

Court of Appeals, State of Michigan

ORDER

People of MI v Marti James Schrauben

Docket No. 332131

LC No. 2014-016277-FH

Joel P. Hoekstra
Presiding Judge

David H. Sawyer

Douglas B. Shapiro
Judges

Pursuant to MCR 7.205(E)(2), in lieu of granting the delayed application for leave to appeal, the Court VACATES the circuit court's October 1, 2015 order dismissing 70 counts of uttering and publishing. The circuit court correctly observed that in determining whether successive prosecution is barred under double jeopardy protections, the focus is on whether the current and prior offenses have the same elements, not on whether the same act is involved. *People v Nutt*, 469 Mich 565, 577-578; 677 NW2d 1 (2004), citing *Blockburger v United States*, 284 US 299, 304; 52 S Ct 180; 76 L Ed 306 (1932). But that is done to determine whether the same act "constitutes a violation of two distinct statutory provisions." Although the forgeries that form the basis for the uttering and publishing charges in the present case are the same *type* of act as formed the basis for defendant's 2012 convictions, they are not the same act. Defendant's 2012 uttering and publishing convictions were based on defendant forging his employer's name on four checks. In the current uttering and publish charges, he is charged with forging his employer's name 70 more times on 70 more checks. Double jeopardy does not bar the present prosecution.

We REMAND for reinstatement of the uttering and publishing charges under circuit court file no. 2014-016277-FH.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

JUN 17 2016

Date


Chief Clerk