469 Mich 565, 573; 677 NW2d 1 (2004).

B. ANALYSIS

"The United States and Michigan Constitutions protect a person from being twice placed in jeopardy for the same offense." *Nutt*, 469 Mich at 574.² Double jeopardy affords individuals "three related protections: (1) it protects against a second prosecution for the same offense after acquittal; (2) it protects against a second prosecution for the same offense after conviction; and (3) it protects against multiple punishments for the same offense." *Id.* at 574. In the instant case, defendant argues that the trial court's restitution order violates the last protection, namely, the protection against multiple punishments for the same offense.

The prohibition against multiple punishments for the same offense protects the interest of defendant "in not having more punishment imposed than intended by the Legislature." *People v Calloway*, 469 Mich 448, 451; 671 NW2d 733 (2003). "The Double Jeopardy Clause functions as a restraint on the prosecutor and the court, but does not limit the Legislature's ability to define criminal offenses and establish punishments[.]" *People v Meshell*, 265 Mich App 616, 628-629; 696 NW2d 754 (2005) (quotation marks and citations omitted). "Where the Legislature clearly intends to impose such multiple punishments, there is no double jeopardy violation." *People v Garland*, 286 Mich App 1, 4; 777 NW2d 732 (2009). Thus, "[j]udicial examination of the scope of double jeopardy protection against imposed multiple punishment for the 'same offense' is confined to a determination of legislative intent." *People v Sturgis*, 427 Mich 392, 400; 397 NW2d 783 (1986); *People v Parker*, 230 Mich App 337, 342; 584 NW2d 336 (1998).

In the instant case, the tobacco was seized and sold pursuant to the Tobacco Products Tax Act, MCL 205.429, an administrative statute, which states:

(1) A tobacco product held, owned, possessed, transported, or in control of a person in violation of this act . . . may be seized and confiscated by the department as provided in this section.

² The state and federal guarantees are consistent and should be similarly construed. *People v Davis*, 472 Mich 156, 161; 695 NW2d 45 (2005).

(3) . . . If, after a hearing before the state treasurer or person designated by the state treasurer, the department determines that the property is lawfully subject to seizure and forfeiture and the person from whom the property was seized or any persons claiming an interest in the property do not take an appeal to the circuit court of the county in which the seizure was made within the time prescribed in this section, the property seized shall be considered forfeited to the state by operation of law and may be disposed of by the department as provided in this section.

(5) . . . The department may sell all tobacco products, except cigarettes, and other property forfeited pursuant to this section at public sale. . . .

After the forfeiture proceedings, defendant was convicted of violating the act, as MCL 205.428 provides:

(1) A person, other than a licensee, who is in control or in possession of a tobacco product contrary to this act, . . . who offers to sell or does sell a tobacco product to another for purposes of resale without being licensed to do so under this act, shall be personally liable for the tax imposed by this act, plus a penalty of 500% of the amount of tax due under this act.

(3) A person who possesses, acquires, transports, or offers for sale contrary to this act 3,000 or more cigarettes, tobacco products other than cigarettes with an aggregate wholesale price of \$250.00 or more, . . . is guilty of a felony, punishable by a fine of not more than \$50,000.00 or imprisonment for not more than 5 years, or both.

On appeal, defendant argues that his double jeopardy rights were violated because he was ordered to pay restitution despite a prior forfeiture of the same tobacco product. However, as a general matter, civil forfeiture proceedings do not qualify as punishment for purposes of double jeopardy. *People v Acoff*, 220 Mich App 396, 398; 559 NW2d 103 (1996); see also *United States v Ursery*, 518 US 267; 116 S Ct 2135; 135 L Ed 2d 549 (1996).

Furthermore, defendant's reliance on *United States v Halper*, 490 US 435; 109 S Ct 1892; 104 L Ed 2d 487 (1989) is misplaced. First, *Halper* was abrogated by *Hudson v United*

States, 522 US 93; 118 S Ct 488; 139 L Ed 2d 450 (1997) (Rehnquist, C.J., lead opinion).³ The *Hudson* court criticized *Halper* for improperly focusing on the character of the sanctions without first determining whether the Legislature intended the civil proceeding to constitute a criminal punishment. *Hudson*, 522 US at 101. Second, defendant’s reliance on *Halper* is misplaced because—unlike the instant case—*Halper* did not involve the civil forfeiture of property but instead involved the imposition of multiple financial penalties. *Halper*, 490 US at 437-440.

Moreover, even if the forfeiture proceedings were an additional punishment, the Legislature intended for both forfeiture proceedings and a criminal sanction to be available. MCL 205.429(6) provides: “The seizure and destruction or sale of a tobacco product or other property under this section does not relieve a person from a fine, imprisonment, or other penalty for violation of this act.” See also MCL 205.430. Defendant fails to address the axiom that “[w]here the Legislature clearly intends to impose such multiple punishments, there is no double jeopardy violation.” *Garland*, 286 Mich App at 4; see also *People v Smith*, 478 Mich 292, 316; 733 NW2d 351 (2007).

We also note that the forfeiture proceeding in this case did not subject defendant to any duplicative or excessive penalty, as defendant was awarded a credit for the \$25,000 the state received in the forfeiture proceeding. Moreover, the trial court only ordered defendant to pay the tax owed, not an additional penalty.

Accordingly, defendant has not demonstrated that the trial court’s restitution order violated the double jeopardy protection against multiple punishments for the same offense.⁴

III. CONCLUSION

Defendant has not established a double jeopardy violation. We affirm.

/s/ Michael J. Riordan
/s/ Pat M. Donofrio
/s/ Mark T. Boonstra

³ Defendant’s reliance on *Dep’t of Revenue of Montana v Kurth Ranch*, 511 US 767; 114 S Ct 1937; 128 L Ed 2d 767 (1994), is likewise misplaced, as that case relied on *Halper*.

⁴ While defendant also makes fleeting references to an Eighth Amendment violation, he did not state that as an issue in his issues presented section, nor does he sufficiently support such a claim. Thus, defendant has abandoned any challenge on this ground. *People v Albers*, 258 Mich App 578, 584; 672 NW2d 336 (2003); *Payne*, 285 Mich App at 195.