

No. 65566-3-I, City of Seattle v. Akbar Meah

GROSSE, J. (dissenting) — I dissent. This case is more like Kintz¹ than not. I believe the trial court should be affirmed on either of the bases argued by the City. To hold otherwise, in my opinion, is to over emphasize the use of the descriptive or comparative term “noncontinuous.”

First, when is it viewed as determinative, as it is in the majority opinion, it begs the question. Something that is “noncontinuous” is by definition distinct but the opposite is not necessarily so. But, while useful, such comparative juxtapositions alone cannot be determinative. While without question the statute² requires more than one act or occurrence, I believe the fact that one act is closely followed by another act does not itself make the two one.

Second, I believe the separation the statute requires should be defined by the act or acts themselves. As the facts of this case illustrate the encounter here was continuous in time, but divisible by separate acts; including, but not limited to, the slap on the knee, the negative response to the request to know the victim better, and following the victim when she left the bus. On these facts, I believe that it is consistent with Kintz to have left this decision with the trier of fact.

¹ State v. Kintz, 169 Wn.2d 537, 238 P.3d 470 (2010).

² RCW 9A.46.110.