STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 26, 2000
v	No. 215221 Wayne Circuit Court
ERIC SMOOTHERS, Defendant-Appellant.	LC No. 98-004494

Before: Jansen, P.J., and Doctoroff and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right from convictions 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), following a bench trial. Defendant was sentenced as a second habitual offender, MCL 769.10; MSA 28.1082, to two years imprisonment for the felony-firearm conviction and twenty-five to seventy-five years imprisonment for the second-degree murder conviction, to be served consecutively. We affirm.

Defendant argues that the trial court should have suppressed evidence of an eyewitness identification of defendant in a corporeal lineup. A trial court's decision on a motion to suppress evidence is entitled to deference and will not be reversed on appeal unless it is clearly erroneous. *People v Faucett*, 442 Mich 153, 170; 499 NW2d 764 (1993); *People v Colon*, 233 Mich App 295, 304; 591 NW2d 692 (1998); *People v McElhaney*, 215 Mich App 269, 286; 545 NW2d 18 (1996). A decision is clearly erroneous if this Court is left with a definite and firm conviction that a mistake has been made. *Id.*

Defendant claims that the corporeal lineup was impermissibly suggestive because the witness previously viewed defendant's photograph among six pictures in a photographic array. To suppress identification evidence, a defendant must show that in light of the totality of the circumstances, the identification procedure was so impermissibly suggestive that it led to a substantial likelihood of misidentification. *Colon*, *supra* at 304; *People v Kurylczyk*, 443 Mich 289, 302; 505 NW2d 528 (1993). In the instant case, rather than arguing that the photographic array was itself suggestive, defendant contends that the mere viewing of defendant's photograph created an impermissible suggestion for the subsequent corporeal lineup. We disagree.

Our Supreme Court has held that where a photograph of a defendant was published before witnesses identified him in a photographic array, the identification was valid because there was a lack of evidence that the identification was influenced by the photograph. *Kurylczyk, supra* at 310. In this case, as in *Kurylczyk*, there is no evidence that the witness was influenced in any way by viewing the photographic array. The police officer who conducted the lineup testified that both the photographic array and the corporeal lineup were conducted properly, and defendant failed to present any evidence to contradict his testimony. We find that the trial court did not clearly err in denying defendant's motion to suppress the identification.

Defendant next argues that the trial court should have suppressed his confession, because it was not given voluntarily. We review de novo the record of a motion to suppress a confession, but will not disturb the lower court's decision unless its factual findings were clearly erroneous. *People v Kowalski*, 230 Mich App 464, 472; 584 NW2d 613 (1998). In the present case, defendant appears to confuse the issue of whether his statement was voluntary with the question of whether he made the statement at all. The voluntary nature of a statement and the veracity of the statement are two separate issues. *People v Neal*, 182 Mich App 368, 371; 451 NW2d 639 (1990). To be admissible, a defendant's statement must be freely and voluntarily given. *People v Daoud*, 462 Mich 621, 630; 614 NW2d 152 (2000). Whether a statement is voluntary depends on the absence of police coercion. *Id*. at 635. This is a question that must be resolved by the trial court at a *Walker*[1] hearing. *Neal, supra* at 372. However, whether a defendant actually made a statement is a question of fact for trial. *Id.*

In this case, defendant argues only that his confession was fabricated, and does not present any evidence of police conduct that improperly influenced his confession. Because defendant failed to establish that his statement was involuntary, we find no error in the trial court's denial of defendant's motion to suppress the confession.

Affirmed.

/s/ Kathleen Jansen
/s/ Martin M. Doctoroff
/s/ Peter D. O'Connell

[1] *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).