

IN THE COURT OF CRIMINAL APPEALS

AT NASHVILLE

OCTOBER 1996 SESSION

<p><b>FILED</b></p> <p>March 27, 1997</p> <p>Cecil W. Crowson Appellate Court Clerk</p>
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STATE OF TENNESSEE, )  
 )  
 Appellee, )  
 )  
 VS. )  
 )  
 JAMES E. IRWIN )  
 )  
 Appellant. )

C.C.A. No. 01C01-9603-CC-00096

DICKSON COUNTY

HON. LEONARD W. MARTIN,  
JUDGE

(Driving under the Influence)

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OPINION FILED: \_\_\_\_\_

**AFFIRMED**

**J. STEVEN STAFFORD,  
SPECIAL JUDGE**

## OPINION

Defendant Irwin pled guilty to driving under the influence of an intoxicant (DUI), was fined \$350 and received eleven (11) months and twenty-nine (29) days, all of which was suspended except forty-eight (48) hours. With the consent of the state and the trial court, Irwin explicitly reserved a certified question of law pursuant to Tennessee Rules of Criminal Procedure 37 (b)(2)(i). The certified question of law for our review is “whether or not the detention of the defendant in this case, under the policy of the Dickson County Sheriff’s Department, constitutes punishment so as to preclude further prosecution on double jeopardy grounds or violates the defendant’s due process rights.” The trial court denied Irwin’s motion to dismiss. We affirm the judgment of the trial court.

## FACTS

On the afternoon of February 25, 1995, Sergeant John Patterson stopped Irwin for driving under the influence of an intoxicant. Sgt. Patterson administered three field sobriety tests, all of which Irwin failed to complete. Sgt. Patterson noticed that Irwin had slurred speech, bloodshot eyes and alcohol on his breath. Sgt. Patterson later discovered a half empty pint bottle of vodka underneath the passenger seat of Irwin’s car. After being informed that he was under arrest for driving under the influence, Irwin became verbally abusive. He began cursing Patterson, calling him names, threatening to sue for arresting him and saying he was going to have Patterson’s badge and job. Based on the above behavior and his experience with alcohol related arrests, Sgt. Patterson concluded that Irwin was “very intoxicated.”

Irwin was taken to the Dickson County Sheriff’s Department where he was “booked in” at 2:15 p.m. When Irwin was delivered to the jail, he continued to display the same verbally abusive behavior. He refused to take an intoximeter test.

Although Irwin's wife came to the jail shortly after his arrest, she was informed that she was not allowed to see him, nor was she allowed to post bond at that time. Irwin was later permitted to call to a bonding company at approximately 7:45 p.m. He was released from custody at approximately 8:05 p.m.

Irwin was subsequently indicted for driving under the influence. He then filed a motion to dismiss asserting that "the [DUI] prosecution [was] barred by the protection against Double Jeopardy." Sheriff Tom Walls testified at the evidentiary hearing regarding the policy of detaining those charged with DUI for a minimum of six (6) hours. Sheriff Walls also testified that the underlying purpose of the policy is public safety.

In addition, Sgt. Patterson testified as to Irwin's verbal abuse and intoxication at the time of and subsequent to the arrest. Based on the testimony, the trial judge concluded that there was no abuse of Irwin's individual rights and that his detention served a legitimate governmental function.

## PENNINGTON

The crux of Irwin's argument hinges upon a recent decision of this court, State v. Pennington, 1996 WL 38107, C.C.A. No. 01C01-9307-PB-00219, (Tenn. Crim. App. filed February 1, 1996, at Nashville) *perm. to app. granted* July 1, 1996, wherein we held that a defendant's post arrest detention without prior adjudication could operate as punishment for the charged offenses and thus violate the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution, as well as Article I, Section 10, of the Tennessee State Constitution.<sup>1</sup> Irwin argues, based on Pennington, that blanket policies of holding persons in custody for set periods of time are unconstitutional.

In Pennington, the defendant was placed on a mandatory "twelve hour hold"

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<sup>1</sup> In Pennington the concurring judge concurred in results only. There was a strong dissenting opinion by the other judge.

solely because he refused to submit to a breath alcohol test. There were also three witnesses who were not impaired and prepared to take custody of the defendant at the time of his arrest.

## DETENTION POLICY AS PUNISHMENT

Irwin contends that the six hour (6) detention policy and the subsequent indictment violate Article I, Section 10 of the Tennessee Constitution as well as the Fifth Amendment to the United States Constitution protecting persons from multiple punishments for the same offense. See State v. Black, 524 S.W.2d 913 (Tenn. 1975). He specifically argues that the six (6) hour detention imposed by the Dickson County Sheriff's Department prior to being admitted to bail was punishment; therefore, further prosecution is prohibited.

In making a determination whether confinement in a particular case is "punishment", Doe v. Norris, 751 S.W.2d 834, 839 (Tenn. 1988) provides some guidance. A court must decide:

"whether the confinement is imposed for the purpose of punishment or whether it is an incident of a legitimate governmental purpose. Where ... no showing of an express intent to punish is made ... will turn on 'whether an alternative purpose to which [the restriction] may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned.'"

Id. (citing Bell v. Wolfish, 441 U.S. 520, 99 S.Ct. 1861, 1874, 60 L.Ed.2d 447 (1979) quoting Kennedy v. Mendoza-Martinez, 372 U.S. 144, 168-69, 83 S.Ct. 554, 567-568, 9 L.Ed.2d 644 (1963)).

If the state action is remedial and not intended to inflict punishment as a means of vindicating public justice, the double jeopardy clause serves as no protection. See State v. Coolidge, 915 S.W.2d 820, 823 (Tenn. Crim. App. 1995)(citing State v. Conley, 639 S.W.2d 435 (Tenn. 1982); Kennedy v. Mendoza-Martinez, 372 U.S. 144, 83 S.Ct. 554, 9 L.Ed.2d 644 (1963)). Courts may infer that the restriction is punitive in nature unless it is related to a legitimate governmental

purpose. Id. The initial burden is on the defendant to make a threshold showing of double jeopardy. Id. (citations omitted). That determination will depend on 1) whether the detention served an alternative purpose, and 2) whether that detention was excessive in relation to the purpose. Id. at 824.

## ANALYSIS

We need not reach the constitutional issue presented in Pennington; namely, whether post arrest detention pursuant to a policy of mandatory detention for a prescribed period of time can serve as a double jeopardy bar to continued prosecution. We agree with the trial judge's assessment that the facts in the instant case and the facts in Pennington are far apart.

The trial judge made the following factual findings:

. . . .

In this particular case, what I was listening for was factual information which would show that this particular case, this individual's rights were being abused, and that it was not necessary for the purpose of protecting the public, i.e., that when his wife went in to get him, she was a responsible person who was offering to bail him out and take care of him. Instead, what I've heard is testimony that he was very intoxicated, that he was very abusive, that he was making improper, threatening sort of statements, and her impression was that he had just been arrested, that she had gone up there shortly after that. He called her and said, I have just been arrested, come and get me. And we know that he checked in up there sometime around 2:15. So we don't have any showing, in this record, whatsoever, that at that time he wasn't [sic] in shape to be going anywhere with anybody, including his wife. We don't have any showing that it would have been safe to do that.

Neither do we have any sort of showing, at some other point in time, that there was either the opportunity or the safety for releasing him prior to when she went back to get him that night at 8:05 . . . .“

These factual findings are conclusive upon this Court unless the evidence contained in the record preponderates against those findings. State v. Binion, 900 S.W.2d 702 (Tenn. Crim. App. 1994). The record clearly supports these findings.

The hold placed on the defendant was not punitive in nature. There was ample testimony regarding Irwin's intoxicated state at the time of his arrest and his subsequent abusive behavior. Clearly, there was a legitimate governmental purpose in holding Irwin until he obtained sobriety. He had refused a test that could assist officers in more precisely determining his degree of intoxication. Releasing Irwin after determining that he was "very intoxicated" could have endangered the public as well as Irwin. Detention for the purpose of detoxication may serve a legitimate governmental purpose. Coolidge, *supra*. Irwin was properly detained; therefore, the trial judge properly denied the motion.<sup>2</sup>

Accordingly, the judgment of the trial court is AFFIRMED.

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J. STEVEN STAFFORD, SPECIAL JUDGE

CONCUR:

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JOE B. JONES, PRESIDING JUDGE

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WILLIAM M. BARKER, JUDGE

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<sup>2</sup> See State v. Thurmon, 1996 WL 594085, C.C.A. No. 02C01-9512-CR-00375, Shelby County (Tenn. Crim. App. filed October 17, 1996, at Jackson) holding that the detention of a DUI defendant, under the facts, was remedial and needed to protect the public and the defendant.

