

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GREGORY STEPHEN KONOPKA,

Defendant-Appellant.

UNPUBLISHED

May 18, 2001

No. 218346

Oakland Circuit Court

LC No. 98-160339-FH

Before: McDonald, P.J., and Smolenski and K. F. Kelly, JJ.

MEMORANDUM.

Defendant appeals as of right from a conviction of first-degree retail fraud, MCL 750.356c; MSA 28.588(3), for which he was sentenced as an habitual offender, fourth offense, MCL 769.12; MSA 28.1084, to 1½ to 5 years in prison. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole issue on appeal is that the trial court erred in denying his motion for a new trial on the ground that the verdict was against the great weight of the evidence. We review the trial court's ruling on such a motion for an abuse of discretion. *People v Torres (On Remand)*, 222 Mich App 411, 415; 564 NW2d 149 (1997). This Court gives substantial deference to a trial court's determination that a verdict is not against the great weight of the evidence. *Arrington v Detroit Osteopathic Hosp Corp (On Remand)*, 196 Mich App 544, 560; 493 NW2d 492 (1992).

In reviewing a motion for a new trial on the ground that the verdict was against the great weight of the evidence, the judge must review the whole body of proofs. *People v Herbert*, 444 Mich 466, 475; 511 NW2d 654 (1993), overruled in part on other grounds *People v Lemmon*, 456 Mich 625, 627; 576 NW2d 129 (1998). Generally, a verdict may be vacated only when it is not reasonably supported by the evidence and was more likely the result of causes outside the record, such as passion, prejudice, sympathy, or some other extraneous influence. *People v Plummer*, 229 Mich App 293, 306; 581 NW2d 753 (1998); *People v DeLisle*, 202 Mich App 658, 661; 509 NW2d 885 (1993).

Defendant contends that the verdict was against the great weight of the evidence because the witnesses' testimony conflicted. "Conflicting testimony, even when impeached to some extent, is an insufficient ground for granting a new trial" absent exceptional circumstances not

present here. *Lemmon, supra* at 643-644, 647. Therefore, the resolution of the witnesses' credibility was within the exclusive province of the jury, *DeLisle, supra* at 662, and this Court may not resolve them anew. *People v Gadomski*, 232 Mich App 24, 28; 592 NW2d 75 (1998). Accordingly, we find that the trial court did not abuse its discretion in denying defendant's motion.

Affirmed.

/s/ Gary R. McDonald
/s/ Michael R. Smolenski
/s/ Kirsten Frank Kelly