

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRUCE GOSS,

Defendant-Appellant.

UNPUBLISHED

January 26, 2001

No. 217608

Wayne Circuit Court

LC No. 98-007317

Before: Sawyer, P.J., and Jansen and Gage, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of one count of intentional discharge of a firearm at a dwelling, MCL 750.234b; MSA 28.431(2), and possession of a firearm during the commission of a felony, second offense, MCL 750.227b; MSA 28.424(2). The trial court sentenced defendant to one to four years' imprisonment for the intentional discharge of a firearm conviction, and a consecutive five-year term for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant first contends that his convictions of both intentional discharge of a firearm at a dwelling and felony-firearm violate the constitutional prohibition against double jeopardy. We note that defendant failed to properly preserve this issue for appeal because he did not raise the issue at trial. *People v Grant*, 445 Mich 535, 546; 520 NW2d 123 (1994). Moreover, this Court previously rejected the identical argument defendant raises, concluding that "the Legislature intended that the felony-firearm statute apply to those who commit the act prohibited under MCL 750.234b; MSA 28.431(2)." *People v Guiles*, 199 Mich App 54, 59; 500 NW2d 757 (1993). We are bound by this decision. MCR 7.215(H)(1). Furthermore, because the *Guiles* analysis appears sound,¹ we decline to invoke the conflict rule of MCR 7.215(H)(2), as defendant suggests.

¹ In *Guiles*, the Court correctly observed that "[i]t is clear from the language of the [felony-firearm] statute that the Legislature intended, with only a few stated exceptions, that every felony committed by a person possessing a firearm result in a felony-firearm conviction," citing *People v Sturgis*, 427 Mich 392, 406-407; 397 NW2d 783 (1986) and *People v Morton*, 423 Mich 650, 656; 377 NW2d 798 (1985), and that "[t]he statute that punishes the intentional discharge of a firearm at a dwelling or occupied structure, MCL 750.234b; MSA 28.431(2), is not one of the

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Defendant next argues that his intentional discharge of a firearm at a dwelling conviction violated his due process rights because he was not given adequate notice that he would have to defend against this charge. This issue is also unpreserved for appeal because defendant did not raise it at trial. *Grant, supra*. Nonetheless, we will briefly consider defendant's argument.

A trial court has no authority to convict a defendant of an offense not specifically charged unless the defendant has received adequate notice. Notice is considered adequate if the charge is a lesser included offense of the original charge. *People v Quinn*, 136 Mich App 145, 147; 356 NW2d 10 (1984). A review of the lower court record, including the preliminary hearing transcript, indicates that defendant originally was charged with six counts of assault with intent to commit murder for firing multiple gunshots into a residential house occupied by six persons. MCL 750.83; MSA 28.278. Under the instant facts, the discharge of a firearm into a dwelling charge of which defendant ultimately was convicted constitutes a cognate lesser offense. *People v Jones*, 395 Mich 379, 387-390; 236 NW2d 461 (1975); *People v Sullivan*, 231 Mich App 510, 517; 586 NW2d 578 (1998) ("A cognate lesser offense shares several elements and is in the same class of offenses as the greater crime, but differs from the greater crime in that it contains some elements not found in the higher offense."), *aff'd* 461 Mich 986 (2000). Accordingly, we conclude that the trial court did not violate defendant's due process rights when it found him guilty of the cognate lesser discharge of a firearm offense.

Affirmed.

/s/ David H. Sawyer
/s/ Kathleen Jansen
/s/ Hilda R. Gage

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exceptions provided in the felony-firearm statute." *Guiles, supra* at 59.