

Ex parte Drake

3rd Court of Appeals - Austin

November 15, 2006 - 03-06-00076-CR

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Opinion By: Pemberton, J.

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Double jeopardy not violated by increased fees for traffic violation, fine, and pending charges.

In November 2003, D was convicted in municipal court for failing to maintain financial responsibility and she paid a fine. In October 2004, the Department of Public Safety notified D that the surcharge imposed under the driver responsibility program was due and that her driver's license would be suspended if she did not pay it within thirty days [708.151 Texas Transportation Code]. D did not pay the surcharge, and her driver's license was automatically suspended in December 2004 [708.152 Texas Transportation Code]. In February 2005, D was arrested for driving while her license was suspended [DWLS] and her prosecution for this offense is pending. D's license suspension was lifted in August 2005 after she belatedly paid the 2004 surcharge. D also paid the surcharge assessed in October 2005. D filed a habeas corpus petition alleging that the surcharge imposed under the driver responsibility program constituted a second punishment for her failure to maintain financial responsibility and therefore violated the guarantee against double jeopardy. After a hearing, the lower court denied relief and D appealed. Held: Affirmed. Under the driver responsibility program, the Texas Department of Public Safety assesses an annual surcharge on the driver's licenses of persons convicted of certain driving-related offenses during the preceding thirty-six month period [708.053-.054; 708.102-.104 Texas Transportation Code]. The amount of the surcharge varies depending on the offense. The surcharge for driving without financial responsibility is \$250 per year. Failure to pay the surcharge results in the automatic suspension of the driver's license until the surcharge is paid. A criminal defendant may use pretrial habeas corpus to challenge the facial constitutionality of the penal statute on which the prosecution is based. Although D did not challenge the constitutionality of the DWLS statute itself, she challenged the constitutionality of the statutory scheme of which her DWLS prosecution is a part. License suspension is the enforcement mechanism employed by the driver responsibility program, and D's license was suspended pursuant to the program. If, as D contended, the surcharge assessed under the program was facially unconstitutional, the taint of that unconstitutionality attaches to the suspension of D's license and the pending DWLS prosecution. D's habeas corpus petition called into question the authority to proceed with the DWLS prosecution and, if resolved in D's favor, would result in her immediate release. Thus, D's petition raised a cognizable claim. Double jeopardy principles protect against the imposition of multiple criminal punishments for the same offense. Thus, the question on appeal was whether the surcharge was a civil or a criminal penalty for double jeopardy purposes. Whether a particular punishment is criminal or civil is, at least initially, a matter of statutory construction. A court must first ask whether the legislature, in establishing the penalizing

mechanism, indicated either expressly or impliedly a preference of one label or the other. Even in those cases where the legislature has indicated an intention to establish a civil penalty, a further inquiry is required to determine whether the statutory scheme was so punitive either in purpose or effect as to transform what was intended as a civil remedy into a criminal penalty [Hudson v United States, 522 US 93, 99]. D relied upon a colloquy between members of the Texas House of Representatives during the floor debate on the bill that enacted the program during which one member asked whether the surcharges were taxes and a sponsor of the legislation replied that the surcharges were “penalties”. D’s reliance on these statements was unpersuasive for two reasons. When interpreting a statute, courts seek to discern the collective intent of the legislature. To do this, the focus must be on the text of the statute because it is the only definitive evidence of what the legislators had in mind when the statute was enacted into law. Furthermore, it is not sufficient that a surcharge can be viewed as a penalty for the underlying traffic offense for which it is imposed. D’s double jeopardy argument requires a showing that the surcharge is a criminal punishment. Nothing in the statutory language indicates that the surcharges imposed under the driver responsibility program were intended as criminal punishments. A license to drive is a privilege subject to reasonable regulations. Under the driver responsibility program, drivers who abuse this privilege by committing traffic offenses are assessed a surcharge used largely to finance emergency medical services and facilities—services and facilities that often serve the victims of traffic accidents. Monetary penalties have long been recognized as enforceable in civil proceedings and are not historically viewed as punishment. [Hudson, 522 US at 104]. The surcharges imposed by the driver responsibility program were intended by the legislature to be civil penalties. The surcharges are not so punitive in their purpose or effect as to make them criminal penalties regardless of the legislature’s intent. The surcharge assessed on D’s driver’s license following her conviction and fine for driving without financial responsibility was not a criminal punishment raising a potential violation of the double jeopardy guarantee against multiple punishments for the same offense.