

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARRYL KEITH WADE,

Defendant-Appellant.

UNPUBLISHED

August 19, 1997

No. 191600

Macomb Circuit Court

LC No. 95-000369-FC

Before: Sawyer, P.J., and Bandstra and E. A. Quinnell*, JJ.

MEMORANDUM.

Defendant appeals by right his jury conviction for armed robbery and possession of a firearm during the commission of a felony. He contends that he was deprived of a fair trial when a police officer vouched for the credibility of the two eyewitnesses.

All the police officer said was that, in conducting a photographic identification proceeding involving the two eyewitnesses, he advised them that he was not interested in a tentative identification, and could proceed with the case only if they were "100% sure". Both witnesses advised the officer that their identifications were based on that level of certainty. These statements were not objectionable as hearsay, MRE 801(d)(1)(C), and did not represent vouching for the eyewitness testimony, since it was equivalent to the eyewitnesses saying that they were 100% certain of their identifications, and both eyewitnesses were available for cross-examination on this point. However, even if this could be construed as error, it was unpreserved and, on this record, was not outcome determinative. Therefore, appellate relief is unwarranted. *People v Grant*, 445 Mich 535; 520 NW2d 123 (1994).

Affirmed.

/s/ David H. Sawyer

/s/ Richard A. Bandstra

/s/ Edward A. Quinnell

* Circuit judge, sitting on the Court of Appeals by assignment.