

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM EUGENE JONES,

Defendant-Appellant.

UNPUBLISHED

June 3, 1997

No. 193330

Recorder's Court

LC No. 95-007276

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

PER CURIAM.

Defendant appeals as of right from his jury trial convictions of involuntary manslaughter, MCL 750.321; MSA 28.553, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The trial court originally sentenced defendant to a term of five to fifteen years' imprisonment for the involuntary manslaughter conviction, and to the statutory term of two years for the felony firearm conviction. Defendant subsequently filed a post-judgment motion for a new trial, to vacate his felony firearm conviction, and for resentencing MCR 7.208(B). The trial court denied defendant's motion for a new trial, but resentenced defendant to a term of three to fifteen years' imprisonment for the involuntary manslaughter conviction because the guidelines were incorrectly scored at defendant's first sentencing.

On appeal, defendant argues that reversible error occurred at his trial because the court did not instruct the jury regarding the lesser misdemeanor offense of careless and reckless or negligent discharge of a firearm, death resulting. MCL 750.861; MSA 28.426(21). Defendant failed to preserve this issue for our review because defendant failed to request this instruction at trial. *People v Steele*, 429 Mich 13, 19; 412 NW2d 206 (1987). We also find that defendant's failure to request the instruction at trial is fatal to his argument. In *Steele*, a five-part test was established to determine when a trial court must give an instruction on a lesser misdemeanor offense. The first condition of that test is that a proper request for the instruction must be made. *Id.* The record in this case shows that defendant did not request the lesser offense instruction at trial. Defendant argues that the discussions between the trial court and trial counsel regarding jury instructions were held off the record, but we will not speculate as to events or discussions which may have occurred off the record. The law places the responsibility of

making the request for the instruction upon the defendant, and without a record of such a request, we will not assign error.

Defendant also argues that his convictions for both involuntary manslaughter and felony-firearm constitute factual double jeopardy. We disagree. On appeal, we review a trial court's determination of a double jeopardy issue *de novo*. *People v White*, 212 Mich App 298, 304-305; 536 NW2d 876 (1995). Our examination of the scope of double jeopardy protection against judicially imposed multiple punishment for the "same offense" is restricted to a determination of legislative intent. *People v Guiles*, 199 Mich App 54, 57; 500 NW2d 757 (1993). In *Guiles*, we concluded that the clear intent of the Legislature, discerned from the language of the felony-firearm statute, was that every felony committed by a person possessing a firearm result in a felony-firearm conviction, save only the few exceptions stated in the statute. *Id.* at 59. Since involuntary manslaughter is not one of the exceptions stated in the felony-firearm statute, we decline to make it an exception here.

Affirmed.

/s/ Michael R. Smolenski
/s/ Michael J. Kelly
/s/ Roman S. Gribbs