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1996

Double Jeopardy

JUSTICE COURT

MONROE COUNTY

People v. McRobbie[110]
(decided December 1, 1995)

Defendants made motions to dismiss misdemeanor charges for driving while intoxicated in violation of sections 1192(2)[111] and 1192(3)[112] of the New York Vehicle and Traffic Law [hereinafter VTL].[113] Defendants argued that since their full driving privileges were suspended at the arraignment, they had already been punished and that continued prosecution for the same charges would subject them to double jeopardy in violation of the New York State[114] and Federal Constitutions,[115] as well as the New York Criminal Procedure Law.[116] The court held that the prosecution's case pursuant to section 1192(2) of the VTL "rests primarily on the introduction of some sort of chemical analysis constituting a per se violation," and dismissed the charges against

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110. 1995 WL 785019, at *1 (Just. Ct. Monroe County Dec. 1, 1995).

111. N.Y. VEH. & TRAF. LAW § 1192(2) (McKinney Supp. 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.

112. 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.*

113. *McRobbie*, 1995 WL 785019, at *1.

114. N.Y. CONST. art. I, § 6. This provision provides in pertinent part: "No person shall be subject to be twice put in jeopardy for the same offense . . . ." *Id.*

115. U.S. CONST. amend. V. The Fifth Amendment provides in pertinent part: "[N]or shall any person be subject for the same offence to be twice put in jeopardy of life or limb." *Id.*

116. N.Y. CRIM. PROC. LAW § 40.20(1) (McKinney 1992). Section 40.20(1) states: "A person may not be twice prosecuted for the same offense." *Id.*

both defendants under section 1192(2).[117] However, the court found that under section 1192(3), the prosecutor had to prove that the defendant's consumption of alcohol "rendered him incapable of employing the physical or mental abilities needed in order to operate a vehicle as a reasonable and prudent driver."[118] Since this was not a per se violation, the court decreed that the charges under section 1192(3) should remain in full force and effect.[119]

The defendants, McRobbie and Gannon, were arrested and charged with violating sections 1192(2) and 1192(3) of the VTL.[120] Both defendants pled not guilty and had their full driving privileges suspended.[121]

In considering the claim, the court recognized that protections against double jeopardy prevent reprosecution after acquittal, reprosecution after conviction and protections against multiple punishments for the same offense.[122] The court stated that these guarantees are "fundamental to our system of justice and consequently appl[y] to the states through the due process clause of the Fourteenth Amendment."[123]

Further, the court had to determine "whether the proceeding was intended to be, or by its nature is, necessarily criminal and punitive or civil and remedial."[124] In *Helvering v. Mitchell,*[125] the United States Supreme Court held that a penalty imposed for the fraudulent avoidance of income tax was "merely a remedial

117. *McRobbie*, 1995 WL 785019, at *7.
118. *Id.*
119. *Id.*
120. *Id.* at *1.
121. *Id.*
122. *Id. See* North Carolina v. Pearce, 395 U.S. 711, 726 (1969) (holding that where a judge imposes a harsher sentence on a defendant after a new trial, the judge must affirmatively set forth reasons for imposing a harsher sentence).
123. *McRobbie*, 1995 WL 785019, at *1. *See* Benton v. Maryland, 395 U.S. 785, 787 (1969) (holding that the Double Jeopardy Clause of the Fifth Amendment is applicable to the states through the Fourteenth Amendment).
124. *McRobbie*, 1995 WL 785019, at *2.
125. 303 U.S. 391, 400 (1938) (holding that the forfeiture of goods and the payment of sums of money are sanctions that have long been recognized as civil proceedings).

civil sanction."[126] The *McRobbie* court stated that it was forced to decide "whether or not the double jeopardy clause provided protection only against repeat criminal punishments for the same action."[127]

In deciding this issue, the court employed a two prong test set forth by the Supreme Court in *United States v. Ward*.[128] In the first prong of the *Ward* test, the court must determine whether, in establishing the penalizing mechanisms, Congress preferred the label of criminal over civil sanction.[129] If Congress did intend to establish a civil penalty, then under the second prong of *Ward*, the court must inquire "whether the statutory scheme was so punitive either in purpose or in effect as to negate that intention."[130] In making a determination under the second prong, "only the clearest proof could suffice to establish the unconstitutionality of a statute on such ground."[131]

However, the Supreme Court's decision in *United States v. Halper*[132] turned the focus away from whether or not "a proceeding was criminal and punitive and/or civil and remedial, instead focusing on the issue of whether sanctions that were admittedly civil could be so divorced from any remedial goal that they constituted punishment for the purposes of double jeopardy analysis."[133] Thus, the question in *McRobbie* was not whether the "license suspending statute is civil or criminal, but rather whether it is punishment."[134] Citing *Halper*, the *McRobbie* court stated that "it follows that a civil sanction that cannot fairly be said solely to serve a remedial purpose, but rather can only be explained as also serving either retributive or deterrent purposes

126. *McRobbie*, 1995 WL 785019, at *1.
127. *Id.* at *2.
128. 448 U.S. 242 (1980).
129. *McRobbie*, 1995 WL 785019, at *2 (citing United States v. Ward, 448 U.S. 242, 248 (1980)).
130. *McRobbie*, 1995 WL 785019, at *2 (citations omitted).
131. *Id.*
132. 490 U.S. 435 (1989).
133. *McRobbie*, 1995 WL 785019, at *4.
134. *Id.*

is punishment as we have come to understand the term."[135] Thus, the court concluded that "it is the purposes actually served by the sanction in question, not the underlying nature of the proceeding giving rise to the sanction that must be evaluated."[136]

After establishing that the timing of the sanctions were not a factor in the analysis, the court analyzed whether the suspension of a driver's license could properly be classified as "punishment" under a *Halper* analysis.[137] The court noted that while *Halper* dealt with monetary penalties, the language used in *Halper* was broad enough to apply to any civil sanction, whether monetary or not, "to the extent that it serves only as a deterrent or retribution."[138]

Applying *Halper*, the *McRobbie* court concluded that the removal of a driver's license "cannot be said solely to relate to the state's objective of removing drunk drivers from the road because the lack of a driver's license will not guarantee a remedy to the problem needing correction, that is, the behavior of the drunken driver."[139] Thus, the court concluded that the suspension of driver privileges did not serve a solely remedial purpose, and that further prosecution under section 1192(2) of the VTL would be barred by the protections against double jeopardy.[140]

However, the court stated that the charge of driving while intoxicated under section 1192(3) of the VTL would survive.[141] In reaching the decision, the court looked to the United States Supreme Court's decision in *Blockburger v. United States*.[142] In *Blockburger,* the Court stated that "[a] single act may be an

135. *Id.*
136. *Id.* at *5.
137. *Id.*
138. *Id.* at *6. *See also* Department of Revenue of Montana v. Kurth Ranch, 114 S. Ct. 1937, 1948 (1994) (holding that a tax on the possession of contraband is "too far removed in crucial aspects from a standard tax assessment to escape characterization as punishment for the purpose of Double Jeopardy analysis").
139. *McRobbie*, 1995 WL 785019, at *6.
140. *Id.*
141. *Id.*
142. 284 U.S. 299 (1931).

offense against two statutes; and if each statute requires proof of an additional fact which the other does not, an acquittal or conviction under either statute does not exempt the defendant from prosecution and punishment under the other."[143] Utilizing the *Blockburger* test, the court in *McRobbie* found that the People's proof in a prosecution under section 1192(3) of the VTL "involves whether or not the defendant's consumption of alcohol has rendered him incapable of employing the physical or mental abilities needed to operate a vehicle as a reasonable and prudent driver."[144] Since the People had to prove additional facts under the section 1192(3) prosecution, rather than section 1192(2), the court held that the charges pursuant to section 1192(3) of the VTL would remain in full force and effect as they did not constitute a double jeopardy violation.[145]

143. *Id.* at 304 (citations omitted).
144. *McRobbie*, 1995 WL 785019, at *7.
145. *Id.*