

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WARNER JOEL GREENE,

Defendant-Appellant.

UNPUBLISHED

January 28, 2000

No. 209754

Macomb Circuit Court

LC No. 97-002010-FH

Before: Bandstra, C.J., and Holbrook, Jr. and Fitzgerald, JJ.

MEMORANDUM.

Defendant was convicted by a jury of carrying a concealed weapon, MCL 750.227; MSA 28.424, felonious assault, MCL 750.82; MSA 28.277, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to concurrent prison terms of two to five years for the CCW conviction and one to four years for the felonious assault conviction, and a consecutive two-year term for the felony-firearm conviction. He appeals as of right. We affirm.

Defendant contends that the trial court erred in denying his motion to suppress a witness' in-court identification on the ground that defendant was not represented by counsel when the police conducted a pretrial photographic lineup. We review the trial court's ruling on the admission of identification evidence for clear error, which "exists when the reviewing court is left with the definite and firm conviction that a mistake has been made." *People v Kurylczyk*, 443 Mich 289, 303; 505 NW2d 528 (1993). The evidence adduced at the evidentiary hearing showed that defendant had been named as a suspect by the owner of the car he was driving, allowing the police to obtain a warrant for his arrest. However, he had not been positively identified as the man who feloniously assaulted the officer who attempted to effectuate a traffic stop. Defendant had not yet been contacted or questioned before the photographic lineup, and he had not been taken into custody and released. Under these circumstances, defendant was not entitled to counsel at the lineup. *Kurylczyk, supra* at 302; *People v McKenzie*, 205 Mich App 466, 472-473; 517 NW2d 791 (1994).

Affirmed.

/s/ Richard A. Bandstra
/s/ Donald E. Holbrook, Jr.
/s/ E. Thomas Fitzgerald