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## Double Jeopardy, Supreme Court, Appellate Division Second Department: People v. Haishun

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## SUPREME COURT, APPELLATE DIVISION

## SECOND DEPARTMENT

People v. Haishun<sup>134</sup>  
(decided April 21, 1997)

Defendant, William J. Haishun, was convicted of driving while intoxicated.<sup>135</sup> He appealed to the Appellate Division, Second Department, claiming that the Double Jeopardy Clauses of the Federal<sup>136</sup> and New York State<sup>137</sup> Constitutions require vacatur of his sentence.<sup>138</sup> The Appellate Division, Second Department, affirmed the decision of the Orange County Court, holding that the mandatory license suspension followed by a court sentence for the same underlying act does not violate the protections against Double Jeopardy.<sup>139</sup>

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<sup>134</sup> 238 A.D.2d 521, 656 N.Y.S.2d 660 (2d Dep't), *appeal denied*, 90 N.Y.2d 940, 687 N.E.2d 655, 664 N.Y.S.2d 758 (1997).

<sup>135</sup> *Id.* at 521, 656 N.Y.S.2d at 661. Defendant was charged with two counts of driving while intoxicated and he pleaded guilty to one count. *Id.*

<sup>136</sup> U.S. CONST. amend. V. The Fifth Amendment provides in pertinent part: "[N]o person shall . . . be subject for the same offense to be twice put in jeopardy of life and limb . . . ." *Id.*

<sup>137</sup> N.Y. CONST. art. I, § 6. This section provides in pertinent part: "[N]o person shall be subject to be twice put in jeopardy for the same offense . . . ." *Id.*

<sup>138</sup> *Haishun*, 238 A.D.2d at 521, 656 N.Y.S.2d at 661.

<sup>139</sup> *Id.* (citing *People v. Roach*, 226 A.D.2d 55, 59, 649 N.Y.S.2d 607, 609 (4th Dep't 1996) (holding that the suspension of the defendant's driver's license pending prosecution for the offense of driving while intoxicated did not constitute multiple punishment in violation of the double jeopardy clause); *In re Smith v. County Ct. of Essex County*, 224 A.D.2d 89, 92, 649 N.Y.S.2d 507, 509 (3d Dep't 1996) (holding that a criminal prosecution following a suspension of a driver's license for the same underlying conduct did not violate defendant's rights against double jeopardy)).

On November 3, 1995, defendant was arrested for driving while intoxicated in violation of sections 1192(2)<sup>140</sup> and 1192(3)<sup>141</sup> of the New York State Vehicle and Traffic Law [hereinafter "VTL"].<sup>142</sup> Thereafter, in accordance with the provisions of VTL § 1193(2)(e)(7),<sup>143</sup> defendant's driver's license was suspended.<sup>144</sup> Subsequently, defendant was sentenced by the court after he entered a plea of guilty to one count of driving while intoxicated.<sup>145</sup> Defendant appealed, arguing that the mandatory suspension of his driver's license, followed by the sentencing of the court, subjected him to successive punishments for the same act, in violation of the Double Jeopardy Clauses of the Federal and New York State Constitutions.<sup>146</sup> In addition, defendant

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<sup>140</sup> N.Y. VEH. & TRAF. LAW § 1192 (2) (McKinney 1996). Section 1192(2) provides:

Driving while intoxicated; per se. No person shall operate a motor vehicle while such person has .10 of one per centum or more by weight of alcohol in the person's blood as shown by chemical analysis of such person's blood, breath, urine or saliva, made pursuant to the provisions of section eleven hundred ninety-four of this article.

*Id.*

<sup>141</sup> N.Y. VEH. & TRAF. LAW § 1192(3) (McKinney Supp. 1996). Section 1192(3) provides: "Driving while intoxicated. No person shall operate a motor vehicle while in an intoxicated condition." *Id.*

<sup>142</sup> *Haishun*, 238 A.D.2d at 521, 656 N.Y.S.2d at 661.

<sup>143</sup> N.Y. VEH. & TRAF. LAW § 1193(2)(e)(7) (McKinney 1996). This section provides for the immediate suspension of one's driver's license pending the prosecution on the charge of driving while intoxicated and states:

A court shall suspend a driver's license, pending prosecution, of any person charged with a violation of subdivision two or three of section eleven hundred ninety-two of this article who, at the time of arrest, is alleged to have had .10 of one percent or more by weight of alcohol in such driver's blood as shown by chemical analysis of blood, breath, urine or saliva, made pursuant to subdivision two or three of section eleven hundred ninety-four of this article.

*Id.*

<sup>144</sup> *Haishun*, 238 A.D.2d at 521, 656 N.Y.S.2d at 661.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.* (citing *North Carolina v. Pearce*, 395 U.S. 711, 717 (1969) (recognizing that the constitutional guarantee against double jeopardy protects

contended that § 1193 (2)(e)(7) of the VTL violated the Due Process Clauses of the Federal<sup>147</sup> and New York State<sup>148</sup> Constitutions.<sup>149</sup>

The court began its analysis by acknowledging that “[u]nder certain circumstances, the imposition of civil sanctions can constitute punishment for underlying criminal conduct, thereby triggering the protection of the Double Jeopardy Clause.”<sup>150</sup> However, a criminal statute and a civil forfeiture statute may be successively enforced without triggering a double jeopardy violation.<sup>151</sup> In order to determine whether the prosecution of the

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“against multiple punishment for the same offense”); *In re Smith v. County Ct. of Essex County*, 224 A.D.2d 89, 90, 649 N.Y.S.2d 507, 508 (3d Dep’t 1996) (holding that the Fifth Amendment of the Constitution protects individuals from “multiple punishment for the same offense.”).

<sup>147</sup> U.S. CONST. amend. XIV, § 1. The Fourteenth Amendment provides in pertinent part: “[n]or shall any State deprive any person of life, liberty, or property, without due process of law . . . .” *Id.*

<sup>148</sup> N.Y. CONST. art. I, § 6. This section provides in pertinent part: “No person shall be deprived of life, liberty, or property without due process of law.” *Id.*

<sup>149</sup> *Haishun*, 238 A.D.2d at 522, 656 N.Y.S.2d at 661.

<sup>150</sup> *Id.* (quoting *People v. Roach*, 226 A.D.2d 55, 58, 649 N.Y.S.2d 607, 609 (4th Dep’t 1996)).

<sup>151</sup> *Id.* (citing *In re v. County Ct. of Essex County*, 224 A.D.2d 89, 90, 649 N.Y.S.2d 507, 508 (3d Dep’t 1996)) (citations omitted). In *Smith*, petitioner’s driver’s license was administratively suspended following his arrest for driving while intoxicated. *Id.* at 89-90, 649 N.Y.S.2d at 507-08. Thereafter, he was indicted and arraigned on an indictment for the charges of operating a vehicle with an excessive blood alcohol level and driving while intoxicated. *Id.* at 90, 649 N.Y.S.2d at 508. After petitioner’s motion to dismiss the indictment was denied, he brought an Article 78 proceeding to prohibit the court from continuing with his pending trial on the grounds that his Fifth Amendment double jeopardy rights were violated. *Id.* In holding that the suspension of a driver’s license followed by a trial for the underlying offense did not violate double jeopardy, the court reasoned that “constitutional prohibitions against double jeopardy and double punishment do not prevent the enactment of both civil and criminal sanctions for the same conduct” *Id.* (citations omitted). See also *Helvering v. Mitchell*, 303 U.S. 391 (1938). In *Helvering*, the United States Supreme Court determined that a monetary penalty imposed upon a defendant for income tax evasion was remedial in nature and therefore constituted a civil sanction. *Id.* at 401. The Court stated that “Congress may impose both a criminal and a civil sanction in respect to the same act or

driving while intoxicated offense together with the suspension of defendant's driver's license violated double jeopardy, the court applied the two-prong test set forth by the Supreme Court in *United States v. Ursery*.<sup>152</sup>

In *Ursery*, the Supreme Court held that civil forfeitures did not constitute additional punishment for the purpose of invoking the Double Jeopardy Clauses of the Federal and State Constitutions.<sup>153</sup> In *Ursery*, the United States government instituted civil forfeiture proceedings<sup>154</sup> against Ursery's property, contending that it was utilized for the purpose of conducting illegal drug transactions.<sup>155</sup> Subsequently, Ursery was indicted and convicted for the crime of manufacturing marijuana.<sup>156</sup> In

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omission; for the double jeopardy clause prohibits merely punishing twice, or attempting a second time to punish criminally, for the same offense." *Id.* at 399. Accordingly, the Court held that enforcement of a remedial civil statute does not invoke double jeopardy protection. *Id.* at 404.

<sup>152</sup> *Id.* See *United States v. Ursery*, 116 S. Ct. 2135 (1996).

<sup>153</sup> *Ursery*, 116 S. Ct. at 2149. The United States Supreme Court reversed the decision of the appellate court which held that the forfeiture of a defendant's property and the punishment for the underlying criminal violated the Double Jeopardy Clauses of the Federal and State Constitutions. *Id.* at 2138.

<sup>154</sup> 21 U.S.C. § 881(a)(7) (Supp. 1997). This section provides in pertinent part:

The following shall be subject to forfeiture to the United States and no property right shall exist in them: All real property, including any right, title, and interest . . . in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this subchapter punishable by more than one year's imprisonment.

*Id.*

<sup>155</sup> *Ursery*, 116 S. Ct. at 2138-39. The United States Supreme Court granted certiorari and consolidated *Ursery* with a similar case wherein a civil forfeiture proceeding was instituted against the defendants who were later convicted of money-laundering and drug conspiracy. *Id.* at 2138.

<sup>156</sup> *Id.* at 2139. Defendant was indicted for violating 21 U.S.C. § 841 (a)(1) (1984 ). This section provides in pertinent part: "Except as authorized by this subchapter, it shall be unlawful for any person knowingly or

determining that the civil forfeiture did not constitute multiple punishment for purposes of double jeopardy, the *Ursery* Court set forth a two-prong test,<sup>157</sup> which includes two basic questions. First, whether the legislature intended to categorize the procedure at issue as a criminal proceeding or as a civil proceeding.<sup>158</sup> Second, whether the civil proceeding is so punitive that it could not possibly be viewed as civil.<sup>159</sup> Regarding the first prong, the *Ursery* Court examined Congress' intent to determine that forfeiture proceedings are civil proceedings.<sup>160</sup> With regard to the second prong, although the *Ursery* Court noted that the civil forfeiture statute encompasses a deterrent element therein, the court nonetheless held that this element was not so punitive so as to render the civil forfeiture into a criminal statute to which double jeopardy applies.<sup>161</sup>

This test was followed by the New York Court of Appeals in *Cordero v. Lalor*.<sup>162</sup> The *Cordero* court was faced with the question of whether disciplinary sanctions imposed on an inmate at a prison, followed by criminal prosecution, invoked double

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intentionally . . . to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance." *Id.*

<sup>157</sup> *Ursery*, 116 S. Ct. at 2147 (citing *United States v. One Assortment of 89 Firearms*, 465 U.S. 354 (1984)). In *89 Firearms*, defendant was indicted and acquitted on criminal charges of dealing firearms without a license. *Id.* at 355. At trial, defendant asserted the defense of entrapment and was acquitted of the charges. *Id.* at 356. Thereafter, the Government instituted an action for the forfeiture of the firearms. *Id.* Defendant contended that the forfeiture proceeding constituted multiple punishment in violation of the Double Jeopardy Clause of the Fifth Amendment. *Id.* at 362. The Supreme Court held that the forfeiture proceeding brought against the defendant was a civil remedial sanction, rather than criminal punishment and therefore, not barred by double jeopardy. *Id.* at 366. The Court reasoned that Congress intended forfeiture as a civil remedial sanction with its goal aimed at keeping dangerous weapons away from unlicensed dealers. *Id.* at 364. Moreover, the civil forfeiture is a separate sanction and not an additional penalty for the criminal act. *Id.* at 366.

<sup>158</sup> *Ursery*, 116 S. Ct. at 2147.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.* at 2149.

<sup>162</sup> 89 N.Y.2d 521, 678 N.E.2d 482, 655 N.Y.S.2d 870 (1997).

jeopardy protection.<sup>163</sup> Applying the *Ursery* test, the court found that prison disciplinary proceedings are civil in nature and serve the institutional interests of maintaining prison discipline and safety.<sup>164</sup> Therefore, the court concluded that “the disciplinary sanctions imposed upon appellants did not constitute criminal punishment triggering double jeopardy protection.”<sup>165</sup>

Similarly in *Roach*, the Appellate Division, Fourth Department, held that the immediate suspension of defendant’s driver’s license did not bar subsequent prosecution for the crime of driving while intoxicated.<sup>166</sup> Applying the first prong of the *Ursery* test, the court found that “the statute is intended to be a civil sanction for the failure to pass a chemical sobriety test and is not a criminal penalty for the underlying offense of driving while intoxicated.”<sup>167</sup> In analyzing the second prong of the *Ursery* test, the court found that the suspension of a driver’s license “may be legitimately viewed as a sanction that is primarily civil in nature” which serves the remedial purpose of “protecting the public from potentially drunk drivers.”<sup>168</sup> Accordingly, the court concluded that defendant’s protection against double jeopardy was not violated by the prompt suspension of his driver’s license.<sup>169</sup>

In *Haishun*, after applying the *Ursery* test, the court concluded that driver’s license suspension under the provisions of VTL

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<sup>163</sup> *Id.* at 525, 678 N.E.2d at 483-84, 655 N.Y.S.2d at 871-72.

<sup>164</sup> *Id.* at 532, 678 N.E.2d at 488, 655 N.Y.S.2d at 876.

<sup>165</sup> *Id.* at 532-33, 678 N.E.2d at 488-89, 655 N.Y.S.2d at 876-77.

<sup>166</sup> *People v. Roach*, 226 A.D.2d 55, 59, 649 N.Y.S.2d 607, 609 (4th Dep’t 1996). In *Roach*, defendant was charged with driving while intoxicated. *Id.* at 57, 649 N.Y.S.2d at 608. Several days later, a hearing was held at which time defendant’s driver’s license was suspended. *Id.* Thereafter, a trial was held and defendant was convicted and sentenced for driving while intoxicated. *Id.* Defendant sought to dismiss the criminal prosecution on the grounds that it was barred by double jeopardy. *Id.*

<sup>167</sup> *Id.* at 59, 649 N.Y.S.2d at 609. The *Roach* court noted that the placement of the prompt suspension law in the “License Sanctions” section of the Vehicle and Traffic Law rather than in the “Criminal Penalties” section was additional proof of the Legislature’s intent to regard the law as a civil sanction. *Id.*

<sup>168</sup> *Id.* at 59, 649 N.Y.S.2d at 610.

<sup>169</sup> *Id.* at 59, 649 N.Y.S.2d at 609.

§ 1193(2)(e)(7) was intended by the Legislature “to be a civil sanction for the failure to pass a chemical sobriety test and is a criminal penalty for the underlying offense of driving while intoxicated.”<sup>170</sup> Relying on well settled principles, the court construed the suspension of a driver’s license as a sanction that is civil in nature.<sup>171</sup> The prompt suspension law serves a remedial public purpose with its primary aim to protect “the public from potentially dangerous drunk drivers.”<sup>172</sup> Accordingly, the civil statute authorizing the suspension of a driver’s license does not cause a subsequent criminal procedure to violate double jeopardy because the two statutes can co-exist.<sup>173</sup>

The suspension of a driver’s license cannot be a successive punishment because the deprivation of a driver’s license cannot be quantified so as to constitute a disproportionate sanction

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<sup>170</sup> *People v. Haishun*, 238 A.D.2d 521, 522, 656 N.Y.S.2d 660, 661 (2d Dep’t 1997) (quoting *Roach*, 226 A.D.2d at 59, 649 N.Y.S.2d at 609).

<sup>171</sup> *Haishun*, 238 A.D.2d at 522, 656 N.Y.S.2d at 661 (citations omitted). See *People v. Ferraiolo*, 223 A.D.2d 556, 557, 636 N.Y.S.2d 378, 378 (2d Dep’t 1996). See also *Barnes v. Tofany*, 27 N.Y.2d 74, 78, 261 N.E.2d 617, 620, 313 N.Y.S.2d 690, 694 (1970) (finding that the suspension of a driver’s license is civil in nature with its primary goal to protect the public from dangerous drivers); *People v. Gerstner*, 168 Misc. 2d 495, 499, 638 N.Y.S.2d 559, 562 (Sup. Ct. Monroe County 1996) (concluding that “although a license suspension pursuant to Vehicle and Traffic Law §1193(2)(e)(7) may have a deterrent effect, its primary aim and objective is the promotion of highway safety.”).

<sup>172</sup> *Roach*, 226 A.D.2d at 59, 649 N.Y.S.2d at 610. See also Governor’s Mem. 1994 N.Y. LAWS 2972 which provides in pertinent part:

Prompt suspension not only serves a general deterrent by mandating swift and certain penalties, but also keeps the potentially dangerous driver off the road during adjudication of the criminal charge . . . . Drunk, drugged and otherwise unsafe drivers continue to plague our streets and endanger our welfare. The persistence of these threats makes clear that additional steps must be taken to rid our roads of these dangers.

*Id.*

<sup>173</sup> *Haishun*, 238 A.D.2d at 522, 656 N.Y.S.2d at 661. See *Helvering v. Mitchell*, 303 U.S. 391, 399 (1938); *Barnes v. Tofany*, 27 N.Y.2d 74, 78, 261 N.E.2d 617, 619, 313 N.Y.S.2d 690, 693 (1970).



relative to the harm prevented.<sup>174</sup> Accordingly, applying the two-prong test, the *Haishun* court found that suspension of the defendant's driver's license followed by sentencing of the court for driving while intoxicated is not the multiple punishments protected by the Double Jeopardy Clauses of the Federal and State Constitutions.<sup>175</sup>

With reference to defendant's second contention, the *Haishun* court invoked the principles set forth in *Pringle v. Wolfe*<sup>176</sup> to determine whether the prompt suspension law<sup>177</sup> violated the Due Process Clauses of the Federal and State Constitutions.<sup>178</sup> In *Pringle*, the New York Court of Appeals determined that the statute does not violate due process because it provides that a hearing be held before the suspension of a driver's license.<sup>179</sup> Moreover, at the hearing, the driver is entitled to present evidence to challenge the findings of the court.<sup>180</sup> This right to a hearing affords the driver the due process protection guaranteed under the Federal and State Constitutions.<sup>181</sup> Hence, the *Haishun* court determined that the administrative suspension of defendant's license did not involve a constitutional violation of due process.<sup>182</sup>

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<sup>174</sup> United States v. Ursery, 116 S. Ct. 2135, 2145 (1996).

<sup>175</sup> *Haishun*, 238 A.D.2d at 522, 656 N.Y.S.2d at 661.

<sup>176</sup> 88 N.Y.2d 426, 668 N.E.2d 1376, 646 N.Y.S.2d 82, *cert. denied*, 117 S. Ct. 513 (1996). In *Pringle*, plaintiff was charged with driving while intoxicated. *Id.* at 430, 668 N.E.2d at 1378, 646 N.Y.S.2d at 85. Before his arraignment, plaintiff brought an action for a declaratory judgment to declare the prompt suspension law unconstitutional. *Id.* at 430, 668 N.E.2d at 1379-80, 646 N.Y.S.2d at 85.

<sup>177</sup> *Id.* at 429, 668 N.E.2d at 1378, 646 N.Y.S.2d at 84. N.Y. VEH. & TRAF. LAW § 1193 (2)(e)(7) is commonly referred to as the "prompt suspension law." *Id.*

<sup>178</sup> *Haishun*, 238 A.D.2d at 522, 656 N.Y.S.2d at 661.

<sup>179</sup> *Pringle*, 88 N.Y.2d at 432, 668 N.E.2d at 1379, 646 N.Y.S.2d at 85.

<sup>180</sup> *Id.* at 432, 668 N.E.2d at 1380, 646 N.Y.S.2d at 86. See N.Y. VEH. & TRAF. LAW § 1193(2)(e)(7)(b) which provides in pertinent part: "At the time of such license suspension the holder shall be entitled to an opportunity to make a statement regarding these two issues and to present evidence tending to rebut the court's findings." *Id.*

<sup>181</sup> *Pringle*, 88 N.Y.2d at 434, 668 N.E.2d at 1381, 646 N.Y.S.2d at 87.

<sup>182</sup> *Haishun*, 238 A.D.2d at 522, 656 N.Y.S.2d at 661.

In conclusion, New York State courts have adhered to a two-prong test set forth by the federal courts when assessing whether an administrative suspension of a driver's license followed by a prosecution for an underlying crime of driving while intoxicated violates double jeopardy.<sup>183</sup> New York State cases are replete with citations to federal cases which have held that a driver's license suspension followed by prosecution for the underlying crime is not violative of double jeopardy.<sup>184</sup> Hence, the state position is analogous to the federal position and the prompt suspension law is consistent with both the Federal and New York State Constitutions.

People v. Quamina<sup>185</sup>  
(decided February 3, 1997)

Defendant appeals his conviction of the charge of criminal possession of a weapon in the third degree, claiming a violation of his constitutional rights<sup>186</sup> and statutory protections against double jeopardy.<sup>187</sup> "The defendant had moved to dismiss the

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<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>184</sup> 653 N.Y.S.2d 612 (2d Dep't 1997). In his first trial, defendant, Kellon Quamina, was charged with two counts of criminal possession of a weapon in the second degree and two counts of criminal possession of a weapon in the third degree. *Id.* at 613. He was acquitted of the charges in the second degree, but the jury could not reach a verdict for the charges in the third degree. *Id.* A new trial was ordered as to these charges. *Id.* Defendant was convicted at the subsequent trial and appealed. *Id.*

<sup>186</sup> *Id.* See U.S. CONST. amend. V. The Fifth Amendment provides "nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb." *Id.* Similarly, N.Y. CONST. Article I § 6 states: "No person shall be subject to be twice put in jeopardy for the same offense." *Id.*

<sup>187</sup> *Id.* See also N.Y. CRIM. PROC. § 40.20. (McKinney 1989). Section 40.20 provides the following:

(1) A person may not be twice prosecuted for the same offense (2) A person may not be separately prosecuted for two offenses based upon the same act or criminal based on the same transaction unless: (a) The offenses as defined have substantially different elements and the acts establishing one