

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEMETRICE BENOR JOHNSON,

Defendant-Appellant.

UNPUBLISHED

March 31, 2009

No. 279130

Wayne Circuit Court

LC No. 07-006715-01

Before: Saad, C.J., and Bandstra and Hoekstra, JJ.

SAAD, C.J. (*concurring*).

I concur in the result because we are bound by *People v Cornell* and its progeny, but I write separately because I am troubled by the illogical application of the rule in this case.

Were it not for our Supreme Court’s unambiguous holding that prohibits convictions of uncharged cognate offenses, I would rule differently here. Defendant was fully aware that his possession and use of a dangerous weapon—the element that distinguishes felonious assault from assault with intent to murder—was at issue during the preliminary examination and at trial. Indeed, the prosecutor charged defendant with *three firearm offenses* predicated on his possession and use of a gun and defendant was convicted of those charges. Furthermore, in his motion to quash or reduce the charge of assault with intent to commit murder, defendant never asserted that he did not use a gun. He merely argued that the fact that he shot at the victim did not establish that he intended to commit murder. In other words, defendant specifically acknowledged that all the crimes for which he was being tried involved the use of a dangerous weapon and it defies explanation how he would have defended the case any differently if the prosecutor had formally charged him with felonious assault. Defendant clearly had adequate notice of all of the facts at issue and had ample opportunity to prepare for trial and defend against this charge. Under these circumstances, the purpose of the Supreme Court’s rule is clearly not served by vacating defendant’s conviction, but I recognize that we must do so under the rule of stare decisis.

/s/ Henry William Saad