

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES KENNETH ADAMS, III.,

Defendant-Appellant.

UNPUBLISHED

February 5, 1999

No. 202889

Recorder's Court

LC No. 95-007253

Before: Sawyer, P.J., and Wahls and Hoekstra, JJ.

MEMORANDUM.

Following a bench trial, defendant was convicted of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to two years' imprisonment on the felony-firearm conviction and to a consecutive four-to-ten-year term of imprisonment on the assault conviction. Defendant appeals as of right. We affirm.

Defendant argues that his conviction must be reversed because the in-court eyewitness identification of defendant by the victim lacked an independent basis. An independent basis for an in-court eyewitness identification is necessary only when a pretrial identification has been rendered invalid. *People v Kachar*, 400 Mich 78, 83, 97; 252 NW2d 807 (1997). Because the record contains no evidence of any pretrial identification of defendant by the victim, tainted or otherwise, no need existed to demonstrate an independent basis for the in-court identification as a prerequisite for allowing the identification.

Rather, defendant's claim of error is more accurately characterized as a claim that the prosecutor presented insufficient evidence to establish beyond a reasonable doubt that defendant was the shooter. Viewing the evidence in a light most favorable to the prosecutor, a rational trier of fact could find beyond a reasonable doubt that defendant was the shooter in light of the victim's testimony that he was able to ascertain with certainty that defendant was the shooter while looking through the open vehicle window and observing fire coming from the gun. *People v Wolfe*, 440 Mich 508, 515, 489 NW2d 748 (1992), amended on other grounds 441 Mich 1201 (1992). The arguments advanced

by defendant address whether the victim's testimony was credible and what weight, if any, should be given to the victim's testimony. These matters are to be left to the trier of fact and not to be decided anew by this Court. *Id.* at 514.

Affirmed.

/s/ David H. Sawyer

/s/ Myron H. Wahls

/s/ Joel P. Hoekstra