

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MELISSA ANN NUTT,

Defendant-Appellee.

UNPUBLISHED
November 9, 2001

No. 225887
Oakland Circuit Court
LC No. 99-167397-FH

Before: Hoekstra, P.J., and Whitbeck and Meter, JJ.

HOEKSTRA, P.J., (*concurring*).

In order for defendant to prevail on her claim that this prosecution violates her constitutional guarantee against double jeopardy, US Const Am V; Const 1963, art 1, § 15, both parts of the “same transaction” test must be satisfied. They are that all offenses against a defendant must be joined together if 1) they grow out of a “continuous time sequence” and 2) the charges display “a single intent and goal.” *People v Sturgis*, 427 Mich 392, 401; 397 NW2d 783 (1986); *People v McMiller*, 202 Mich App 82, 85; 507 NW2d 812 (1993). I conclude that the evidence demonstrates a “continuous time sequence,” but that the two offenses do not display “a single intent and goal.” Consequently, I find that the order dismissing the charge against defendant of receiving or concealing stolen firearms, MCL 750.535b, must be reversed.

In deciding whether the evidence establishes a “continuous time sequence,” the lead opinion and the dissent in section II C seem to suggest that the result is controlled by prior decisions of this Court. Although instructive, I do not believe either is controlling because the time sequence decision requires a case-by-case analysis of the facts peculiar to the case and an assessment based on those facts regarding whether the time sequence part of the same transaction test has been met. Here, I agree with the section II B of the dissenting opinion as it pertains to the time sequence analysis. The facts and circumstances present in this case establish that the events were part of a continuous criminal episode.

However, I agree with the lead opinion that the two charges do not share “a single intent and goal.” My opinion on this issue is stated succinctly and well in this Court’s opinion in *People v Squires*, 240 Mich App 454, 458-459; 613 NW2d 361 (2000). Although the charges here are slightly different, the reasoning of *Squires* is equally applicable. Consequently, the second part of the “same transaction” test is not met and defendant’s claim that this prosecution

violates double jeopardy must fail.

/s/ Joel P. Hoekstra