

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDDIE LANE, JR.,

Defendant-Appellant.

UNPUBLISHED

September 24, 1999

No. 210006

Recorder's Court

LC No. 97-004708

Before: Gribbs, P.J., and O'Connell and R.B. Burns*, JJ.

PER CURIAM.

Following a one-day bench trial, defendant was convicted of armed robbery, MCL 750.529; MSA 28.797, and was sentenced to a term of imprisonment of eighteen months to five years. Defendant appeals as of right. We affirm.

Defendant first argues that the district court abused its discretion in denying his request for a lineup identification to require the victim to identify defendant before the preliminary examination. Although defendant did request a lineup before the preliminary examination was held, defendant failed to raise this issue before the trial court. Therefore, this issue is unpreserved. *People v Sparks*, 53 Mich App 452, 454; 220 NW2d 153 (1974). Because defendant has not demonstrated plain error that was prejudicial, defendant has forfeited review of this unpreserved issue. *People v Grant*, 445 Mich 535, 553; 520 NW2d 123 (1994); *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Defendant also argues that the in-court identification of defendant by the victim at the preliminary examination was unduly suggestive. Although defendant objected to the admission of the victim's in-court identification at the preliminary examination, he did not object to the subsequent admission of the preliminary examination transcript at trial and did not move to suppress the identification testimony before or during trial.¹ Therefore, this issue is also unpreserved. *People v Lee*, 391 Mich 618, 626; 218 NW2d 655 (1974); *People v Whitfield*, 214 Mich App 348, 351; 543 NW2d 347 (1995); *People v Syakovich*, 182 Mich App 85, 89; 452 NW2d 211 (1989). In order to avoid forfeiture of this issue, defendant must demonstrate plain error that was prejudicial, i.e., that was

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

outcome determinative. *Grant, supra* at 553; *Carines, supra* at 763-764. In this bench trial, the trial court made specific findings of fact and concluded that the victim's in-court identification of defendant was not adequate to find that defendant committed the crime. However, the trial court found that the identification testimony of an eyewitness was reliable and was corroborated by other evidence. The court also found that the identification the eyewitness made was not the result of unduly suggestive procedures. The court therefore concluded that defendant was beyond a reasonable doubt the person who committed the crime. Under these circumstances, we conclude that defendant has failed to demonstrate that the admission of the victim's in-court identification testimony from the preliminary examination affected the outcome of the trial. Accordingly, defendant has forfeited this issue.

Finally, defendant argues that the trial court erred in excluding a statement the victim made to a police officer describing the person who robbed him. Neither the victim nor the police officer testified at trial, although the victim's testimony at the preliminary examination was read into the record at trial. Therefore, the statement defendant sought to admit was an out-of-court statement. Defendant did not indicate that the statement was being offered for any purpose other than to prove the truth of the matter asserted; therefore, the statement was inadmissible hearsay. MRE 801(c); MRE 802. Defendant has failed to identify any hearsay exception or other rule of evidence that would mandate or allow the admission of the statement; therefore, defendant has abandoned this issue for failing to cite supporting authority. *People v Hanna*, 223 Mich App 466, 470; 567 NW2d 12 (1997). See also *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998) ("An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority."). Accordingly, we decline to review this issue.

Affirmed.

/s/ Roman S. Gribbs

/s/ Peter D. O'Connell

/s/ Robert B. Burns

¹ The victim died of natural causes between the preliminary examination and trial, and the victim's preliminary examination testimony was therefore read into the record at trial.