

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GREGORY DARNELL HOUSCH,

Defendant-Appellant.

UNPUBLISHED

September 25, 1998

No. 192388

Recorder's Court

LC No. 95-003439

Before: Holbrook, Jr., P.J., and Wahls and Cavanagh, JJ.

MEMORANDUM.

Defendant appeals as of right his conviction for second-degree murder, MCL 750.317; MSA 28.549, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). We affirm.

Defendant's conviction was primarily based on the identification testimony of Gwanda Edmonds, who witnessed the murder and also knew defendant from prior contacts. On appeal, defendant argues that the identification was tainted by police suggestion, and that the court erred in allowing a suggestive preliminary examination identification procedure. We disagree.

In order to sustain a due process challenge, a defendant must show that the pretrial identification procedure was so suggestive in light of the totality of the circumstances that it led to a substantial likelihood of misidentification. *People v Kurylczyk*, 443 Mich 289, 302; 505 NW2d 528 (1993), cert den 510 US 1058; 114 S Ct 725; 126 L Ed 2d 689 (1994). If the pretrial procedure was impermissibly suggestive, an in-court identification by the same witness may be allowed if an independent basis for an untainted identification can be established. *Id.* at 303. A trial court's decision to admit identification evidence will not be reversed unless it is clearly erroneous. *Id.*

There is no showing that the trial court clearly erred in finding that the identification testimony was not tainted. The witness knew defendant prior to the shooting, and was able to observe him at the time of the crime. Police did not know defendant's name until he was identified by the witness.

There is no showing that the preliminary examination identification was tainted. Defendant was seated in the back of the courtroom, rather than at the table with counsel when he was identified. The court acted within its discretion in denying a pretrial lineup where the witness knew defendant before the crime was committed. *People v Buchanan*, 107 Mich App 648, 653; 309 NW2d 691 (1981).

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Myron H. Wahls

/s/ Mark J. Cavanagh