STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FRANK STEVENS a/k/a FRANK STEVEN BUTLER,

Defendant-Appellant.

UNPUBLISHED
November 6, 1998

No. 196156
Macomb Circuit Court
LC No. 93-002597 FH

Before: Wahls, P.J., and Holbrook, Jr. and Fitzgerald, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of conspiracy to commit malicious destruction of personal property over $100, MCL 750.157a; MSA 28.354(1), two counts of malicious destruction of personal property over $100, MCL 750.377a; MSA 28.609(1), conspiracy to commit arson, MCL 750.157a; MSA 28.354(1), arson of real property, MCL 750.73; MSA 28.268, and two counts of arson of personal property, MCL 750.74; MSA 28.269. He was sentenced to five years' probation as to all counts, to be served concurrently, with the first year to be served in the Macomb County Jail. Defendant now appeals as of right. We affirm.

Defendant first argues that the trial court erred in denying his motion for a new trial. He claims that the verdict was against the great weight of the evidence because a crucial witness's credibility was suspect. We reject this argument. Our Supreme Court has recently clarified the proper standard in evaluating a motion for a new trial: "A trial judge does not sit as the thirteenth juror in ruling on motions for a new trial and may grant a new trial only if the evidence preponderates heavily against the verdict so that it would be a miscarriage of justice to allow the verdict to stand." *People v Lemmon*, 456 Mich 625, 627; 576 NW2d 129 (1998).

New trial motions which depend solely on the weight of evidence concerning witness credibility are not favored, and absent exceptional circumstances, credibility questions are for the jury. *Id.* at 636, 639, 642. In defining the exceptions to this general rule, the Court indicated that exceptional circumstances might be found "'[w]here testimony is patently incredible or defies physical realities,' '[w]here a witness's testimony is material and is so inherently implausible that it could not be believed by a reasonable juror,' or where the testimony has been seriously 'impeached' and the case marked by

'uncertainties and discrepancies.'" *Id.* at 643-644 (citations omitted). However, the Court cautioned that a judge's disagreement with the jury's verdict is not grounds for a new trial. *Id.* at 644.

Here, defendant claims that witness John Pree "was an incredible liar." However, the information Pree provided regarding the acts of vandalism and the firebombing were consistent with police reports. In addition, other testimony given by Pree was corroborated both by the police officer in charge of the investigation and by an FBI agent. Even defendant's own testimony confirmed some of Pree's statements. Thus, while there were inconsistencies in Pree's testimony, much of his testimony was corroborated by other witnesses. Under these circumstances, there is no justification for departure from the general rule that questions regarding credibility are for the jury. Accordingly, the trial court did not abuse its discretion in denying defendant's motion for a new trial.

Next, defendant argues that the trial court erred in excluding portions of a letter written by Macomb County Prosecutor Carl Marlinga. We disagree. The decision to admit evidence will not be reversed absent an abuse of discretion. *People v McElhaney*, 215 Mich App 269, 280; 545 NW2d 18 (1996).

Marlinga's letter included a statement that "there is no credible evidence to indicate that City Management Company (or any officer, employee or person connected with your company) is guilty of or suspected of any criminal wrong doing whatsoever." Defendant argues that this statement amounts to an admission that Pree is not credible. We find nothing in the record to support this assertion. Marlinga could have believed that Pree was telling the truth and still concluded that there was no "credible evidence" implicating City Management Company. In any event, as we noted above, questions of credibility are for the jury, and Marlinga's opinion on this issue was irrelevant.[1] Thus, the trial court did not abuse its discretion in excluding portions of the letter.

Finally, defendant argues that he was denied a fair trial because his trial was not severed from that of his codefendant. Defendant has not provided this Court with a copy of the motion to sever or the trial court's disposition as to that motion.[2] Therefore, this issue would normally be considered waived on appeal. *People v Anderson*, 209 Mich App 527, 535; 531 NW2d 780 (1995). Moreover, because defendant and codefendant's defenses were not "irreconcilable" or "mutually exclusive," joinder of their cases was proper. *People v Hana*, 447 Mich 325, 331, 349-350; 524 NW2d 682 (1994).

Affirmed.

/s/ Myron H. Wahls
/s/ Donald E. Holbrook, Jr.
/s/ E. Thomas Fitzgerald

[1] As our Supreme Court has noted, one witness's opinion regarding the credibility of another witness "is not probative of the matter." *People v Buckey*, 424 Mich 1, 17; 378 NW2d 432 (1985).

[2] We note that there is evidence in the record that someone made a motion to sever, and that the motion was denied. However, it is not clear whether it was defendant or one of his codefendants that made the motion, nor is it clear what arguments were made in support of the motion.