STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED November 9, 2001
v	No. 225887 Oakland Circuit Court
MELISSA ANN NUTT, Defendant-Appellee.	LC No. 99-167397-FH

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

PER CURIAM.

The prosecutor appeals by right from an order dismissing, on double jeopardy grounds, a charge against defendant of concealing stolen firearms, MCL 750.535b. We reverse and remand.

The facts, procedural history, standards of review, and applicable legal test in this case are set forth succinctly in the accompanying dissenting opinion and will not be repeated here.

This case is controlled, in large part, by the December 1990 case of *People v Flowers*, 186 Mich App 652; 465 NW2d 43 (1990). In *Flowers*, the defendant robbed an individual in Oakland County and stole the victim's vehicle. *Id*. at 653. The defendant then took the car to Wayne County, where he was arrested. *Id.* Because of his possession of the stolen vehicle, the defendant was convicted in Wayne County of possession of stolen property valued over one hundred dollars. *Id*. at 653-654. Subsequently, based on his robbery of the victim, he was convicted in Oakland County of armed robbery. *Id*. at 653. On appeal, the defendant argued that his possession conviction barred the subsequent armed robbery conviction because of the prohibition against double jeopardy. *Id*. This Court, applying the "same transaction" test as discussed by the dissent in the instant case, see *id.* at 653, upheld the armed robbery conviction and ruled, in relevant part, as follows:

> . . . the test to determine whether crimes arise out of the same transaction is whether the offenses are part of the same criminal episode and whether the offenses involved laws intended to prevent the same or similar harm or evil . . . .
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> * * *

> We conclude that armed robbery and possession of stolen property on different days are not part of the same transaction and that the harm or evil to be prevented by the armed robbery statute . . . and by the statute that prohibits possession of stolen property . . . are substantially different. Under the same-transaction test, the prohibition against double jeopardy was not violated here. [*Id*. at 653-654.]

Flowers is directly analogous to the instant case. *Flowers* essentially demonstrates that for both a concealing conviction and a related, separately-prosecuted home invasion conviction to be deemed as having arisen from separate criminal episodes, there is no requirement that a defendant "wait[] some period" before concealing the stolen property or that the concealment be "completely unrelated to the theft." Indeed, in *Flowers*, the robbery and the possession of the stolen property occurred within minutes of each other, yet the Court deemed the crimes sufficiently separate because the possession continued into the day following the robbery. *Id*. at 653. Similarly, in the instant case, defendant invaded several homes, and, regardless of what happened in the meantime, she concealed stolen firearms four days later. Therefore, under *Flowers*, defendant's two convictions did not arise from the same criminal episode for double jeopardy purposes.

Flowers was decided in December 1990, making it binding precedent under MCR 7.215(I)(1), which states that "[a] panel of the Court of Appeals must follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990 . . . ." To the extent that the case of *People v Hunt (After Remand)*, 214 Mich App 313; 542 NW2d 609 (1995), may conflict with *Flowers*, this Court is bound to follow *Flowers* because it was the first opinion released on the issue.[1] See *People v Young*, 212 Mich App 630, 639; 538 NW2d 456 (1995), remanded on other grounds 453 Mich 976 (1996); see also *Novak v Nationwide Mut Ins Co*, 235 Mich App 675, 690; 599 NW2d 546 (1999).

Flowers makes clear that the two convictions in the instant case were not part of the same criminal episode for double jeopardy purposes, and thus on this basis alone defendant's double jeopardy argument must fail. See generally *Crampton v 54-A District Judge*, 397 Mich 489, 508-509; 245 NW2d 28 (1976). Another question, however, is whether the harm or evil to be prevented by the second-degree home invasion statute differs substantially, for double jeopardy purposes, from the concealing stolen firearms statute. See *Flowers, supra* at 654. An examination of the statutes shows that it does. The second-degree home invasion statute states, in relevant part, that "a person who breaks and enters a dwelling or enters a dwelling without permission and . . . commits a felony, larceny, or assault is guilty of home invasion in the second degree." See MCL 750.110a(3). The concealing stolen firearms statute states, in relevant part, that "[a] person who receives, conceals, [or] stores . . . a stolen firearm . . ., knowing that the firearm . . . was stolen, is guilty of a felony . . . ." See MCL 750.535b. The former statute is directed toward peaceful habitation, see *People v Squires*, 240 Mich App 454, 459; 613 NW2d 361 (2000), while the latter is directed toward the trafficking of firearms. Moreover, the two

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[1] Moreover, *Hunt* distinguished *Flowers* by noting that in *Flowers*, the robbery and the possession occurred on different days. See *Hunt, supra* at 317. Similarly, the home invasion and the concealment in this case occurred on different days, reinforcing the precedential value of *Flowers* with regard to the instant case.

statutes are located in different chapters of the Penal Code, "meaning that they are not hierarchical or cumulative." *People v Peerenboom*, 224 Mich App 195, 201; 568 NW2d 153 (1997). The statutes serve sufficiently different purposes such that even if we disregard the question of whether defendant's crimes arose from a continuous criminal episode, defendant's two convictions did not violate the prohibition against double jeopardy.[2] *Crampton*, *supra* at 508-509.

Reversed and remanded. We do not retain jurisdiction.

/s/ Patrick M. Meter

[2] Although *Squires*, *supra* at 459-460, found that the statute prohibiting breaking and entering a dwelling and the general receiving and concealing statute did indeed serve different purposes under a double jeopardy analysis, *Hunt*, the earlier case and therefore the binding case on the issue, reached the contrary conclusion. See *Hunt*, *supra* at 317. Nevertheless, the instant case is distinguishable from *Hunt* on this issue because the instant case involved the unique statute concerning the concealment of stolen *firearms* as opposed to the general receiving and concealing statute. Finally, it is noted that the convictions in this case survive the federal double jeopardy analysis discussed in *Flowers*, *supra* at 654-655.