

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRELL SPENCER,

Defendant-Appellant.

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UNPUBLISHED

March 30, 2001

No. 219717

Wayne Circuit Court

LC No. 98-008423

Before: Gage, P.J., and Cavanagh and Wilder, JJ.

GAGE, P.J. (concurring).

I believe that the evidence, which showed that defendant aimed a gun toward a large group of people and fired the gun several times, supported an inference that defendant intended either to injure these individuals or to place them in apprehension of an immediate battery. *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). Therefore, I would conclude that the trial court erred in denying defendant's request to instruct the jury regarding the elements of felonious assault as a cognate lesser offense of assault with intent to murder. *People v Sullivan*, 231 Mich App 510, 517-518; 586 NW2d 578 (1998), *aff'd* 461 Mich 992 (2000); *People v Vinson*, 93 Mich App 483, 486; 287 NW2d 274 (1979). Nonetheless, I agree with the majority that in light of the jury's finding of defendant's guilt of assault with intent to murder, the highest charge, instead of the lesser included, intermediate charge of assault with intent to do great bodily harm less than murder, the trial court's failure to instruct regarding felonious assault qualifies as harmless error. *Sullivan, supra* at 520.

/s/ Hilda R. Gage