STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 20, 2007
v	No. 272401 Wayne Circuit Court
WILLIAM JAMES TAYLOR, Defendant-Appellant.	LC No. 06-005262-01

Before: Zahra, P.J, and White and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right from convictions of assault with intent to do great bodily harm less than murder, MCL 750.84, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), second offense, MCL 750.227b. He was sentenced as an habitual offender, fourth offense, MCL 769.12, to concurrent prison terms of 7 to 30 years for the assault conviction and 5 to 30 years for the felon in possession conviction, to be served consecutive to a five-year term of imprisonment for the felony-firearm, second offense, conviction. We affirm.

Defendant first contends that the trial court erred in denying his motion to suppress. "The trial court's decision to admit identification evidence will not be reversed unless it is clearly erroneous." *People v Harris*, 261 Mich App 44, 51; 680 NW2d 17 (2004). "Clear error exists if the reviewing court is left with a definite and firm conviction that a mistake has been made." *Id.*

"An identification procedure that is unnecessarily suggestive and conducive to irreparable misidentification constitutes a denial of due process." *People v Kevin Williams*, 244 Mich App 533, 542; 624 NW2d 575 (2001). Improper suggestiveness may arise where the witness is told that the right person has been apprehended. *People v Gray*, 457 Mich 107, 111; 577 NW2d 92 (1998). An identification procedure may also be improperly suggestive if the witness is shown only one person or is shown a group of people in which one person is singled out in some way. *Id.* "The relevant inquiry . . . is not whether the lineup photograph was suggestive, but whether it was unduly suggestive in light of all of the circumstances surrounding the identification." *People v Kurylczyk*, 443 Mich 289, 306; 505 NW2d 528 (1993).

Even where the identification procedure was unduly suggestive, identification testimony is still admissible at trial if there is an independent basis for an in-court identification "that is untainted by the suggestive pretrial procedure." *Williams, supra*, 244 Mich App at 542-543. Relevant factors include (1) whether the witness previously knew the defendant, (2) the witness's opportunity to observe the offense, (3) how much time elapsed between the offense and the disputed identification, (4) the accuracy of the witness's description of the defendant as compared to his actual description, (5) whether the witness made a previous proper identification of the defendant or failed to identify him, (6) whether the witness identified another person as the defendant before the lineup, (7) whether the witness was affected by fatigue, nervous exhaustion, alcohol, drugs or undue stress caused by the offense, and (8) any idiosyncratic or special features of the defendant. *People v Kachar*, 400 Mich 78, 95-96; 252 NW2d 807 (1977); *People v McCray*, 245 Mich App 631, 639-640; 630 NW2d 633 (2001).

Here, although the victim, Tonyal Reid, was shown only one photograph and may or may not have been told that it was a picture of a possible suspect, the evidence clearly showed that Reid was already acquainted with his assailant and identified him, albeit by a nickname only, to the police before being shown the photograph. The trial court properly concluded that suppression was not required because there was an independent basis for an in-court identification that was "untainted by the suggestive pretrial procedure." *Williams, supra* at 542-543.

Issues Raised in Defendant's Standard 4 Brief

In addition to challenging the identification procedure, discussed above, defendant contends that he is entitled to a new trial because his counsel provided ineffective assistance. To prevail on a claim of ineffective assistance of counsel, defendant must show that his counsel's performance was objectively unreasonable and the representation was so prejudicial that he was deprived of a fair trial. To demonstrate prejudice, the defendant must show that, but for counsel's error, there was a reasonable probability that the result of the proceedings would have been different. [*People v Watkins*, 247 Mich App 14, 30; 634 NW2d 370 (2001), aff'd 468 Mich 233 (2003) (citations omitted).]

Defendant contends that counsel should have canvassed the neighborhood where the shooting occurred to find persons who may have witnessed the shooting and, in the event they had information that might have benefited the defense, counsel should have called them to testify at trial. There is nothing in the record to suggest that such witnesses exist or what testimony they might have offered, and thus defendant has not shown a reasonable probability that the outcome of the trial would have been different if counsel had found and called the potential witnesses. *People v Avant*, 235 Mich App 499, 508; 597 NW2d 864 (1999).

Defendant also contends that counsel should have objected to some aspect of Carla Ivey's testimony at the suppression hearing. Apart from citing a page in the transcript, defendant has not identified the testimony with which he takes issue or any basis for a viable objection. "It is not sufficient for a party 'simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.'" *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). The issue is thus deemed abandoned.

Finally, defendant argues that the trial court erred in admitting Officer Ericka Jones's rebuttal testimony that defendant was known as June or Junior. The trial court's ruling regarding the admission of evidence is reviewed for an abuse of discretion. *People v Hine*, 467 Mich 242, 250; 650 NW2d 659 (2002). A witness may testify to a matter if evidence is introduced to establish that the witness has personal knowledge of the matter. MRE 602; *People v Holleman*, 138 Mich App 108, 114; 358 NW2d 897 (1984). Hearsay is not admissible unless subject to a specific exception to or exclusion from the hearsay rule. MRE 801; MRE 802.

Jones testified that defendant "usually goes by the name of June or Junior." However, she admitted that she had never heard anyone address him by either name. Rather, she based her testimony on information obtained from police records and "people in the projects." Defendant's hearsay objection was overruled based on this inadequate foundation. However, in this bench trial, it is clear that the court was satisfied that the victim recognized defendant as his assailant. Thus, the error in admitting Jones' testimony was harmless.

Affirmed.

/s/ Brian K. Zahra
/s/ Helene N. White
/s/ Peter D. O'Connell