STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHNNY LEE TROTTER,

Defendant-Appellant.

UNPUBLISHED
October 25, 1996

No. 186522
LC No. 95-018582-FC

Before: Fitzgerald, P.J., and O'Connell and T.L. Ludington,* JJ.

PER CURIAM.

Pursuant to a plea agreement, defendant pleaded guilty of armed robbery, MCL 750.529; MSA 28.797, possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), and habitual offender, second offense, MCL 769.10; MSA 28.1082. He was sentenced to five to twenty years' imprisonment for the armed robbery conviction and to a consecutive two-year term of imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm.

On December 21, 1994, defendant committed an armed robbery at a gas station in Ottawa County. Defendant left the robbery scene in a goldish-brown vehicle and was observed traveling in the direction of Grand Rapids in Kent County. Alerted by a telephone call to the Ottawa County Sheriff's Department, numerous police agencies became involved in a chase of defendant's vehicle that began shortly after the armed robbery. The police attempt to apprehend defendant resulted in a high speed chase in which a number of police vehicles were damaged. The damage resulted in a conviction and sentence for malicious destruction of property in Kent County. After the MDOP conviction, defendant was convicted of the present armed robbery and felony-firearm convictions in Ottawa County.

Defendant maintains that his second plea and convictions violated his constitutional guarantee against double jeopardy by imposing upon him separate trials for two criminal acts arising from the same transaction. *People v White*, 390 Mich 245, 258; 212 NW2d 222 (1973); *People v Spicer*, 216 Mich App 270, 272; 548 NW2d 245 (1996). We disagree.

* Circuit judge, sitting on the Court of Appeals by assignment.

Michigan courts have adopted a "same transaction" test for double jeopardy in the context of successive prosecutions. *People v McMiller*, 202 Mich App 82, 85; 507 NW2d 812 (1993). Under the same transaction test, the prosecutor is required to join at one trial all charges that grow out of a "continuous time sequence" and that demonstrate a "single intent and goal." *Id.*

Defendant contends that the armed robbery and MDOP offenses were part of one continuous time sequence and demonstrated the single intent and goal of successfully completing the armed robbery. Defendant suggests that the MDOP offense, wherein some police cars were damaged in defendant's attempt to evade capture, was part of the initial armed robbery because armed robbery is a "continuing" offense, with the crime not completed until the perpetrators reach a point of temporary safety. In support of the proposition, which is referred to as the "transactional" approach, defendant relies on *People v Velasquez*, 189 Mich App 14, 17; 472 NW2d 289 (1991). However, in *Velasquez* and the other cases cited by defendant in reliance for his argument, double jeopardy was not at issue. The transactional approach, which was adopted in *People v Beebe*, 70 Mich App 154, 159; 245 NW2d 547 (1976), is generally used to distinguish a robbery from a larceny and recognizes that an assault or force may *follow* a taking, rather than precede or be concomitant with it, such that the "felonious taking" element of armed robbery is satisfied. See *People v Tinsley*, 176 Mich App 119, 121; 439 NW2d 313 (1989). The transactional approach further recognizes that a taking is not considered complete until the assailant has effected his escape because the victim is still considered in possession of his property. *People v Clark*, 113 Mich App 477, 480; 317 NW2d 664 (1982). Thus, it ensures that the possessory interest has been severed.

Decisions that have applied the *White* same transaction test have required a close, unified purpose relationship between the crimes and a direct, factual connection, not mere temporal fortuity. *People v Jackson*, 153 Mich App 38, 46; 394 NW2d 480 (1986). In *People v Charles Johnson*, 62 Mich App 240, 248; 233 NW2d 246 (1975), this Court stated that "[a]t least one of the crimes must be of an ongoing nature such that all of the offenses are committed at the same time to achieve a single purpose." The sole fact that the offenses occurred within a short time span does not makes the offenses one continuous transaction. See, e.g., *People v Bolton*, 112 Mich App 626, 628; 317 NW2d 199 (1981); *People v Grant*, 102 Mich App 368; 301 NW2d 536 (1980). Indeed, the sequence of conduct may be simultaneous but not continuous for the purpose of the test. *Jackson, supra* at 50. In other words, one criminal offense may evolve from another criminal offense and still constitute two separate transactions under the Double Jeopardy Clause. *People v Richard Johnson*, 94 Mich App 388, 391; 288 NW2d 436 (1979).

The parties agree that *Grant, supra* is factually similar to the present case. In *Grant*, the Court determined:

> The facts of the present case do not evidence a single intent or goal as found in *Rolston* [kidnapping, rape, and murder.] An obvious goal of the armed robbery was to obtain money for whatever use the defendant intended. The later assault was aimed at evading police efforts to apprehend the defendant, a clearly different objective. Additionally, the offenses herein where not interrelated to the extent that they comprise

> an "essentially unitary criminal episode." *People v Charles Johnson, supra,* 248. At the time the defendant assaulted Officer Young, the armed robbery was successfully completed. Further, at no time was Officer Young present at the robbery scene, which would indicate a hot pursuit of the defendant. Although the defendant's criminal acts were committed within a short period of time, that evidence alone does not suggest the identity of intent or goal behind the acts necessary to raise a valid double jeopardy defense. In the absence of shared intent or goal, the defendant's second trial was not violative of his guarantee against double jeopardy.

In accord with *Grant* and *Bolton*, we conclude that the armed robbery had been completed at the time the malicious destruction of property occurred. The felonious taking had been accomplished and the armed robbery was not continuing because possession had been severed. Further, even if we were to determine that there was a "continuous time sequence" in this case, decisions of this Court have held on similar facts that there is no single intent or goal. The obvious goal of the armed robbery was to obtain money or property, and the later malicious destruction of property was aimed at evading capture, a "clearly different objective." See *Grant, supra* at 373; *Bolton, supra* at 628. As the Court noted in *Jackson, supra*, "[t]he double jeopardy clause does not license subsequent offenses growing out of a theft or excuse the theft upon trial for one or another offense." At most, defendant has shown only that the MDOP "evolved" from the armed robbery, but, because it is a separate offense, double jeopardy does not exist. *Spicer*, *supra* at 273.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Peter D. O'Connell
/s/ Thomas L. Ludington