

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BASSAM MAZAHM,

Defendant-Appellant.

UNPUBLISHED

September 10, 1999

No. 208822

Wayne Circuit Court-
Criminal Division

LC No. 97-002884

Before: Markman, P.J., and Saad and P.D. Houk,* JJ.

MEMORANDUM.

Defendant appeals by right from his bench trial conviction of aggravated stalking, MCL 750.411i; MSA 28.643(9), for which he was sentenced to five years' probation. We affirm.

On appeal, defendant argues that the trial court abused its discretion by denying his motion for a new trial on the ground that the verdict is against the great weight of the evidence because the complainant's testimony was inconsistent and incredible. We disagree.

New trial motions based solely on the weight of the evidence regarding witness credibility are not favored and should be granted only in exceptional cases in which the evidence preponderates heavily against the verdict and a serious miscarriage of justice would otherwise result. *People v Lemmon*, 456 Mich 625, 639-642; 576 NW2d 129 (1998), overruling *People v Herbert*, 444 Mich 466, 475; 511 NW2d 654 (1993).¹ The existence of conflicting testimony, even when impeached to some extent, is an insufficient basis to overturn a verdict as against the great weight of the evidence; rather, that remedy is reserved for cases where the testimony is contradicted by indisputable physical facts or law or is otherwise so patently incredible or inherently implausible that it could not be believed by any reasonable trier of fact. *Lemmon*, *supra* at 642-647.

Here, defendant has failed to identify the kind of extraordinary evidentiary defects or defaults that would permit the verdict to be overturned as against the great weight of the evidence. Moreover,

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

to the extent that defendant's argument also includes a challenge to the

sufficiency of the evidence to sustain his conviction, we conclude that the evidence, when viewed in a light most favorable to the prosecution, provides a sufficient basis for a rational trier of fact to find that the elements of the offense were proven beyond a reasonable doubt. *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994).

Affirmed.

/s/ Stephen J. Markman

/s/ Henry William Saad

/s/ Peter D. Houk

¹ The *Lemmon* decision applies to decisions on motions for new trial rendered on or after March 24, 1998. See *People v Bolen*, 459 Mich 903 (1998). Here, the trial court rendered its decision on defendant's motion for new trial on March 27, 1998. Moreover, even under the prior standard set forth in *Herbert*, questions of credibility may not be decided anew by this Court. See, e.g., *People v Gadomski*, 232 Mich App 24, 28; 592 NW2d 75 (1998).