

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICKY LEE ANES,

Defendant-Appellant.

UNPUBLISHED

January 25, 2002

No. 227343

Wayne Circuit Court

LC No. 99-009260

Before: Talbot, P.J., and Smolenski and Wilder, JJ.

PER CURIAM.

Following a bench trial, the trial court convicted defendant of first-degree home invasion, MCL 750.110a(2), and sentenced him as a fourth habitual offender, MCL 769.12, to a term of six to twenty years' imprisonment. He appeals as of right. We affirm.

Defendant argues that he was denied due process because a witness' in-court identification was the product of an unduly suggestive photographic lineup. Because defendant did not object to the identification evidence in the trial court, we review this issue for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Having reviewed the photographic lineup, we conclude that it was not unduly suggestive. *People v Gray*, 457 Mich 107, 111; 577 NW2d 92 (1998). Thus, defendant has not established plain error affecting his substantial rights. *Carines, supra*. Further, because the lineup was not unduly suggestive, defendant has not established that trial counsel was ineffective for failing to file a motion to suppress the identification. *People v Toma*, 462 Mich 281, 302-303; 613 NW2d 694 (2000).

Defendant also argues that the evidence was insufficient to identify him as the perpetrator. We disagree. Although there were some minor inaccuracies in the witness' description of defendant and his car, the witness testified at trial that he was "one-hundred percent" sure that defendant was the perpetrator. We note that the witness had ample opportunity to observe the perpetrator during the commission of the crime. Additionally, the license plate number of the perpetrator's car that was recorded by the witness matched defendant's vehicle. Viewed in a light most favorable to the prosecution, the evidence was sufficient to identify defendant as the perpetrator beyond a reasonable doubt. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). Further, the credibility of the identification

testimony was for the trier of fact to resolve and this Court will not resolve it anew. *Id.*

Affirmed.

/s/ Michael J. Talbot
/s/ Michael R. Smolenski
/s/ Kurtis T. Wilder