

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAMONT CHARLES ETHERIDGE, JR.,

Defendant-Appellant.

UNPUBLISHED

December 16, 1997

No. 196662

Macomb Circuit Court

LC No. 95-003194 FC

Before: O'Connell, P.J., and White and C. F. Youngblood*, JJ.

MEMORANDUM.

Defendant appeals by right his convictions by jury of assault with intent to commit great bodily harm less than murder (two counts), MCL 750.84; MSA 28.279, as lesser included offenses of assault with intent to murder, and two counts of possession of a firearm during the commission of a felony. MCL 750.227b; MSA 28.424(2). This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant contends that his Fifth Amendment privilege against self-incrimination was violated when the prosecution elicited, during direct examination of two detectives who interrogated defendant after arrest, the fact that defendant, after initially waiving his *Miranda* rights and answering some questions, then invoked his *Miranda* rights and refused to answer further questions.

However, even assuming *arguendo* that this questioning of the two detectives, notwithstanding the lack of objection, violated defendant's constitutional rights, and that the error is cognizable for appellate purposes notwithstanding the invited error doctrine, any such error was harmless beyond a reasonable doubt where the evidence was overwhelming. The arresting officers saw the gunman, whose clothing was consistently described by nearly a dozen eyewitnesses, running from the scene of the crime, took up hot pursuit, and arrested defendant and a codefendant. In the car with defendant was found a pistol which was ballistically matched to the shell casings left at the restaurant. Additional eyewitnesses also identified defendant as the gunman, these witnesses including several customers of the restaurant and one bystander from across the street. Defendant's statement to police acknowledged that his

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

clothing was identical to that which all the eyewitnesses described as being worn by the gunman. The prosecutor's questions were not so offensive as to be intolerable to the maintenance of a sound judicial process and the harmless error doctrine applies. *People v Gilbert*, 183 Mich App 741; 455 NW2d 731 (1990).

Affirmed.

/s/ Peter D. O'Connell

/s/ Helene N. White

/s/ Carole F. Youngblood