

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY TERRENCE SMITH,

Defendant-Appellant.

UNPUBLISHED

June 8, 2004

No. 245095

Wayne Circuit Court

LC No. 02-003307

Before: Markey, P.J., and Wilder and Meter, JJ.

MEMORANDUM.

Defendant appeals by right his convictions of armed robbery, MCL 750.529, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b, entered after a bench trial. We affirm.

A new trial may be granted on some or all of the issues if a verdict is against the great weight of the evidence. MCR 2.611(A)(1)(e). Determining whether a verdict is against the great weight of the evidence requires a review of the entire body of proofs. The test is whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. *People v Gadomski*, 232 Mich App 24, 28; 592 NW2d 75 (1998). If the evidence conflicts, the issue of credibility ordinarily should be left for the trier of fact. *People v Lemmon*, 456 Mich 625, 642-643; 576 NW2d 129 (1998). In a case tried without a jury, a motion for new trial is not required to preserve the issue. MCR 7.211(C)(1)(c).

The only issue in dispute at trial was the identity of the perpetrator of the armed robbery of a gas station. Complainant testified unequivocally that defendant, whom he knew as a former employee, perpetrated the robbery. Two defense witnesses, who were friends of defendant's, stated that defendant was working at another location at the time the robbery occurred. The trial court was entitled to find that complainant's testimony was more credible than that given by defendant's witnesses. *Lemmon, supra*; *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989). The evidence did not preponderate so heavily against the verdict that it would be a

miscarriage of justice to allow the verdict to stand. *Gadomski, supra*. Defendant is not entitled to a new trial.

We affirm.

/s/ Jane E. Markey
/s/ Kurtis T. Wilder
/s/ Patrick M. Meter