

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SELESTER E. KING,

Defendant-Appellant.

---

UNPUBLISHED

August 19, 1997

No. 190615

Oakland Circuit Court

LC No. 95-139484-FC

Before: Sawyer, P.J., and Bandstra and E. A. Quinnell\*, JJ.

MEMORANDUM.

Defendant appeals by right his jury convictions for armed robbery, possession of a short-barreled shotgun, receiving and concealing stolen property over \$100, and possession of a firearm during the commission of a felony, enhanced pursuant to his fourth felony offender status.

Defendant first contends that his trial counsel was ineffective in failing to move to suppress an eyewitness identification based on an improperly conducted lineup. Although defendant claims on appeal that he was the only person in the lineup with facial contusions, there is no evidence of record in support of this contention. Factual claims not supported by the record cannot furnish a proper basis for appellate relief. *People v Lawson*, 124 Mich App 371; 335 NW2d 43 (1983). As the record gives no indication that a meritorious motion to suppress the lineup identification could have been filed, defendant has failed to establish the prejudice prerequisite to appellate relief on a claim of ineffective assistance of counsel. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

Defendant's remaining argument is that he was improperly subjected to a single trial on unrelated offenses. The lower court record is devoid of any motion by defendant seeking a separate trial pursuant to MCR 6.120(B), so the issue is not preserved in any event. However, the offenses of which defendant was tried and convicted were the result of a single incident -- the prosecution proved beyond a reasonable doubt that defendant used the short-barreled shotgun to commit an armed

---

\* Circuit judge, sitting on the Court of Appeals by assignment.

robbery, and then attempted to escape from the scene of the crime in a stolen automobile. These offenses were properly joined for trial. *People v Tobey*, 401 Mich 141, 152; 257 NW2d 537 (1977).

Affirmed.

/s/ David H. Sawyer

/s/ Richard A. Bandstra

/s/ Edward A. Quinnell