

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

LEVELL CHRISTIAN, JR.,

Defendant-Appellee.

---

UNPUBLISHED

May 4, 1999

No. 206675

Wayne Circuit Court - Criminal  
Division

LC No. 97-001912

Before: Kelly, P.J., and Neff and Smolenski, JJ.

MEMORANDUM.

The prosecution appeals, by delayed leave granted, from a judgment of conviction and sentence entered on the jury's corrected verdict finding defendant guilty of discharging a firearm causing injury while intentionally aimed without malice, MCL 750.235; MSA 28.432. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, the prosecution argues that the trial court erred in recalling the jury after it was discharged and taking a second verdict from it. However, the prosecution has not presented this Court with a record establishing that the issue was properly preserved by timely objection below, nor has the prosecution argued that any exception to the issue preservation requirement applies in this case. See, e.g., *People v Grant*, 445 Mich 535, 546-547; 520 NW2d 123 (1994).

Moreover, the record is unclear as to whether the jury was ever "officially discharged" before being recalled to the courtroom in this case. A jury may change the form and substance of a verdict to coincide with its intention as long as the jury has not been officially discharged. *People v McNary*, 43 Mich App 134, 143; 203 NW2d 919 (1972). This is true even if the jury has already formally acknowledged its verdict on the record and has been excused from the courtroom. See *Standard Oil Co v Gonser*, 331 Mich 29; 49 NW2d 45 (1951); *Alston v Tye*, 67 Mich App 138; 240 NW2d 472 (1976). See also *Colling v Avon Disposal, Inc*, 179 Mich App 796; 446 NW2d 361 (1989). Here, the trial court asked the jurors to remain in the jury room for



the purpose of conducting a post-trial exit interview with them, apparently intending to postpone the final act of officially discharging the jury until the conclusion of that interview.

Affirmed.

/s/ Michael J. Kelly

/s/ Janet T. Neff

/s/ Michael R. Smolenski